The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
P.O. Box 11330
Columbia, South Carolina 29211

RE: Timothy Michael Farris v. State of South Carolina, Case No. 2012-CP-16-814

Dear Mr. Shearouse:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

(1) Proof of service of the notice of appeal on the respondent.

(2) A copy of the order which is to be challenged on appeal.

(3) This appeal is being filed with the Supreme Court because of the issues detailed in the attached Motion to Alter or Amend.

Sincerely,

DATED: 1-29-15

Timothy Michael Farris

Timothy Michael Farris, Pro Se

Please direct any reply to me at:
7910 Hillenby Court, Waxhaw, NC 28173
(704) 256-9001

Please returned time stamped copy

cc: Joshua Thomas
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

RECEIVED

FEB 09 2015

S.C. SUPREME COURT

AFFIDAVIT OF MAILING

I am the Applicant for Post-Conviction Relief # 2012-CP-16-814. I have this day mailed a copy of the **NOTICE OF APPEAL** by depositing same in the United States mail, postage prepaid to:

Joshua Thomas
PO Box 11549
Columbia, SC 29211
Attorney for Respondent

Dated this _____day of _____, 2015

Timothy Michael Farris

Timothy Michael Farris, Pro Se

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	NOTICE OF APPEAL
State of South Carolina,	)	
	)	PER RULE 203 SCACR
Respondent.	)	
	)	
	)	

The Applicant, Timothy Michael Farris, hereby gives notice of intention to appeal from the judgment of this court in the above action. The Applicant received written notice of the entry of judgment on January 28, 2015. He did not receive it from his appointed attorney, and did not receive written notice prior to that date because his appointed attorney abandoned him.

The date on which the attorney of record received written notice of the Order of Dismissal is a mystery. He refuses to disclose that information.

A Motion to Alter or Amend was filed *pro se* on January 6, 2015. The Applicant is uncertain whether that Motion will be addressed since he filed before the attorney of record was officially relieved, and that Motion has since been removed from the list of actions.

A copy of the Order of Dismissal is enclosed. Issues that could be raised on appeal are described in the enclosed Motion to Alter.

<<<<<<<<<<<<<<<<<<<<<<<<SIGNATURE PAGE ATTACHED>>>>>>>>>>>>>>>>>>>>>>

Respectfully submitted,

Timothy Michael Farris

Timothy Michael Farris, Applicant Pro Se

Please direct any reply to me at:

7910 Hillenby Court, Waxhaw, NC 28173
(704) 256-9001

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT
Timothy M. Farris, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2012-CP-16-814 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 24, 2012. The Court convened an evidentiary hearing into the matter on July 24, 2014, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsels, Tonya Copeland Little, Esquire, and Matthew S. Swilley, Esquire, also testified. The Court had before it a copy of the plea transcript, the probation termination transcript, the records of the Horry County Clerk of Court regarding the subject conviction, the filings in this case, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is not presently confined in the South Carolina Department of Corrections. In December 2008, the Darlington County Grand Jury indicted Applicant for criminal solicitation of a minor (2008-GS-16-1555). Tonya Copeland Little, Esquire, and Matthew S. Swilley, Esquire, represented Applicant. On March 9, 2011, Applicant pled guilty as indicted. In

exchange for the plea, the State dismissed two (2) other pending solicitation charges. The Honorable Paul M. Burch sentenced Applicant to five (5) years of incarceration, suspended upon the service of time served and four (4) years of probation. Applicant did not appeal his plea or sentence. On January 23, 2013, the Honorable J. Michael Baxley terminated Applicant's probationary sentence.

Applicant filed the current application for post-conviction relief on September 24, 2012. Respondent made a timely return and motion to dismiss on or about January 15, 2013, asking the application be dismissed as untimely. By order dated January 28, 2013, Judge Baxley conditionally dismissed the action as untimely. Applicant filed a timely response to the conditional order, and Judge Baxley rescinded the conditional order by written order dated January 10, 2014.

II. ALLEGATIONS

In his application, Applicant alleged he is entitled to relief for the following reasons:

1. "Ineffective Assistance of Counsel"
    a. "Did not show when asked, full discovery, did not object to evidence"
2. "Newly Discovered Evidence"
    a. "Received full discovery after asking 3 times on June 5th, 2012"

At the evidentiary hearing, Applicant proceeded on the following allegations of ineffective assistance of counsel:

1. Failure to object to an invalid arrest and search warrant.
2. Failure to object to an improper extradition.
3. Failure to advise Applicant the State had no evidence the alleged victim was thirteen (13) years old.
4. Failure of Mr. Swilley to properly prepare based on the length of his representation.
5. Failure to investigate witnesses.
6. Failure to share discovery.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court also reviewed Applicant's pro se filings. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Specifically, the Court finds Ms. Little's and Mr. Swilley's testimony very credible and gives it great weight. Correspondingly, the Court finds Applicant's testimony not credible. Set forth below are the other relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified he was living in North Carolina at the time he was arrested. He recalled Ms. Little was his first attorney, but could not recall his first meeting with her. Applicant testified he never received a copy of his discovery. He alleged he never saw a video or received a transcript of the internet chats that led to his charges. Applicant testified he told Ms. Little he was thinking about a trial, but admitted he never specifically told her he wanted a trial instead of a plea. Applicant also admitted he pled guilty to avoid a harsher sentence if convicted.

