

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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**RECEIVED**

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**S.C. Supreme Court**

JASON BONEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001794

---

APPENDIX

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BENJAMIN JOHN TRIPP  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JOHN WALT WHITMIRE  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

)  
) COURT OF GENERAL SESSIONS  
) 2012-GS-32-02465  
\_)

STATE OF SOUTH CAROLINA

vs.

JASON BONEY

DEFENDANT

)  
)  
) TRANSCRIPT OF RECORD  
)  
)  
\_)

January 22, 2013  
Lexington, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

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

KATE WHETSTONE USRY, ASSISTANT SOLICITOR  
Attorney for the State

SALLY J. HENRY, ASSISTANT PUBLIC DEFENDER  
Attorney for the Defendant

CAROL M. THUEME, RPR  
Official Court Reporter

## I N D E X

DEFENDANT:

PAGE

JASON BONEY

3

## EXHIBITS

(There were no exhibits marked.)

1 THE CLERK: Jason Boney.

2 2012-GS-32-2465, State versus Jason Boney,  
3 indicted for criminal sexual conduct with a minor, 2nd  
4 degree. He is pleading as charged. The indictment has  
5 been true-billed, and he is represented by Ms. Henry.

6 Raise your right hand, please.

7 JASON BONEY, after being duly sworn, testified  
8 as follows:

9 THE COURT: All right. Madame Solicitor.

10 MS. USRY: Thank you, Your Honor.

11 This is a case against Jason Boney. He's  
12 pleading guilty to criminal sexual conduct with a minor,  
13 2nd degree, Your Honor.

14 This incident occurred on June -- well, the  
15 incident came to light on June 30 of 2012, Your Honor.

16 I do want to bring to the Court's attention that  
17 the victim in this case, Minor is  
18 present with her father, Bruce DeClerque. They are  
19 seated, Your Honor, three rows back on the right. So  
20 she's in the purple shirt. They are present in the  
21 courtroom.

22 THE COURT: Okay.

23 MS. USRY: This incident began when the  
24 defendant's live-in girlfriend -- I don't believe they  
25 were married. They have three children in common.

1           It's suspected the defendant was engaging in an  
2 inappropriate relationship with Minor           . And she's  
3 also present today, Your Honor. Crystal Bayer is her  
4 name. She thought an inappropriate relationship was going  
5 on. Minor           would baby-sit her children sometimes  
6 and come up to their residence.

7           She left the residence and took her three  
8 children to her mother's house and told the defendant she  
9 was going out for the night. She returned to the house to  
10 observe the defendant go pick up Minor           and bring  
11 her back to his house, and she, along with a friend,  
12 witnessed through a window them engaging in sexual  
13 relations. She came through the door, caught them in the  
14 act when she walked into the room, Your Honor, and that's  
15 kind of what brought this case to light.

16           Officers were called in. Minor           was  
17 taken to the hospital and given a sexual assault exam,  
18 Your Honor. She was 15 years of age when this happened.  
19 The defendant was 27.

20           That night she told --

21           THE COURT: Excuse me. The indictment says,  
22 "engaged in sexual battery with a minor who was 14" --

23           MS. USRY: But less than 16, Your Honor.

24           THE COURT: Or less than -- no, it says, "14  
25 years of age or less, but who was 11 years of age" --

1 that's count one. And two is sexual battery with a minor  
2 at least 14 but who was less than 16. So it's under that  
3 provision he's pleading guilty?

4 MS. USRY: Yes, sir, Your Honor. And I'm going  
5 to go into further facts to indicate the relationship did  
6 begin at an earlier time and actually began when she was  
7 much younger, Your Honor.

8 THE COURT: Okay.

9 MS. USRY: But on this evening, when she went to  
10 the hospital, both parties -- and when officers  
11 interviewed the defendant, they indicated this was the  
12 first time this had happened, the first time they engaged  
13 in sexual intercourse, Your Honor.

14 When officers interviewed the defendant, he  
15 indicated that, again, this was the first time.

16 Later in investigating this incident, Your  
17 Honor, they spoke with a witness who told them that he had  
18 spoken with <sup>Minor</sup> and she told him that the  
19 relationship had started over Christmas break of her  
20 eighth grade year when she was 13 years of age. That  
21 person then called the defendant on the telephone --  
22 because a warrant had not been served at this point, this  
23 third party called the defendant on the telephone and  
24 inquired about that. He indicated he did have sex with  
25 the victim when she was 13 years old, and he told that

1 person that "love don't know no age."

2 I've spoken with the victim and her father. He  
3 is pleading as charged. We have looked at indicting  
4 further on a lewd act if this was to go to trial, Your  
5 Honor. That's actually going before the grand jury today,  
6 but I'm going to withdraw that if it hadn't gone through  
7 or dismiss it if it has gone through after this plea.

8 They don't wish to address the Court, but they  
9 do want me to tell you that this has affected her  
10 severely. They want him to stay away from her. They want  
11 a restraining order or a no-contact provision as part of  
12 this plea. They want to see jail time and a sex offender  
13 registry, and that is up -- I told them that is up to Your  
14 Honor, how this -- the resolution of this case.

15 The State is concerned, Your Honor, because the  
16 relationship was going on since she was 13 years of age.  
17 It also appears from talking to <sup>Minor</sup> , and I talked to  
18 her a few months ago when she and her father came up, and  
19 she did confirm then that this relationship had been going  
20 on for some time. She indicated that it began when her  
21 father was out of the house a lot because her mother was  
22 put into a home for medical reasons, and the State's  
23 concerned that he took advantage of that situation.

24 And in addition, the State's concerned because  
25 his prior record is a 2004 assault and battery of a high

1 and aggravated nature, but that charge stems from similar  
2 facts not with this victim but another underage minor,  
3 Your Honor. I believe it was pled down to an ABHAN. But  
4 it's clear he knew the law because of the prior offense  
5 and he knew that what he was doing was inappropriate.

6 And, Your Honor, that's the extent of the  
7 State's presentation on this matter at this time.

8 MS. HENRY: Your Honor, may we approach for a  
9 moment?

10 THE COURT: Yes.

11 (A bench conference was held with the judge and  
12 attorneys.)

13 THE COURT: All right. Mr. Boney, do you want  
14 to plead guilty to this offense, criminal sexual conduct  
15 with a minor, 2nd degree?

16 THE DEFENDANT: Yes.

17 THE COURT: This penalty carries a prison  
18 sentence of up to 20 years; is that right?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you also understand that this  
23 law is classified under the law -- this offense is  
24 classified under the law as being a violent offense and a  
25 most serious offense?

1 THE DEFENDANT: Yes.

2 THE COURT: And if you commit another most  
3 serious offense, you can be sentenced to prison for life  
4 without the possibility of parole. Do you understand that  
5 to be the case under our two strikes law for most serious  
6 offenses?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, as you stand before me at this  
9 time, you're presumed to be not guilty of this charge, and  
10 you have the right to remain silent concerning this  
11 charge. When you plead guilty, you give up your  
12 presumption of innocence and your right to remain silent.  
13 Do you understand that, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Also when you plead guilty, you give  
16 up your right to confront any witnesses against you, to  
17 have your lawyer, Ms. Henry, subpoena any witnesses to  
18 come to testify for you. You also give up the right to  
19 present any defense that you might have to the charges,  
20 and also the right to require the State to prove your  
21 guilt beyond a reasonable doubt to a jury. Do you  
22 understand those rights?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you wish to waive those rights  
25 and plead guilty? Sir, do you wish to waive those rights

1 that I just explained and plead guilty?

2 THE DEFENDANT: Yes.

3 THE COURT: And are you guilty of this offense?

4 THE DEFENDANT: Yes.

5 THE COURT: And, Ms. Henry, are you in agreement  
6 with his decision to plead guilty?

7 MS. HENRY: I am, Your Honor.

8 THE COURT: And, Mr. Boney, do you also  
9 understand that there are many other -- there can be many  
10 other collateral consequences of pleading guilty to a  
11 sexual assault with a minor case, including the  
12 requirement of sexual offender registry, electronic  
13 monitoring, and other -- many other possible collateral  
14 consequences of such a guilty plea. Do you understand  
15 that, sir?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: And understanding all of that, do  
18 you wish to continue with this guilty plea?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: All right. And the facts as stated  
21 by Ms. Usry, the solicitor, are those facts true?

22 THE DEFENDANT: Yes, they are.

23 THE COURT: All right. I will accept the guilty  
24 plea.

25 Ms. Henry.

1 MS. HENRY: Thank you very much, Your Honor.

2 Mr. Boney has one criminal offense on his  
3 record, and that was the ABHAN that Ms. Usry referred to.  
4 He received probation on that, and actually it was a PTUP  
5 probation. The condition of it was that he complete 100  
6 hours of community service, which he did, and probation  
7 was ended.

8 THE COURT: What was that case about?

9 MS. HENRY: He was much younger then and much  
10 closer in age to the young lady. It was a consensual  
11 situation as well. And I think that the sentence  
12 reflects -- or one can read between the lines, let me put  
13 it that way. It reflects the nature of that offense.

14 Your Honor, he's guilty of showing very, very  
15 poor judgment.

16 Just a little background I'd like to give Your  
17 Honor.

18 THE COURT: Sure.

19 MS. HENRY: He is now 27. He went through the  
20 ninth grade at Airport High School and is currently  
21 enrolled to get his GED. Once he does that, he would like  
22 to go on to perhaps a community college and get some  
23 education in the medical field.

24 He is a father with the woman he was living with  
25 of four-year-old twin girls. They've been together for

1 that length of time at least, although they're not legally  
2 married. But he was working, supporting the family.

3 THE COURT: They have a live-in relationship but  
4 they're not married?

5 THE DEFENDANT: That's correct.

6 THE COURT: All right.

7 MS. HENRY: But they've been together for quite  
8 a while.

9 THE COURT: Okay.

10 MS. HENRY: I think there were some marital  
11 problems there. This young lady, who is named in the --  
12 as the victim in the indictment, was a friend of the  
13 family. She used to come over and help care for the  
14 little twin girls, and I think both parents trusted her to  
15 take care of them. One would be there sometimes, the  
16 other not.

17 I think he was frustrated in his own marriage.  
18 He was not getting the attention he felt he needed, if I  
19 could put it that way, and this young woman offered to do  
20 that. He wasn't in a -- and I know this doesn't sound  
21 right to the Court because of his age, but he was in an  
22 emotionally vulnerable time in his life. Of course, he  
23 knew better, but he made bad judgments and let his  
24 emotions take over.

25 When this young lady was talked to by the

1 authorities, she made it crystal clear that she had wanted  
2 this relationship, she had been in it very willingly, and  
3 I don't know if anyone had a hint that this was going on  
4 except I'll call it his wife, Crystal Bayer, because she  
5 set him up that night very deliberately so that she could  
6 get, I guess, her hands on real evidence that this was  
7 what had been happening for a while.

8 THE COURT: "She set him up" meaning the --

9 MS. HENRY: Yes, sir.

10 THE COURT: -- meaning his girlfriend or --

11 MS. HENRY: No. Well, Ms. Bayer, the woman  
12 he -- the mother of his twins he'd been living with. She  
13 told him that she was going to the beach or some excuse to  
14 take the children out of the house, leaving him there  
15 alone with the young lady. And then she came back and  
16 took pictures through the window, and a few other things.  
17 Not that that makes any difference, I mean it was ongoing  
18 anyway, but I suppose she wanted actual proof of it.

19 Your Honor, he regrets this a lot. It was bad,  
20 bad judgment. All I can say is that, you know, he was in  
21 such an emotional desert at that time with regard to his  
22 relationship with his wife that he was just vulnerable to  
23 this kind of activity.

24 As we talked with Your Honor up at the bench,  
25 Ms. Usry and I, I think that the statute provides that if

1 you make a finding on the record that this was consensual,  
2 then he would not have to register as a sex offender, he  
3 would not be subject to electronic monitoring, and the  
4 most serious nature of his crime would be abdicated in  
5 favor of --

6 THE COURT: Of course you said that. You came  
7 to the bench and said that was the law. And I asked you  
8 to show me where it is the law or tell me what law it is  
9 that you're now saying, and I --

10 MS. HENRY: Yes, sir. I think we referred to --  
11 and, of course, this is my position yet -- we referred to  
12 16-3-655 B.2, where the victim of the sexual conduct is  
13 under 16 years of age.

14 THE COURT: Well, that makes the person -- the  
15 age factor makes it 2nd degree criminal sexual conduct as  
16 opposed to a first degree. But I don't see anything under  
17 the statute that would allow me to make a finding that it  
18 is consensual and, therefore, he would not be under the  
19 sex offender registry.

