

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

D. Garrison Hill, Circuit Court Judge

100-11115
JAN - 5 2015
200

ROBERT LEE DEAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001313

APPENDIX

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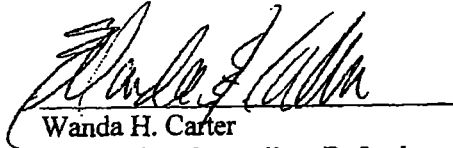
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CONCLUSION

Based on the foregoing argument, appellant's convictions and sentences should be reversed and his case remanded to the lower court for a new trial.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

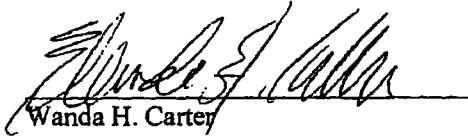
ATTORNEY FOR APPELLANT

This 23rd day of December, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 23rd, 2010

A handwritten signature in black ink, appearing to read "Wanda H. Carter", written over a horizontal line.

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STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

COURT OF COMMON PLEAS
2012-CP-39-01273

ROBERT LEE DEAN,
APPLICANT,)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

ORIGINAL

April 21, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

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HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 MS. RATIGAN: May it please the Court, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. RATIGAN: This is the case of Robert Lee Dean v.
5 the State of South Carolina. The docket number is
6 2012-CP-39-1273. Mr. Dean was indicted for second degree
7 criminal sexual conduct with a minor and lewd act upon a
8 child. He was represented on these charges by Mr. DeJong.
9 The case was brought to trial in September of 2009. And
10 Mr. Dean was found guilty.

11 On September 23rd of 2009, Judge Welmaker sentenced
12 him to concurrent terms and 20 years for second degree CSC
13 with a minor, and 15 years for lewd act. He did file an
14 appeal. It was perfected as an Anders brief. And the
15 matter was dismissed in February of 2012.

16 The State is ready to proceed.

17 THE COURT: Yes, sir, Mr. Ariail.

18 MR. ARIAIL: Yes, Your Honor.

19 We're ready to proceed.

20 THE COURT: Okay. You may call your first witness,
21 Mr. Ariail.

22 MR. ARIAIL: Yes, Your Honor.

23 Mr. Dean -- I call Robert Dean to the stand.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right hand.

1 WHEREUPON,

2 ROBERT LEE DEAN,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: State your full name for the record.

5 THE WITNESS: Robert Lee Dean.

6 DIRECT EXAMINATION

7 BY MR. ARIAIL:

8 Q Mr. Dean, please, state your name again for the
9 record.

10 A It's Robert Lee Dean.

11 Q Okay. And you filed a PCR application in regards to
12 two charges that you had. I guess it was a CSC second
13 degree and a lewd act; is that correct?

14 A Correct.

15 Q In both of those cases, you were represented by
16 Mr. DeJong; is that right?

17 A Correct.

18 Q Okay. And I know there was some procedural, I guess,
19 issues in regards to this. And I think you were indicted
20 or it was brought up that you were going to be tried on
21 the lewd act. I guess you found out about that the day of
22 the trial; is that correct?

23 A Correct.

24 Q And Mr. DeJong, he objected to that based upon lack
25 of notice; is that correct?

1 A Correct.

2 Q Okay. Now, you went to trial and were convicted of
3 both of these charges; is that --

4 A Correct.

5 Q Okay. Now, we've discussed this. And you filed this
6 PCR application in regards to what you believe that
7 Mr. DeJong did not do, or things that he left out in
8 regards to your representation; is that correct?

9 A Correct.

10 Q Okay. And I want to go through some of those items,
11 and then you can add to it, if you need to. But this was
12 a case involving a stepdaughter; is that correct?

13 A Correct.

14 Q An allegation she made about some inappropriate
15 things that you, apparently, had done to her; is that
16 correct?

17 A Correct.

18 Q Okay. Now, how long had Mr. DeJong represented you
19 on the charges?

20 A To be honest with you, I'm not sure of the exact
21 date. Because when I first got arrested and charged, I
22 was working at the time. But I lost my job and really
23 went on short-term disability and couldn't afford -- so I
24 had to apply for the public defender.

25 So I'm thinking it's somewhere in the neighborhood of

1 two years, plus or minus. I'm not exactly sure of the
2 exact date, to be honest with you.

3 Q Okay. Do you know exactly when you were charged or
4 arrested on these?

5 A That was, I believe, either September or October of
6 '06.

7 Q Okay. So you didn't go to trial until somewhere
8 around -- I think it was September of 2009; is that right?

9 A Correct. Yes, sir.

10 Q Okay. For the first -- I guess you say he
11 represented you for about two years; is that right?

12 A Two, two and a half years, I believe, is correct.

13 Yes, sir.

14 Q Okay. So after you were represented -- I mean after
15 you were charged with this, how long before you met with
16 him, I guess?

17 A Again, I think it was six months to a year. I'm not
18 sure of the exact time period.

19 Q Did you have anybody representing you during that
20 time?

21 A When the charges first came up, I spoke with a lawyer
22 out on the street. And he's the one that, actually -- I
23 hadn't paid him, but he's the one that, actually, went
24 with me to Clemson city court to do the first, I think,
25 hearing, evidentiary hearing, or whatever it is to decide

1 whether it's supposed to go forward. And he waived that
2 hearing because there was only one charge at the one [sic]
3 time.

