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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

JEFFREY D. GILLILAND,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001859

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2009-GS-23-10484

2009-GS-23-10485

STATE OF SOUTH CAROLINA,)

vs.)

JEFFREY D. GILLILAND,)
DEFENDANT.)

TRANSCRIPT OF RECORD

ORIGINAL

September 12, 2011
Greenville, South Carolina

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE.

A P P E A R A N C E S:

CHRISTINE K. SUSTAKOVITCH, ESQ.
Assistant Solicitor

DANIEL H. FARNSWORTH, SR., ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

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P R O C E E D I N G S

THE CLERK: Your Honor, this is amended indictment 2009-GS-23-10484, Jeffrey D. Gilliland indicted for incest, pleading to the same. And it is a true bill. Amended indictment 2009-GS-23-10485, indicted for criminal sexual conduct with a minor second degree, pleading to the same. And it is a true bill.

Raise your right hand.

WHEREUPON,

JEFFREY D. GILLILAND,

after first having been duly sworn, testified as follows:

MS. SUSTAKOVITCH: Your Honor, may it please the Court.

I just wanted to notify Your Honor that this case has been set for trial Monday in front of Your Honor first up next week. And he is entering a plea today.

THE COURT: Mr. Farnsworth, do you represent Mr. Gilliland in this matter?

MR. FARNSWORTH: I do, Your Honor.

THE COURT: Have you had an opportunity to talk with your client about the charges pending against him, the possible punishments he faces, and his Constitutional rights?

MR. FARNSWORTH: Your Honor, we've discussed those on several occasions.

1 THE COURT: Do you believe he understands the
2 discussions you've had with him?

3 MR. FARNSWORTH: Yes, Your Honor.

4 THE COURT: Have you had an opportunity to review
5 with your client the State's evidence?

6 MR. FARNSWORTH: I have, Your Honor. I provided
7 discovery to him, also.

8 THE COURT: Based upon your investigation of all the
9 facts and circumstances surrounding this matter, do you
10 believe the State could prove its case against him beyond
11 a reasonable doubt if a trial were held, and that if there
12 was a trial, his conviction would be most probable?

13 MR. FARNSWORTH: Absolutely, Your Honor.

14 THE COURT: Mr. Gilliland, how old are you, sir?

15 DEFENDANT GILLILAND: 41.

16 THE COURT: Are you married?

17 DEFENDANT GILLILAND: No, sir.

18 THE COURT: Do you have children?

19 DEFENDANT GILLILAND: Yes, sir.

20 THE COURT: How many children do you have?

21 DEFENDANT GILLILAND: Three.

22 THE COURT: How old are they?

23 DEFENDANT GILLILAND: My son is 19. My daughter is
24 11. And Anna [phonetic] is 19, also.

25 THE COURT: How far did you go in school,

1 Mr. Gilliland?

2 DEFENDANT GILLILAND: To the eleventh grade.

3 THE COURT: And where did you attend?

4 DEFENDANT GILLILAND: Carolina High.

5 THE COURT: During your adult life, what work have
6 you done primarily?

7 DEFENDANT GILLILAND: I'm a certified technician at
8 BBA Fiberweb.

9 THE COURT: When did you last work?

10 DEFENDANT GILLILAND: That would be 2000 -- the end
11 of 2006.

12 THE COURT: Have you ever had any alcohol or drug
13 abuse treatment?

14 DEFENDANT GILLILAND: No, sir.

15 THE COURT: Have you ever had any treatment for
16 mental health issues from a psychiatrist or a
17 psychologist?

18 DEFENDANT GILLILAND: Yes, sir.

19 THE COURT: Are you under a doctor's care now?

20 DEFENDANT GILLILAND: I am at Ridgeland.

21 THE COURT: Okay. Do you take medication?

22 DEFENDANT GILLILAND: Yes, sir.

23 THE COURT: Does that medication interfere with your
24 ability to understand what we're doing, or does it help
25 you to take the medication?

1 DEFENDANT GILLILAND: It helps me to understand, yes,
2 sir.

3 THE COURT: So you're aware of why we're here and
4 what these charges are about today?

5 DEFENDANT GILLILAND: Yes, sir.

6 THE COURT: Now, I've been presented an indictment.
7 This indictment says that between October the 1st, 2007,
8 and July the 22nd of 2008, that you had carnal intercourse
9 with an individual initialled ASS, who is within a degree
10 of relationship prohibited by the Code of Laws of South
11 Carolina Title 16-15-20(2). This being in violation of
12 the law of incest in South Carolina.

13 Are you pleading guilty to that charge today?

14 DEFENDANT GILLILAND: Yes, sir.

15 THE COURT: And I, also, have an indictment that says
16 between October the 1st, 2007, and February the 16th,
17 2008, that you engaged in a sexual battery with the same
18 individual ASS, at least, 14 years of age at the time, but
19 was less than 16 years of age, and that in doing so you
20 were in a position of familial, custodial, or official
21 authority to coerce that victim to submit, and that you
22 were older than the victim. And this being in violation
23 of the law of South Carolina constituting criminal sexual
24 conduct with a minor in the second degree.

25 Are you pleading guilty to that charge as well?

1 DEFENDANT GILLILAND: Yes, sir.

2 THE COURT: Solicitor, I'll be glad to hear about the
3 facts of the cases.

4 MS. SUSTAKOVITCH: Thank you, Your Honor.
5 May it please the Court.

6 Briefly, I'd like to go into the background of this
7 case and these parties. This Defendant is the biological
8 father of the victim. He never married the child's
9 mother, who is present in court today, Beverly Stancell,
10 at the rail. But he did have visitation throughout the
11 years with the victim in this case, ASS, who is now 19
12 years old. They would have limited visitation. And this
13 went on for a number of years as the victim grew older.

14 When the victim was 15 years old, it was Mother's
15 Day, 2007, the victim got into an altercation with her
16 mother, and she moved out of the home here in Greenville
17 County. She went down to Laurens County where she began
18 living with this Defendant, her father, and this
19 Defendant's wife at the time, now ex-wife, who is, also,
20 present in court, Angel Gilliland.

21 It was in that house very shortly after that the
22 sexual intercourse between this Defendant and his daughter
23 began. Very shortly after moving into that home, this
24 Defendant left his wife for his daughter. They moved out.
25 The intercourse in this case would have happened some in

1 Laurens County, and at several locations in Greenville
2 County.

3 Police in Laurens County first became aware that
4 there were suspicions of sexually inappropriate activity
5 going on between this Defendant and his daughter when the
6 ex-wife, Angel Gilliland, noticed that there were hickies
7 on this Defendant's neck and on his daughter's neck. And
8 she noticed that during a visitation where she was picking
9 up her two other children.

10 At that point, she became concerned. She called
11 police. They interviewed her children forensically down
12 in Laurens where it was determined her son had witnessed
13 this Defendant penetrate his sister with his finger in the
14 bathroom at one point.

15 Around that same week, it was July of 2008, that is
16 where the victim in this case had -- the sex had been
17 going on about a year, and she had had enough. And she
18 determined -- decided that she was no longer going to
19 allow this Defendant to have sex with her. And that would
20 be July 22nd, 2008.

21 Very briefly, from her statement, This past weekend,
22 my friend asked me -- and this is the victim's statement
23 to police. This past weekend, my friend asked me what was
24 going on, and I wouldn't tell them. I think they knew
25 that something was going on. I told my dad the other day

1 that I was completely done with everything, because it
 2 wasn't right. I told him this in front of everybody. We
 3 were in Mike's trailer. Me and Mike were in the back room
 4 in Mike's trailer. And he called me a whore -- her
 5 father -- and drug me out the door, across the yard, and
 6 cut my foot.

7 He told me to get in the car, that we were going
 8 towards Williamston. And then dad stopped the car. He
 9 pulled into some bushes and trees. And he told me to take
 10 my clothes off. I had to get on the passenger seat and he
 11 made me have sex with him. He told me that I was nothing.
 12 And he used the "C" word, C-U-N-T, like my mom. He called
 13 me all kinds of names like whores and bitches, and that I
 14 was no better than my mama.