20 The only reference to consent in that statute is  
21 that a person may not be convicted of a violation of  
22 criminal sexual conduct, 2nd degree, if he is 18 years of  
23 age or less when he engages in consensual sexual conduct  
24 with a person who is at least 14 years of age. I think  
25 that provision was added because of circumstances where

1 maybe high-school students might engage in sexual conduct  
2 and be in violation of this law. If you have a boy who is  
3 17 or 18 engaging in sexual conduct with a girl who is 15,  
4 then that is criminal sexual conduct, 2nd degree, or it  
5 was prior to the change of the law, I think. But I don't  
6 see any other reference to anything else that you just  
7 mentioned in this law.

8 If there is, and it exists in some provision,  
9 and you have any cases that support what you're saying,  
10 I'll be happy to look at it, but I'm not familiar with any  
11 of that.

12 MS. HENRY: At this time I do not, Your Honor.  
13 I wonder if we might hold that matter in abeyance. I'll  
14 be happy to research and brief this for you.

15 THE COURT: Just a moment.

16 (Pause.)

17 THE COURT: All right. Go ahead.

18 MS. HENRY: As I say, Your Honor, I would ask  
19 the Court to consider holding this matter in abeyance  
20 until I have been able to research and perhaps provide a  
21 brief to the Court.

22 THE COURT: To hold what part of it in abeyance?

23 MS. HENRY: The sexual offender registry and as  
24 well as the no electronic monitoring. I'm not certain  
25 that's a provision, that they have to be monitored anyway.

1 THE COURT: Let me look at this case. It's the  
2 case of State versus Jennifer Dykes. She's charged with  
3 committing a lewd act on a child under 16, and the judge  
4 up in Greenville, Charles B. Simmons, Jr. -- I think he's  
5 a master-in-equity maybe -- found that sex offender was in  
6 willful violation of her probation and that she should be  
7 subjected to lifetime satellite monitoring. She appealed,  
8 and the Supreme Court, Justice Kittredge in writing the  
9 opinion, held that a statutory provision that mandates  
10 lifetime satellite monitoring of certain child sex  
11 offenders without judicial review violates due process.

12 And so I'm thinking that that may be the portion  
13 that you're referring to where there's an order of  
14 lifetime registration, which is not the same as sex  
15 offender registry, and that came up in the context of a  
16 probation violation where the judge handling this said,  
17 Well, you get a lifetime registration, and she appealed.

18 She was 26 and had some relationship with a  
19 14-year-old girl and got probation, and that resulted in  
20 the order of lifetime monitoring of a lewd act with a  
21 minor case.

22 And they emphasize, We emphasize that our  
23 holding today is a narrow one and the satellite monitoring  
24 provisions remain largely intact. We don't suggest that  
25 satellite monitoring as a whole is unconstitutional, but

1 it's only -- only the mandatory monitoring of those who  
2 pose a low risk of reoffending that violates due process.  
3 Further, our holding only extends to those who are not  
4 under any terms of supervision, probation, parole or  
5 similar restrictions; and we express no opinion as to  
6 whether mandatory monitoring of those who are on  
7 probation, parole, and community service implicates due  
8 process. Our holding applies only to those who have no  
9 mechanism to have the monitoring removed because they have  
10 a conviction of CSC 1st or lewd act, and it appears that  
11 they concluded that this young lady was a low risk of  
12 reoffending and that it was unconstitutional to subject  
13 her to mandatory lifetime monitoring.

14 So any sentence I do today would not seek to  
15 make any order as to what is mandatory for life. Of  
16 course, I don't know what the -- if there are possible  
17 collateral consequences of certain cases in which that may  
18 be the case, including this one.

19 MS. HENRY: My understanding in the past has  
20 been that mandatory life monitoring would apply only to  
21 CSC 1st and lewd act. Of course, there's no lewd act any  
22 longer, it's only CSC 3rd, so I don't know where that  
23 leaves the law. As I say, I'll be happy to research this  
24 and brief the Court. Obviously I'm not -- I don't have  
25 that today.

1 THE COURT: All right. Well, I'm not going to  
2 not impose a sentence today, but anything you might want  
3 me to consider on the issue regarding clarification or  
4 anything that I might need to specifically consider in  
5 making a part of the sentencing regarding future  
6 electronic monitoring requirements, I'll consider it, but  
7 not -- I don't want to suggest that there are any special  
8 rights or exceptions that this defendant is entitled to  
9 with regard to it because I don't see this as being the  
10 same type case as that before the Supreme Court in the  
11 Dykes case.

12 MS. HENRY: I understand.

13 THE COURT: All right.

14 MS. HENRY: Your Honor, we respectfully are  
15 asking the Court to consider a suspended sentence and a  
16 probationary period for Mr. Boney. I think, you know, the  
17 supervision that would be in place would certainly be  
18 adequate to ensure that he has no contact with this young  
19 lady again, and that he does the right thing.

20 He has plans for his future. As I say, he's  
21 attempting right now to complete his GED, and then he  
22 wants to go on with that to acquire some more skills at  
23 community college.

24 Presently, he has found a place to live, which  
25 is in Lexington County, but nowhere near these people. He

1 has a social worker that he's been working with to get him  
2 in place for the GED. He has completed Work Keys, which  
3 is a program that kind of focuses people, gets them on  
4 track. He's just trying to do the right thing right now,  
5 Your Honor.

6 He's been, you know, other than this particular  
7 incident, I think he's a good father to his children. He  
8 worked full time, he had a towing service and then a limo  
9 service, and, you know, doing what he could with the  
10 skills that he had.

11 So we're asking the Court to consider giving him  
12 a suspended sentence with a lengthy time of probation so  
13 that he can modify his behavior, show the Court he can do  
14 what is necessary, turn his life here into one that is  
15 productive and continue to support his children.

16 And, again, I would emphasize that, not to lose  
17 sight of the fact that even though this young lady was not  
18 of the age she could consent, it was, you know, on her  
19 part a willing relationship with this man, so consensual  
20 in all practical aspects, if not legal.

21 THE COURT: All right. Mr. Boney, what would  
22 you like to tell me?

23 THE DEFENDANT: Your Honor, I'm trying to get my  
24 life together. I've always done for other people and  
25 never for me, and it's gotten me nowhere. Like Ms. Sally

1 said, I'm trying to go into the medical field. I do want  
2 to be an X-ray tech and then go back and try to be a  
3 perfusionist. I just want to do right in life, set a  
4 goal, and that is my goal in life, and it took this  
5 horrible matter to help make my mind up of what I wanted  
6 to do in life. And I just want to be a father to my kids  
7 and better myself.

8 THE COURT: All right. Anything further?

9 THE DEFENDANT: I just want to say that, you  
10 know, I do know what I did was wrong. I was really in a  
11 bad place in my life. I was very depressed, very unhappy  
12 with my living situation, with my job situation, stressed  
13 to the max, and I wasn't getting the attention that I  
14 needed. And shame on me, but I took the first chance that  
15 was shown to me, and I should have never done it.

16 If I could go back, I could really change a lot  
17 of things, because you really don't know what you have  
18 until it's all gone. And I lost my house, my car, my  
19 kids, my family. You know, I had to live in with my mom,  
20 then I ended up getting kicked out of there. I stayed  
21 with a buddy of mine for about a month and then I got  
22 kicked out of there, and I stayed in my truck for a long  
23 time, and I've come a long ways from where I was at. I  
24 cross one bridge at a time.

25 And, you know, like I said, I just want to get

1 my GED, I want to go to medical school, I want to do  
2 something with my life, I want to have a career. I want  
3 to be a father to my kids.

4 THE COURT: All right. Thank you, sir.

5 Reply by the State.

6 MS. USRY: Your Honor, the State just stands by  
7 the position that the defendant took advantage of a  
8 13-year-old, and I'll let the facts speak for themselves.

9 THE COURT: Well, one of the first things that a  
10 man gets to learn, and that is that bothering children in  
11 a sexual manner will land you in jail. Some people say  
12 they're jail bait. People know that if you engage in  
13 sexual acts with children, your expectation should be that  
14 you will go to jail.

15 You know, the fact of the matter is that even  
16 though a person who commits such offense might consider  
17 themselves to be perfectly normal and might be going  
18 through the regular stresses and strains of life, the fact  
19 is that the impact of it on the minor child, any number of  
20 children who have been sexually abused appear before me as  
21 adults, telling me about how it has destroyed their lives  
22 and caused them to not be able to lead a normal life. So  
23 it's no different than shooting someone in the back and  
24 they're coming in here crippled and the person says, I'm  
25 sorry, I just made a mistake, and I'm looking at a

1     crippled man that they shot in the back. It's unfortunate  
2     that you made that mistake, but we have a crippled person  
3     over here and what am I to do about it?

4             So in this instance in which you have committed  
5     these offenses, and the defense is that the child agrees,  
6     the child consented, and there's no such thing. A child  
7     who is under the age of consent cannot consent, and it's  
8     something that you knew or should have known based on your  
9     experience of being through the system. You've just  
10    decided that you're going to break the law, and so you  
11    must be prepared to suffer the consequences of having done  
12    so.

13            It's unfortunate for you that you seem to have a  
14    lot of positive things going for you, but it's all  
15    unbalanced when you weigh the positives and the negatives,  
16    and this is a definite negative for you because of the  
17    impact that you've caused the victim and will continue to  
18    cause her, and her family, for years to come. And  
19    hopefully she will receive the right type of support and  
20    assistance that can help her come through this and be  
21    fine, or as fine as can be expected considering the  
22    circumstances.

23            Mr. Boney, the sentence of the Court is that you  
24    be committed to the State Department of Corrections for a  
25    period of ten years, and you will receive credit for any

1 time that you've served.

2 MS. HENRY: Thank you.

3 (The proceedings were concluded.)

4 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

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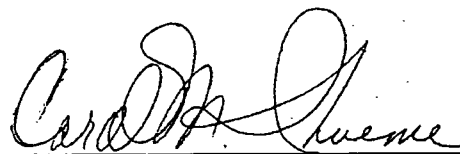
## 1 CERTIFICATE OF REPORTER

2  
3  
4 STATE OF SOUTH CAROLINA )  
5 COUNTY OF LEXINGTON )  
6  
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for  
9 the 11th Judicial Circuit of the State of South Carolina,  
10 do hereby certify that the foregoing is a true, accurate  
11 and complete Transcript of Record of the proceedings had  
12 and evidence introduced in the trial of the captioned  
13 case, relative to appeal, in the Court of General Sessions  
14 for Lexington County, South Carolina, on the 22nd day of  
15 January, 2013.

16 I do further certify that I am neither of kin,  
17 counsel nor interest to any party hereto.  
18

19  
20 May 17, 2013

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23 CAROL M. THUEME, RPR  
24 Circuit Court Reporter  
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## FORM 5

STATE OF SOUTH CAROLINA

County of LexingtonJason Boney 354029

Full name and prison number (if any) of Applicant

v.

State of South Carolina

FILED

IN THE COURT OF COMMON PLEAS

2013 APR 30 P 2:06

APPLICATION FOR

POST-CONVICTION RELIEF

2013CP3201511

INSTRUCTIONS - 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 Allendale Correctional Institution  
P.O. box 1151 Fairfax, S.C 29827
2. Name and location of Court which imposed sentence Lexington County  
General Sessions
3. Name(s) of co-defendant(s) (if any) N.A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 16-03-0655 (B)(2)
  - (b) N.A

A TRUE COPY

Lex. Co. C.C.C.P., G.S. &amp; F.C.

- (c) N.A
5. The date upon which sentence was imposed and the terms of the sentence: FILED  
 (a) January 22, 2013 10 years  
 (b) N.A 2013 APR 30 2:06  
 (c) N.A
6. Check whether a finding of guilty was made:  
 (a) after a plea of guilty Yes  
 (b) after a plea of not guilty N.A  
 (c) after a plea of nolo contendere N.A
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
8. If you answered "yes" to (7), list:  
 (a) the name of each Court to which you appealed:  
 i. N.A  
 ii. N.A  
 iii. N.A  
 (b) the result in each such Court to which you appealed:  
 i. N.A  
 ii. N.A  
 iii. N.A  
 (c) the date of each such result:  
 i. N.A  
 ii. N.A  
 iii. N.A  
 (d) if known, citations of any written opinion or orders entered pursuant to such results:  
 i. N.A  
 ii. N.A  
 iii. N.A
9. If you answered "no" to (7), state your reasons for not so appealing:  
 (a) Counsel did not file notice of intent to appeal.  
 (b) N.A

(c) N.A FILED

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: 2013 APR 30 P 2:06

(a) JEB [REDACTED]

(b) See Memorandum To supporting this PCR

(c) See "Attachment"

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

(a) See Attachment

(b) N.A

(c) N.A

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

(a) any petition in a State Court under South Carolina Law? N.A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N.A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N.A

(d) any other petitions, motions or applications in this or any other Court? N.A

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

(a) the specific nature thereof:

i. N.A

ii. N.A

iii. N.A

iv. N.A

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

i. N.A

ii. N.A

iii. N.A

iv. N.A

(c) the disposition thereof:

i. N.A

ii. N.A

iii. N.A

iv. N.A

(d) the date of each such disposition:

i. N.A

ii. N.A

iii. N.A

iv. N.A

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

i. N.A

ii. N.A

iii. N.A

iv. N.A

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?