Applicant testified he only met with Mr. Swilley one time. He testified Mr. Swilley provided him copies of some of the State's evidence, but did not give him copies of everything in his file. He recalled Mr. Swilley advised him the State would be successful at trial. Applicant testified Mr. Swilley told him how to answer questions at the plea colloquy. Applicant also admitted he lied at the colloquy. Applicant denied his guilt to the crime, and averred he had an

alibi witness to establish he was at band practice during the times the chats allegedly occurred. However, he admitted he did not give the name of this witness to Ms. Little or Mr. Swilley.

Ms. Little testified she was an assistant public defender when appointed to represent Applicant. She recalled meeting with Applicant four (4) times during her representation. At the first meeting, Applicant admitted to sending the messages to the undercover officer, but said he was struggling with a pill addiction at the time. Ms. Little testified Applicant never told her he had an alibi witness. Ms. Little testified she did not hire an expert to review the computer records, but did research similar cases and discuss the issues with other attorneys. However, she testified she would have explored the possibility of expert testimony if Applicant requested a trial. Ms. Little recalled discussing bench and jury trials with Applicant. She testified Applicant had difficulty deciding to plea, but she never anticipated the case would go to trial. Ms. Little recalled attempting to negotiate an offer to plea to a lesser charge and stay off the sex offender registry, but the State did not make any such offer. Ms. Little recalled reviewing the arrest and search warrants and finding nothing objectionable about them.

Mr. Swilley testified he became involved in Applicant's case when he became a public defender. He recalled thorough discussions with Ms. Little about the case. He testified the case was difficult to defend because Applicant's actions met the definition of solicitation. However, he believed he could argue to a jury that Applicant never intended to follow through on his statements and should not be convicted. Mr. Swilley recalled reviewing the chat logs and discussed the case with Applicant. He recalled Applicant admitting he sent the chats, but he would have sought an expert if Applicant had said it was not him. He also recalled Applicant did not claim to have an alibi or any other defense. Mr. Swilley testified he explained Applicant's

exposure if convicted at trial, and it was of utmost importance to Applicant to avoid jail time. He testified he only told Applicant to be truthful with the plea judge. Mr. Swilley testified it was Applicant's decision to enter the plea, but he would have been prepared if Applicant requested a trial.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its

"reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

1. Failure to challenge the arrest and search warrants.

The Court finds Applicant has not met his burden of proving plea counsel ineffective in failing to challenge the search and arrest warrants in this case. Specifically, the Court finds there are no facial deficiencies in the arrest warrant. The warrant is sworn by affiant Mica Griggs, and conveys information relayed from Sergeant John Specht of the Harstville Police Department. The fact Sergeant Specht did not personally appear before the magistrate is not fatal to the validity of the warrant. State v. Dunbar, 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004) ("Probable cause for a search warrant can be supported by information given to the affiant by other officers." (citing U.S. v. Ventresca, 380 U.S. 102, 108 (1965))). Furthermore, the warrant alleges sufficient facts to show Applicant committed each element of the crime of criminal solicitation of a minor. See S.C. Code Ann. § 16-15-342(a). Finally, the magistrate properly issued the arrest warrant where the crime was committed in Darlington County, even though Applicant resided in North Carolina. See Spiker v. Com., 711 S.E.2d 228, 230-31 (Va. Ct. App. 2011) (discussing other jurisdiction that have determined venue for internet crimes is proper in the location to which the defendant directed his internet communications).

Accordingly, Applicant has not demonstrated plea counsel would have any proper grounds to object to the issuance of the arrest warrant. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments"). Thus, the Court finds credible Ms. Little's testimony that she had no reason to challenge the arrest warrant. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Regardless, an unlawful arrest does not preclude the court from exercising jurisdiction over Applicant where he was later indicted by the grand jury. See State v. Holliday, 255 S.C. 142, 146, 177 S.E.2d 541, 543 (1970) (citing State v. Waitus, 226 S.C. 44, 83 S.E.2d 629; State v. Swilling, 246 S.C. 144, 142 S.E.2d 864; Thompson v. State, 251 S.C. 593, 164 S.E.2d 760). Thus, the State could have properly secured a conviction at trial even if counsel had successfully challenged the arrest warrant.

The Court notes Applicant conceded at the evidentiary hearing that the search warrant was subject to the same probable cause analysis as the arrest warrant. Assuming the contents of the search warrant affidavit were similar to the arrest affidavit, the Court would also find plea counsel was not deficient in failing to challenge the validity of the search warrant. However, no copy of the search warrant was presented at the evidentiary hearing, nor was one included in Applicant's filings. Accordingly, the Court finds Applicant has not demonstrated he was prejudiced by the lack of a challenge to the search warrant. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (finding of prejudice cannot be based on "pure conjecture"). Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and

defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). Because Applicant knowingly and voluntarily pled guilty, he cannot now challenge the sufficient of these warrants. Thus, Applicant has not demonstrated plea counsel was ineffective for not challenging the arrest and search warrants.