4 Q Okay. And that was a preliminary hearing, I guess?

5 A Yes. Preliminary hearing, yes.

6 Q Okay. So after that, you got -- or were appointed
7 Mr. DeJong; is that right?

8 A Yes, sir.

9 Q How many times do you think -- and you were out on
10 bond during this whole time; right?

11 A Yes, sir.

12 Q Okay. How many times did you meet with Mr. DeJong
13 during this time?

14 A I would think in the neighborhood of, at least, half
15 a dozen, four to six, at least --

16 Q Okay. And you --

17 A But --

18 Q Go ahead.

19 A Approximately once every six months or so, I'd get a
20 note from the Court saying I had to report. And I would
21 come in. And I would see Mr. DeJong. And they would
22 offer a plea agreement. And I'd either agree to it or
23 disagree. And every time, I turned it down.

24 So that happened, at least, four times. And I'm
25 thinking in the neighborhood of four to six times.

1 Q Okay. So four to six times, you either were what we
2 call got a bond card, I guess, to come to court; is that
3 correct?

4 A Correct.

5 Q Were there any other times that you had -- that you
6 met with him to discuss the specifics of the case, or the
7 facts?

8 A I met with him twice. Originally, the first time
9 when I was first appointed to him, I met with him by
10 myself. And he read me the charges, read me the
11 statements.

12 And then I met him once again with my daughters to
13 bring them in so that they could speak on it. I wanted my
14 family to be aware of what was going on. And since -- my
15 daughters and them lived with us at the time. And that's
16 really the only time we discussed the case, other than the
17 times when I came to court to hear a plea agreement -- or
18 plea offer.

19 Q Okay. Did he go over the facts that -- or hear the,
20 I guess, specifics of what the allegations were?

21 A Yes. I think he did.

22 Q Did you have -- and I know I provided to you and I've
23 gotten a copy of -- part of -- there were some statements
24 that were, I guess, discussing what the allegations were?

25 A Yes, sir.

1 Q Okay. Did you have a chance to review those?

2 A He read over them for me, yes, sir, and read them to
3 me and, you know, what the statements were saying, yes,
4 sir.

5 Q Okay. Did you understand what she -- I guess what
6 the victim was alleging?

7 A In hindsight, I don't -- I didn't understand at the
8 point that she was saying it went further than touching.
9 My original thought was she was accusing me of touching
10 her inappropriately. And that meant touching outside the
11 clothes.

12 But once the other indictment came in and, once I went
13 to trial, they were saying there was even some type of
14 penetration and oral sex as well. So that was kind of
15 new.

16 Q Okay. So you had no knowledge of that prior to that?

17 A Not the penetration with the finger, and things that
18 they testified to in court, no, sir.

19 Q Okay. So there was no discovery that provided that
20 to you; is that --

21 A The only thing I got -- I didn't get -- again, I'm
22 not very up on the law. This is really the first time
23 I've had any trouble.

24 My understanding is I was supposed to have gotten a
25 discovery packet with an inventory sheet, and all this.

1 And, really, the only thing we ever discussed -- and I
2 didn't, actually, get an inventory packet until I wrote
3 Mr. DeJong after I was convicted. But he did read over
4 the statements that the police officers had and that
5 Courtney and her family made.

6 Q Okay. And, in this case, to the best of your
7 knowledge, there was no forensic interview done; correct?

8 A As far as I know, there was no interview,
9 investigation, or anything done.

10 Q And Judge Hill has the transcript in this. This was
11 really pretty much a case based upon statements being made
12 against you; is that correct?

13 A Correct. Yes, sir.

14 Q I mean, there was really no physical evidence in this
15 case?

16 A No physical evidence, no investigation, nothing.

17 Q And so you testified in this case, too; correct?

18 A Yes, sir, I did.

19 Q Okay. Now, I want to go back a little bit through
20 the specifics of the case. This was a stepdaughter of
21 yours; correct?

22 A Correct.

23 Q And you had lived, I guess, in the residence with her
24 for approximately five to six years; is that right?

25 A Correct.

1 Q And you had married her mother; correct?

2 A Yes, sir.

3 Q And these allegations came up that there were some
4 inappropriate actions taken against her during the time
5 you lived with her; right?

6 A It came up after. I moved out probably either
7 October or November of '05. And these allegations didn't
8 come up until July of '06.

9 Q Okay.

10 A And this was after I told her mother that I was going
11 to be suing her for divorce on the grounds of adultery.
12 And I told her that in July while the children were
13 visiting. And then when they came back from the visit is
14 when I found out these allegations were made.

15 Q Okay. So a lot of -- and the transcript speaks for
16 itself. A lot of the issues in the case were failure to
17 report, or lack of reporting when the victim --

18 A Right.

19 Q -- reported it. And that was one thing you discussed
20 with Mr. DeJong; correct?

21 A Yes, sir.

22 Q Now, what -- did he do what you wanted him to do in
23 regards to evaluating or bringing out the failure to
24 report or lack of reporting that y'all discussed?

25 A Again, because I'm not real, I guess, knowledgeable

1 of court cases and things, I relied on Mr. DeJong to
2 pretty much do everything he could. I like Mr. DeJong as
3 a person. He's a great man. I'm not really here to bad
4 talk him. But I think there was some things that could
5 have been brought out in the case.

6 Because one of the statements the Prosecutor made at
7 the end in his closing argument was why would Courtney
8 lie? And I think there were lots of reasons that she
9 could have lied, including me divorcing her mother on the
10 grounds of adultery, her wanting to stay in Florida, the
11 problems they were having with the next door neighbor. I
12 think that really wasn't brought out at trial.

13 I even wanted to -- I asked Mr. DeJong if there was
14 any way that we could have the two police officers testify
15 on my behalf. There's a police report mentioned of -- I
16 believe it's the first of May sometime in '06. And I
17 don't have that police report in front of me. It's
18 supposed to be in the discovery, I guess, or in my file
19 with Mr. DeJong.