15 He, also, told in front of Mike and Meria [phonetic]
 16 Rivera that he was in love with me, and that he would not
 17 live without me. My dad told them the sex had been going
 18 on with me. He made me and Meria [phonetic] go to the
 19 back of the trailer and sleep there. The next morning, he
 20 woke up and he told me he was going to kill himself.
 21 That's when he had me make love to him one more time. The
 22 statement goes on, Your Honor.

23 What transpired that day is that this Defendant then
 24 got a gun. He left the trailer. He went down to the
 25 river in Anderson County. There was a stand-off where the

1 Anderson County SWAT team was called out to talk to this
2 Defendant. And the negotiations were broken -- excuse me,
3 the negotiations ended with this Defendant turning himself
4 in.

5 DSS came out. They took emergency protective custody
6 of the victim. And they did notice bruising and a cut to
7 her foot. A rape kit was done on the victim. The DNA in
8 that rape kit is not this Defendant's DNA, just for the
9 record. It would have been presented at trial that during
10 the week that the sexual intercourse between this
11 Defendant and his daughter ended that she had had sex with
12 a neighbor several times that week.

13 At trial, Mike Martin and Meria [phonetic] Rivera
14 would testify as to the incident in the trailer where this
15 Defendant did admit to being in love with his daughter.
16 The Defendant's sister did give a statement to police,
17 Your Honor, where she had noticed some of the unusual
18 things going on with this Defendant -- excuse me, with her
19 brother and her niece. And he did, eventually, admit to
20 her that he had been having sex with his daughter, and
21 that it went on for about a year.

22 Finally, Your Honor, the State is in possession of a
23 couple of what I would qualify as love letters that were
24 written in this case. And, just very briefly, I'll just
25 give you a snippet of one that would be introduced at

1 trial. I fought so hard for you to just not hate me, I
2 hope you don't. I'm so in love with everything about you,
3 except me. I had no control, but my guilt eats me every
4 day. It hurts us. I couldn't help it. But look at you,
5 so majestic and immaculate in my eyes. Do you see
6 yourself the way I do, or do you feel useless and weak
7 like me? And then he goes on to say that when I hold you
8 and you love me back, I feel like a God, unstoppable and
9 proud. And, Your Honor, I believe that gives you an idea
10 of what is written in those love letters.

11 That would be the evidence that the State would
12 present at trial next week.

13 THE COURT: You heard the facts recited by the
14 Solicitor, Mr. Gilliland, are those substantially the
15 facts to which you're pleading guilty to today?

16 DEFENDANT GILLILAND: Yes, sir.

17 THE COURT: Now, when you enter a plea of guilty,
18 you're giving up substantial rights that you enjoy. You
19 have a right to have a trial by jury. A jury could be
20 impanelled. The State of South Carolina would have the
21 full burden of proof. They would have the burden of
22 convincing a jury unanimously beyond a reasonable doubt of
23 your guilt.

24 You'd have a right in a jury trial to challenge the
25 evidence that the State tries to offer. You could

1 confront witnesses against you. You'd have a right, if
2 you chose, to call witnesses in your own behalf. You
3 would have these and other rights. Obviously, by being
4 presumed innocent, you could remain silent throughout the
5 entire trial. By entering a plea, you're waiving that
6 right to silence right away.

7 Do you understand these rights that you enjoy as a
8 citizen that you're giving up by pleading guilty?

9 DEFENDANT GILLILAND: Yes, sir.

10 THE COURT: Do you want to give those rights up?

11 DEFENDANT GILLILAND: Yes, sir.

12 THE COURT: Are you satisfied with the representation
13 Mr. Farnsworth has provided you?

14 DEFENDANT GILLILAND: Yes, sir, I am.

15 THE COURT: Has he done everything to defend you that
16 you've asked him to do?

17 DEFENDANT GILLILAND: Yes, sir.

18 THE COURT: Have you met with him as often and as
19 long as you feel necessary?

20 DEFENDANT GILLILAND: Yes, sir.

21 THE COURT: Have you understood those discussions
22 you've had with him?

23 DEFENDANT GILLILAND: Yes, sir.

24 THE COURT: Do you have any complaints whatsoever
25 about his representation of you?

1 DEFENDANT GILLILAND: No, sir.

2 THE COURT: Has anybody threatened you in any way to
3 get you to plead guilty today?

4 DEFENDANT GILLILAND: No, sir.

5 THE COURT: Has any promise been made to you to
6 entice you to plead guilty today?

7 DEFENDANT GILLILAND: No, sir.

8 THE COURT: Are you pleading guilty of your own free
9 will?

10 DEFENDANT GILLILAND: Yes, sir.

11 THE COURT: Are you pleading guilty because you are
12 guilty?

13 DEFENDANT GILLILAND: Yes, sir.

14 THE COURT: Do you understand that you can receive up
15 to 20 years in jail on the criminal sexual conduct with a
16 minor charge?

17 DEFENDANT GILLILAND: Yes, sir.

18 THE COURT: Do you realize you could be sentenced up
19 to 10 years in jail on the other charge?

20 DEFENDANT GILLILAND: Yes, sir.

21 THE COURT: Have you understood the questions I've
22 asked you?

23 DEFENDANT GILLILAND: Yes, sir.

24 THE COURT: Have you been truthful in your answers to
25 me?

1 DEFENDANT GILLILAND: Yes, sir.

2 THE COURT: The law gives you a right, if you meet
3 our appellate court rules, to appeal this proceeding
4 within 10 days. And if you can't afford an attorney, one
5 could be appointed for you.

6 Do you understand that?

7 DEFENDANT GILLILAND: Yes, sir.

8 THE COURT: I find there is a substantial factual
9 basis for the plea, that it has been freely, voluntarily,
10 knowingly, and intelligently made by Mr. Gilliland with
11 the advice of competent legal counsel with whom he has
12 expressed his satisfaction.

13 I will accept your plea, sir.

14 Mr. Farnsworth, I'll be glad to hear from you. And
15 I'll, certainly, be glad to hear from your client.

16 MR. FARNSWORTH: Your, Honor, may it please the
17 Court.

18 Your Honor, first of all, let me say that
19 Mr. Gilliland accepts full responsibility for these
20 charges and his conduct. We talked about this, I think, a
21 week or so ago when I told him the case was going to be
22 coming up for trial. He had, at that point, said he
23 definitely wanted to plead guilty. He didn't want to put
24 his family, or her family either one through a trial on
25 this matter.

1 And, Your Honor, just back in July -- the Laurens
2 charges were made, also. But back in, I think, July of
3 2009, he was sentenced in Laurens and pled guilty to the
4 charges related to these same incidents, but in Laurens
5 County, instead of Greenville. And he received an
6 eight-year sentence, Your Honor.

7 Judge, as the Solicitor told you, this -- all this
8 began around Mother's Day, which was May of 2007. At that
9 time -- prior to that time, Mr. Gilliland, you know, led a
10 normal, productive life. He had been married for 15
11 years, two children. He worked the same job for 15 years.
12 He was laid off sometime late in 2006.

13 He did -- prior to that, he was -- way prior before
14 2007, he was diagnosed with being manic depressive. And
15 he took his medication like he should have. After he was
16 laid off from the company he worked for, he couldn't
17 afford his medication and kind of got off. He got off his
18 medication.

19 Judge, he -- as you've heard, this relationship
20 started in Laurens County. I think they moved to
21 Greenville County, back to Laurens County, and back to
22 Greenville County. And I think the relationship -- the
23 sexual relationship ended in -- I believe it was July the
24 22nd of 2008. And up until that time, even though I think
25 there was some suspicion maybe, nobody knew about the --

1 to my knowledge anyway from the discovery, that anybody
2 knew about the sexual relationship.

3 What my client tells me happened, he went to the
4 friend's house that the Solicitor alluded to about
5 having had -- that he had had -- the neighbor had had sex
6 with her. He found that out, got upset. I think that was
7 the night before the next day in which he tried to commit
8 suicide. He had a gun. Actually, there are witnesses in
9 the discovery who, actually, saw him pull the trigger
10 while it was in his mouth. He discharged one of the
11 bullets in the gun. He -- you know, they -- the
12 Laurens -- this happened in Anderson County right over the
13 Greenville County line. And, on July 22nd, 2008, is when
14 he was arrested. He was taken to Laurens County after
15 that.