2. Failure to challenge an improper extradition.

The Court finds Applicant failed to demonstrate plea counsel was ineffective in failing to challenge Applicant's extradition to South Carolina. Applicant raises various allegations about the documentation supporting South Carolina's demand for extradition. However, the extradition waiver indicates Applicant voluntarily waived extradition to South Carolina. Any flaws in the content of the extradition warrant were waived by his consent to be extradited. Furthermore, Applicant willfully and voluntarily appeared for all of his scheduled court dates. These appearances waived any complaints he may have had about his extradition to South Carolina. State v. Adams, 354 S.C. 361, 374-75, 580 S.E.2d 785, 792 (Ct. App. 2003) ("A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." (citations omitted)). Again, Applicant's plea also waived any challenge he may have to the extradition procedures. Whetsell, 276 S.C. at 297, 277 S.E.2d at 892. Thus, Applicant has not demonstrated plea counsel was ineffective in any way for failing to challenge the validity of the extradition waiver.

3. Failure to advise Applicant the State had no evidence the alleged victim was thirteen (13) years old.

The Court finds Applicant failed to demonstrate plea counsel failed to advise Applicant regarding the State's evidence. Regarding this allegation, the Court finds especially credible Ms. Little and Mr. Swilley's testimony that they each independently reviewed the chat logs and other evidence with Applicant. The Court finds neither credible nor believable Applicant's testimony neither attorney every discussed the State's evidence with him. Ms. Little and Mr. Swilley both understood the chat logs indicated Applicant believed he was chatting with a thirteen (13) year old girl. Although Applicant alleged the actual video of the chats did not include the undercover officer's age, that video was not presented to the Court. Clark, 315 S.C. at 388, 434 S.E.2d at 267. However, the chat logs indicate Applicant understood the age of the person he believed he was soliciting. At one point, Applicant states he is seven (7) years older than the officer, and then describes himself as twenty (20) years old. (Resp.'s Ex. 1, p. 5). Accordingly, the record contains evidence the State could prove Applicant believed he was soliciting a thirteen (13) year old victim. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense).

In addition, Applicant thoroughly discussed this evidence with plea counsel. Accordingly, his plea acted as a waiver of any challenge to the validity of this evidence. Whetsell, 276 S.C. at 297, 277 S.E.2d at 892; see also Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a

plea is usually, but not invariably, foreclosed. (citing Blackledge v. Allison, 431 U.S. 63 (1977))). Therefore, the Court finds plea counsel was not ineffective in this regard.

4. Failure of Mr. Swilley to properly prepare based on the length of his representation.

The Court finds Applicant failed to meet his burden of showing Mr. Swilley failed to adequately prepare for his plea. Applicant alleges the limited amount of time Mr. Swilley spent on the case indicates he was presumptively prejudiced by Mr. Swilley's performance. However, Applicant's reliance on United States v. Cronic, 466 U.S. 648 (1984), is misplaced. This case presents none of the three (3) scenarios giving rise to presumed prejudice under Cronic. Applicant was not denied counsel at a critical stage of prosecution. Cronic, 466 U.S. at 659. Nor did plea counsel "entirely fail[] to subject the prosecution's case to meaningful adversarial testing[.]" Id. Finally, this not an instance where "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." Id. (citing Powell v. Alabama, 287 U.S. 45 (1932)). Instead, the record reflects Mr. Swilley reviewed the file, discussed the case with Applicant, and considered all possible outcomes to the proceedings. The Court finds very credible Mr. Swilley's testimony he would have sought expert testimony and prepared for trial had Applicant requested one. However, the record reflects Applicant accepted the State's plea offer and declined a trial to avoid a harsher sentence See Bennett v. State, 371 S.C. 198, 204-05, 638 S.E.2d 673, 676 (2006) (counsel not deficient for advising client to plea to avoid maximum penalty if convicted).

Furthermore, brevity of consultation is not *per se* grounds for relief. See Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) ("Therefore, it is not enough to merely show that

counsel only met with Easter twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case."); cf. Avery v. Alabama, 308 U.S. 444 (1940) (no denial of constitutional right to assistance of counsel where counsel appointed three days before capital trial). Here, Mr. Swilley discussed the case thoroughly with Ms. Little. He also reviewed the discovery and spoke with the investigating officer. Again, Mr. Swilley credibly testified he would have been prepared for trial had Applicant wanted one. Under the circumstances, the Court finds Mr. Swilley conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Applicant has failed to demonstrate what further preparation or investigation could have been accomplished had Mr. Swilley represented Applicant for a longer period of time. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information). Furthermore, in light of the overwhelming evidence of Applicant's guilt, he has not demonstrated plea counsel improperly advised him to enter a guilty plea. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it"). Therefore, Applicant has not demonstrated Mr. Swilley was ineffective in any way.

5. Failure to investigate witnesses.

The Court finds Applicant failed to meet his burden of proof to show plea counsel was ineffective in failing to investigate an alibi witness. Here, the Court finds very credible the

testimony of Ms. Little and Mr. Swilley that Applicant admitted to sending the internet chats with the alleged minor. The Court also finds credible their testimony that Applicant never gave them any information concerning potential alibi witnesses. The Court finds Applicant's testimony on this issue wholly not credible. Because Applicant admitted his guilt to plea counsel and never provided any potential alibi witnesses, he has not demonstrated plea counsel was deficient in failing to investigate in this regard. See Rodriguez v. State, 74 S.W.3d 563, 568 (Tex. App. 2002) ("Moreover, we opt not to fault trial counsel for the intentional withholding of vital information by his client." (citations omitted)).