20 But that particular day when that happened, there was
21 an incident with the next door neighbor who was
22 intoxicated. And Courtney and Nick both told me on a
23 previous time that, you know, he was inappropriate with
24 them. So the police were called because there was a
25 confrontation.

1 Before I left, Nick and Courtney both left with me
2 that day to go to their father's. I was taking them to
3 their father's. That was the weekend they spent with
4 their father. That was another thing, I think, that was
5 not brought out in court was, you know, every other
6 weekend they went to their father's.

7 But, anyway, on this particular day, when we were
8 leaving, the police were sitting in the street and so was
9 I up along beside them. And I asked the police to tell
10 them -- Courtney was sitting in the front, Nick was in the
11 back, that if they have any problems with anybody doing
12 anything inappropriate, threatening them, or whatever,
13 they can always report it to the police, counselors,
14 whatever.

15 And I think had the officers come and testified on my
16 behalf to that -- if I was guilty, why would I be telling
17 her how to report me? I mean, I just -- I wouldn't have
18 done that. I mean, that makes no sense to me.

19 But I think that may have helped in a sense.
20 Because, to me, the case, basically, boiled down to her
21 saying I did and me saying I didn't. And I know I didn't.
22 So there's no way they could prove I did.

23 Q Okay. And that -- I guess what I want to take from
24 that, that was an incident that happened -- was it after
25 you had become separated from the mother?

1 A Yes, sir, almost six, seven months.

2 Like I said, I left in either October or November of
3 '05. And this happened the first of May of '06, a month
4 before they left to go to Florida to visit their
5 grandparents.

6 Q Okay. And the reporting took place in the summer of
7 '06; correct?

8 A Correct.

9 Q So this was a month before she went to Florida; is
10 that --

11 A Correct.

12 Q Okay. So the relevance of that was that you were
13 saying that she could have reported or said something to
14 those officers at that time; is that correct?

15 A Correct.

16 Q And she didn't say anything about you at that time?

17 A Correct.

18 Q Did she say anything about that is not -- what did
19 she say to those officers at that time?

20 A She just said, okay, that she knew that if she was
21 having problems with somebody that she could call. And,
22 again, it's -- you know, we said police officers, you
23 know, school counselors. There was always somebody that
24 she could contact.

25 Q Okay.

1 A And, again, we're talking about a 16-year-old who,
2 you know, in this day and age is probably a lot smarter
3 than, at least, me anyway with things of that nature.

4 Q Okay. Now, in regards to, I guess, this Florida
5 arrangement, she went every summer to live with her
6 grandparents; correct?

7 A Yes. Her and her brother both went.

8 Q And one of the, I guess, things that Mr. DeJong drew
9 out was that there was -- she hadn't reported this to her
10 grandparents during any of the summer she was with them;
11 correct?

12 A That's correct.

13 Q And if I'm -- correct me if I'm wrong. In this case,
14 she first reported to her brother --

15 A Right.

16 Q -- while she was in Florida with him?

17 A Yes, sir. That's my understanding.

18 Q And then her brother either told -- I think it was
19 her grandfather?

20 A Right.

21 Q And the grandfather told the grandmother?

22 A It may have been the grandmother being told first and
23 her telling the grandfather. I'm not sure of the exact --

24 Q Okay. But it all happened while they were in
25 Florida; correct?

1 A Yes, sir.

2 Q And so the reporting issue -- what other things did
3 you discuss with him about drawing out or, I guess,
4 concentrating on that reporting aspect? Did you ask him
5 to do anything else on that?

6 A Well, I really wasn't sure what to ask him for the
7 simple fact that, again, I knew I didn't do it. And there
8 was no way for them to prove I did. So it was hard for me
9 to say, well, you know, can you do this?

10 Other than, you know, the police report being one
11 thing, the trouble they were having with the next door
12 neighbor. I even thought at one time that maybe she was
13 afraid of the next door neighbor, and that's why, you
14 know, she put it on me. Because she disliked me because
15 of the divorce that I said I was going to file for in
16 July.

17 Her mother, also, thought I was trying to go back
18 with my first wife, which was untrue. There were just a
19 lot of things going on and a lot of reasons, again, that
20 she could have lied that I really don't think were brought
21 out in court. And because -- I guess looking back, it
22 boils down to who's more believable, or who may tell the
23 truth and who not.

24 And I don't mean to speak bad about children because
25 I have children of my own. And we all sometimes stretch

1 the truth, or whatnot. But I believe there were reasons
2 that the jury could have considered why she might have
3 lied, including wanting to stay in Florida, you know, just
4 a myriad of things.

5 Q But he drew out -- and correct me if I'm wrong. In
6 the transcript, he drew out that she wanted to -- loved
7 her grandparents and would like to live down there;
8 correct?

9 A Right. He did.

10 Q Okay. And the -- I guess the issue you have is you
11 think he could have done more in regards to that, drawing
12 that out?

13 A Well, I -- again, I think if -- and I don't mean to
14 bad mouth Mr. DeJong. Again, I think he's a great
15 gentleman.

16 But looking back, I'm not sure what he should have
17 done and what he shouldn't have done. I just feel like if
18 I'm innocent and I know I'm innocent, there should have
19 been some way for me to prove that innocence. And I know
20 the burden of proof is not on me. It's supposed to be on
21 the State. But I don't believe the State proved anything
22 either. It still boils down to her saying I did and me
23 saying I didn't. There's no evidence whatsoever. And if
24 it comes down to who's more believable, then I would think
25 there could have been some way to impeach what she was

1 saying.