16 Your Honor, he pled to reduced charges down there.
17 And, as I say, he received an eight-year non-violent
18 sentence from Judge Tommy Houston on July 10th, 2009.
19 And, Your Honor, of course, in a perfect world, a perfect
20 system, the lawyer probably should have brought him to
21 Greenville County right after that and took care of the
22 Greenville County cases.

23 I noticed -- I didn't get involved in the case until
24 October 26th, 2009. In fact, the warrants weren't even
25 served on him until September 17th, 2009, from Greenville

1 County. And they served him in the Department of
2 Corrections. So a year had gone by since his sentencing
3 and two years since he, actually, was incarcerated over in
4 Anderson and taken to Laurens.

5 Your Honor, he's been incarcerated continuously since
6 July 22nd, 2008. As I said, these charges were over a
7 period of close to a year, just the only difference was
8 the two counties involved, Laurens and Greenville.

9 Your Honor, as I told you, Mr. Gilliland accepts full
10 responsibility for what he's done. He's not proud of it.
11 He's shown remorse to me. His sister and even his ex-wife
12 are here in his support. They tell me that he has shown
13 remorse to them. He knows this was just a terrible
14 mistake. And we just are sorry it happened, Your Honor.
15 It was just a terrible decision that he made. And some of
16 the members of his family have even told me that they
17 just -- that's not the person they knew, that he just
18 wasn't in his right mind. We're not bringing up any
19 insanity at all. But he was off his medication when this
20 thing started.

21 Your Honor, he's about one year -- he got eight years
22 down there in Laurens on 9-8-09 -- July, 2009 -- I'm
23 sorry, July the 8th, 2009. He has served -- with the time
24 since he's been in jail, he's served about three years.
25 He's only about a year away from maxing out that

1 eight-year sentence. I would just ask Your Honor to take
2 into consideration the fact that this is not one that you
3 usually hear where somebody commits an act, and later on
4 they do it again. These were all during the same time
5 frame, just, you know, a county apart. And we would ask
6 you to take that into consideration in your sentencing.

7 And I think his -- this is his sister on the right
8 here, that's Allison Allen, and his ex-wife are here in
9 support. And I think one or both would like to address
10 the Court.

11 THE COURT: I'll, certainly, be glad to hear from
12 either one of you, if you'd like to address me. If you
13 would, just feel free to state your name, please.

14 MS. ALLISON ALLEN: I'm Allison Allen. I'm his
15 sister.

16 THE COURT: Yes, ma'am.

17 MS. ALLISON ALLEN: And I'm here to support him.
18 I -- he did -- he came off of his medication. And when he
19 came off of his medication, I noticed a drastic change in
20 him. He was not himself.

21 I pray for the family. It has been stressful and
22 taken a toll. And I pray for our families. But I believe
23 my brother is a very good person. I have been close to
24 him since the time I was little. And when we grew up, he
25 was -- he had depression. I love him. And I support him.

1 THE COURT: Thank you, ma'am.

2 MS. SUSTAKOVITCH: Your Honor, at the appropriate
3 time, I wanted to add one point about the sentencing, and,
4 also, put the victim's input on the record. I believe --
5 whenever Your Honor is ready for that.

6 THE COURT: Well, now is the time.

7 MS. SUSTAKOVITCH: Okay. First, as to -- just to
8 clarify, he pled to aggravated assault and battery in
9 Laurens County with no sex registry. And that was what
10 Mr. Farnsworth stated back in 2009. The State here in
11 Greenville County felt that that charge -- or that
12 disposition was not the appropriate disposition for this
13 case under these facts. And that is why we're here today.

14 As to the victim's input, I believe the victim's
15 stepfather wanted to speak -- his name is David
16 Stancell -- very briefly. And then I have a brief
17 statement from the victim.

18 THE COURT: Yes, sir, Mr. Stancell. If you'd state
19 your name again for the record.

20 MR. DAVID STANCELL: David Stancell, S-T-A-N-C-E-L-L.

21 I'd just like to say, Your Honor, that I don't think
22 there's a sentence strong enough for what he's done to my
23 daughter, and my wife, and my other daughter, and me
24 personally. He's -- he may have been off his medication,
25 but he knew what he was doing. And it was not acceptable

1 in any way for him to do what he did.

2 She is scarred for life, and so is the rest of my
3 family.

4 MS. ANGEL GILLILAND: We are, too. I'm sorry. We
5 are all scarred. And we all pray for each other.

6 THE COURT: You need to state your name, please,
7 ma'am.

8 MS. ANGEL GILLILAND: I'm sorry. Angel Gilliland.

9 THE COURT: All right. I'll give you a chance to
10 speak in a moment. But while one person is speaking,
11 we'll let that person finish.

12 Yes, sir.

13 MR. DAVID STANCELL: I mean, I'm an adult. I can
14 handle this better. My daughter was not an adult, and she
15 has a lot of issues. She's been through some counseling.
16 She's going to have to have a lot more. And I just hope
17 the Court bears that in mind that -- the fact that he was
18 an adult, and he should have known better.

19 THE COURT: All right. Thank you, Mr. Stancell.

20 MS. SUSTAKOVITCH: Your Honor, very --

21 THE COURT: Anything else, ma'am, you wanted to say?
22 If you'd state your name, please, for the record.

23 MS. ANGEL GILLILAND: Angel Gilliland.

24 THE COURT: Yes, ma'am.

25 MS. ANGEL GILLILAND: We have all suffered in this.

1 He does have two other children that suffer daily, also.
2 And they have been through counseling. So it's not just
3 one person that this has put an impact on. It has
4 affected all of us. And, you know, he needs mental help,
5 and she needs help.

6 THE COURT: Thank you.

7 Yes, Solicitor.

8 MS. SUSTAKOVITCH: Your Honor, this is the statement
9 from the victim. I'm sorry I'm writing, instead of
10 speaking. I don't think I can get the words out without
11 crying. The last few years, my life has been a nightmare
12 that no one can imagine. During and after Jeff's abuse,
13 I've spent the last years trying to believe and feel
14 normal again. Jeff killed my soul. I prayed day in and
15 day out for this to be over. I just want to breathe
16 again. If Jeff were out of jail, I will always be afraid
17 for my life and for my family. I wish I could put him
18 away forever, but even forever, it would not be good
19 enough. He will still haunt me in and out of jail.
20 That's all.

21 THE COURT: Is there a prior record?

22 MS. SUSTAKOVITCH: Yes, sir, Your Honor.

23 1990, disorderly conduct, possession of beer by a
24 minor; 2008, unlawful carrying of a pistol; 2009, the
25 aggravated assault and battery, and the contributing

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charge out of Laurens County related to these facts.

THE COURT: In case 2009-10485, the sentence of the Court is that the Defendant be committed to the State Department of Corrections for a period of 20 years. Case 2009-10484, the sentence is 10 years, to be concurrent to that previously imposed.

I wish you the best, sir, and the family.

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

CERTIFICATE OF REPORTER

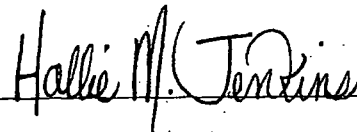
STATE OF SOUTH CAROLINA)

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 General Sessions for Greenville County, South Carolina, on the 12th day of September, 2011.

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

December 4, 2012



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

FORM 5

STATE OF SOUTH CAROLINA)
County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

JEFFREY GILLIAND 335786)
Full name and prison number (if any) of Applicant)

2012-CP-23-05861

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
2012 SEP 13 AM 9:19

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCORMICK CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GREENVILLE COUNTY SC. COUNTY COURTHOUSE.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009-GS-23-10484

(b) 2009-GS-23-10485

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) SEPTEMBER 19TH - N/A (NO SENTENCE SHEET RECEIVED)

(b) SEPTEMBER 19TH - N/A (NO SENTENCE SHEET RECEIVED)

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? YES!

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. GREENVILLE COUNTY GENERAL SESSIONS.

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. DENIED.