Furthermore, Applicant presented no testimony from alleged alibi witnesses at the evidentiary hearing. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (applicant must present testimony of a favorable witness at evidentiary hearing in order to establish prejudice (citations omitted)). Even assuming such a witness would have testified Applicant was at church at the time some of the chats were sent, such testimony would not have provided an alibi for all of the chats. State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) ("[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." (quoting 21 Am. Jur. 2d Criminal Law § 136)). Thus, Applicant also failed to demonstrate how he was prejudiced by plea counsel failing to investigate alibi witnesses.

6. Failure to share discovery.

The Court finds Applicant failed to demonstrate plea counsel ineffective for failing to share discovery. Again, the Court finds the testimony of Ms. Little and Mr. Swilley very

credible on this issue, while finding Applicant's testimony not credible. Ms. Little and Mr. Swilley shared the State's discovery response with Applicant. Even assuming plea counsel did not provide Applicant a copy of the entire file, he was fully aware of the evidence against him when he made the decision to enter his plea. Accordingly, Applicant has not shown a deficiency in plea counsel's performance. Cf. Hyman v. State, 397 S.C. 35, 46, 723 S.E.2d 375, 381 (2012) (court unwilling to "assume that the Constitution requires disclosure of Brady evidence to a criminal defendant *personally*" (emphasis in original)). He also has not shown he was prejudiced by not receiving a copy of the evidence. Id. at 49, 723 S.E.2d at 382 (applicant failed to demonstrate possibility of different outcome had he personally received discovery where he "was fully aware of the inculpatory nature of the [evidence] throughout the negotiations and the guilty plea proceedings"). Therefore, Ms. Little and Mr. Swilley were not ineffective for failing to give Applicant a physical copy of their entire file.

C. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms or that the outcome of his plea would have been different had counsel

performed differently. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk, 383 S.C. at 563, 681 S.E.2d at 594. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24 day of Nov, 2014.

THE HONORABLE THOMAS A. RUSSO
Presiding Judge 2141

Lexington, South Carolina

FILED
2014 DEC 19 PM 1:10
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	NOTICE OF MOTION AND
State of South Carolina,	)	MOTION TO ALTER OR AMEND ORDER
	)	PURSUANT TO RULE 52(b)
Respondent.	)	AND RULE 59(E), SCRCP
	)	
	)	

TO: HONORABLE JOHN RUSSO

JOSHUA THOMAS, ESQ., COUNSEL FOR RESPONDENT

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure the Applicant hereby notifies this Court of his Motion to Alter or Amend the Order of Dismissal filed on December 19, 2014.

I. Illegal Extradition from North Carolina to Darlington Detention Center

A. Extradition was illegal because the Applicant was not a fugitive from justice. He had never been indicted in South Carolina nor any other state.

B. The extradition was illegal without a request for extradition from the Governor of South Carolina. Detective Specht had no authority to enter North Carolina to arrest a suspect.[1]

C. Ignoring the law, Detective Specht arrested the Applicant in North Carolina and drove him, in handcuffs, to Darlington Detention Center.

[1] *See*, clause 2 of article 4 of the Constitution of the United States.

D. Ignoring the law, Detective Sprecht **twice** refused the Applicant's requests for a lawyer.

E. Detective Specht also seized belongings of the Applicant and of his grandmother and brought these items to South Carolina. He had no authority to seize these items.

F. Detective Specht violated the Applicant's Fourth and Sixth Amendment rights, and his Extradition rights.[1]

G. Neither of the public defenders who testified challenged these violations of the Applicant's rights. This is a jurisdictional issue. The seizure of the Applicant and the family's possessions violated the Fourth Amendment. The failure of both defense counsel, Little and Swilley, to recognize these violations, and their failure to challenge jurisdiction is a blatant example of ineffective representation. How could the Court consider these lawyers to be "very competent"?

H. The Court misunderstood. Applicant did not waive his rights by consenting to extradition. He was 20 years of age. He did not know his rights–other than to ask for a lawyer. He was intimidated into compliance. No attorney spoke with the Applicant for nearly two years after the illegal extradition and illegal arrest. The Applicant knew no one who could advise him, and neither he nor his grandparents had funds to pay a lawyer. The 20-years-old musician was dragged from bed, was in shock at being arrested and shackled and surrounded by law enforcement. Is it a surprise that, without reading the Waiver, he signed as ordered? He did not know until four years later that the Extradition Waiver included a box checked by an unknown person–a box that stated he admitted to being a fleeing felon. Since he had no criminal history, why didn't his attorneys ask him about this?

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[1] "[L]aw enforcement officials [must follow] the clear mandates of state and federal extradition laws in the apprehension and transportation of fugitives." *Wirth v. Surles*, 562 F.2d 319, 323 (1977). Also see, *Roberts v. Reilly*, 116 U.S. 80 , 29 L. ed. 544, 6 Sup. Ct. Rep. 291.

I. It is ridiculous to conclude that a 20 years-old who was shackled, without legal counsel, without family present, would know enough to recognize and challenge a defective Extradition Waiver. Since he did not see it again until June 2012, he had no opportunity to challenge it and assert his rights. But his "very competent" attorneys, Little and Swilley, knew or should have known as soon as they examined the discovery provided by the state.