2 Q Okay. Did he -- did you ask him to, I guess, go
3 into, I guess, questions about the divorce and how that
4 impacted this or --

5 A Well, I -- again, I hoped he would bring all that up.
6 Because, like I said, that was reasons why this was
7 reported, you know. I feel maybe he could have spoken to
8 my daughters and got some insight on how Courtney thought,
9 and what she thought, and what -- you know, if they knew
10 about something more going on. My mother even suggested
11 that she could have come and testified that Courtney's
12 mother was trying to get me to come back, and she thought
13 I was having the affair with my first wife. And that,
14 again, could have been a reason why these charges were
15 brought up.

16 Because me being the type of man I am, I was a single
17 parent for a while. And I fought for custody of my kids.
18 And kids mean everything to me. And I'll be honest, one
19 of the reasons I was going to charge her with adultery was
20 because I was angry and wanted to get mad and get even.
21 And I think that's exactly what she did to me.

22 I believe these allegations were made and brought up
23 to make me look bad, the thing that would hurt me the
24 most. And I believe that once they're out, she couldn't
25 take them back. Once it's said, she couldn't take it back

1 without her being in trouble.

2 Q Okay. Now, I know you've submitted an application,
3 your PCR application for a lot of things, which have been
4 made a part of the record. I know I've gone through and
5 tried to highlight the ones -- are there others that you
6 want to have the Court hear about that you think need to
7 be addressed? I know all this is part of the record --

8 A Again, because I'm not sure of the legal system and
9 how it, actually, works, I know I put in the original
10 application. I, also, sent in two amendments that I hope
11 are part of the record, also.

12 And there's, also -- again, I spoke with you this
13 morning and you said that that may already be part of the
14 record anyway, the pages from the -- yeah, the
15 transcript --

16 Q Right.

17 A -- where the Prosecutor admitted that the case boiled
18 down to nothing, just he-said-she-said thing.

19 Sand I think even though my first appellate -- or
20 direct appeal was denied about the expert witness, I still
21 think if I read the law books correctly -- and I'm not --
22 again, I'm not a lawyer and not real versed on it. But it
23 seemed to me that the only thing she did was really give
24 -- gave evidence saying why she lied. And she can't
25 really give evidence to why she lied or why she reported

1 late, because she never spoke with her. She never
2 interviewed her. She never said anything. I believe it
3 was corroborating, I guess, evidence.

4 Q I guess what you're talking about is there was an
5 expert that testified in regards to --

6 A The late reporting.

7 Q -- the late reporting, and all of that?

8 A Right. And I think the Prosecutor, at the time when
9 he was speaking or his opening statement, was saying that
10 he would present witnesses to tell why she didn't report
11 on time, or why it was late.

12 Q Right.

13 A And, again, if I'm reading the law books right, that
14 was really just bolstering the witness, which I don't
15 believe is proper.

16 Q Okay. And you talked -- Mr. DeJong made a motion --
17 or tried to object to some of that information; is that
18 correct?

19 A He did, yes, sir.

20 MR. ARIAIL: Your Honor, I have no further questions.

21 THE COURT: Cross-examination.

22 MS. RATIGAN: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. RATIGAN:

25 Q So, Mr. Dean, you testified you met with Mr. DeJong

1 probably four to six times. Does that sound about right?

2 A Approximately, yes, ma'am.

3 Q Okay. And that he went over the State's evidence
4 with you?

5 A Yes, ma'am. He read the statements to me.

6 Q And you told him your version of your relationship
7 with the victim, and how you think this may have come to
8 pass?

9 A Yes, ma'am.

10 Q Okay. And I believe you testified you brought your
11 daughters to meet with Mr. DeJong?

12 A Yes, ma'am.

13 Q And they ended up testifying for you at trial; is
14 that correct?

15 A They did, yes, ma'am.

16 Q And you testified that you didn't understand that the
17 trial would go into things like oral or digital
18 penetration. You didn't know that until you got to trial?

19 A Correct. Yeah. I didn't know that was one of the
20 allegations they made.

21 Q Okay. Have you seen a copy of the arrest warrants in
22 this case? Did you ever get served a copy of those
23 warrants?

24 A I've got a copy of the first warrant, which I was,
25 actually, arrested on. And the other one I got was, I

1 believe, given to me from Mr. DeJong. But it -- I was
2 never arrested or anything. It's evidently one that they
3 went to the Grand Jury, if I understand correctly, which
4 came up afterwards, I think.

5 MS. RATIGAN: May I approach, Your Honor?

6 THE COURT: Sure.

7 BY MS. RATIGAN:

8 Q Mr. Dean, I'm handing you a warrant. The number is
9 K058147. Does that look familiar to you?

10 A Somewhat. I really didn't -- when I looked at it, I
11 guess I looked at the outside where --

12 Q Okay.

13 A Yeah. But I guess that's close enough.

14 Q And the return down there says it was delivered to
15 you on August 24th of 2006. Do you recall that?

16 A I don't, but I'll stipulate. I guess that's correct.

17 Q Okay. And --

18 A But is this the original arrest warrant, or is this
19 the one where they went and --

20 Q I'm just asking if you, actually, got this warrant.
21 It says it was given to you in August of 2006. Do you
22 recall getting this?

23 A I don't recall it per se. But if I've signed it or I
24 agreed to it, then, yeah, I guess I got it.

25 Q Okay. And in the affidavit for the warrants, does it

1 refer to oral sex or digital penetration? Can you read
2 that real quick for me?

3 A It does say that.

4 Q Okay. But even though it says that in this warrant
5 that was allegedly given to you in August, you're saying
6 the first time you heard about this was at the trial?

7 A The first time I recall hearing that there was
8 digital penetration was, I thought, at the trial.

9 Q Okay.

10 A Now, it may have been on there. But, to be honest
11 with you, I was in such a state of shock that I didn't
12 read the warrant, I guess, completely.