N.A

N.A

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

(a) which grounds have been presented:

i. N.A

ii. N.A

iii. N.A

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

i. N.A

ii. N.A

iii. N.A

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) N.A.  
 (b) N.A.  
 (c) N.A.

2013 APR 30 P 2:06  
 FILED

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? N.A.  
 (c) your sentencing? Yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N.A.  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
N.A.

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

(a) the name and address of each attorney who represented you:  
 i. Sally Henrey 206 E. main St. Lexington  
S.C 29072  
 ii. N.A.  
N.A.  
 iii. N.A.  
N.A.  
 (b) the proceedings at which each such attorney represented you:  
 i. Guilty Plea  
N.A.  
 ii. N.A.  
N.A.  
 iii. N.A.  
N.A.

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

Vacate Sentence and Conviction

N.A

N.A

FILED

2013 APR 30 2:06

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

N.A

N.A

2013CP3201511

STATE OF SOUTH CAROLINA )

County of Lexington )

VERIFICATION

I, Jason C Boney, 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.

[Signature]

SWORN to and subscribed before me this 24  
day of April 24, 2013

Cynthia G. Sanderson (S.S.)  
Notary Public

My Commission Expires: 3/9/21

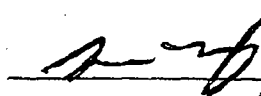
FILED

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

APR 30 2:06

I, Jason Boney, 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

24 day of April, 2013

Cynthia G. Sanders  
Notary Public

My Commission Expires: 3/9/21

2013CP3201511

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

FILED

2013 APR 30 2:06

Jason Cooke Boney, 354029 )

Applicant, )

2013CP3201511

vs. )

The State of South Carolina )

Respondent. )

MEMORANDUM OF LAW IN SUPPORTING OF  
APPLICANT'S SUPPLEMENT FOR POST-  
CONVICTION RELIEF APPLICATION

"ATTORNEY APPOINTMENT REQUESTED"

Applicant Jason Cooke Boney, 354029 ("Boney") submits that Memorandum of Law In Supporting of Applicant's Supplement for Post-Conviction Relief Application.

#### BACKGROUND

Boney, currently incarcerated at Allendale Correctional Institution, was convicted of Sex/Criminal Sexual Conduct with Minor or Attempt-victim under 16 years of age in Lexington County after a involuntary guilty plea on January 22, 2013. He was sentenced to ten (10) years by the Honorable Clifton Newmen. Boney was represented by Sally Henrey at the Guilty Plea.

#### ARGUMENTS

GROUND A. Did Solicitor committed fraud upon court by unlawfully impaneled its Grand Jury outside the Statute?

#### SUPPORTING FACTS AND ARGUMENT

The Applicant contends the indictment in this case, which contains that the Grand Jury convened on October 2012 and were made with intent to injury and

defraud the said court. Thus, each of them, made said false statement and report in manner and form as above set forth with intent to deceive the Court because the General Assembly did not made a provision in 14-5-760. Sec.(2), for a Terms of Court in Eleventh Circuit in October citing from the indictment:

At a Court of General Sessions, convened on October 2012  
the Grand Jurors of Lexington County present upon their  
Oath:

Nor are indictments within the operation of the Statutes of jeof-aile. A quote from the Statute 14-5-760. Term of Court in eleventh circuit.

The Courts of the eleventh judicial circuit shall be held as hereinafter provided.

Sec.(2) Lexington County.- The Court of General Sessions for Lexington County shall be held at Lexington on the third Monday in January, the fourth Monday in May, and the Tuesday following the first Monday in September. Each term of the Court of General Sessions shall be for two weeks.

Here, legislative did not made a provision in 14-5-760 for a term of court in October. As set forth, the Solicitor did committed Obstruction of Justice and Conspiracy to Commit Official Misconduct and Perjury because the statutory construction of 14-5-760, legislative histor is very clear and ambiguous. Bonholders Protective Comm. v. I.C.C., 432 F.2d 268, 271 (3rd Cir. 1970), and authorities cited is not inconsistent with the facts that statute eshewed the terms of court in eleventh circuit.

The statutory terms above are clear unambiguous, and require the County Solicitor to the prepare and submit bills of indictment through the Presiding Judge of the Court of General Sessions to a Grand Jury impaneled under the authority of the Court of General Sessions. No exceptions.

Consequently, and in keeping with the manatory provisions of section 14-9-210 and section 14-5-760, State has No jurisdiction to issue return of true-billed indictment except during a time when the Court of General Sessions is law-

fully convened to oversee the grand jury process. Any acts of the court taken outside those statutory restrictions would by necessity be null and void. **FILED**

In fact, our Supreme Court has already determined the NO indictment may be true billed by a grand jury when the Court lacks jurisdiction. The grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of indictment can take place. See State v. McClure, State v. Funderburk, and State v. Wheeler. **2013 APR 30 2:06**

Therefore, since NO Court of General Sessions was convened on the date within the Statute, then indictment was allegedly true billed, the grand jury proceedings would therefore by necessity be held invalid, and its illegally issued indictment null and without binding legal effect.

However, here, evidence will establish that Solicitor unlawfully impaneled its Grand Jury outside the jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to deep secret its violation of statutory law.

Hence, the Assistant Solicitor is REQUIRED TO KNOW AND OBEY THE LEGAL mandates if section 14-9-210, and lawfully impanel a grand jury accordingly.

As presented above, instead of discharging their responsibilities in conformity with State law the Assistant Solicitor broke their oath of office. The Assistant intentionally violated the provisions of section 14-9-210 and section 14-5-760 by unlawfully processing the indictment outside statute.

**GROUND B. Did Solicitor's abuse their discretionary power and in such, by violation of Obstruct the due Administration of Justice?**

**SUPPORTING FACTS ARGUMENT**

The Applicant contends that the indictment(s) did not sufficiently and fully apprise the Applicant of what he had to prepare himself to meet because the structural constitutional error, language and/or charged embodied within the indictment(s) indicate or imply to the Applicant that the burden-

of production belongs to the Applicant and not the State. By such they also violate South Carolina Code Ann. Section 17-19-10 and 17-19-20. The language and/or charge in the indictment(s) to the Applicant that he is called upon to meet the burden of production on the crucial elements of the offense(s) in violation of the relevant statutes, the Sixth Amendment and Due Process of Law. Also, they infringe upon the Applicant's Fourteenth Amendment Rights to Equal Protection. Due the structural constitutional error and/or defect in the constructions of the indictment(s) they do not sufficiently and fully apprise the Applicant of the cause and nature of the offense(s) being brought against him or her of what he must prepare himself to meet State v. Browing, 320 S.C. at 368, 465 S.E.2d 359 citing State v. Munn, Supra. Such prohibit the Court from enacting its Subject Matter Judiciary powers.

In the instant case, "Administration of Justice" means performance of acts or duties required by law in discharge of duty and crime of conspiracy to obstruct the due Administration of Justice in this prosecution was apart of Obstruction of Justice and Conspiracy to Commit Official Misconduct and perjury.

**GROUND C: Was the Applicant's Fourteenth Amendment Rights of the United States Constitution and his Rights of Due Process violated because the Solicitor indicted the Applicant twice for the same acts, which constituted double jeopardy?**

#### **SUPPORTING FACTS ARGUMENT**

The Applicant contends that upon examination of the Record, the Solicitor indicted the Applicant twice for the same offense. In the instant case, Mr. Roney was indicted on October 2012 and January 2013 for the same acts, which constituted double jeopardy, since Lewed Act upon a Child is not a lesser included offense of criminal sexual conduct a minor, 2nd Degree. See Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306, the Blockburger Rule is one of statutory construction; under the Blockburger test, it is presumed that the legis-

ature did not intend to allow defendant to be punished under both statutes, the presumption raised by the test can be rebutted by a clear indication of legislative intent, and when such an intent is found, it must be respected, regardless of the outcome of the **Blockburger Test**. Regardless, the Solicitor **Nolle Prossed** the indictment for January 2013, the facts still remain that the Applicant was indicted for the same Acts.

#### GROUND D. Brady Violation

The Applicant contends it is well established by DNA Test of the victim there was "No Finds", he placed his penis inside her to engage in a sexual battery with the victim. Here, the Solicitor committed fraud upon the court, when they allege the Applicant engage in a sexual battery with the victim on June 30, 2012. Therefore, the DNA Evidence will prove beyond a reasonable doubt that Mr. Boney did not engage in sexual intercourse with the victim. According to Brady, the Solicitor must disclose exculpatory evidence if it is both favorable and material to the defense. In this case, the Solicitor's failed to disclose the "Finding" of the DNA Test of the victim. See Graves v. Cockrell, 351 F.3d 156, Boney's claim under Brady that the state failed to disclose to Boney that DNA Test had informed the Solicitor that Boney did not have sexual intercourse with the victim. The Solicitor's committed a Obstruction of Justice and Conspiracy to Commit Official Misconduct.

#### GROUND D. DURESS

The Applicant humbly contends that he was coerced into a "plea of guilty". Here, guilty pleas are serious business; they must be entered into voluntarily or else they're invalid. A defendant can't be tricked into or forced to enter a guilty plea; it has to agree to it by his own choice and free will. Obviously, the Sol-

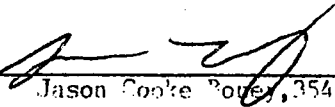
icitor's manipulated, mentally and or/ psychologically coerce and/or force **FILED**  
 him into a plea. Such a heavy weight of shifting the burden <sup>2013</sup> persuasion  
 and the taking away of one's presumption of innocence by the indictment(s) <sup>APR 30 2 06</sup>  
 of South Carolina have been unjustly and unconstitutionally used against  
 Defendant in the State of South Carolina to mentally and/or psychologically  
 coerce and/or force them into plea bargains and at their trials, for far  
 too long.

Specifically, the Applicant's was heavy medicated doing his guilty plea  
 and confession.

#### CONCLUSION

For all the reasons stated herein above, it is respectfully requested  
 that this Honorable Court grant the Applicant's Motion to Vacate the convict-  
 ion and sentence.

Respectfully submitted,

  
 Jason Cooke Poyer, 354020

April 26, 2013

September 20, 2012 Page 28 of 62

**Palmetto Health FNE Program**

Adult/Adolescent Forensic Record

Unit Record:

Minor

000495596

**Pertinent Medical History**

LMP: 5-28-12

Normal:

Yes ☒ No

"I can go quiet a few months without a period, very light or very heavy".

2013 APR 30 2:06 PM

Tampon use: No ☒ Yes last usage? 6-6-12

- Any recent (60 days) anal-genital injuries, surgeries, diagnostic procedures or medical treatment that may affect the interpretation of current physical findings Yes ☒ No

If yes, describe:

- Any other pertinent medical conditions or injuries that may affect the interpretation of current physical findings? Yes ☒ No

If yes, describe: Tubes in ears age 7.

- Physical injuries and/or pain described by patient

"Bruise on leg from the other day".

Current medications: ☒ None

Allergies: NKA "I have strange reactions to everything"

**Pertinent pre and post assault related history:**

No

Yes

Unsure

- Consensual intercourse within 7 days?

☒

o Oral

☒

o Vaginal

☒

o Anal

☒

- If yes, was a condom used?