J. The failure of each appointed attorney to challenge jurisdiction prejudiced the Applicant.[1]

II. Failure to Challenge the Arrest and Search Warrants

A. No search warrant was provided to this Court because the Applicant never received a search warrant issued by South Carolina, nor was one in the file he received in June 2012. It is likely none was issued by South Carolina, since it would have required the magistrate to authorize Detective Specht to search a home and car in another state.

B. The Applicant agrees with the Court that Sergeant Specht's failure to appear personally before the magistrate is "not fatal to the validity of the warrant." What makes the warrant fatal is:

1. Specht did not provide an affidavit, let alone a sworn affidavit.

2. The sworn affidavit was submitted **not** by an investigator but by a low level employee of the police department who had no personal knowledge to support the arrest warrant;[2]

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[1] The Duke lacrosse players–college students–did not know their rights when they were arrested for first-degree rape, first-degree kidnapping, first-degree sexual offense, common-law robbery, "felonious strangulation," and conspiracy to commit murder. If their parents were not highly educated and wealthy enough to afford top-notch attorneys; if, instead, they had no attorneys and later were represented by the type of attorneys assigned to this Applicant, they would be in prison today.

[2] "[T]he magistrate or municipal judge must find within the complainant's affidavit enough information that will justify a reasonable belief that (1) a crime has been committed and (2) the person to be arrested committed the offense. The information in the affidavit must be such that the magistrate can make the (continued...)

3. The affidavit is conclusory and insufficient. Among other things, it "recited no more than the elements of the crime charged" and did not state how (or if) the computer chats were traced to the Applicant's computer.[1]

4. The affidavit does not contain any facts linking Farris to the alleged crime.[2]

5. No attempt was ever made to cure these defects.[3]

6. The arrest warrant limits the arrest to the state of South Carolina.

7. Cases cited by the Court in support of Sergeant Specht are inapposite. *Spiker v. Comm.* addresses whether an officer from one county can arrest a person in anothe county **within the same state.**[4] In other words, Sergeant Specht of Hartsville could arrest anyone in Berkeley or Horry or any other county of South Carolina.[5] *Spiker* does not support the Court's conclusion that Specht had authority to arrest a suspect beyond the borders of this state.

8. The Court misrepresented *State v. Dunbar*."[2] This case is familiar because the Applicant cited it in his Motion for Summary Judgment. Contrary to this Court's

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[2](...continued)
determination of probable cause. That is, the affidavit must contain facts, not conclusions. For example, if the complainant merely says, "I swear under oath that Brian Smith stole an automobile," it is conclusory and insufficient." *Judge's Bench Book*, available at http://www.sccourts.org/summaryCourtBenchBook/HTML/CriminalC.htm

[1] ". . .suspicions of petitioner's guilt derived entirely from information given him by law enforcement officers and other persons . . .none of whom either appeared before the Commissioner or submitted affidavits." *Giordenello v. United States*, 357 U.S. 480 (1958).

[2] *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611 (1999), 521 S.E.2d 163. ("The affidavit does not contain any facts linking Gist to the crime.")

[3] "[T]he complaining officer [ ] relied exclusively upon hearsay information, rather than personal knowledge in executing the complaint; and (2) that the complaint was, in any event, defective in that it, in effect, recited no more than the elements of the crime charged . . .." *Giordenello, supra.*

[4] 711 S.E.2d 228 (Va. Ct. App.).

[5] S.C. Code Annot. Chapter 13, Section 17-13-40 confers similar statewide jurisdiction.

misinterpretation, the *Dunbar* court reversed the conviction after finding, "The person signing the affidavit had no knowledge of the facts alleged in the affidavit."

III. All Other Allegations

A. These issues are crucial. Applicant requests specific findings of fact and expressly stated conclusions of law relating to each issue presented and discarded in the Order.[1]

B. Contrary to their testimony, neither Little nor Swilley reviewed and discussed the file with the Applicant. He was *told* there was evidence of his guilt. He did not know he had a right to see the evidence. He testified that neither Little nor Swilley discussed the evidence with him–and this is true. Because when he finally saw the chat logs in 2013, he saw no evidence that the detective pretended to be a 13 years-old. In 2014, when his PCR attorney viewed the video of the chat logs, he told the Applicant there was no evidence of the age. That the video was not presented to this Court is the fault of defense counsel. That is a serious omission. It would be proof the detective did not follow procedure. In other cases the investigator made certain the man knew the decoy was a minor, by mention of attending high school as well as age.

C. The Court believes the Applicant knew he was chatting with a 13-years-old because the chat logs show "Michael24339" claiming to be seven years older. His Yahoo account has the wrong birth year, making him five years older–and seven years older than an eighteen years-old. (Exhibit Z with Motion for Summary Judgment). This could mean the person who used "Michael24339" believed the girl was eighteen–the age required by Yahoo for participation. Or it could mean the person who used "Michael24339" knew the person whose identity he used actually

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[1] "A PCR court "shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented." S.C. Code Ann. § 17-27-80 (2003)" *Marlar v. South Carolina* , 653 S.E.2d 266, 267 (S.C. 2007); *Elam v. South Carolina Dep't. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party *must* file such a motion when an issue or argument has been raised, but not ruled on, to preserve it for appellate review.") (emphasis in original).

was 20 years (easily learned from his many email postings on the 'net–the source of Det. Specht's identification of him). Because neither Little nor Swilley discussed the evidence with the Applicant nor showed it to him, he had no opportunity to point out possible alternative explanations.