13 Q And you never discussed that aspect of the warrant,
14 the penetration aspect. You never discussed that with
15 Mr. DeJong?

16 A I don't recall.

17 Q Okay. And you had discussed -- well, let me strike
18 that and let me start over again.

19 Had you discussed with Mr. DeJong that this would,
20 essentially, boil down to a he-said-she-said type of
21 scenario?

22 A Yes, we did.

23 Q Okay. And I believe you testified that you had
24 turned down, at least, one plea offer; is that correct?

25 A It was more than one. And the very last one was to

1 plead to probation, if I would plead guilty.

2 Q And why did you turn down these offers?

3 A Mainly, I didn't want to admit to something I didn't
4 do even, you know, for probation. I guess in hindsight I
5 was foolish, because I got found guilty anyway, whether I
6 was or not. I may have, you know, come out better. But
7 still I -- at the time, I didn't want to admit to
8 something I didn't do.

9 Q So would it be fair to say you always wanted to go to
10 trial in an attempt to prove your innocence?

11 A It would probably be fair to say that me not knowing
12 the justice system, believing the justice system was just
13 that just that, yes, I wanted to go prove my innocence.
14 However, I didn't know how to do that, other than, you
15 know, me saying I didn't do it.

16 And, again, knowing the justice system now, if, you
17 know, I had to choose between 20 years or probation -- and
18 I believe that's something a lawyer maybe should have said
19 that I can't prove you innocent. The best thing you
20 should do is go and plead guilty and then fight it
21 afterwards. And I believe that's, also, in the criminal
22 key laws that that's the responsibility of the lawyer that
23 he should say I believe this is a plea you should take.

24 Now, again, hindsight looking back, I'm not sure
25 whether I would have or not, because I wasn't guilty.

1 But, at least, that should have been brought up, I think.

2 Q Okay. And one of the things you wanted Mr. DeJong to
3 do a better job of was to go into the reasons the victim
4 may have delayed her reporting?

5 A Well, not only that, but the reasons why. I asked at
6 the time if I could have someone come in and testify on my
7 character and the person I was. Because if I'm
8 understanding the charges correctly, they're saying this
9 went on for many years almost like I was some type of
10 predator. And if that was the case, I think this would
11 have shown up somewhere somehow in my life. But
12 Mr. DeJong said it wasn't really an attack on my
13 character. It was just going to be on what she said and
14 what I said.

15 But, you know, again, hindsight looking back, it was
16 an attack on my character. If she's accusing me of doing
17 these horrible things, then that's not who I am. That's
18 not who I was.

19 Q All right. And you had told Mr. DeJong you wanted
20 him to look into the May of 2006 police report, and to
21 maybe look into the neighbor. Was there anything else you
22 wanted him to do that he did not do for you?

23 A Well, I think the police officers coming and
24 testifying on my behalf, at that point, was a big major
25 blow to my case.

1 Q Okay. But aside from that and looking into the
2 neighbor, was there anything else you haven't mentioned
3 yet that you wanted him to do for you that he did not do?

4 A Well, I'm not sure how to answer that. Because,
5 again, I'm not really versed in the law. I'm not sure
6 what he could do and what he couldn't do, what was
7 appropriate and what wasn't. I just feel like if he's a
8 lawyer representing me, then he should do the best job
9 that he could. And, to be honest with you, even sitting
10 here, I'm not even a hundred percent sure whether he did
11 or didn't, because I don't know what he could do and what
12 he couldn't do.

13 I honestly believe -- and, again, I'm not speaking
14 bad about Mr. DeJong. He -- I think he's a good man. And
15 I appreciate him. And I thank God for him. But, you
16 know, he's a public defender who has many cases every day.
17 I don't know that he has the ability to investigate like
18 he should. I don't know if he has the time to dwell into
19 these cases.

20 And it's my opinion -- and, again, no disrespect to
21 Mr. DeJong. But I believe if I had a paid lawyer out on
22 the street, I would not be sitting here today.

23 Q So you can't identify what you wanted him to
24 investigate. You just feel like he should have devoted
25 more time on his own to try and figure out --

1 A Well, not so much on his own, but just to investigate
2 why these charges may have come up, why -- you know, a
3 good example is why would she lie? There were several
4 things that were never brought out in court.

5 One of the questions that the jurors even came back
6 and asked about was the time aspect as far as what shifts
7 we worked and the time we worked. And I think, again, a
8 basic investigation would have taken care of that.

9 MS. RATIGAN: That's all I have, Your Honor.

10 MR. ARIAIL: No further questions, Your Honor.

11 THE COURT: All right. Thank you, Mr. Dean.

12 Yes, sir, Mr. Ariail.

13 MR. ARIAIL: Yes, Your Honor.

14 I call Mr. DeJong to the stand.

15 WHEREUPON,

16 JOHN WILLIAM DEJONG,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: State your full name for the record.

19 THE WITNESS: John William DeJong. Last name is
20 spelled D-E-J-O-N-G.

21 DIRECT EXAMINATION

22 BY MR. ARIAIL:

23 Q Mr. DeJong, how are you doing today?

24 A Can you speak up just a little bit, Mr. Ariail?

25 Q I'm sorry. How are you doing today?

1 A I'm doing good.

2 Q Good. I'll try to speak up a little bit. You
3 represented Mr. Dean in these two cases that we've kind of
4 been discussing?

5 A I had that pleasure.

6 Q Okay. Now, I want to go back a little bit. How long
7 had you represented him, or do you know when you were
8 appointed for him?

9 A I can -- I don't know. I could look through my file
10 to see the exact appointment date. I can tell you I
11 opened my file on July the 19th of 2007.