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) INAFFECTIVE ASSISTANCE OF COUNCIL.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) _____

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) INAFFECTIVE COUNCIL -> TO BRING BEFORE POST CONVICTION RELIEF)
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered Ayes@ to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. DANIEL FARNSWORTH, Sr
POST OFFICE BOX 10196 GREENVILLE SC, 29603
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. GUILTY PLEA
 - ii. APPEAL
 - iii. _____

19. State clearly the relief you seek in filing this application:

SENTENCE MODIFICATION, TIME REDUCTION, IF NOT,
ANY TYPE OF RELIEF OR VACATE SENTENCE OR
CONVICTION.

20. Are you now under sentence from any other court that you have not challenged?

NA

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of GREENVILLE)

VERIFICATION

I, JEFFREY D. GILLILAND, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jeffrey D. Gilliland

SWORN to and subscribed before me this 28
day of August, 2012.

Jeff Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, JEFFREY D. GILLELAND, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


 Applicant

SWORN or affirmed to and subscribed before me this
28 day of August, 2012.


 Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Jeffrey Doyle Gilliland,)
 S.C.D.C. No. 335786,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-5861

RETURN

In response to the post-conviction relief application filed September 13, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury issued an amended indictment at the August 2011 term for incest (2009-GS-23-10484) and second-degree criminal sexual conduct (CSC) with a minor (2009-GS-23-10485). Daniel J. Farnsworth, Sr., Esquire, represented the Applicant.

On September 12, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of ten (10) years for incest and twenty (20) years for second-degree CSC with a minor.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. By order dated January 19, 2012, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

III.

The Respondent asserts the Applicant's allegation that her attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "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 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

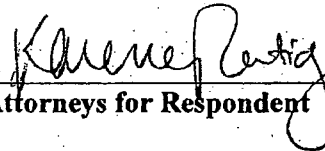
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 26, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 JEFFREY DOYLE GILLILAND, 335786)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2012-CP-23-5861

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Jeffrey Doyle Gilliland, 335786
 McCormick Correctional Institution
 386 Redemption Way
 McCormick SC 29899**

DATED this 26th day of March, 2013.

Judy A. Carey
 Judy A. C. Carey, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) 2012-CP-23-5861
)
)
)
 JEFFREY DOYLE GILLILAND)
 APPLICANT)
 vs.) TRANSCRIPT OF RECORD
)
 STATE OF SOUTH CAROLINA)
 RESPONDENT)

June 20, 2014
 Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

A P P E A R A N C E S:

CAROLINE HORLBECK, ESQ.
 Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
 Attorney for the Respondent

APRIL HERRON
 Official Court Reporter

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» > O < «

Certificate of Reporter 32

1 MS. RATIGAN: This is Jeffrey Gilliland vs.
2 State of South Carolina, docket number
3 2012-CP-23-5861.

4 THE COURT: Yes, ma'am.

5 MS. RATIGAN: The Applicant was indicted for
6 incest and second degree sexual -- pardon me, second
7 degree criminal sexual conduct with a minor. He was
8 represented by Mr. Farnsworth. On September 12th of
9 2011 he pled guilty before Judge Welmaker, he
10 received concurrent sentences of 10 years for incest
11 and 20 years for second degree CSC with a minor. He
12 did file an appeal, however on January 19th of 2012
13 the Court of Appeals dismissed the matter based on
14 his failure to provide a written explanation as to
15 what issues to be reviewed from that guilty plea.
16 His application was timely filed and the State is
17 ready to proceed.

18 THE COURT: Okay.

19 Ms. Horlbeck.

20 MS. HORLBECK: Your Honor, we call
21 Mr. Gilliland.

22 THE COURT: All right, Mr. Gilliland, come
23 forward, please, sir.

24 THE CLERK: Please place your left hand on the
25 Bible, raise your right.

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 JEFFREY GILLILAND, after being duly
2 sworn, testified as follows:

3 THE CLERK: Thank you, please state your full
4 name for the record.

5 THE WITNESS: Jeffrey Doyle Gilliland.

6 THE CLERK: Thank you, you may be seated.

7 DIRECT EXAMINATION

8 BY MS. HORLBECK:

9 Q Mr. Gilliland, were you charged with sexual
10 activity with a minor and also incest involving your
11 daughter?

12 A Yes, ma'am, I was.

13 Q And this was out of Greenville County, is that
14 correct?

15 A Yes, ma'am.

16 Q Is -- you were also -- is it correct that you
17 were also charged with an offense out of Laurens County
18 related to this same matter?

19 A Yes, ma'am.

20 Q What charge did you receive out of -- from
21 Laurens County?

22 A That was assault and battery with high and
23 aggravated nature and assault and battery.

24 Q Did you plead guilty to that charge from Laurens
25 County?

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 A Yes, ma'am.

2 Q When did you plead guilty to that?

3 A That was in 2007 or eight, I believe. Or nine.
4 I think it was 2009.

5 Q Okay. What was the sentence you received on
6 that Laurens County charge?

7 A Ten years nonviolent.

8 Q Okay. All right. All right. You actually pled
9 guilty, back to your Greenville charges, you actually pled
10 guilty to those charges, did you not?

11 A Yes, ma'am.

12 Q And you received ten years for incest and 20
13 years for the criminal sexual conduct charges?

14 A Yes, ma'am.

15 Q Those charges ran concurrent, is that correct?

16 A Yes, ma'am.

17 Q Who represented you in the Greenville case?

18 A Dan Farnsworth.

19 Q Okay. Was Mr. Farnsworth appointed to represent
20 you before or after you pled guilty to your Laurens County
21 charge?

22 A Like years after.

23 Q Okay. Did Mr. Farnsworth represent you on the
24 Laurens County charge?

25 A No, ma'am.

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 Q Okay. All right. Now, I'm going to ask you
2 some questions about any plea bargains that you received
3 on your Greenville County case involving Mr. Farnsworth.
4 Did you receive any plea offers from State?

5 A No, ma'am. I did but Mr. Farnsworth presented
6 them to me.

7 Q Okay. How many plea offers did Mr. Farnsworth
8 present to you?

9 A He told me twice. Once that it was 15 and then
10 once 10. And then he turned them down because he could do
11 better than that.

12 Q Do you know what charges the State had offered
13 you to allow you to plead to?

14 A No, ma'am, just that that was offered, the 10 --
15 15 and then the 10.

16 Q All right. Did Mr. Farnsworth sit down and
17 discuss these offers with you prior to him refusing the
18 offers?

19 A No, ma'am, that was when he couldn't. They
20 offered it before I was there. Then when we went into the
21 little meeting room, that's when he told me.

22 Q Okay. So you were in the Department of
23 Corrections serving time on your Laurens charge?

24 A Yes, ma'am, I was in Ridgeland.

25 Q Okay. All right. Did Mr. Farnsworth call you

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 on the phone to discuss the plea offers with you?

2 A No, ma'am. He had me brought up to the
3 courthouse.

4 Q Did anybody -- was Mr. Farnsworth retained or
5 appointed?

6 A He was appointed.

7 Q All right. Did anyone from his office or the
8 Public Defender's Office call you in SCDC to discuss these
9 offers with you?

10 A No, ma'am.

11 Q Okay. The first time you heard of these
12 offers -- it is it true that the first time you heard of
13 these offers was when you came to the Greenville County
14 Courthouse?

15 A Yes, ma'am.

16 Q Okay. Where did you and Mr. Farnsworth meet
17 when you came to the courthouse?

18 A In the little room.

19 Q Holding cell?

20 A Yes, ma'am, in the holding cell, the little
21 room.

22 Q Let me just make sure I understand, had
23 Mr. Farnsworth already refused the offers before he even
24 discussed them with you?

25 A Yes, ma'am. He told me that -- he told me that

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 he could do better than that. That he told her no. And
2 that if I wanted to then he could call her back.

3 He said, If you want it, he said, I can call her
4 back.

5 Q Okay.

6 A And he said but you don't want that.

7 Q All right. So to your knowledge there was an
8 opportunity at that point for Mr. Farnsworth to accept one
9 of these offers on your behalf?