☒

- Comments:

**Ingestion of alcohol/drugs by patient:**☒

- If yes, Alcohol Drugs Amount:

Date:

# Voluntary # Forced # Coerced # Suspected

Time:

Describe:

- Any voluntary use of alcohol 12 hours prior to assault? ☒
- Any voluntary use of drugs 96 hours prior to assault? ☒
- Any voluntary use of alcohol or drugs between time of assault and forensic exam? ☒

**Post assault hygiene/activity:**

No

Yes

Describe:

- Urinated ☒
- Defecated ☒
- Genital or body wipes ☒
- Douched ☒
- Removed tampon/diaphragm ☒
- Brushed teeth ☒
- Mouthwash ☒
- Bath/shower/wash ☒
- Ate or drank ☒
- Changed clothing ☒
- Smoked ☒

7/1/2012 4:43:25 AM

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F12-01999

LE Reports: 7-27-12

**Palmetto Health FNE Program**  
Adult/Adolescent Forensic Record

**General Physical Examination**

Physical Examination: Findings (see below) ☒ No findings

FILED

Unit Record:

Minor

000495586

2013 APR 30 12:07

Diagram A

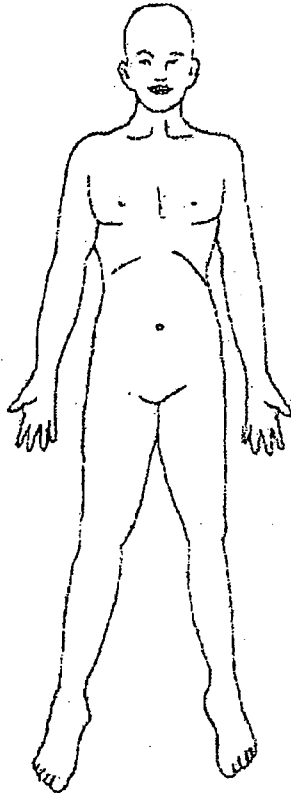
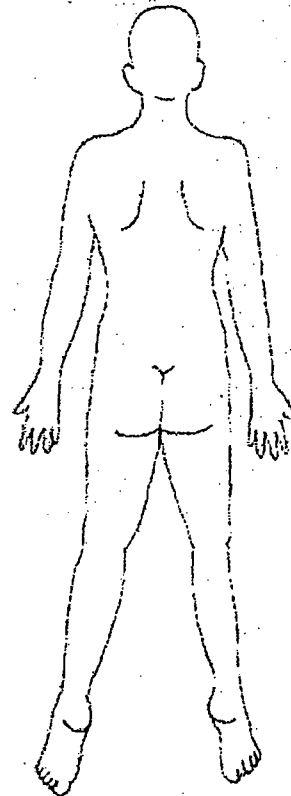


Diagram B



September 20, 2012 Page 34 of 62

**Palmetto Health FNE Program**  
**Adult/Adolescent Forensic Record**

FILED

Unit Record:

Minor

000495586

**Genital Examination - Females**

2013 APR 30 2:07

**Location of findings. See details next page.**

☒ No findings

|                                       |                      |
|---------------------------------------|----------------------|
| Inner thigh                           | Perihymenal tissue   |
| Perineum                              | Hymen                |
| Labia majora                          | Fossa navicularis    |
| Labia minora                          | Posterior fourchette |
| Clitoris                              | Anus                 |
| Vaginal Wall                          | Cervix               |
| Periurethral tissue / urethral meatus |                      |

**Exam position used:**

Supine ☒ Lithotomy Lateral Other

If other: Patient states has never had a pelvic exam.

**Exam methods:**

☒ Water lubricated speculum Foley catheter  
☒ Toluidine blue dye Colposcope ☒ UV light

**Previous pelvic exams:**

Yes ☒ No ☒ Exam explained

**Presence of sperm - vaginal wet prep:**

Motile Non-motile None visualized ☒ NA

Diagram K

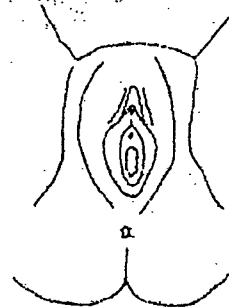


Diagram L

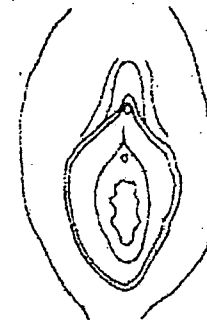


Diagram M

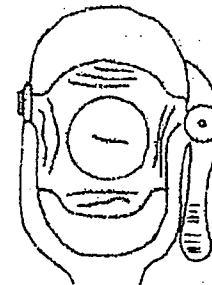
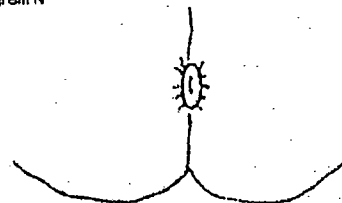


Diagram N



7/1/2012 4:43:26 AM

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F12-01999

LE Reports: 7-27-12

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**Palmetto Health FNE Program**  
 Adult/Adolescent Forensic Record

 FILED  
 2012 SEP 20 2:07

 Minor  
 000495586
**Evidence Collected**

**Clothing Collected:** describe clothing NA Bathed 2012 Sep 20 2:07 changed clothes

Shirt \_\_\_\_\_  
 Pants \_\_\_\_\_  
 ✓ Underwear Green striped  
 Bra \_\_\_\_\_  
 Jacket \_\_\_\_\_  
 Belt \_\_\_\_\_  
 Shoes \_\_\_\_\_  
 Debris Sheet \_\_\_\_\_  
 ✓ Other Backpack with clothing collected by Law Enforcement.

**Trace Evidence Collected:** No Yes Not Indicated Describe

Combed pubic hairs [redacted] Shaved  
 Miscellaneous materials [redacted]  
 Other [redacted]

**DNA Evidence Collected:**

Fingernail scraping/cuttings [redacted]  
 Oral swab and smear [redacted]  
 Bite mark/suck/kissing [redacted]  
 Suspected Body Fluid [redacted]  
 Vaginal swab and smear ✓  
 Rectal swab and smear ✓ ← No findings were found  
 Buccal swab ✓ in test See Page 8 of 12  
 Other [redacted] for no findings also

**Toxicology Evidence Collected:**

Blood/grey top NA [redacted]  
 Urine [redacted]  
 Vomit [redacted]  
 Other [redacted]

**Photography:**

Colposcope ✓  
 Digital pictures ✓ # of pictures 15

2013CP3201511

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

Jason Boney,  
S.C.D.C. No. 354029,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

Case No. 2013-CP-32-1511

**RETURN**

Respondent, making its Return to the application for post-conviction relief April 30, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the October 2012 term of the Lexington County Grand Jury for Criminal Sexual Conduct with a Minor (2012-GS-32-2465). Applicant was represented by Sally J. Henry, Esquire. On January 22, 2013 Applicant pled guilty as charged before the Honorable Clifton Newman. Judge Newton sentenced Applicant to confinement for a period of ten (10) years imprisonment. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

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

1. Lack of Subject Matter Jurisdiction, in that:
  - a. "Did solicitor committed fraud upon the court by unlawfully impaneled its Grand Jury outside the Statute?"
  - b. "Due the structural constitutional error and/or defect in the constructions of the indictment(s) they do not sufficiently and fully apprise the Applicant of the cause and nature of the offense(s) being brought against him"
2. Due Process, in that:
  - a. "Was the Applicant's Fourteenth Amendment Rights of the United States Constitution and his Rights of Due Process violated because the Solicitor indicted the Applicant twice for the same acts, which constituted double jeopardy?"
  - b. "Did Solicitor's abuse their discretionary power and in such, by violation of Obstruct the due Administration of Justice"
3. Brady Violation, in that:
  - a. The "Solicitor's failed to disclose the 'Finding' of the DNA Test of the victim."
  - b. "the state failed to disclose to [Applicant] that DNA Test had informed the Solicitor that [Applicant] did not had sexual intercourse with the victim."
4. Involuntary Guilty Plea
  - a. Applicant "was coerce into a 'plea of guilty'"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

Respondent submits that the Applicant's claim that the circuit court lacked subject matter jurisdiction is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, Applicant was indicted by the Lexington County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Here, Applicant cannot show any irregularity, because the indictment in question is sufficient on its face. Therefore, Respondent would move for summary judgment on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

## IV.

Applicant further alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is

incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a *prima facie* showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

#### V.

Applicant argues that the Solicitor failed to disclose material exculpatory evidence. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

#### VI.

Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would

have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. United States, 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

#### VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

#### VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

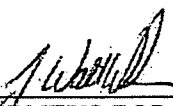
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

March 14<sup>th</sup>, 2015

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
IN THE ELEVENTH CIRCUIT

2013-CP-32-1511

JASON BONEY

Applicant,

vs

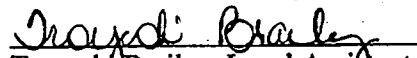
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,  
Respondent

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:

**Anna R. Good, Esq.**  
**1720 Main St, Ste. 303**  
**Columbia, SC 29201**

DATED this 14<sup>th</sup> day of March, 2014

  
Troyesh Brailey, Legal Assistant  
For Respondent

1 State of South Carolina Court of Common Pleas  
2 County of Lexington

3

4

5 Jason Boney, )  
6 Applicant, ) Transcript of Record  
7 v. ) 13-CP-32-1511  
8 State )  
9 Respondent. )

10

April 14, 2014  
Lexington, South Carolina

11

12

13 B E F O R E:

14 The Honorable William P. Keesley, Judge.

15

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

17 Anna R. Good, Esquire  
Attorney for the Applicant

18

19 Walt Whitmire, Assist. Attorney General  
Attorney for the State

20

21

22

23

24

Stacy L. Sheppard, RPR  
Circuit Court Reporter

25

## I N D E X

WITNESSPAGE

|                                      |    |
|--------------------------------------|----|
| Jason Boney                          |    |
| Direct Examination By Ms. Good       | 6  |
| Cross-Examination By Mr. Whitmire    | 23 |
| Redirect Examination By Ms. Good     | 26 |
| Cynthia Lynn Batchler                |    |
| Direct Examination By Ms. Good       | 27 |
| Cross-Examination By Mr. Whitmire    | 35 |
| Darryl Eugene Batchler               |    |
| Direct Examination By Ms. Good       | 38 |
| Cross-Examination By Mr. Whitmire    | 40 |
| Sally Henry                          |    |
| Direct Examination By Mr. Whitmire   | 41 |
| Cross-Examination By Ms. Good        | 53 |
| Redirect Examination By Mr. Whitmire | 62 |
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|    |                 |                       |            |             |
|----|-----------------|-----------------------|------------|-------------|
| 1  | E X H I B I T S |                       |            |             |
| 2  | <u>NO.</u>      | <u>DESCRIPTION</u>    | <u>ID.</u> | <u>EVD.</u> |
| 3  | P-1             | Page from Journal     | 9          | 10          |
| 4  | P-2             | Bottle of Prozac      | 17         | 34          |
| 5  | P-3             | Copy of Text Messages | 30         | 31          |
| 6  |                 |                       |            |             |
| 7  |                 |                       |            |             |
| 8  |                 |                       |            |             |
| 9  |                 |                       |            |             |
| 10 |                 |                       |            |             |
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| 25 |                 |                       |            |             |

1           (The following proceedings were held on  
2           April 14, 2014.)

3           **MR. WHITMIRE:** May it please the Court. The  
4           matter before this Court is Jason Boney v. State of  
5           South Carolina, case number 2013-CP-32-1511.  
6           Mr. Boney was indicted for CSC with a minor second  
7           degree. He was represented by Ms. Sally Henry.

8           On January 23rd, 2013, Mr. Boney pled guilty as  
9           indicted before the Honorable Judge Newman. Judge  
10          Newman sentenced Mr. Boney to a term of ten years  
11          imprisonment. He did not appeal his guilty plea or  
12          sentence. He did file a timely application for  
13          post-conviction relief.

14          He's present and represented by Ms. Good.  
15          Ms. Good has filed a timely amended application on  
16          behalf of Mr. Boney. At this time, I turn matters  
17          over to Ms. Good to put her allegations on the  
18          record.

19          **MS. GOOD:** Thank you, Your Honor. At this  
20          time, we're going to be going forward on the  
21          allegations regarding ineffective assistance of  
22          counsel in that trial counsel failed to correctly  
23          inform the Applicant regarding the situation about  
24          his plea and the mandatory Sex Offender Registry as  
25          a portion of his sentence; in addition, ineffective

1 assistance of counsel for failing to present  
2 mitigating evidence to the judge on the Applicant's  
3 behalf during the plea; and, finally, that his plea  
4 was not intelligently made as the Applicant was  
5 under the influence of medication at the time of the  
6 plea which affected his ability to understand what  
7 was occurring.

8 **MR. WHITMIRE:** And, Your Honor, just for the  
9 record, Respondent would make a motion for summary  
10 judgement on the first allegation relating to  
11 ineffective assistance of counsel for failure to  
12 advise the Sex Offender Registry as that is  
13 considered by our law to be a collateral consequence  
14 of the guilty plea and not a incident of his  
15 confinement.

16 **MS. GOOD:** And, Your Honor, in response to  
17 that, the case law of that is that an attorney does  
18 not have to advise him regarding the collateral  
19 consequences; however, in this case -- and in the  
20 case law on that, the attorney didn't and the PCR  
21 was not granted. In this case, she actually did  
22 advise him regarding the Sex Offender Registry and  
23 advised him wrongly regarding that information,  
24 which is also evidenced in the transcript in front  
25 of Judge Newman. So we would ask that you hear the

1 testimony on that issue before making a decision.