12 Q Okay. Do you know how many times you met with him
13 during the course of your representation?

14 A I do not. I don't -- did not keep a record of that.

15 Q Okay. And I want to go through a little bit about
16 his testimony and get some clarification. The first item
17 I want to talk about is this question in regards to
18 criminal sexual conduct, and the penetration, and his
19 knowledge of that. Do you remember discussing that with
20 him?

21 A I have no independent recollection. But having gone
22 through the discovery and gone over the warrants with him,
23 my recollection is he was, initially, charged with
24 criminal sexual conduct with a minor. Thereafter, he was
25 indicted for the lewd act. And the lewd act was the one

1 we had the argument over at the beginning of the trial,
2 not the CSC as such.

3 Q Correct. Okay. So in -- from your information you
4 had -- there was no forensic interview; correct?

5 A There was not. I think the transcript bears that
6 out. I raised an issue under whatever code section that
7 is. Mr. Them said there was no forensic interview. And
8 there was no forensic interview.

9 Q Okay. And during your discussions with Mr. Dean, do
10 you believe that he understood what he was charged with
11 and the significance of all this?

12 A I never had any questions of competency or any
13 question of him comprehending any discussions that we had.

14 Q Okay. So there was no questions that you had during
15 this time that he didn't understand what a criminal sexual
16 conduct charge was?

17 A No, sir.

18 Q Okay. Now, during your discussions with him and the
19 facts of this case, did he provide you information about
20 his divorce from the victim's mother?

21 A We talked about that, yes.

22 Q Okay. And I know that was a -- I guess one of his
23 questions he had as to what your view was on how you were
24 going to handle that, and how you were going to utilize
25 that at trial. And I think one of the questions was that

1 this was -- these charges were made up out of spite from
2 the mother?

3 A That's, certainly, where we were trying to go.

4 Q Okay.

5 A And I think, again, we tried to do that when Mr. Dean
6 was on the witness stand. I would refer you, Mr. Ariail,
7 to, I think, probably Page 358 or 359 of the transcript.
8 I was trying to go into the divorce and the separation.
9 Mr. Them objected to it on the grounds of relevancy. His
10 Honor sustained that objection and told me very nicely to
11 move on.

12 Q Okay. Did you during the, I guess, cross-examination
13 of the victim's mother go into that? Do you remember?

14 A I don't remember. I don't have that part of the
15 transcript marked. If you can direct me to it, I'll be
16 happy to take a look at it.

17 Q I don't have it right in front of me right now. But
18 is that something you discussed with him, and that you
19 were going to try to make that a focus of the case?

20 A As memory serves me, yes.

21 Q And it appears you were shut down a little bit in
22 regards to it during his direct examination?

23 A Right.

24 Q Okay. Now, in regards to the reporting aspect of it,
25 did you discuss with him or have, I guess, a discussion

1 about these -- a next door neighbor and officers that came
2 to the house?

3 A He may well have shared that with me, Mr. Ariail. I
4 have no independent recollection of that today.

5 Q Okay. And I've gone through the transcript. And I
6 don't remember any -- I'll defer to Judge Hill to review
7 the transcript. But I don't remember any questioning or
8 any questions about statements that the victim made to any
9 type of officers. Do you remember anything about that?

10 A I do not.

11 Q Okay. Did he -- you've heard him testify today that
12 he -- do you remember any of this conversation about this
13 type of --

14 A About the officers?

15 Q Yeah. About the officers or --

16 A I do not.

17 Q Okay. Did he give you -- do you have any notes in
18 your file that he gave you the names of these officers, or
19 a police report, or any issues in regards to that?

20 A If you can bear with me just one moment.

21 Mr. Ariail, in flipping very hurriedly through my
22 file, I see trial notes. I see some notes I took when his
23 two daughters, I believe, came in and spoke to me. I
24 don't see any indication that he ever gave me any names of
25 the police officers.

1 Q Okay.

2 A Or, at least, that I made a note of. I'm not saying
3 he did not.

4 Q Right.

5 A But I didn't make a note of it.

6 Q Do you remember anything about this neighbor that
7 was -- I think it was the next door neighbor causing
8 problems with the kids or...

9 A I don't recall that.

10 Q Okay. Now, the delayed reporting in this case, I
11 think that was one of the focuses of your case, too, of
12 your defense. Do you remember having any discussions with
13 him or any things he wanted you to concentrate on that --
14 about this delayed reporting, or any issues with the --
15 being in Florida and not reporting beforehand?

16 A I feel certain we had that discussion, yes, sir. I
17 think probably where that came out to some degree maybe
18 not so much in the case we put up, but, certainly, in
19 trying to keep Shauna Galloway-Williams off of the witness
20 stand.

21 Q Right. And that was an objection you made to try to
22 limit her testimony or prevent her from testifying about
23 that; correct?

24 A Yes, sir.

25 Q Now, the offer that was relayed to him -- I think

1 there was -- he might have just testified that there
2 was -- he had rejected, at least, one offer. Do you know
3 how many offers he received in this case?

4 A I flipped over that just a moment ago. Bear with me
5 one more second, please.

6 I know I have, at least, one written offer. God rest
7 Mr. Them's soul, he was not always good about putting his
8 offers in writing. A lot of times they were verbal. But
9 I just saw in my file as I flipped through here --

10 I apologize, Your Honor.

11 THE COURT: That's okay. Take your time.

12 (Pause.)

13 THE WITNESS: It's always amazing how when you're not
14 looking for something, you find it.

15 Well, here is one that was dated -- well, actually,
16 this is one that, actually, went to Mr. Dean before I was
17 appointed to represent him. Then on August the 14th of
18 2007, I received an offer from Mr. Them that I went over
19 with the client. It was an offer for 15 years, suspended
20 on the service of 12, five years of probation with no new
21 indictments to follow. And that was an offer to plead to
22 a lewd act under the old lewd act statute, and criminal
23 sexual conduct with a minor second degree.