10 A Yes, ma'am.

11 Q Okay. And what was your response at that point,
12 did you want to accept the offer?

13 A Well, I actually I told Mr. Farnsworth that I
14 didn't know what I was doing. I mean, I didn't know the
15 law, I don't know anything. I told him that, you know, I
16 didn't want to come in here and get my head knocked off
17 for this without going to trial. Because there was a lot
18 of things that was not true that I needed to bring forth
19 but he told me that no other Judge would override another
20 Judge's decision. And the Judge in Laurens had gave me 10
21 nonviolent. He said and plus they knocked off two years.
22 It was a negotiated sentence, they knocked off two years.
23 He said, This Judge will not knock off the two years, you
24 will probably get the 10, run concurrent and you'll get
25 out about two years later in 2014.

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 Q Okay. So, tell me about the negotiated
2 sentence, tell me about.

3 A That was in Laurens County. That was --

4 Q I see.

5 A That was the 10 that I got. I took a plea of 10
6 and the Judge knocked off two years on the sentence.

7 Q All right. And so correct me if I'm wrong, did
8 you want to accept the 10 year offer or no?

9 A I didn't know exactly what to do.
10 Mr. Farnsworth was confident so I went with what he was
11 saying.

12 Q He was confident -- Mr. Farnsworth was confided
13 about what?

14 A He was confident that I wouldn't get no more
15 time than what that first Judge give me.

16 Q Okay. And your decision that day was to do
17 what?

18 A To go with Mr. Farnsworth and let him take it up
19 before the open plea.

20 Q Okay. Why didn't you plead guilty that day that
21 you were transported to court?

22 A The day that I was transported to court?

23 Q Yes. Or did you plead guilty that day.

24 A No, I talked to Mr. Farnsworth and told him that
25 we would take it before the open plea.

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 Q Okay.

2 A Then I came back and we went before the open
3 plea.

4 Q That's what I'm asking you, did you actually
5 plead guilty that day?

6 A No, ma'am.

7 Q Okay? Why not?

8 A We didn't have court.

9 Q Okay. So, you were just transported to discuss
10 the matter?

11 A Yes, ma'am.

12 Q But no court that week? Did you ever get signed
13 up to plea?

14 A I don't remember. I don't recall.

15 Q Okay. When you returned to court was your case
16 scheduled for trial?

17 A I think--

18 Q To your knowledge?

19 A Yeah, I don't know if it was scheduled for trial
20 or not. I didn't know if I was even scheduled for trial.

21 Q Did anyone ever tell you you were scheduled for
22 trial, Mr. Farnsworth or anyone from his office?

23 A No, ma'am. The only thing that me and
24 Mr. Farnsworth talked -- Mr. Farnsworth told me that I
25 didn't want -- they were going to take it to trial and I

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 probably didn't want to take it to trial.

2 Q Okay. When did you find out your case was on
3 the trial docket?

4 A When my sister actually had told me.

5 Q When did your sister tell you?

6 A In between meetings between Farnsworth and the
7 next time I talked to her from Ridgeland.

8 Q Okay. How did your case get on the trial docket
9 if you wanted to plead?

10 A I don't know, I have no idea.

11 Q All right. All right. So, when you were
12 transported to court the second time, did you meet with
13 Mr. Farnsworth?

14 A Yes, ma'am.

15 Q All right. What did you and he discuss?

16 A The second time?

17 Q Yes.

18 A Whenever I walked in Mr. Farnsworth, he just
19 asked me, he said, Where are we? And I told him what we
20 talked about the last time.

21 He said, Okay. And this what -- I mean, he
22 just basically touched base with me and told me that he
23 would get back in touch with my again before we came to
24 Court. Then I met with him that day.

25 Q Did you go to court? Did you plead guilty that

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 second time you were transported to court?

2 A No, ma'am. I think it was the third time. I
3 think it was after that. I met with Mr. Farnsworth like
4 one more time before.

5 Q Had you decided to plead guilty the second time
6 you came to court?

7 A Yes, ma'am.

8 Q Why didn't you plead guilty that day?

9 A That was just a meeting between me and
10 Mr. Farnsworth.

11 Q Was court in session?

12 A I don't remember. I don't know if court was in
13 session or not. I just thought it was a meeting with --
14 he met with me a couple of times.

15 Q Okay. So correct me if I'm wrong, you had
16 decided to plead guilty the first time that you were
17 transported to court but there was no court in session,
18 correct?

19 A Yes, ma'am.

20 Q The second time you came to court you also
21 wanted to plead guilty but you didn't plead guilty, is
22 that correct?

23 A Yes, ma'am. I didn't plead guilty until
24 Mr. Farnsworth took me before the Judge that day --

25 Q That's what I'm asking you, why didn't you plead

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 guilty that second day.

2 A That was -- because the second time was just a
3 meeting. You know what I mean? There was no court.

4 Q Okay.

5 A He just touched base with me.

6 Q Okay. So, when you did plead guilty did you and
7 Mr. Farnsworth discuss the potential sentence?

8 A We had discussed it the day before that, yes,
9 ma'am.

10 Q What was his advice to you?

11 A Whenever we talked about the sentence, whenever
12 we were talking about the -- you talking about before?

13 Q I'm just asking you before you pled guilty, the
14 day you pled guilty, what was his advice to you about
15 pleading guilty?

16 A He told me he said -- whenever we met, we met
17 before court and we went into the little room and was
18 talking. And he had me sign a sentencing sheet. And he
19 told me then he said, When we go in here, the Judge is
20 going to ask you a lot of questions. He said, You just
21 answer yes to everything and agree with everything and say
22 no more. I got this.

23 Q Okay. What was his advice to you about
24 potential sentence and what sentence you could or would
25 receive?

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 A He had told me he said -- Mr. Farnsworth told me
2 that no Judge would like to override another Judge's
3 sentence.

4 Q Okay.

5 A That's when he told me that I would probably get
6 the 10 run concurrent but I wouldn't get the two knocked
7 off so I would do an extra two years. Instead of coming
8 out in '12, it would be around '14 or so.

9 Q All right. When you say '14, you mean 2014?

10 A Yes, ma'am.

11 Q Was that a promise or is that just -- was
12 Mr. Farnsworth telling you just what he felt might happen?

13 A He never promised me.

14 Q Okay.

15 A He just told me that he was confident that that
16 would happen.

17 Q All right. And based on -- based on
18 Mr. Farnsworth's advice about what he felt might happen,
19 what did you decide to do?

20 A I decided to let Mr. Farnsworth handle it
21 because Mr. Farnsworth seems to me like he really -- he was
22 really confident and really going at this.

23 Q Okay. All right. And if you'd known that you
24 would receive the sentence that you received, would you
25 still have pled guilty that day?

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 A No, ma'am, I would have took it to trial.

2 Q Okay. All right. Did you ask Mr. Farnsworth --
3 did Mr. Farnsworth review discovery with you?

4 A No, ma'am.

5 Q Did you ever--

6 A He basically just -- we did not discuss anything
7 that actually happened.

8 Q Did he provide a copy of discovery to you?

9 A Yes, ma'am, he did.

10 Q Did you provide him with any witness, names
11 names of witnesses that you wanted him to contact?

12 A Yes, I did.

13 Q Did he contact those witnesses?

14 A Yes, he did.

15 Q Okay. All right. And did you and he discuss
16 any motions that you wished for him to file?

17 A No. The day that I come in and did the open
18 plea, I stood and he sentenced me to the 40 years. And I
19 looked at Mr. Farnsworth and Mr. Farnsworth looked at me
20 and said, I will be up to talk to you in a minute. And i
21 have not scene or spoke to Mr. Farnsworth since. He never
22 came up.

23 Q Did you and Mr. Farnsworth discuss filing the
24 motion for change of venue?

25 A Yes, I did. I brought that before him.

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 Q All right. What basis did you want -- what was
2 the basis for that motion?

3 A The basis for that motion was that the victim
4 family worked here at the Greenville County Detention
5 Center. And I felt like that there was a lot involved in
6 my trial where I had actually -- in the beginning I had
7 taken the position from a detective that worked here. And
8 I just felt that I could not get a fair trial here.

9 Q Was that motion ever filed?

10 A No, ma'am.

11 Q Did you think if that motion had been filed the
12 outcome of this case would have been different?

13 A I think maybe it would have.

14 Q How so?

15 A I just felt like that I had cost the State so
16 much money and pretty much I got an officer in trouble.
17 And plus the victim's family worked here. And I just felt
18 that maybe I didn't get a fair trial. I didn't get a fair
19 shake at it. I wouldn't have gotten a fair trial here.