2 **THE COURT:** The motion for summary judgment is  
3 denied.

4 Call your witness.

5 **MS. GOOD:** Applicant calls Jason Boney.

6 JASON BONEY,

7 having been duly sworn, testified as follows:

8 **THE CLERK:** Have a seat and state your name for  
9 the record, please.

10 DIRECT EXAMINATION

11 BY MS. GOOD:

12 **Q** Good morning. As you heard Mr. Whitmire --

13 **THE COURT:** Say your name, please.

14 **THE WITNESS:** Jason Boney.

15 BY MS. GOOD:

16 **Q** As you heard Mr. Whitmire put on the record, on  
17 January 22nd, 2013, you pled guilty to CSC with a  
18 minor second degree and received ten years and Sex  
19 Offender Registry by Judge Newman?

20 **A** That is correct.

21 **Q** And, at that time, your attorney was Sally  
22 Henry?

23 **A** Yes.

24 **Q** How long had you had Ms. Henry as your  
25 attorney?

1           **A**     She was appointed to me in September of 2012.

2           **Q**     And in September of 2012, from that time till  
3           January of 2013, when you pled, how many meetings  
4           did you have with her, approximately?

5           **A**     Two.

6           **Q**     Okay. And when was the first meeting with  
7           Ms. Henry?

8           **A**     First meeting was in late October.

9           **Q**     And where was this taken place?

10          **A**     This was at her office.

11          **Q**     Okay. And at that meeting, can you tell the  
12          Judge what occurred?

13          **A**     At the meeting, we sat down. She discussed the  
14          process of going to trial. At that time, I did tell  
15          her I did want to go to trial. Also, at that time,  
16          she gave me a copy of my discovery. Also, there was  
17          another charge, supposedly, that was put on me that  
18          I had nothing -- I knew nothing about. She called  
19          the Solicitor's office and spoke with the Solicitor.  
20          The Solicitor said that it could have been meant for  
21          somebody else and it was a mistake, and she would  
22          get back with us on that because I did not have a  
23          arrest warrant for that one.

24          **Q**     And, at that time, did you inform her of your  
25          mental status?

1       **A**     Yes, I did.

2       **Q**     What did you tell her about that?

3       **A**     I told her that I was suicidal and had suicidal  
4       thoughts.

5       **Q**     And was that as a result of your charges?

6       **A**     That is correct.

7       **Q**     And, at that time, what did she tell you about  
8       investigating the case?

9       **A**     At that time, she told me, when things get  
10      close, we dig deeper.

11      **Q**     And did you ever give her permission to speak  
12      to your mother and stepfather about this case?

13      **A**     Yes, I did.

14      **Q**     Are you aware if they ever spoke to them or  
15      not?

16      **A**     No, they did not.

17      **Q**     When was your next meeting with her?

18      **A**     The next meeting was the day at the guilty plea  
19      that I thought was roll call.

20      **Q**     Okay. Let me get to that. Did you previously  
21      have a roll call set before that that was on a  
22      Sunday?

23      **A**     That is correct.

24      **Q**     And when you call Ms. Henry about that, what  
25      were you told?

1       **A**     She said that she would call the Solicitor,  
2       find out if that was a mistake, and it was a  
3       mistake. And she told me my next roll call date was  
4       January 22nd.

5       **Q**     Okay. And that's what you were under the  
6       impression January 22nd was?

7       **A**     Yes, ma'am.

8               (Plaintiff's Exhibit Number 1, page from  
9       journal, marked for identification.)

10      **Q**     I'm going to show you what's marked as  
11      Plaintiff's Exhibit Number 1. Do you recognize  
12      that?

13      **A**     Yes, I do.

14      **Q**     And what is that?

15      **A**     That is the back cover of my journal.

16      **Q**     You had a journal that you wrote during this  
17      entire time?

18      **A**     Yes, ma'am.

19      **Q**     And on the -- is that your handwriting?

20      **A**     Yes, ma'am.

21      **Q**     And on the back cover of that, do you have  
22      written anywhere the date, January 22nd?

23      **A**     Yes, I do.

24      **Q**     And what is written along with that?

25      **A**     It says, January 22nd roll call.

1           **MS. GOOD:** At this time, Your Honor, I'd like  
2 to introduce Plaintiff's 1 into the record.

3           **THE COURT:** Any objection?

4           **MR. WHITMIRE:** No objection, Your Honor.

5           **THE COURT:** Mark it as evidence, please.

6                   (Plaintiff's Exhibit Number 1, page from  
7 journal, admitted into evidence.)

8 BY MS. GOOD:

9           **Q**     So when you showed up January 22nd, what time  
10 did you show up?

11          **A**     It was probably about 8:40.

12          **Q**     And, at that time, where did you leave your  
13 journal?

14          **A**     I left my journal in the truck.

15          **Q**     Okay. And was your truck locked?

16          **A**     Yes, ma'am.

17          **Q**     And when you showed up at 8:45, what were you  
18 wearing?

19          **A**     I was wearing T-shirt and jeans.

20          **Q**     And if you had been aware that there was a plea  
21 that day, what would you have worn?

22          **A**     I would have worn a suit and tie.

23          **Q**     At this time, when you first arrived, were you  
24 able to find Ms. Henry?

25          **A**     No.

- 1 Q And did you try to find her?
- 2 A Yes, I did.
- 3 Q And where did you go to try to find her?
- 4 A I went back to the public defender's office.
- 5 Q And were you able to find her there?
- 6 A No, just the lady at the desk was there, and
- 7 she said Ms. Henry was not there.
- 8 Q Okay. And did you eventually come back over to
- 9 the courthouse?
- 10 A Yes. I waited there 15 minutes and came back
- 11 to the courthouse because it was getting close.
- 12 Q When you show up, did you find out that it
- 13 wasn't a roll call?
- 14 A Yes. I went to the fourth floor and the
- 15 marshal told me, state my business. And I said, I'm
- 16 here for roll call. And he said, There's no roll
- 17 call here today, just guilty plea and trial. And I
- 18 said, Well, I'm here for a roll call. And he said,
- 19 Well, you might want to go down to the Solicitor's
- 20 office and find out what's going on. And I asked
- 21 him where that was. He said, The third floor --
- 22 MR. WHITMIRE: Objection; hearsay.
- 23 THE COURT: Hold on just a moment. You're
- 24 objecting to -- on the grounds of hearsay.
- 25 Do you want to be heard?

1           **MS. GOOD:** Your Honor, we'll move -- it's not  
2 going towards the truth of the matter asserted.

3           **THE COURT:** You're just telling what the  
4 marshals told you to go to the -- what courtroom?

5           **THE WITNESS:** To the third floor, to the  
6 Solicitor's office to find out if I was there for a  
7 guilty plea.

8           **THE COURT:** Overruled. Go ahead.

9 BY MS. GOOD:

10          **Q** Once you got to the Solicitor's office, did you  
11 gain knowledge that you then were supposedly there  
12 for a guilty plea?

13          **A** The woman at the window looked and saw my name  
14 on the docket for a guilty plea.

15          **Q** Did that surprise you?

16          **A** Very much.

17          **Q** And why was that?

18          **A** Because I told Ms. Sally I wanted to go to jury  
19 trial.

20          **Q** During this entire time when you could not find  
21 Sally, did you contact your family in any way?

22          **A** Yes, I did.

23          **Q** And what did you do?

24          **A** I told my mom that I was scared and I couldn't  
25 find Sally.

1           Q     Did you call her or did you text her or did you  
2           e-mail her?

3           A     I did call her at first and then I did text  
4           her.

5           Q     Okay. Eventually, did you find Ms. Henry?

6           A     Yes. She came in close to ten o'clock.

7           Q     And did you speak with her immediately  
8           regarding your case?

9           A     No, I did not.

10          Q     At what point did you finally talk to  
11          Ms. Henry?

12          A     Probably 10:40, give or take.

13          Q     And as a result of your discussions with her,  
14          what did you say to her to begin your conversation?

15          A     When we went out into the hallway to talk, I  
16          said, What the hell are we doing here? And she  
17          said, We're going to court. And I said, Well, I  
18          knew nothing about this. And she said, Well, here  
19          we are.

20          Q     And did y'all then begin to discuss your  
21          charges and what your potential plea agreement would  
22          be?

23          A     Not at that time.

24          Q     Did she ever talk to you regarding your  
25          sentencing for this case?

1       **A**     She told me that the victim loved me and that I  
2       had a very strong possibility of probation.

3       **Q**     Okay. And during this entire time, were you on  
4       any medication?

5       **A**     Yes, I was.

6       **Q**     And what medication were you on?

7       **A**     Prozac.

8       **Q**     And why were you on Prozac?

9       **A**     Anxiety.

10      **Q**     How much Prozac were you prescribed? What was  
11      your prescription by your doctor?

12      **A**     To take one capsule a day.

13      **Q**     Okay. And did you take one that morning before  
14      you came to court?

15      **A**     I actually took two that morning.

16      **Q**     And did you take anymore during the course of  
17      the morning while you couldn't find Ms. Henry?

18      **A**     I took three more.

19      **Q**     Okay. So in total you had taken three?

20      **A**     Five.

21      **Q**     Five, okay. As a result of taking those, how  
22      were you feeling?

23      **A**     I was feeling very loopy by the time it was my  
24      turn to go to court.

25      **Q**     And did you understand everything that was

1 going on during your plea?

2 **A** No.

3 **Q** And prior to your plea when you were discussing  
4 sentencing with Ms. Henry, what were you informed  
5 about the Sex Offender Registry and if you were  
6 going to have to be on it or not?

7 **A** She came over and brought the sentencing sheet  
8 to me and said, Being the circumstances of my case,  
9 this is going to be nonviolent and that I would not  
10 have to register.

11 **MS. GOOD:** Your Honor, I don't know if you want  
12 to use the sentencing sheet that's already in the  
13 record in the file or if you would like me to  
14 introduce one. I would like that to be used.

15 **THE COURT:** It's up to you.

16 **MR. WHITMIRE:** I don't mind stipulating to  
17 judicial notice.

18 BY MS. GOOD:

19 **Q** I'm going to show you this sentencing sheet,  
20 but the Judge will look at the one that's in the  
21 record. Do you see the sentencing sheet?

22 **A** Yes, I do.

23 **Q** And when you got the sentencing sheet, what was  
24 marked or checked on that?

25 **A** It was nonviolent.

1 Q Okay. And on that sentencing sheet that you  
2 see, is something scratched out?

3 A Nonviolent.

4 Q And what is checked?

5 A Violent/most serious.

6 Q When you saw that sentencing sheet, was the  
7 violent/most serious checked?

8 A No.

9 Q And you were informed that you would not have  
10 to be on the Sex Offender Registry?

11 A That is correct.

12 Q And you were charged with CSC with a minor  
13 second degree?

14 A That is correct.

15 Q And at the time of the supposed incident, how  
16 old were you?

17 A I was 20 -- when I went to the guilty plea?

18 Q No, supposedly when this incident occurred.

19 A I was 27.

20 Q So you were over the age of 18?

21 A Yes, ma'am.

22 Q About how long was this conversation regarding  
23 your sentencing and what was going to happen at the  
24 plea?

25 A The entire conversation that I had with Sally

1           that day was probably 10 to 15 minutes.

2           **Q**     Okay. And is it after that conversation you  
3           took the Prozac or before?

4           **A**     Before, I took it. And then after the  
5           conversation, I went to my truck and took three  
6           more.

7           **Q**     Okay. And did you contact your mother again?

8           **A**     Yes, I did.

9                     (Plaintiff's Exhibit Number 2, bottle of  
10           Prozac, marked for identification.)

11          **Q**     I'm going to show you what's marked as  
12          Plaintiff's Exhibit Number 2. Do you recognize  
13          this?

14          **A**     Yes, I do.

15          **Q**     And what is that?

16          **A**     That is my medication bottle.

17          **Q**     Okay. And does that indicate your prescription  
18          of one time a day?

19          **A**     On the label, yes.

20                    **MS. GOOD:** At this time, Your Honor, we move to  
21          enter Plaintiff's 2.

22                    **THE COURT:** Any objection?

23                    **MR. WHITMIRE:** Objection on relevance. There's  
24          been no foundation that this was in fact --

25                    **MS. GOOD:** I have --

1           **MR. WHITMIRE:** -- this was his Prozac  
2           prescription at the time of the guilty plea.

3           **MS. GOOD:** And I can -- I have another witness,  
4           Your Honor, I can call later if you would like to  
5           hold off on that.