24 I've got some notes here. 12/5 of '07, he gave me a
25 verbal offer, which I made a note of. And you're welcome

1 to see this, if you would like to. 12/5 of '07, 12 years
2 on the CSC second or 15 years on a lewd act and may
3 plead -- or may plead straight up, so --

4 BY MR. ARIAIL:

5 Q To both?

6 A I guess -- to try to answer your question, bottom
7 line, he had one offer before I ever represented him. And
8 then it appears he had two offers, at least, while I was
9 representing him.

10 Q Right. And there was never -- I mean, from my
11 understanding, there was not a recommendation or any type
12 of probation in this case; is that correct?

13 A Not for straight probation.

14 Q Okay.

15 A It was always -- it was either a split sentence --
16 well, it was always a split sentence. I don't even know
17 if it was straight time --

18 Q Right.

19 A -- but I think it was always a split sentence that
20 was offered.

21 Q Okay. And these were relayed to him in discussions
22 with him; correct?

23 A Yes, sir.

24 MR. ARIAIL: Your Honor, I have no further questions.

25 THE COURT: Ms. Ratigan.

1 MS. RATIGAN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. RATIGAN:

4 Q Mr. DeJong, would you have filed the usual Brady and
5 Rule 5 motions when you were appointed?

6 A I'm sorry, ma'am.

7 Q Would you have filed the usual Brady and Rule 5
8 motions when you were appointed?

9 A Yes, ma'am, I did.

10 Q And did you receive those materials from the State?

11 A I did.

12 Q Did you perceive there was anything you did not
13 receive from the State?

14 A I'm sorry, ma'am.

15 Q Did you perceive that you were missing anything in
16 discovery?

17 A I did not. I think I probably asked about forensic
18 interviews, but then there were none.

19 Q And did you review those materials with Mr. Dean?

20 A I did.

21 Q Okay. Did you review with him the elements of the
22 charges and the possible penalties?

23 A I did.

24 Q Did you review with him his version of events, his
25 story?

1 A I think we did that on more than one occasion,
2 Ms. Ratigan.

3 Q And I believe you testified you, also, spoke to some
4 of his daughters?

5 A I did.

6 Q And did they, eventually, testify at his trial?

7 A They did.

8 Q When these plea offers were made to Mr. Dean, did you
9 explain to him the pro's and con's of a plea versus a
10 trial?

11 A I do. I'll be very candid. Usually, when a plea
12 offer, even -- no matter how good I think it may or may
13 not be, for purposes of why we are sitting here today, I,
14 normally, do not tell a client you should take it.
15 Usually, the harshest thing -- that may not be a good
16 choice of words. But the harshest thing I would say is,
17 you really need to give this very serious consideration.

18 And had there been an offer for straight probation in
19 this case, that one I may have twisted Mr. Dean's arm on,
20 if there had been such a one. But I don't recall such a
21 one.

22 Q Did Mr. Dean just always reiterate that he wanted to
23 go to trial?

24 A Yes, ma'am.

25 Q Okay.

1 A I don't think there was ever any implication on his
2 part whatsoever that he would plead guilty.

3 Q Would it be fair to say that the State's case was a
4 he-said-she-said, just a credibility issue?

5 A Yes.

6 Q Okay. And you discussed that with Mr. Dean?

7 A I'm sure I did. I can't sit here and say I have an
8 independent recollection of that. But I'm sure I did.

9 Q And so what would the -- what was your defense
10 strategy at trial?

11 A Again, you know, basically, to say it didn't happen
12 based on the delayed reporting, and not reporting, and
13 that type of thing.

14 Q Okay. If Mr. Dean had asked you to look into this
15 May 2006 police report or the issue with the neighbor, is
16 that something you would have done? Would you have looked
17 into it?

18 A I can't honestly say I would have, Ms. Ratigan.

19 Q Okay. In your opinion, was there anything else you
20 could have investigated in this case in order to offset
21 the State's position?

22 A No. Because, again, it was, basically, a swearing
23 contest. There were no medicals, as I recall, no forensic
24 interviews. It was, basically, a swearing contest between
25 the alleged victim -- I guess victim now and Mr. Dean.

1 Q And Mr. Dean testified that he asked you about
2 bringing in character witnesses. Is that something you
3 recall discussing with him?

4 A I'm sure he did. And my stock response on that is
5 your character is not an issue during the trial.

6 Q And is that something you would have told Mr. Dean in
7 this case?

8 A Yes, ma'am.

9 MS. RATIGAN: That's all I have, Your Honor.

10 MR. ARIAIL: Nothing further, Your Honor.

11 THE COURT: Thank you, Mr. DeJong.

12 THE WITNESS: Thank you, Your Honor.

13 MR. ARIAIL: Your Honor, that is our case.

14 THE COURT: Ms. Ratigan.

15 MS. RATIGAN: Your Honor, the State would rest on the
16 record.

17 THE COURT: All right. Does anyone wish to make any
18 kind of closing statement at this particular time?

19 MR. ARIAIL: No, Your Honor.

20 THE COURT: Okay. I understand the issues. I'm
21 going to review the transcript in light of what I've heard
22 here today. And I'll let you know my decision, hopefully,
23 in the next several weeks.