20 Q All right. Did you request Mr. Farnsworth to
21 file an appeal?

22 A No, ma'am. Actually, my sister did.

23 Q Was the appeal filed?

24 A Yes, ma'am.

25 Q And what happened with that appeal?

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 A It was denied upon grounds that no reason for
2 the appeal was given.

3 Q Okay. All right. And did Mr. Farnsworth advise
4 you of that?

5 A Mr. Farnsworth sent me a letter. I got the
6 letter after he had filed -- after the appeal had been
7 filed, he had sent me a letter telling me that I needed, I
8 think I had 19 days to come up with a reason for the
9 appeal. And I wrote a letter and said I don't know what
10 to do, what my reasons. And my sister had talked to him
11 and it was denied.

12 Q Who did you write the letter to?

13 A I wrote it to Mr. Farnsworth's office.

14 Q In your letter you asked Mr. Farnsworth what?

15 A I just told him that I did not know what to do.
16 I wanted to file for the appeal but I didn't know what to
17 do from that point.

18 Q Did Mr. Farnsworth respond to your letter?

19 A Not after that. When I got the letter of denial
20 of the appeal, that's the last time I heard from him.

21 Q To your knowledge did Mr. Farnsworth provide any
22 reasons for the appeal?

23 A No, ma'am. No, I don't think so. Because the
24 letter I got back said no reason given for appeal. That's
25 why it was denied.

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 Q What was your reason for the appeal?

2 A I didn't know what to do. I don't know what
3 reasons to file for. I had no clue of what I could file
4 for.

5 Q Okay. Did you expect Mr. Farnsworth to assist
6 you with that?

7 A Yes, I did.

8 Q Providing those reasons to the Court? Did you
9 expect Mr. Farnsworth to help you provide those reasons to
10 the Court?

11 A Yes, ma'am.

12 Q Okay. All right. Are there any other
13 allegations that you have that you want to bring up
14 against Mr. Farnsworth today?

15 A No, ma'am.

16 Q Okay. Were there any actions, other actions of
17 Mr. Farnsworth that gave you concern of how he was
18 handling your case?

19 A The only time I actually had any -- that I
20 actually saw something that kind of bothered me was one
21 day we were in the meeting and him he asked me he said,
22 Where are we now? And I started telling him where we was
23 at and he pulled a cigarette out of his pocket and he was
24 fixing to light it.

25 And I told Mr. Farnsworth, Mr. Farnsworth you

JEFFREY GILLILAND-DIRECT BY MS. HORLBECK

1 can't smoke in here.

2 And he said, Oh yeah. And he stuck it back in
3 his pocket.

4 And that just kind of struck me odd, you know.

5 Q Where were you when this happened?

6 A In the meeting room.

7 Q Meeting room, what downstairs, the holding cell?

8 A The conference room, yeah. Where you talk
9 through the little tube. Talk through the little box.

10 Q Right. But did he seem familiar with the facts
11 of your case and did he seem to know you?

12 A Yes, ma'am.

13 Q Okay. All right. Any other allegations you
14 want to bring up today?

15 A No, ma'am.

16 MS. HORLBECK: Please answer any questions that
17 Ms. Ratigan may have for you.

18 THE WITNESS: Yes, ma'am.

19 CROSS-EXAMINATION

20 BY MS. RATIGAN:

21 Q So, your testimony is that you never actually
22 reviewed the evidence in your case with Mr. Farnsworth?

23 A No, ma'am.

24 Q You never looked over the letters you wrote your
25 daughter from the jail?

JEFFREY GILLILAND-CROSS BY MS. RATIGAN

1 A No, ma'am.

2 Q You never talked about the witnesses that were
3 going to say that you admitted to the conduct with your
4 daughter?

5 A Yes, ma'am, there was -- he talked to me about
6 several things out of it but not the actual things that
7 happened. He just talked to me about the things that were
8 being alleged, what I was being accused of. And but as
9 far as talking about everything that happened, we didn't
10 talk about that.

11 Q So he discussed that the State would have
12 witness that would say these things but you just never
13 actually saw statements or anything, is that what you're
14 saying?

15 A No, ma'am.

16 Q Okay. And your testimony is that you did not
17 get a chance to discuss these 15 and 10 year offers?

18 A No, ma'am. He -- I discussed it with him that
19 day. He had Already turned it down.

20 Q Just rejected them for you?

21 A Ma'am?

22 Q He just rejected them on your behalf?

23 A Yes, ma'am.

24 Q Okay. Did you tell him that you wanted to go to
25 trial in this case or did you want him to try to get you a

JEFFREY GILLILAND-CROSS BY MS. RATIGAN

1 plea offer?

2 A I told Mr. Farnsworth that I didn't know what to
3 do. And he told he said, Look, he said, Don't look good,
4 a trial might not be the way to go. And when he told me
5 what they offered, I didn't -- I told him, I said,
6 Mr. Farnsworth, I don't know.

7 He said, You don't want that.

8 I said, I don't know, I don't want to go in
9 there and get my head knocked off.

10 He said, Look, I'm going to take you before an
11 open plea. He said, Let me do what I do. I got
12 this.

13 Q Did you ever tell Mr. Farnsworth any particular
14 offer that you would like in this case?

15 A No, ma'am.

16 Q Why did you tell the plea Judge that day, when
17 you went before Judge Welmaker, why didn't you tell him,
18 you know, Mr. Farnsworth was rejecting these offers for
19 you before you had a chance to discuss them?

20 A Because when Mr. Farnsworth talked to me, like I
21 said, he was very confident that he had this. And I had
22 full faith in him. I did.

23 Q And he never promised you you'd get 10 years --

24 A No, ma'am.

25 Q --he just said --

JEFFREY GILLILAND-CROSS BY MS. RATIGAN

1 A No, ma'am --

2 Q -- that's what you could get?

3 A He didn't promise, no, ma'am. He didn't not
4 promise me anything.

5 Q And the victim of the family in this case is
6 your daughter, correct?

7 A Yes, ma'am.

8 Q So, when you say the victim's family worked at
9 the detention center, who -- to whom are you referring?

10 A That would be her step-father's mother and her
11 husband.

12 Q And did you ever bring up these concerns with
13 Mr. Farnsworth?

14 A Yes, ma'am, I did.

15 Q What did he say when you brought them up to him?

16 A He said a change of venue would not matter.
17 That it would still be determined -- the case, as far as
18 going with a open plea, everything would be determined the
19 way that it was and that wouldn't matter.

20 Q And you still cannot articulate what it is that
21 you wanted to appeal? What issues you wanted to appeal?

22 A Not without going to trial.

23 Q But what I'm saying is that from the guilty
24 plea, what issues -- what happened during the guilty plea
25 that you wanted the Appellate Court to look at? What kind

JEFFREY GILLILAND-CROSS BY MS. RATIGAN

1 of errors. Do you know of any errors?

2 A No, ma'am, not on the appeal, no, ma'am.

3 Q Okay.

4 That's all I have, Your Honor.

5 MS. HORLBECK: That's all I have, Judge.

6 THE COURT: Thank you, Mr. Gilliland, I
7 appreciate you being here, sir, you may step down.

8 MR. GILLILAND: Thank you, sir.

9 Anything further from the Applicant?

10 MS. HORLBECK: No, Judge.

11 THE COURT: All right.

12 THE COURT: Anything from the State?

13 MS. RATIGAN: Yes, Your Honor, we'd call
14 Mr. Farnsworth.

15 THE CLERK: Mr. Farnsworth, please place your
16 left hand on the Bible, raise your right.

17 DAN FARNSWORTH, after being duly
18 sworn, testified as follows:

19 THE CLERK: Please, state your name for the
20 record.

21 THE WITNESS: Dan J. Farnsworth.

22 DIRECT EXAMINATION

23 BY MS. RATIGAN:

24 Q Mr. Farnsworth, do you recall representing
25 Mr. Gilliland on these charges?

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

1 A Yes, ma'am, I do.

2 Q Were you appointed or were you retained?

3 A I was appointed.

4 Q And did you file the usual discovery motions?

5 A I did.

6 Q Did you receive those materials from the State?

7 A Yes, I did.

8 Q Did you review them with your client?

9 A My practice was to make -- I have my
10 investigator make a copy, either take it to the to jail
11 and that I would come down there sometime subsequent to
12 that and go over it with him and answer any questions he
13 may have and this type of thing, so. And I did with him.