D. Of chief concern among the issues ignored by the Court is the question of IP addresses.[1] At the hearing, attorney Swilley admitted he did not know what the IP addresses meant–and he did no investigation.

1. IP addresses have been addressed by other courts, as detailed in the Motion for Summary Judgment. Had either attorney investigated, it would be apparent that the "Michael 24339" email was used by more than two dozen computer IP addresses. Had they compared the times this email was used with the times on Sergeant Specht's chat logs they would know that none of the times matched. Had they traced the location of these IP addresses . . .. All this and more is in the Motion for Summary Judgment.

2. The failure of attorneys to investigate is ineffective representation.[2]

3. These "very competent" attorneys did not know Farris had alibi witnesses because they did not ask, nor did they show him the evidence of dates and times he was supposed to be on the internet with the detective. One alibi witness attended the meeting with attorney Swilley. He provided an affidavit which was filed with the Motion for Summary Judgment–but another no doubt "very competent" attorney, appointed for the PCR, did not notify him about thr hearing. Nor did the

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[1] Section 17-27-80 of Chapter 27, Uniform Post-Conviction Act.

[2] *Edwards v. State*, 392 S.C. 449; 710 S.E.2d 60 (2011) ["This Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); *see also McKnight v. State,* 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) ("A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."]

latest appointed attorney file the notarized affidavit from another alibi witness, one with a better memory for little details. He, too, was not notified about the hearing.

D. The Court failed to address the possibility of email hijacking. One reason to suspect this is based on South Carolina cases that challenged the conviction for internet solicitation of a minor. In each, the accused used an email alias not associated with his identity:

1. In *State v. Reid*, the defendant used the alias, "Fine_Ass_Seminoles_Fan."[1]

2. In *State v. Odom* the defendant (a former prosecutor) used the alias, "Danger6552000," which also displayed the name "Roge Wilson."[2]

3. In *State v. Gaines*, the defendant used the alias, "HMMRTHEGRT8."[3]

4. In *State v. Green*, the defendant used the alias, "blak slyder."[4]

5. There are many such examples–from other states as well as the federal courts. Not one of the accused used an email address widely known as his computer identity.

6. Unlike most other defendants, Timothy Michael Farris was young–only twenty years of age–but he was not stupid enough to use the email that identified him if he intended to solicit sex with a minor.

7. Farris used his email address, "Michael24339," for frequent postings that allowed any reader to know he was a musician, had a band, lived in North Carolina, owned 2003 black Nissan, and he had recently broken up with his fiancee who had been a singer with the band. Sergeant Specht admitted he identified the email address as belonging to Farris–through internet

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[1] 679 SE2d 199 (Ct. App. 2009)

[2] 676 S.E.2d 124 (2009), 382 S.C. 144.

[3] 667 S.E.2d 728 (S.C. 2008).

[4] 724 S.E.2d 664 (SC 2012).

postings. Not through any sophisticated investigation.

8. Farris provided information that anyone could have used to "spoof" his identity. As detailed in the Motion for Summary Judgment, cyber-identity theft ("spoofing") is a frequent occurrence, affecting an Arizona legislator and leading to criminal charges in New York.

9. The failure of the attorneys to investigate is fatal to their claims of competency.[1]

D. The Court needs to rule on IP addresses provided by Yahoo

IV. Ineffective Assistance of Plea Counsel

The testimony of the two plea counsel was not truthful. Their motive was self-protection. Tonya Copeland Little violated attorney-client privilege when she testified as a prosecution witness since she was not a defendant in the petition for Post-Conviction Relief.

Ms. Little's perjured herself when she claimed the Applicant told her he was guilty. Perhaps she wrote "guilty" in her notes because that was her mind-set, but he has insisted on his innocence throughout the years. She claimed he never told her he wanted a trial. But when she ordered him to attend a plea hearing, he came–with his grandfather. And stood before the judge and declared he would not plead guilty. What choices were left? Ms. Little departed without another word to the Applicant. After several months, he phoned her and learned he had no attorney assigned. In his ignorance, he presumed the case was gone.

Ms. Little testified that she tried to arrange a plea deal. She did not admit to the Court that she more than fudged facts. She wrote to the assistant attorney general that the Applicant had completed drug rehabilitation. [Exh. A] Possibly her intent was to create sympathy, but this statement is untrue. The Applicant had no insurance, his grandparents had minimal income and, in

[1] ". . . the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of [466 U.S. 648, 655] assistance of counsel cannot be satisfied by mere formal appointment." Avery v. Alabama, 308 U.S. 444, 446 (1940)" *United States v. Cronic*, 466 U.S. 648 (1984).

fact, filed for bankruptcy protection the year prior to the Applicant's arrest. There simply was no money to pay for rehabilitation–if he had needed it.

Respectfully submitted,

Timothy Michael Farris, Applicant Pro Se

Please direct any reply to me at:

7910 Hillenby Court, Waxhaw, NC 28173

(704) 256-9001

Exhibits

Tonya Little's letter in which she falsely claimed her client had drug rehab.

