

John Christian Hammond
P.O. Box 2384
Anderson, South Carolina 29622
(864) 642-8748

RECEIVED
AUG 13 2012
SC Court of Appeals

August 7, 2012

VIA REGULAR MAIL

The Honorable Jenny Abbott Kitchings
Clerk, The S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. John Christian Hammond
Case No.: 2010-GS-04-01359

Dear Ms. Kitchings:

I believe I have sufficient grounds for appeal. I was indicted for Criminal Sexual Conduct with a Minor – Victim Under 11 years of Age --- First Degree.

The alleged victim according to the indictment, a copy of which I have attached, was 4 years old at the time of the alleged offense. I spent 851 days in jail waiting for justice. I was told the only way out was to take this plea. I understand that these issues are for Post Conviction Relief and not appeal. Nevertheless, I do believe I have sufficient grounds for appeal.

The sentencing sheet notes that I pled to a “lesser included offense”, i.e. Criminal Sexual Conduct with a Minor Second Degree.

Criminal Sexual Conduct with a Minor Second Degree is not a lesser included offense of Criminal Sexual Conduct with a Minor First Degree. Second Degree involves a child who is 14 years of age or less, but at least 11 years of age. First Degree involves a minor who is under 11 years of age.

According to the indictment, the minor at issue in this case was under the age of 11. Therefore, it is a legal impossibility for me to be guilty of or to be found guilty of Criminal Sexual Conduct with a Minor Second Degree involving a minor who is between the ages of 11 and 14.

I have attached the sentencing sheet and the indictment. It is my belief that it was a legal impossibility for the Court to sentence me under the charge of Criminal Sexual

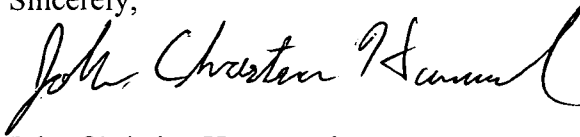
Conduct in the 2nd degree when at no time were there any allegations of wrongdoing of any kind with a child between the ages of 11 and 14.

The indictment involved a 4 year old. A lesser included offense would have been Assault and Battery of a High And Aggravated Nature, but not Criminal Sexual Conduct Second Degree. I have referenced the following case law:

The trial court lacks subject matter jurisdiction to convict the defendant of a crime that is not a lesser included of the offense charged in the indictment.” State v. McFadden, 342 S.C. 629, 632, 539 S.E.2d 387, 389 (2000), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 106, 610 S.E.2d 494, 501 (2005). For an offense to be a lesser included offense of another, the greater offense must include all the elements of the lesser offense. *Id.*; accord *223 Blockburger v. U.S., 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932). “If the lesser offense includes an element not included in the greater offense, then the lesser offense is not included in the greater.” Hope v. State, 328 S.C. 78, 81, 492 S.E.2d 76, 78 (1997)

I believe the above cases will help with my appeal. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "John Christian Hammond". The signature is written in a cursive style with a large, sweeping flourish at the end.

John Christian Hammond

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson
STATE

INDICTMENT/CASE#: 2010-GS-04-01359

VS.
John Christian Hammond

AW#: J890636

AKA:
Race: W Sex: M Age: 44

Date of Offense: 1/1/2010

DOB: 08-08-1965 SS#: 464-31-8632

S.C. Code §: 16-03-0655(A)(1)

Address: 116 Arbor Ln

CDR Code #: 0385

City, State, Zip: Anderson, SC 29621-4201

DL# 008527542* SID# SC00400551

SENTENCE SHEET

6/21/10
ENTERED

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree 20yrs cc 85dys cts

In violation of § 16-03-0655(A)(1) B 1 of the S.C. Code of Laws, bearing CDR Code # 0385-0396 w/ 5yrs prob

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) \$17-25-45 n.c.

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kit R Solicitor SC Bar # 69673 Defendant [Signature] Attorney for Defendant SC Bar # 12035

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 851, provided that upon the service of 851 days/months/years and payment of \$ 5 plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 851 days

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135 & Sex Offender Reg. Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	
§14-1-211 (A)(2)(DUI Surcharge)	\$100	100.00
§56-5-2995 (DUI Assessment)	\$12	
§56-1-286 (DUI Breath Test)	\$25	
§47.12 (Public Def/Prob)	\$500	500.00
§14-1-212 (Law Enforce. Funding)	\$25	25.00
§14-1-213 (Drug Court Surcharge)	\$100	
§50-21-114 (BUI Breath Test Fee)	\$50	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	
§90.7 (SCCJA Surcharge)	\$5	5.00
3% to County (if paid in installments)		18.90
TOTAL		1048.90

Richard A. Hilty

Clerk of Court/Deputy Clerk: P. Hill
Court Reporter: _____

PTUP _____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. Dr Job Corp _____

May serve WE beginning _____
Substance Abuse Counseling

Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: Sex offender treatment and reentry N/C with inc. checky for ALDC

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation

Presiding Judge: [Signature]
Judge Code: C-3
Sentence Date: 6/21/10

A TRUE COPY
JUN 29 2010
CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Anderson)

At a Court of General Sessions, convened on ~~JUN 29 2010~~, the Grand Jurors of Anderson County present upon their oath:

Sex / Criminal sexual conduct with minor - victim under 11 years of age- First Degree

That **John Christian Hammond** did in Anderson, South Carolina between December 26, 2009 and January 2, 2010, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: K. M., whose date of birth is May 9, 2005. This is in violation of 16-3-655(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOICITOR

WITNESSES

Michele Hendrix, Anderson County Sheriff's Dept.

**The State of South Carolina
County of Anderson**

A TRUE COPY
JUN 29 2012
Robert King
CLERK OF COURT

COURT OF GENERAL SESSIONS

JUN 29 2010

Term

ARREST WARRANT NUMBER

J890636

THE STATE

vs.

John Christian Hammond

COMMITMENT

6/21/12 RT

**ACTION OF GRAND JURY
TRUE BILL**

JUN 29 2010

R. King

Foreperson of Grand Jury

Date:

KWR

Indictment for

**Sex / Criminal sexual conduct with minor -
victim under 11 years of age- First Degree**

VERDICT

SC Code: 16-03-0655(A)(1)
CDR Code: 0385

Foreperson of Petit Jury

Date:

John Christian Hammond
P.O. Box 2384
Anderson, SC 29622



The Honorable Jenny Abbott Kitchings
Clerk, The S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

2921131629 8012