14 Q Okay. And as part of discovery did you receive
15 a series of letters that he had written the victim?

16 A I did.

17 Q Did you review those with your client?

18 A I don't, you know, specifically remember just
19 talking about that letter. We talked about everything.
20 Besides the letters I think there was an admission he had
21 made in front of two other witnesses about his
22 relationship with his daughter, about the specific acts.
23 And, of course, there were the letters. And we went over
24 all that. And let me just save you time. There never was
25 a situation where he was going to trial. And I, you know,

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

1 remember that and I think I got it written down. He did
2 not want a trial. And he admitted his guilt to me.
3 Showed even a lot of remorse. So, it was just a matter of
4 negotiating a sentence with Ms. Christy --

5 Q Sustakovitch?

6 A Yeah, I use to call her -- what was her maiden
7 name?

8 Q Kedknocker?

9 A Yes, yes. So, we -- she was playing pretty
10 tough. And -- and she, I think, she started out with the
11 first -- or original offer was 15 years. And he didn't
12 want that. But the main reason he didn't want it, he
13 wanted one of those hams he got down there in Laurens,
14 nonviolent sentence. And he just -- and she feel aware of
15 that. And, in fact, she provided me with the transcript
16 of that guilty plea down there. And he was dead bent on
17 getting a 10 year, nonviolent sentence and additionally
18 one of the other conditions was not being put on the
19 sexual log, what you call it, the --

20 Q Sex Offender Registry?

21 A Yeah, registry. And, of course, she wouldn't go
22 for that. And I discussed both of these offers to him,
23 the 15, the 10, and he was adamant about what he wanted.
24 And the reason this case got put on the trial is like so
25 many, he never would take her offer and they expire. So

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

1 she put him on the trial list.

2 Q So, the 10 year offer that the State made, that
3 would not have been nonviolent, that was a 10 year violent
4 offer?

5 A Both of Greenville offers were violent with
6 sexual offender. So.

7 Q Did you ever tell Mr. Gilliland he would
8 probably get 10 years if he did the straight up plea?

9 A I never told him that, no.

10 Q And in your opinion where there any legal errors
11 that were made at the guilty plea that would have been
12 appellate issues?

13 A None whatsoever.

14 Q And last question, did Mr. Gilliland ever tell
15 you of some concerns that the victim's step-father's
16 mother and her husband worked at the detention center?

17 A Today's the first day I ever heard that.

18 Q If the victim's step-father's mother and her
19 husband worked at the detention center, in your opinion
20 would that be have been a valid reason to try and change
21 venue?

22 A Let me answer it this way. If he had insisted,
23 which I don't -- like I say, today's the first I've heard
24 of that. Had he insisted upon change of venue, as his
25 attorney, I would have had an obligation, if it had any

DAN FARNSWORTH-DIRECT BY MS. RATIGAN

1 merit at all to it, to file it, okay? And the second
2 answer of that question, Would it be valid? Any validity
3 to it? I don't think so. I don't think it would have
4 meritorious.

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

6 MS. HORLBECK: Just briefly, Judge.

7 CROSS-EXAMINATION

8 BY MS. HORLBECK:

9 Q Mr. Farnsworth, did you review your notes and
10 the transcript in preparation for this hearing today?

11 A This thing been set up at least once, maybe
12 twice. To be honest with you I briefly went over them
13 today but I've been over them thoroughly --

14 Q Okay.

15 A -- the other two times.

16 Q Okay. All right. So, your testimony today is
17 based on your recollection and your review of the
18 transcript and the file and everything, correct?

19 A Yeah.

20 Q All right. And did you have any health problems
21 in early 2012 that may have effected your representation?

22 A I'm not sure exactly when my health problem
23 started, Counselor, but I yeah, I had a minor stroke.

24 And, you know, I mean, I wasn't working then. I was out
25 of work for about 18 months but it wasn't during when I

DAN FARNSWORTH-CROSS BY MS. HORLBECK

1 went to court, that's for sure. And since then, you know,
2 I been really luck, I'm back to normal. Thank God. So my
3 mind is good as it's ever been in my life.

4 Q Okay.

5 A If that means anything.

6 Q So, and there's nothing -- your health was not
7 impacting your representation of this file at all,
8 correct?

9 A No. This thing I had was sudden, this illness I
10 had.

11 Q Okay.

12 A It was a sudden thing, it wasn't while I was in
13 court.

14 Q Okay. All right. Did you ever tell
15 Mr. Gilliland that you had turned down the plea offers on
16 his behalf?

17 A I never, unless, unless, unless I was talking to
18 a solicitor and we were talking about five or ten years
19 and they said, No 40, I'd turn that down without asking
20 the client. But on something like this, I never turned an
21 offer down, reasonable offer, without discussing it with a
22 client, ever.

23 Q All right. You testified on direct that your
24 practice was to have a copy of discovery sent to the law
25 enforcement center to your client--

DAN FARNSWORTH-CROSS BY MS. HORLBECK

1 A Or I took them.

2 Q Okay. And does that same practice hold true for
3 clients who are incarcerated in the Department of
4 Corrections?

5 A Well, the only way they would have gotten it is
6 either JC -- I was looking through there and I don't see
7 but -- let's see, I do see too. Discovery copied and
8 mailed to the South Carolina Department -- so, that's JC's
9 handwriting.

10 Q What date was that?

11 A March the 9th of 2011.

12 Q Okay. Did you ever travel to wherever
13 Mr. Gilliland was incarcerated.

14 A No, ma'am, I never knew we were supposed to do
15 that.

16 Q I mean, I'm not --

17 A I mean, as far as--

18 Q -- I'm just asking.

19 A No, no, I hadn't done that much.

20 Q Did you call him at SCDC or did you just -- you
21 relied on your meetings with him in?

22 A We had him brought up here every time we needed
23 him. And you can take a look at his file, I saw him a
24 bunch of times.

25 Q Okay.

DAN FARNSWORTH-CROSS BY MS. HORLBECK

1 A And, you know.

2 MS. HORLBECK: All right. Beg the Court's
3 indulgence?

4 THE COURT: Yes, ma'am.

5 BY MS. HORLBECK:

6 Q The letters that were written in this case, who
7 wrote them to your recollection? Was it Mr. Gilliland or
8 the victim?

9 A You know, I'd have to look. It might have been
10 a combination of both. I think -- I know each of them did
11 at least one, I don't know who did the most.

12 Q Did you review those letters with him? Both
13 letters?

14 A Yes, he had everything I had. Yeah, they
15 were -- they were both of them sent letters.

16 MS. HORLBECK: That's all I have, thank you.

17 MR. FARNSWORTH: Thank you.

18 MS. RATIGAN: I have no redirect and the State
19 would rest, Your Honor.

20 THE COURT: Okay, Mr. Farnsworth, I appreciate
21 your being here.

22 MR. FARNSWORTH: Thank you, Judge, good to see
23 you.

24 THE COURT: Anything further from the State?
25 Anything further from the Applicant?

1 MS. HORLBECK: No, Your Honor.

2 THE COURT: Okay, good enough. I'll take the
3 matter under advisement. I'll review the transcript
4 of record, read it in full and then I will send out a
5 ruling by way of letter in fairly short order. Thank
6 you, very much. I appreciate it.

7 MS. RATIGAN: Thank you, Your Honor.

8

9 THE COURT: Good luck to you, Mr. Gilliland.

10 (WHEREUPON, the proceedings were concluded.)

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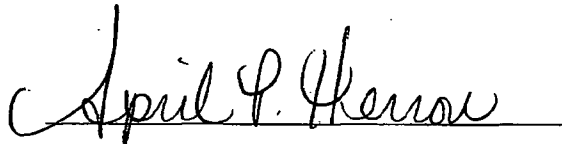
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 20th day of June, 2014.