24 Thank you.

25 *****END OF TRANSCRIPT OF RECORD*****

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Pickens County, South Carolina, on the 21st day of April, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 5, 2014

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)
)
 Robert Lee Dean,)
 S.C.D.C. No. 337033,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-39-1273

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA
 12th MAY 30 P 3:40

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 31, 2012. The Respondent made its return on March 28, 2013. An evidentiary hearing into the matter was convened on April 21, 2014 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by R. Mills, Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, John W. DeJong, Esquire. The Court had before it the trial transcript, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the February 2007 term of the Pickens County Grand Jury for second-degree criminal sexual conduct (CSC) with a minor (2007-GS-39-0346) and lewd act upon a child (2007-GS-39-0347).

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He was represented by John W. DeJong, Esquire.

After the State called the case to trial, the Applicant was found guilty. On September 23, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of twenty years for second-degree CSC with a minor and fifteen years for lewd act upon a child.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Dean, Op. No. 2012-UP-097 (S.C. Ct. App. filed February 22, 2012).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Prosecutorial misconduct:
 - a. Illegal enhancement of charges.
 - b. Threats and attempted coercions to induce a guilty plea.
 - c. Brady violation with State witnesses.
 - d. Improper interrogation proceedings.
 - e. Improper trial tactics:
 - i. Bolstering witnesses.
 - ii. Closing arguments.
2. Ineffective assistance of trial counsel:
 - a. Failure to request Brady materials.
 - b. Failure to properly investigate.
 - c. Failure to raise proper objections and preserve relevant issues for appellate review during trial and closing arguments.
 - d. Failure to move for mistrial.
3. Ineffective assistance of appellate counsel:
 - a. Failure to present appropriate issues for appellate review.
 - b. Failure to ensure Applicant's right to present pro se Anders brief.
4. Due process violations:
 - a. Abuse of discretion with preliminary hearing judge.
 - b. Abuse of discretion with trial judge.
 - c. Failure of South Carolina Court of Appeals in granting forty-five

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

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_____ days to submit a pro se Anders brief.

In a pro se document captioned "Amendment to Application for Post-Conviction Relief" dated February 14, 2013, the Applicant made the following allegations:²

1. Trial judge erred in denying motion for directed verdict.
2. Ineffective assistance of counsel:
 - a. Counsel failed to "properly and timely raise the Corpus Delict issue during trial base on lack of corroborating evidence."

At the hearing, the Applicant proceeded solely upon the allegations of ineffective assistance of trial counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective

² While the Applicant filed a pro se "Amendment to Application for Post-Conviction Relief" dated April 10, 2014, this Court will not consider this document because it was filed after the Applicant was represented by counsel. See Rule 11(a), SCRCP; Jones v. State, 348 S.C. 13, 14, 558 S.E.2d 517, 517 (2002) (holding there is no constitutional right to hybrid representation either at trial or on appeal).

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performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had four to six meetings with trial counsel. The Applicant stated they reviewed the State's evidence and his version of events. The Applicant stated trial counsel also met with his daughters. The Applicant stated he and trial counsel discussed that the case was a "he said/she said" scenario. The Applicant stated he wanted trial counsel to investigate: (1) a neighbor who he said had been "inappropriate" and (2) a May 2006 police report in which he told the victim and her brother to report such inappropriate behavior to the police. The Applicant stated he turned down plea offers because he wanted to go to trial and prove his innocence. The Applicant stated trial counsel should have found a way to impeach the victim. The Applicant stated he wanted trial counsel to call character witnesses on his behalf but that counsel said this was not an attack on his character.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified he discussed the Applicant's version of events several times and reviewed the elements and punishments for the charges. Trial counsel confirmed he and the Applicant discussed this was a "he said/she said" situation. Trial counsel confirmed he met with the Applicant's daughters and stated they testified at trial. Trial counsel testified he had no independent recollection of discussing either the neighbor or the May 2006

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..... police report and that there was nothing in his file that the Applicant gave him the names of the
police officers. Trial counsel testified there was nothing else he could have investigated, as this was a "swearing contest." Trial counsel testified there were two plea offers in this case – a written offer on August 14, 2007 for fifteen years suspended on twelve years and five years probation and an oral offer on December 5, 2007 for an aggregate fifteen year sentence or a "straight up" plea. Trial counsel testified they discussed the advantages and disadvantages of a guilty plea versus a trial but that the Applicant always wanted a trial. Trial counsel testified the defense strategy was to argue the abuse never occurred and to stress the victim's delayed reporting. Regarding character witnesses, trial counsel testified he generally tells his clients that character would not be an issue in a case such as this.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly discuss the case with him. The Applicant stated he did not realize the facts at trial would go beyond an allegation of improper touching. This Court finds the Applicant's testimony is not credible. The Applicant admitted he saw the arrest warrants (one of which mentioned penetration) and that he and trial counsel had discussed the issue of penetration. Further, trial counsel testified they discussed the State's evidence and would have also discussed the arrest warrants. Trial counsel also testified they reviewed the elements of both charges. This Court finds trial counsel's testimony is credible and that the Applicant was well aware of the nature of the State's evidence and charges against him.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly investigate his case. While the Applicant stated he wanted trial counsel to investigate his neighbor and a May 2006 police report, trial counsel testified he did not recall such a conversation and that there were no notes in his file about these matters. This Court finds trial

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counsel's testimony is credible. Further, as the Applicant did not present either witnesses or the police report at issue, this Court cannot speculate as to whether further investigation would have changed the outcome of the Applicant's case. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original); see also Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense). Similarly, as the Applicant failed to present testimony from purported character witnesses, he failed to meet his burden of proving this would have benefitted his case. See Bannister, 333 S.C. at 303, 509 S.E.2d at 807. And while the Applicant stated trial counsel did not do enough to impeach the victim, he failed to articulate what counsel should have done. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test - that trial counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds the Applicant failed to prove the second prong of Strickland - that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 23rd day of May, 2014.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.