6           **THE COURT:** Do y'all want me to rule or what?

7           **MS. GOOD:** We can hold off, Your Honor.

8           BY MS. GOOD:

9           **Q**     All right. So prior to the plea, she went over  
10          that paperwork with you and it was marked  
11          nonviolent. When it came time for the plea, how  
12          were you feeling during the plea?

13          **A**     I was feeling very loopy.

14          **Q**     Do you recall if the judge ever asked you about  
15          medication?

16          **A**     No.

17          **Q**     You don't recall?

18          **A**     No.

19          **Q**     Did you later find out, by reading your  
20          transcript, that he never asked you regarding  
21          medication?

22          **A**     That is correct.

23          **Q**     If he had asked you, would you have told him  
24          what medication you were on?

25          **A**     If I was in my -- yeah.

1           **Q**     During the plea, do you recall Ms. Henry  
2           discussing with the judge the possibility of not  
3           putting you on the Sex Offender Registry?

4           **A**     Vaguely. And as I looked back on my  
5           transcripts, I can see that the judge told her that  
6           she was wrong.

7           **Q**     And did that surprise you?

8           **A**     Very.

9           **Q**     Because you were under the impression you would  
10          not be on the Sex Offender Registry?

11          **A**     Right.

12          **Q**     Was there any mitigation on your behalf for the  
13          plea? Did anybody come to speak on your behalf?

14          **A**     No, ma'am.

15          **Q**     Do you know if Ms. Henry contacted anybody to  
16          come speak on your behalf?

17          **A**     No, she did not.

18          **Q**     If you had been aware that you were going to  
19          plead guilty that day, would you have lined up some  
20          people to come testify for you?

21          **A**     Yes, I would.

22                 **MR. WHITMIRE:** Objection; leading question.

23                 **THE COURT:** Don't lead. Rephrase your  
24          question.

25                 BY MS. GOOD:

1 Q Would you have called somebody to come?

2 A Yes.

3 Q Who would you have called?

4 A My mom and dad.

5 Q Okay. And when you say dad, is that your  
6 biological father?

7 A My stepfather.

8 Q After the plea, did you make a phone call?

9 A Yes, I did.

10 Q Who did you call and what was your discussion?

11 A I called my mom and told her that the judge  
12 gave me ten years.

13 Q And, at that point, you were taken back into  
14 the holding cell. What happened to all of your  
15 possessions?

16 A The officer asked me to give him my wallet,  
17 keys, anything and he put it into a bag.

18 Q Okay. Did you ask Ms. Henry to appeal your  
19 case?

20 A Yes, I did.

21 Q Can you please tell the Judge about that  
22 conversation?

23 A After I put everything into the bag that the  
24 officer told me to, Ms. Henry came into the room and  
25 asked me if I wanted my case appealed and I asked

1 her what that would do for me and she explained the  
2 procedure. And I told her that I asked the officer  
3 if I could give the belongings to my mother, and she  
4 asked me what my mother looked like and if she could  
5 give them to her. And so the officer said, yes.  
6 And I told her to appeal my case and she walked out  
7 the room.

8 Q Go back to the bottle right there and I'll hold  
9 it up so you can see it since you're shackled. Is  
10 this your prescription that you were under the day  
11 of?

12 A Yes, it is.

13 Q And when was it prescribed to you?

14 A It was on 1/11/2013.

15 Q And where was this medication left?

16 A It was in my truck.

17 Q In conclusion, had you been aware you were  
18 pleading that day and all the consequences regarding  
19 the plea, would you have pled that day?

20 A No, I would have not.

21 Q Did you want to plead guilty?

22 A No, I did not.

23 Q At the time of the plea, were you under the  
24 influence of the Prozac?

25 A Yes, I was.

1 Q Could you understand what was going on?

2 A No, I did not.

3 Q If you had known that you were going to be  
4 pleading that day or that you would be sentenced,  
5 would you have called somebody?

6 A Yes, I would.

7 Q And who would you have called?

8 A My mother and father.

9 Q And as a result of Ms. Henry failing to  
10 correctly advise you of the penalties for CSC with a  
11 minor second, do you feel you were prejudiced?

12 A Yes.

13 Q And are you asking the Court --

14 MR. WHITMIRE: Objection, Your Honor, under  
15 relevance. The witness isn't competent or qualified  
16 to give a legal opinion.

17 MS. GOOD: Your Honor, we have to show that he  
18 was prejudiced and that he felt prejudiced by it.

19 THE COURT: You can show prejudice without  
20 asking him the question, was he prejudiced.

21 MS. GOOD: I'll move on, Your Honor.

22 BY MS. GOOD:

23 Q Is there anything else you would like to tell  
24 the Court that we may have missed or skipped over?

25 A Whenever we had the meeting, the brief meeting,

1 I did ask her about the other charge that was  
2 pending on me that was supposed to be a mistake and  
3 she said, Oh, yes, they put that through this  
4 morning.

5 Q So it was dismissed?

6 A Yes.

7 MS. GOOD: No further questions, Your Honor.

8 THE COURT: Cross.

9 MR. WHITMIRE: Beg the Court's indulgence.

10 (Pause.)

11 CROSS-EXAMINATION

12 BY MR. WHITMIRE:

13 Q Good morning, Mr. Boney.

14 A Good morning.

15 Q Mr. Boney, was this your first guilty plea?

16 A No, it was not.

17 Q What was your first guilty plea?

18 A CSC second.

19 Q And what did you plead guilty to?

20 A To ABHAN.

21 Q Who was your attorney for that plea?

22 A Ronald Hall, I believe.

23 Q And did y'all discuss Sex Offender Registry  
24 with CSC versus ABHAN, not being on it?

25 A Right.

1 Q So you were aware of the consequences of the  
2 Sex Offender Registry?

3 A On that one I was.

4 Q You were arrested June 30th, 2012; is that  
5 correct?

6 A Yes, sir.

7 Q You bonded out?

8 A Yes, sir.

9 Q Prior to your 2000 guilty plea, did you make  
10 any efforts to schedule additional appointments with  
11 Ms. Henry?

12 A Yes, I did.

13 Q Can you just briefly describe those?

14 A I tried calling her numerous times to try to  
15 set up an appointment to talk to her.

16 Q Did she answer the phone and talk to you when  
17 you called?

18 A No, sir.

19 Q So it's your contention you showed up to court  
20 for a status conference and you just got duped into  
21 entering a guilty plea; is that correct?

22 A I was coerced, yes.

23 Q Was Ms. Henry aware of your Prozac medications?

24 A That morning, she never asked me.

25 Q Did you ever explain to her that you suffered

1 anxiety or you had some sort of mental defect?

2 A I told her that I had suicidal thoughts and was  
3 suicidal.

4 Q But did you ever specifically tell her that you  
5 were prescribed the Prozac?

6 A She never asked me.

7 Q And what judge did you plead guilty in front of  
8 back on, I believe it was, 2004 ABHAN?

9 A I couldn't tell you.

10 Q But you are aware that you had to, you know,  
11 knowingly and voluntarily enter a guilty plea?

12 A Yes.

13 Q But it's your contention you went forward today  
14 because you had taken, is it, five Prozac pills?

15 A That's correct.

16 Q And I believe you testified that you had wanted  
17 a guilty plea. Can you explain where you told  
18 Ms. Henry that you wanted her to appeal your  
19 sentence and conviction?

20 A I told her whenever the officer was shackling  
21 me after I'd been sentenced.

22 Q Now, do you recall anything that you and  
23 Ms. Henry discussed at those two meetings y'all had  
24 prior to the trial -- or to the plea?

25 A Could you be more specific?

1           Q     I'm just asking do you recall any of your  
2           conversations with your attorney?

3           A     Yes.

4           Q     Did you ask her to investigate anything in  
5           particular?

6           A     Yes, I did.

7           Q     Did she do it for you?

8           A     No.

9           Q     Knowing all of this, you still entered the plea  
10          as indicted that day in 2013?

11          A     Yes.

12          Q     And where were you living after you bonded out  
13          prior to your guilty plea?

14          A     I was living with my mother and father.

15                **MR. WHITMIRE:** No further questions, Your  
16          Honor.

17                **THE COURT:** Redirect.

18                **MS. GOOD:** Very briefly.

19                                REDIRECT EXAMINATION

20          BY MS. GOOD:

21          Q     Regarding going forward with the guilty plea  
22          that day, what was your impression of what your  
23          sentencing was going to be?

24          A     Probation.

25          Q     And were you going to be on the Sex Offender

1 Registry?

2 A No.

3 Q Would it be violent or nonviolent?

4 A Nonviolent.

5 Q And where did you get that information from?

6 A From Ms. Henry.

7 MS. GOOD: No further questions, Your Honor.

8 THE COURT: Recross.

9 MR. WHITMIRE: None, Your Honor.

10 THE COURT: Thank you, sir. You may step down.

11 MS. GOOD: The Applicant calls Lynn Batchler.

12 CYNTHIA LYNN BATCHLER,

13 having been duly sworn, testified as follows:

14 THE CLERK: If you'll have a seat and state

15 your name for the record, please, ma'am.

16 THE WITNESS: Cynthia Lynn Batchler.

17 COURT REPORTER: Can you spell your last name?

18 THE WITNESS: B-a-t-c-h-l-e-r.

19 DIRECT EXAMINATION

20 BY MS. GOOD:

21 Q Ms. Batchler, how do you know the Applicant,

22 Jason Boney?

23 A He's my son.

24 Q Okay. And are you currently married?

25 A Yes.

- 1 Q And who are you married to?
- 2 A My husband, Darryl Batchler.
- 3 Q And are you currently employed?
- 4 A Yes.
- 5 Q And where do you work?
- 6 A I work for A&D Environmental.
- 7 Q And how long have you been there?
- 8 A Two and a half years.
- 9 Q And your son was living with you at the time of  
10 this plea?
- 11 A Yes.
- 12 Q And prior to the plea, had you ever tried to  
13 get in touch with Ms. Henry?
- 14 A I have.
- 15 Q And can you tell the Judge how you tried to do  
16 that?
- 17 A I tried calling by phone and I got no answer.  
18 The only person I spoke to was her paralegal, I  
19 think, Ms. Trish.
- 20 Q And so you would leave messages with her?
- 21 A Yes.
- 22 Q And did Ms. Henry ever call you back?
- 23 A No.
- 24 Q Is it fair to say you're close with your son?
- 25 A Yes.

- 1 Q And were you aware of what was going on in his  
2 case?
- 3 A Yes.
- 4 Q And where was your information coming from?
- 5 A From my son.
- 6 Q Move to January 22nd, 2013, were you aware your  
7 son had a -- some type of court hearing that day?
- 8 A Roll call.
- 9 Q Okay. And were you going to go with him to  
10 roll call?
- 11 A No.
- 12 Q And why not?
- 13 A He usually went by himself.
- 14 Q Okay. At some point during the day, did you  
15 have conversations with Mr. Boney?
- 16 A Yes. I sent him a text telling him to have a  
17 wonderful day, to be positive and energetic at roll  
18 call and good luck on his job interview.
- 19 Q Okay. And did he text you back?
- 20 A Yes.
- 21 Q And when he text you back, what was his  
22 response?
- 23 A He told me he had court and he couldn't find  
24 Ms. Henry.
- 25 Q And was all of this memorialized through your

1 phone texts?

2 A Yes.

3 (Plaintiff's Exhibit Number 3, copy of text  
4 messages, marked for identification.)

5 Q Do you recognize these?

6 A Yes. That's my phone with the texts on it on  
7 the 22nd of January.

8 Q And they are dated January 22nd?

9 A Yes, ma'am.

10 Q And what day is that of the week?

11 A Pardon?

12 Q What day of the week is that?

13 A I think that was a Tuesday.

14 Q And is that a fair representation of the  
15 conversation you had that morning with him during  
16 texts you just testified to?

17 A Yes, ma'am.

18 MS. GOOD: At this time, Your Honor, we enter  
19 Plaintiff's Exhibit Number 3.

20 THE COURT: Any objection to this?

21 MR. WHITMIRE: One moment, Your Honor. I would  
22 object to admissibility on foundation. These text  
23 messages do accurately reflect a day, but do not  
24 reflect the year. It could have been January 22nd,  
25 2014.

1           **MS. GOOD:** And, Your Honor, that's where the  
2           date of actually Tuesday, the day of the week, goes  
3           in to show that it's 2013, because January 22nd,  
4           2014, 2012, would be a different day.

5           **THE COURT:** Objection's overruled. Mark it in  
6           evidence.

7                     (Plaintiff's Exhibit Number 3, copy of text  
8           messages, admitted into evidence.)