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

November 17, 2014



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Jeffrey Doyle Gilliland,)
 S.C.D.C. No. 335786,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-5861

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2014 AUG 5 AM 9 59

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 13, 2012. The Respondent made its return on March 26, 2013. An evidentiary hearing into the matter was convened on June 20, 2014, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, 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 plea counsel, Daniel J. Farnsworth, Sr., Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville 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 Greenville County Clerk of Court. The Applicant was indicted by the Greenville County Grand Jury for Incest (2009-GS-23-10484) and Second-Degree

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Criminal Sexual Conduct (CSC) with a minor (2009-GS-23-10485). He was represented by Daniel J. Farnsworth, Sr., Esquire.

On September 12, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of ten years for Incest and twenty years for Second-Degree CSC with a Minor.

A notice of appeal was filed at the South Carolina Court of Appeals. By order dated January 19, 2012, the Court of Appeals dismissed the appeal based on the Applicant's failure to provide a written explanation as to what issues could be reviewed. See Rule 203(d)(1)(B)(iv), SCACR.

ALLEGATIONS

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

- 1. Ineffective assistance of 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 his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as 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

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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 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). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he and plea counsel did not review discovery materials (though he did have a copy of it) or the facts. The Applicant stated plea counsel turned down two plea offers for fifteen years and then ten years. The Applicant stated he did not know about these offers until after they had been rejected. The Applicant stated he was also charged in Laurens County and had pled guilty to assault and battery of a high and aggravated nature and received a non-violent sentence. The Applicant stated plea counsel said he would not receive a lengthier sentence on these charges because one judge could not override another's sentence. The Applicant stated plea counsel's confidence was why he did not tell the plea judge about the rejected plea offers. The Applicant stated plea counsel told him that he should not bring this case to trial. The Applicant stated plea counsel did not file a motion to change venue (because the victim's stepfather's parents worked at the Greenville County Detention Center).

Plea counsel testified he filed discovery motions in this case and received those materials. Plea counsel testified he sent a copy of the discovery materials to the Applicant on March 9,

2011, reviewed those items with him, and answered any questions. Plea counsel testified that, while the Applicant was in SCDC, he was brought back to Greenville whenever they needed to meet. Plea counsel testified the Applicant admitted his guilt to him and never wanted a trial. Plea counsel testified the State was "playing tough" with plea offers in this case. Plea counsel testified the first offers was for a fifteen-year sentence (which would be for a violent offense and include the sex offender registry), but that the Applicant rejected it because he wanted a non-violent sentence such as what he received in Laurens County. Plea counsel testified the State made a ten-year offer (which would be for a violent offense and include the sex offender registry) but the Applicant rejected it because he wanted a non-violent sentence and did not want to be on the sex offender registry. Plea counsel testified he never told the Applicant that he would probably receive a ten-year sentence. Plea counsel testified he never heard about the victim's relatives being detention center employees but that he would have filed a motion to change venue if the Applicant had insisted upon it.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court finds plea counsel adequately conferred with the Applicant and discussed the facts and evidence in this case. This Court finds there was a thorough guilty plea colloquy in this case, and that the Applicant properly answered all of the plea judge's questions. The Applicant admitted to the plea judge that he was guilty and that he did not dispute the facts. (Plea transcript, p.11; p.13). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.11-13).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not convey two plea offers from the State. While the Applicant stated he was unaware of these offers and that plea counsel rejected them on his behalf, plea counsel testified both offers were relayed to the Applicant. Plea counsel further testified the Applicant rejected both offers because he wanted an offer that was for a non-violent sentence without inclusion on the sex offender registry. This Court specifically finds plea counsel is more credible than the Applicant on this issue. This Court also notes plea counsel had a specific recollection of relaying the offers to the Applicant and the Applicant opting to refuse them. This Court finds plea counsel fulfilled his responsibilities in this regard. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to the defendant constituted deficient performance); see also Rule 1.2(a), RPC, Rule 407, SCACR (an attorney cannot force his client to accept a plea offer and that the decision whether to accept or reject such an offer rests solely with the client).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have filed a motion to change venue. While the Applicant stated the victim's stepfather's parents worked at the Greenville County Detention Center, plea counsel testified the first time he heard this statement was at the PCR hearing. This Court notes the victim in this case is the Applicant's biological daughter. As such, he would have known if she had any tangential relationship to Greenville County employees. This Court finds the Applicant's testimony is not credible. Regardless, this Court finds the Applicant has failed to articulate a cognizable basis for plea counsel to have filed a motion to change venue.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance. The Applicant pled guilty to charges related to this incident in Laurens County. (Plea transcript, p.15; pp.21-22). The victim gave a statement to police about the relationship. (Plea transcript, pp.8-9). The Applicant admitted to three people (one of whom was his sister) that he had a sexual relationship with his biological daughter. (Plea transcript, pp.9-10). The Applicant also sent love letters to the victim. (Plea transcript, pp.10-11). Even assuming arguendo the Applicant could prove plea counsel was deficient, he cannot prove any resulting prejudice because of the overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel’s deficient performance could have reasonably affected the result of defendant’s trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

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.

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

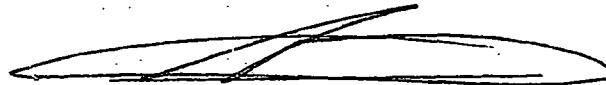
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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 1 day of Aug, 2014.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Giville, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE SUPREME COURT

Jeffrey Gilliland,)
)
Appellant,)

C.A. No. 2012-CP-23-5861

-vs-)

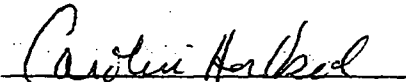
CERTIFICATE OF SERVICE

State of South Carolina,)
)
Respondent.)

This is to certify that I am an employee in the law office of Caroline M. Horlbeck, attorneys for Appellant, and that I have this day caused to be served upon the person(s) named below Appellant's Notice of Appeal by placing copies of same in the United States mail, with adequate postage thereon, addressed as follows:

Ms. Lorie French
S.C. Office of Appellate Defense
P.O. Box 11433
Columbia, SC 29211

Karen Ratigan, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211


Caroline M. Horlbeck

Greenville, South Carolina

August 29, 2014

WITNESSES

no

Cheryl Cromarie

Greenville County Sheriff's Office

9/17/2009

AMENDED INDICTMENT
DOCKET NO. 2009-GS-23-010484
CLK

The State of South Carolina

1500

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2011

THE STATE

vs.

JEFFREY D. GILLILAND

ARREST WARRANT NUMBER

1476185

ACTION OF GRAND JURY

[Signature]

TRIE GILL

[Signature]
Bobby D. Aum

Foreperson of Grand Jury

VERDICT

Farnsworth

Amended Indictment for

0090

INCEST

VIOLATION § 16-15-0020

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
INCEST

At a Court of General Sessions, convened on **AUG 16 2011** the Grand Jurors of Greenville

County present upon their oath:

That JEFFREY D. GILLILAND did in Greenville County, between October 1, 2007 and July 22, 2008, have carnal intercourse with A.S.S. who is within the degree of relationship prohibited by §16-15-20 (1) or (2). This is in violation of §16-15-20 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.

[Handwritten Signature]
SOLICITOR

WITNESSES

AW

Cheryl Cromartie

Greenville County Sheriff's Office

9/17/2009

AMENDED INDICTMENT
DOCKET NO. 2009-GS-23-010485
CLK

1587
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2011

THE STATE

vs.

JEFFREY D. GILLILAND

ARREST WARRANT NUMBER

1476186

ACTION OF GRAND JURY

TRUDE SMITH

Sally D. Baum

Foreperson of Grand Jury

VERDICT

Amended Indictment for

0397

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (14-15)

VIOLATION § 16-03-0655(C)

For person of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AMENDED INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
(14-15)

At a Court of General Sessions, convened on **AUG 16 2011** the Grand Jurors of Greenville

County present upon their oath:

That JEFFREY D. GILLILAND did in Greenville County, between October 1, 2007 and February 16, 2008, engage in sexual battery with A.S.S., who was at least fourteen years of age but who was less than sixteen years of age, and that he did so in a position of familial, custodial, or official authority to coerce the victim to submit, and/or he was older than the victim. This is in violation of § 16-3-655(B)(2) [formerly 16-3-655(3)] 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.

Christy Susa...
SOLICITOR