Appendix to Motion for Summary Judgment

Statement of Undisputed Facts from Motion for Summary Judgment

Fourth Circuit Public Defender's Office
300 Russell Street, Suite 113
Darlington, S.C. 29532

A.C. Michael Stephens, Circuit Defender

J. Richard Jones, Assistant Circuit Defender
Tonya Copeland Little, Assistant Circuit Defender

Mailing Address:
P.O. Box 646
Darlington, S.C. 29540-0646

Telephone – 877.225.2922
Facsimile – 800-670-6375

June 19, 2009

Ms. Susanna Ringler
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

Re: State v. Timothy Michael Farris

Dear Ms. Ringler:

Thank you for your letter dated May 12, 2009, and your plea offer. Mr. Farris and I have discussed your offer at length and he is currently considering his options.

Mr. Farris is 21 years old and has a high school diploma. He has never been arrested in the past and works as an account manager for AMT Advertising. He successfully completed substance abuse counseling almost a year ago and is currently living with his grandparents in Waxhaw, NC.

From our phone conversation, it is my understanding that this is your final offer and you will not consider a counteroffer unless it is approved by your supervisor. However, on behalf of my client and at his request, please consider or ask your supervisor to consider the following counteroffer and write back or call me:

1. PLEAD TO ONE COUNT CONTRIBUTING TO DELINQUENCY OF A MINOR (NEW INDICTMENT)
2. CONSENT TO FORFEITURE
3. DISMISS PENDING CHARGES

Thank you for your consideration.

Sincerely,

TONYA COPELAND LITTLE

cc: Timothy Michael Farris ✓ Timothy:

Contributing to Delinquency of a Minor is a misdemeanor – it carries up to 3 yrs.

Exh.	Content	Memorandum Page
Exh. A	* Swilley appointment	P. 2
Exh. B	* Affidavit for South Carolina arrest warrant	P. 3
Exh. C-1, -2	Pages from Specht's Incident Reports	P. 10, 11
Exh. D	* Confiscated items turned over to Hartsville P.D.	P. 11
Exh. E	* Fugitive Arrest Warrant Waiver of Extradition	P. 12, 28
Exh. F	* Judge Thomas' checklist	P. 14
Exh. G	* Indictment	P. 14
Exh. H	* Kilgo's discovery request	P. 15
Exh. I	* Ringler's letters	P. 15
Exh. J	* Detective Specht's affidavit	P. 16
Exh. K	* Yahoo Application for Search and Seizure	P. 17
Exh. L	* Yahoo IP logs	P. 19, 36
Exh. M	* Request to Myspace	P. 20
Exh. N	* Specht's Chat/ Instant Messages	P. 24
Exh. O	* First Plea Hearing	P. 25
Exh. P	Affidavit	P. 26
Exh. Q	*Specht's Incident Reports	P. 26
Exh. R	Legal treatise, "The Innocent Defendant's Dilemma"	P. 34
Exh. S	Legal treatise, "Bargained Justice"	P. 34
Exh. T	* Forfeiture	P. 35
Exh. U	Affidavit	P. 37
Exh. V	* List of items rec'd 06/04/12	P. 37

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DARLINGTON)	
)	
)	
)	2012-CP-16-814
Timothy Michael Farris,)	
)	
Applicant,)	
)	SEPARATE STATEMENT OF
v.)	
)	UNDISPUTED FACTS IN SUPPORT OF
State of South Carolina,)	
)	APPLICANT'S MOTION FOR
Respondent.)	
)	SUMMARY JUDGMENT
)	

"Exh." references exhibits in the Appendix.

1. South Carolina lacked jurisdiction to arrest the Applicant in North Carolina.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).

2. The South Carolina arrest warrant, signed on July 31, 2008 was facially deficient.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).

3. In the presence of Hartsville Detective Specht and others, the Applicant was told to sign the Waiver of Extradition.
SUPPORTING EVIDENCE: Applicant's affidavit; Exh. E (Waiver).

4. The Waiver is blank in the boxes for "crime(s) in demanding state" and "date of crime(s)."
SUPPORTING EVIDENCE: Exh. E (Waiver).

5. The Waiver falsely states that Applicant was a fleeing felon.
SUPPORTING EVIDENCE: Exh. E (Waiver).

6. Detective Specht knew the Applicant was not a fleeing felon.
SUPPORTING EVIDENCE: Exh. G (Indictment).

7. Detective Specht took custody of the Applicant and the confiscated items in North Carolina.
SUPPORTING EVIDENCE: Exh. C and D (Incident Report; List of Items).

8. Detective Specht did not have authority to transport the Applicant to South Carolina.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).

9. Detective Specht drove the Applicant from North Carolina to Darlington Detention Center in South Carolina.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.

10. Two weeks later, on August 21, 2008, the Applicant was indicted for criminal solicitation of a minor.
SUPPORTING EVIDENCE: Exh. G (Indictment).

11. Two days after the indictment, appointed attorney Robert Kilgo, Jr. sent discovery requests to the prosecutor. Several months later Kilgo left the public defender's employ without ever speaking with the Applicant.
SUPPORTING EVIDENCE: Applicants's affidavit; Exh. H (Kilgo's discovery request); court records.

12. Detective Specht's affidavit in support of the Yahoo search warrant admits he relied exclusively on publicly available web sites to link the Yahoo email name "Michael24339" to the Applicant.
SUPPORTING EVIDENCE: Exh. J (Specht's affidavit).