9           BY MS. GOOD:

10          **Q**     After a while, did you hear from your son?

11          **A**     No.

12          **Q**     Eventually, did you find out what happened  
13          earlier in the day?

14          **A**     The last one I put on there was, you know, it's  
15          going to be okay. I left for lunch to go to The  
16          Deli to get me a sandwich and I came by the  
17          courthouse and I drove around the parking lot and I  
18          found his car. And I said, well, I'm going to write  
19          a note, so -- I haven't heard from him, that he  
20          would give me a call after, you know, roll call.

21                 And right when I went to put the note on his  
22          windshield, because his car was locked, he called me  
23          on my cell phone and I couldn't really understand.  
24          He said, Mama, they gave me ten years. And I was  
25          like, What are you talking about, you know? The

1 judge gave me ten years. And I was like, Can I come  
2 up and, you know, get your things? And I'm not sure  
3 who he asked in the background and they said, yes.  
4 And so I came up to the courtroom, but they wouldn't  
5 let me in.

6 Q Did you eventually get his belongings?

7 A Yes. Ms. Sally brought them out to me.

8 Q Okay. And when you spoke to Ms. Henry, what  
9 did she tell you?

10 A I told her I didn't understand what was going  
11 on. And she said that the judge gave him ten years,  
12 but he would be out in eight and a half and that he  
13 wouldn't have to sign for the sex register. And I  
14 just couldn't understand what was going on.

15 Q Prior to that date, had you ever spoken with  
16 Ms. Henry?

17 A To whom?

18 Q To Ms. Henry.

19 A No.

20 Q And when you got Mr. Boney's belongings, what  
21 were in his belongings?

22 A His wallet and his keys.

23 Q To his truck?

24 A To his truck.

25 Q And did you go to his truck?

1       **A**     Not at that time. I went downstairs to my car  
2       and I called my husband.

3       **Q**     And did he come up there?

4       **A**     No. Actually, I went home and then we came  
5       straight back up here because I needed him to, you  
6       know, drive his truck back to our house.

7       **Q**     And did you mess with anything in the truck?

8       **A**     No.

9       **Q**     And did you eventually get some things out of  
10      the truck?

11      **A**     After we got the truck and we parked it in our  
12      backyard, I took out his journal and his medication  
13      and some of his, I believe it was his discovery  
14      papers that he had in his truck.

15      **Q**     And the journal, the back of the journal that  
16      we already introduced, was that one of the things  
17      you took out of the truck?

18      **A**     Yes.

19      **Q**     All right. And I'm going to show you what's  
20      marked as Plaintiff's Exhibit 2. Do you recognize  
21      this?

22      **A**     Yes. That's the pill bottle I got out of his  
23      console.

24      **Q**     Okay. And have you tampered with it in any  
25      way?

4           **A**       Yes, ma'am.

7           **A**       Right now?

9           **A**       (Witness complies.)

12 THE COURT: Sure.

14                   **THE WITNESS:** Seventy-six.

16 Q And how many, if you can look on the bottle,  
17 were actually prescribed to him on January 11th,  
18 2013?

20 MS. GOOD: At this time, Your Honor, we'd like  
21 to enter into evidence Plaintiff's 2.

23               **MR. WHITMIRE:** No objection, Your Honor.

25 (Plaintiff's Exhibit Number 2, bottle of

1 Prozac, admitted into evidence.)

2 BY MS. GOOD:

3 Q If you had been aware that there was going to  
4 be a plea that day, would you have gone on Jason's  
5 behalf?

6 A I would definitely have been there for my son.

7 Q And if you had been there, what would you have  
8 testified to?

9 A I would have told the judge that he is a  
10 wonderful son, a good father to his children, that  
11 he was going back to school to get his GED. He was  
12 going -- he got his South Carolina WorkKeys, and he  
13 was hopefully going into, to better himself, into  
14 college.

15 Q And, obviously, Jason is your son. Would you  
16 lie here today to try to help him get out of prison?

17 A I'm telling the truth.

18 MS. GOOD: No further questions, Your Honor.

19 THE COURT: Cross.

20 MR. WHITMIRE: Just a few questions, Your  
21 Honor.

22 CROSS-EXAMINATION

23 BY MR. WHITMIRE:

24 Q I believe you said that you had made attempts  
25 to contact Ms. Henry prior to your son's guilty

1 plea; is that correct?

2 A Yes.

3 Q Do you recall what dates you called her on?

4 A It was several dates. It would ring and  
5 sometimes I wouldn't even get an answer.

6 Q Do you recall specific dates or the month?

7 A It was October and December.

8 Q Would you leave a message?

9 A One with his (sic) receptionist, yes.

10 Q What did the receptionist tell you? Did she  
11 take the message down?

12 A Yes.

13 Q What was your son arrested for doing?

14 MS. GOOD: Objection, Your Honor, relevance.

15 THE COURT: Overruled. You may answer the  
16 question if you know, ma'am.

17 THE WITNESS: Sexual conduct.

18 BY MR. WHITMIRE:

19 Q Was your son involved in his defense prior to  
20 the plea?

21 A Yes.

22 Q He had testified that he was looking at  
23 probation?

24 A I don't understand your question.

25 Q Did he tell you that he was looking at possible

1           probation for these charges or charge?

2           **A**     I don't recall the exact statement.

3           **Q**     And you never actually contacted Ms. Henry or  
4           actually spoke to her until after your son's plea;  
5           is that correct?

6           **A**     Yes.

7           **Q**     And you don't want to see your son in jail, do  
8           you?

9           **A**     No.

10          **Q**     Did you speak on his behalf at his first plea  
11          where he -- for the sexual misconduct when he pled  
12          to ABHAN and he got probation?

13          **A**     Yes.

14                 **MR. WHITMIRE:** No further questions, Your  
15          Honor.

16                 **THE COURT:** Thank you.

17                 Redirect.

18                 **MS. GOOD:** None, Your Honor.

19                 **THE COURT:** Thank you, ma'am. You may step  
20          down.

21                 Call your next witness.

22                 **MS. GOOD:** Applicant calls Darryl Batchler.

23                 **THE COURT:** Come around, please.

24                                 \*\*\*\*

25                                 \*\*\*\*

DARRYL EUGENE BATCHLER - DIRECT BY MS. GOOD

38

1 DARRYL EUGENE BATCHLER,  
2 having been duly sworn, testified as follows:

3 THE CLERK: If you'll have a seat and state  
4 your name for the record, please, sir.

5 THE WITNESS: Darryl Eugene Batchler.

6 DIRECT EXAMINATION

7 BY MS. GOOD:

8 Q Mr. Batchler, how do you know Jason Boney?

9 A He's my stepson.

10 Q So you're not biologically related to him?

11 A No, ma'am.

12 Q I'm just going to go ahead and jump to after  
13 his plea on January 22nd, 2013 -- or before that,  
14 did you ever try to get in touch with Ms. Henry?

15 A I did.

16 Q And how did you try to get in touch with her?

17 A My wife was very frustrated because she could  
18 get no results from Ms. Henry's office, so she asked  
19 me to try, and I did with the same exact result as  
20 my wife. Her assistant took my name and number on  
21 one occasion, never heard anything back.

22 Q Do you remember when that was?

23 A No, ma'am, I can't recall the exact date.

24 Q After the plea, did you have any conversations  
25 regarding the appeal and trying to follow up on the

1       filing of the appeal?

2       **A**     I did.

3       **Q**     And what did you do?

4       **A**     I called Ms. Henry's office again and got her  
5       assistant. And her assistant informed me that  
6       there's nothing they could -- no more that they  
7       could do to help Jason, they were no longer his  
8       attorney.

9       **Q**     And were you ever able to get in touch with  
10      Ms. Henry after the plea?

11      **A**     No, ma'am.

12      **Q**     If you had known there had been a plea that  
13      day, would you have come on Jason's behalf?

14      **A**     Yes, ma'am.

15      **Q**     And what would you have testified to?

16      **A**     Well, he's a great son. He's a great father to  
17      his children, that's for sure, and he was definitely  
18      trying to better his life. He was in the process of  
19      getting his GED, which he now has obtained, and also  
20      he was - he went to church every Sunday. He didn't  
21      miss a day.

22      **Q**     And, obviously, even though you're not  
23      biologically related to him, would you lie today for  
24      him?

25      **A**     No, ma'am. I speak the truth, and I do love

1 him. He is my stepson.

2 MS. GOOD: No further questions, Your Honor.

3 MR. WHITMIRE: Just a few quick questions, Your  
4 Honor.

5 CROSS-EXAMINATION

6 BY MR. WHITMIRE:

7 Q Do you remember the name of Ms. Henry's  
8 assistant?

9 A I believe it was Trish maybe. I'm not a  
10 hundred percent sure of that.

11 Q Do you remember the approximate days or months  
12 you called and left messages for Ms. Henry?

13 A Sir, I'm going to say, approximately, I think  
14 it was October. And then I know it was, like I  
15 said, right after the trial date, January 22nd.

16 Q And had your wife kicked Jason out of the house  
17 prior to the plea?

18 A Had she kicked him out of the house prior to  
19 the plea? No, sir.

20 Q So he was living with y'all the entire time  
21 post-arrest, prior to the plea?

22 A He may have stayed a night or two with a friend  
23 here or there, but, yes, sir, his address was my  
24 permanent residence, primary residence.

25 MR. WHITMIRE: No further questions, Your

1 Honor.

2 THE COURT: Redirect.

3 MS. GOOD: No, sir.

4 THE COURT: Thank you, sir. You may step down.

5 THE WITNESS: Thank you.

6 THE COURT: Any other witnesses for the  
7 Applicant?

8 MS. GOOD: No, sir.

9 THE COURT: Anything I need to cover right now  
10 before I hear from the State?

11 MR. WHITMIRE: No, Your Honor. The Respondent  
12 would call Ms. Henry to the stand.

13 THE COURT: Come around, please.

14 SALLY HENRY,

15 having been duly sworn, testified as follows:

16 THE CLERK: Have a seat and state your name for  
17 the record, please, ma'am.

18 THE WITNESS: My name is Sally Henry.

19 DIRECT EXAMINATION

20 BY MR. WHITMIRE:

21 Q Ms. Henry, how long have you practiced criminal  
22 law in Lexington County?

23 A This will be my 18th year in Lexington County.

24 Q What is your current title with the public  
25 defender's office?

1       **A**     I'm the deputy public defender for Lexington  
2       County.

3       **Q**     Do you recall your representation in this  
4       matter?

5       **A**     I do.

6       **Q**     Did you have a chance to review your file?

7       **A**     Yes, I have.

8       **Q**     Can you briefly describe for the Court the  
9       circumstances surrounding Mr. Boney's arrest for  
10      sexual misconduct?

11      **A**     Our information was he was arrested on July  
12      1st. He was interviewed by our office September the  
13      20th. I'm uncertain of the time that he actually  
14      bonded out, but there was almost a three-month time  
15      lapse between our appointment and the date of his  
16      arrest. In any event, we got the file at the end of  
17      September, and the first of November, I had my first  
18      office visit with him. It was there when he  
19      explained the details of his arrest and the  
20      circumstances. Do you want me to go into other  
21      details?

22      **Q**     One quick question first: What is your general  
23      practice procedure in opening a file for a new  
24      client?

25      **A**     When the file is opened, the -- well, let me

1 back up. When we are appointed, the client comes to  
2 our office after he's paid the initial fee of \$40  
3 and sets up an appointment with us to be interviewed  
4 in the office, that's on Tuesday mornings. I don't  
5 know when he -- well, I do know when he came in --  
6 he came in on the 20th of September. He's  
7 interviewed by our intake interviewer; thereafter  
8 the file is given to -- or the paperwork is given to  
9 our head public defender who reviews all the files  
10 and assigns them to individual attorneys. From  
11 there it's passed to the receptionist who actually  
12 opens the file, and we -- the individual attorneys  
13 get the file anywhere from a few days to a week  
14 afterwards.

15 Q I believe you said your first meeting with  
16 Mr. Boney was in September?

17 A September -- no, I'm sorry -- November 13th. I  
18 got the file September 21st.

19 Q What, if any, efforts did you make to inquire  
20 into Mr. Boney's personal and medical history?

21 A At our initial meeting, let me just go over  
22 this really quickly, I follow a procedure. I inform  
23 my client of the nature of the crime that he's been  
24 charged with, he or she has been charged with, the  
25 potential penalties if they're convicted, their

1 constitutional rights and stuff. I go through a  
2 litany so that they'll be aware just of the  
3 protocol.

4 Most of my clients have, you know, never been  
5 through this process. I think Mr. Boney had been  
6 through it once. But thereafter I get into the  
7 circumstances that surrounded when they were  
8 arrested and pretty much just let them explain their  
9 position to me.