13. In the pages Detective Specht claims are records of the Instant Messages (IM) there is no evidence Specht stated he was posing as a girl of thirteen years.
SUPPORTING EVIDENCE: Exh. O.

14. In the pages Detective Specht claims are records of IM exchanged with Michael24339, there is no evidence of plans to meet (i.e., no intent).
SUPPORTING EVIDENCE: Exh. O.

15. There is no evidence of authentication of the IM (chat logs).
SUPPORTING EVIDENCE: Exh. K (footnote #1, p.3, Yahoo search & seizure).

16. There is no evidence of tracing the IM to Applicant's computer.

17. There is no evidence of tracing the IM to Applicant's grandmother's computer.

18. Specht confiscated property that was not relevant to the alleged crime.
SUPPORTING EVIDENCE: Exh. D.

19. At the time of the arrest and indictment Chief Justice Finney's 1999 Order required disposition of criminal cases within 180 days of arrest.
SUPPORTING EVIDENCE: Judge Finney's Order.

20. No court determined that exceptional circumstances existed to allow a delay of fifteen months to dispose of the case against the Applicant.
SUPPORTING EVIDENCE: Court docket.

21. On November 9, 2009–fifteen months after his arrest–the Applicant was ordered to a plea hearing scheduled by the prosecutor. He refused to plead guilty.
SUPPORTING EVIDENCE: Applicant's affidavit; Exh. O (attorney Little's letter).

22. Two and a half years after the arrest, on February 24, 2011, Matthew S. Swilley was appointed to represent the Applicant.
SUPPORTING EVIDENCE: Exh. A (Appointment).

23. One week after his appointment, Swilley phoned the Applicant to notify him about a plea hearing scheduled for the following week.
SUPPORTING EVIDENCE: Applicant's affidavit.

24. Swilley did not ask for a continuance to allow him to investigate or prepare for trial.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.

25. Swilley abandoned any semblance of representing the Applicant.
SUPPORTING EVIDENCE: Applicant's affidavit; court records.

26. At the plea hearing on March 9, 2011 the Applicant was sentenced to probation.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.

27. Two days after the plea hearing plea defense counsel Swilley signed a forfeiture of the Applicant's computer, webcam, digital camera, music CDs, letters, and his grandmother's computer monitor, keyboard, and mouse.
SUPPORTING EVIDENCE: Exh. U (Forfeiture form).

28. The forfeiture form has a space for the Applicant's signature. It is blank.
SUPPORTING EVIDENCE: Exh. U (Forfeiture form).

29. Swilley never notified the Applicant about the forfeiture.
SUPPORTING EVIDENCE: Applicant's affidavit.

30. Forfeiture of Applicant's grandmother's monitor, mouse, and keyboard were improper and illegal.
SUPPORTING EVIDENCE: S.C. Code Ann. §16-15-445.

31. Forfeiture of Applicant's property was improper and illegal.
SUPPORTING EVIDENCE: S.C. Code Ann. §16-15-445.

32. The Applicant did not know about the forfeiture until he received the entire file in June 2012.
SUPPORTING EVIDENCE: Applicant's affidavit.

33. Applicant left messages for Swilley each day after the plea hearing but did not reach him until the fifteenth day. It was too late to withdraw the guilty plea, too late to file a direct appeal. This was a violation of Rule 62.
SUPPORTING EVIDENCE: Applicant's affidavit.

34. In June 2012, nearly four years after the arrest, the Applicant received the entire file from the public defenders' office. A.C. Michael Stevens noted on one of the pages that this was the complete file.
SUPPORTING EVIDENCE: Exh. V (list of items).

35. On September 24, 2012 the Applicant filed for post-conviction relief, pro se.
SUPPORTING EVIDENCE: Court records.

36. The state was required to respond within sixty days of the September 24th filing.
SUPPORTING EVIDENCE: S.C. CODE §17-27-70, Rule 12(A).

37. The state did not request an extension of time for filing.
SUPPORTING EVIDENCE: Court records.

38. On January 17, 2013 the state filed a motion to dismiss. It was mailed to the wrong address and not received by the Applicant.
SUPPORTING EVIDENCE: Court records; Applicant's Reply to Motion to Dismiss.

39. On February 5, 2013 the court issued a Conditional Order of Dismissal, granting the Applicant 20 days to respond. Because this was mailed by the clerk's office, it was sent to the correct address.
SUPPORTING EVIDENCE: Court records.

40. On February 13, 2013 the Applicant responded to the Conditional Order.
SUPPORTING EVIDENCE: Court records.

41. On March 19, 2013 the Applicant again requested appointment of counsel.
SUPPORTING EVIDENCE: Court records.

42. On April 22, 2013 prosecutor T. Andrew Johnson filed his appearance with the court for this case.
SUPPORTING EVIDENCE: Court records.

43. No attorney has been appointed for the Applicant, who continues pro se.
SUPPORTING EVIDENCE: Court records.

44. Unless the conviction is vacated, the Applicant will be a Registered Sex Offender for the remainder of his life.
SUPPORTING EVIDENCE: S.C. Code Ann. §23-3-46; N.C. G.S. § 14-208.12A.

<SIGNATURE BLOCK IS ON NEXT PAGE>

Rick McWhorter
7910 Hillandale Cts
Waxhaws NC 28173

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The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
PO Box 11330
Columbia S.C. 29211