10 Q And when you were appointed on this case, had  
11 Mr. Boney already given a statement to law  
12 enforcement?

13 A I think, yes, he has. And I did not completely  
14 answer your first question. Mr. Boney did inform me  
15 at that first office meeting that he was taking  
16 Prozac. He was prescribed one a day. And his  
17 family physician was a Dr. Harris at Lexington  
18 Family Practice. But he was prescribed, for anxiety  
19 and nervousness, one Prozac a day.

20 Q Throughout the course of representation, did  
21 Mr. Boney ever demonstrate any tendencies or say  
22 anything to you that would draw a red flag and maybe  
23 elicit a mental evaluation?

24 A No, not at all.

25 Q And have you submitted your clients in the past

1 to psychological evaluations from the Department of  
2 Mental Health?

3 A I have.

4 Q Did he ever talk to you about any irregularity  
5 in the way he took his medication?

6 A He did say that on the day or evening of this  
7 incident that he had taken Prozac. He'd taken two  
8 that day.

9 Q What did Mr. Boney tell you about his personal  
10 situation of where he was living after the arrest?

11 A I think for a period of time after he was  
12 bonded out, he went to live with his mother and  
13 stepfather, but then, according to what he told me,  
14 his mom had kicked him out, and he was living in his  
15 truck. He was quite distraught about the  
16 circumstances that he'd been reduced to. But my  
17 understanding, what he told me, was that he did not  
18 live with his mother any longer because she had  
19 kicked him out.

20 Q Have you had a chance to review your file to  
21 see if there was any notations of when or how his  
22 parents tried to get in contact with you?

23 A I have -- I do not see -- in fact, I reviewed  
24 this morning the calls in Mr. Boney's file that I  
25 keep in his computer log, did not see any contact

1 with myself. Now, I do know that they spoke with my  
2 paralegal, Trisha, a couple of times. I don't have  
3 that recorded in my file, though.

4 I did also receive, which is in the file, a  
5 letter from his mom that was dated March 23rd  
6 requesting that we send information, his paperwork  
7 and discovery to him, because she had called prior  
8 to sending the letter and was told that we could not  
9 give her that information, it would have to be given  
10 to him. I didn't have any correspondence from him  
11 requesting it, but because she had written this  
12 letter, we did mail him an additional copy of the  
13 discovery.

14 **MR. WHITMIRE:** Beg the Court's indulgence one  
15 moment, Your Honor.

16 **THE COURT:** Yes.

17 (Pause.)

18 **MR. WHITMIRE:** I apologize.

19 BY MR. WHITMIRE:

20 **Q** Did Mr. Boney tell you his version of the facts  
21 that led to his arrest?

22 **A** Yes, he did.

23 **Q** And what briefly were those?

24 **A** That the victim, alleged victim, of the CSC was  
25 a young girl that their family knew that had helped

1 out with babysitting the children. And on the night  
2 of this incident, his wife, that's how he referred  
3 to Crystal, his wife had told him that she was going  
4 to the beach with her children and her mother and  
5 had left taking the children and another friend, and  
6 that she set him up because she turned around, came  
7 back, hid out behind the house around the windows  
8 and looked in and watched him having or beginning to  
9 have sex with Minor , and that she basically came  
10 into the house in sort of an explosive fashion. The  
11 girl got up and ran to the bathroom and the wife was  
12 taking pictures of her and he was very upset.

13 Q Did he subsequently make admission to the  
14 police that afternoon?

15 A I believe the record -- I mean, the discovery  
16 reflects that, yes.

17 Q Did he ever ask you to interview any witnesses  
18 in particular?

19 A I don't recall that he did.

20 Q Ever ask you to look into any particular facts  
21 out of the State's evidence?

22 A No. I believe my paralegal did attempt to  
23 contact Crystal, and I think she was unsuccessful  
24 with that attempt.

25 Q Was this always going to be a plea from the

1 beginning?

2 A I don't recall that we said, you know, anything  
3 like that at the outset. It just as it developed  
4 and we got discovery and reviewed it and then it  
5 became apparent that he had made statements and the  
6 young woman had made statements as well, that that  
7 was the direction it was going.

8 Q Briefly describe your plea negotiations with  
9 the State.

10 A The State was unwilling to drop the charge to a  
11 lesser offense than what he was charged with, which  
12 was CSC with a minor in the second degree. They  
13 were going to not indict him for a lewd act with a  
14 minor based upon the plea; however, that -- that  
15 indictment, I think, went through that same  
16 afternoon because that was when the grand jury was  
17 meeting that week, but that was eventually nol  
18 prossed. And the reason that they were not going to  
19 offer any lesser-included offense was because he had  
20 that prior CSC second on his record that had been  
21 reduced at one time.

22 Q Did you discuss with him some of the obstacles  
23 that were going to be in place to getting a  
24 favorable plea offer from the State?

25 A Yes, we discussed that.

1       **Q**     And the offer or the agreement he eventually  
2       entered into, do you recall what day you talked  
3       about it with him in context to the January guilty  
4       plea?

5       **A**     I cannot really say that I do, no.

6       **Q**     Do you recall his mannerisms when he decided to  
7       accept the plea? Was he willing to do it?

8       **A**     Yes. We discussed it. We went over the  
9       paperwork. And I believe there might have been an  
10      issue about this violent/nonviolent, but that was  
11      corrected before we entered the plea.

12      **Q**     In your opinion, what was the "but for" reason  
13      that led to him entering this plea agreement?

14             **MS. GOOD:** Objection, Your Honor, that calls  
15      for her opinion instead of fact.

16             **THE COURT:** Sustained.

17      BY MR. WHITMIRE:

18      **Q**     Did he tell you what he wanted out of the plea?

19      **A**     Yes. We were -- both of us were hoping that he  
20      would get a probationary sentence. I felt like  
21      based on the circumstances, which, you know, were --  
22      when we explained in the plea at mitigation stage,  
23      that he had a very strong chance of getting  
24      probation. He had been on probation before and had  
25      done fine. It was, you know, several years in the

1 past, so that's definitely what we were hoping for.  
2 But, you know, the bottom line is it was a straight  
3 up plea.

4 Q Would you look through your file for a brief  
5 moment to see if you made any notations of when the  
6 Solicitor conveyed the offer and he inevitably  
7 accepted it?

8 A I'm not sure I have a date on that. It would  
9 have been on the appearance information. I don't  
10 see it.

11 She had made it clear to me, in conversations  
12 with her, though, that the plea was going to be  
13 straight up. And if he wanted a jury trial, to go  
14 forward with this and not plea, that she would go  
15 forward with the indictment for lewd act.

16 Q I believe on the January plea, was he scheduled  
17 to plea that day on the roster?

18 A Yes.

19 Q How long would you have known about that  
20 scheduling?

21 A That was in January, probably at his -- well,  
22 I'm certain it would have been his last appearance  
23 date.

24 Q And do you recall -- what did he think he was  
25 coming to court for that day? Did he tell you?

1       **A**     He knew he was coming for a plea.

2       **Q**     Did he ask you to contact any witnesses to  
3       speak on his behalf in mitigation?

4       **A**     I don't have any record of that. My  
5       understanding was that he was not in a good position  
6       with his mother and stepfather. Normally, we try to  
7       contact any family members or members of the  
8       community to be there for the plea if, you know, the  
9       -- if they're available and if the client has  
10      requested it.

11      **Q**     Now, the day of the plea or maybe the week  
12      before, do you look over and talk about a client's  
13      constitutional rights one last final time before the  
14      plea colloquy?

15      **A**     Occasionally, I will do that, and I do an  
16      affidavit of the plea. I did not do that with  
17      Mr. Boney. I felt like he understood what we had  
18      discussed initially, and he had been through this  
19      once before.

20      **Q**     Did anything about Mr. Boney's mannerisms, his  
21      speech seem odd to you that day?

22      **A**     No.

23      **Q**     Did he inform you that he was currently taking  
24      too much medication?

25      **A**     No.

1 Q How long have you been doing this again,  
2 Ms. Henry?

3 A Eighteen years at the public defender's office.

4 Q And if a client was showing signs of potential  
5 incompetence, would you let him go forward with the  
6 plea?

7 A Absolutely not.

8 Q Whose decision was it to plead guilty?

9 A Ultimately, it was Mr. Boney's.

10 Q Did Mr. Boney ever grab your shirt or indicate  
11 to you that he was wavering on that day?

12 A No.

13 Q Did he ever ask for a moment to speak with you  
14 during the colloquy?

15 A Not during the colloquy, no.

16 Q On to the very last issue, just a few more  
17 questions. Did you discuss his right to appeal on  
18 this case?

19 A I don't recall having that discussion with him,  
20 no.

21 Q What is your general practice in advising a  
22 client of their right to appeal and filing a notice  
23 of appeal?

24 A Generally, I don't do it because if it's of  
25 significance, the judge explains what the law is to

1       them, but when we go into a plea, the understanding  
2       is, depending on the circumstances of course, that  
3       the sentence that the judge passes down will be  
4       acceptable. The client knows that they're entering  
5       a guilty plea and that the result is in -- of the  
6       sentence is in the hands of the judge.

7       **Q**     And if a client or Mr. Boney asked for a plea  
8       (sic), would you have made some notation in your  
9       file to indicate filing a notice?

10      **A**     Asked for an appeal?

11      **Q**     Uh-huh.

12      **A**     Yes, and I would have gone back to the office  
13      and instructed my paralegal to start that paperwork.

14             **MR. WHITMIRE:** No further questions. Thank  
15      you, Ms. Henry.

16             **THE COURT:** Cross.

17                     CROSS-EXAMINATION

18      BY MS. GOOD:

19      **Q**     Ms. Henry, you said you've been practicing for  
20      18 years?

21      **A**     At the public defender's office.

22      **Q**     So you've been practicing longer than that?

23      **A**     Yeah, 20.

24      **Q**     And you're aware of what the penalties for  
25      criminal sexual conduct with a minor in the second

1 degree is?

2 A Yeah.

3 Q And that includes mandatory Sex Offender  
4 Registry; correct?

5 A That's correct.

6 Q And, in fact, on the date of the plea, January  
7 22nd, 2013, what did you inform Mr. Boney the part  
8 of the penalty for CSC with a minor second was  
9 regarding Sex Offender Registry?

10 A He knew that he would be required to register.

11 Q Were you aware that he was required to  
12 register?

13 A Yes, I was.

14 Q Have you reviewed the transcript in this case  
15 from the plea?

16 A I have.

17 Q And is it not correct that on page 12 and 13  
18 and subsequent pages, you had a colloquy with the  
19 judge arguing that he would not have to be on the  
20 Sex Offender Registry if the judge found it to be  
21 consensual?

22 A Yes. And, obviously, that was a matter of  
23 confusion on my part. There had recently been a  
24 case that came from the Supreme Court a few days  
25 prior to this, maybe a few weeks, I don't recall,

1 but it had to do with lifetime monitoring, and I had  
2 gotten that confused. And the judge cleared it up  
3 on the record.

4 Q Is it fair to say, though, that that is how you  
5 advised Mr. Boney that day regarding the Sex  
6 Offender Registry?

7 A No, because that case had not come out, I  
8 think, at that time period.

9 Q The day of the plea the case had not come out?

10 A No, I'm talking about prior to that.

11 Q On the date of the plea when you advised him of  
12 his rights and the penalties, what did you advise  
13 him regarding Sex Offender Registry?

14 A It would be my recollection that I told him he  
15 would have to register.

16 Q Yet you still argued to the judge that he  
17 shouldn't have to because it was consensual sex?

18 A Lifetime registry, yeah.

19 Q You said you had a discussion at some point  
20 when you reviewed discovery with Mr. Boney that it  
21 was -- the direction was going towards a plea. Do  
22 you recall what Mr. Boney said to you whether he  
23 wanted a trial or a plea?

24 A I think initially he wanted a trial because he  
25 felt like he had been set up by his wife slash

1 girlfriend. And that was probably -- that was his  
2 initial response, he wanted a trial. But when we  
3 reviewed the discovery and got into it and -- it was  
4 apparent, at least in my opinion, that a trial would  
5 not go well because of the statements that had been  
6 made by both parties, then we started looking at a  
7 plea.

8 Q And what day was that, if you recall?

9 A I don't know.

10 Q You said you were aware that he was taking  
11 Prozac, correct, one a day?

12 A That's what he told me he was prescribed, yes.

13 Q And when the plea negotiations came about, you  
14 said you couldn't recall ever going over that plea  
15 negotiation with him until the day of court;  
16 correct?

17 A If that's what I said, yeah.

18 Q About how long was your conversation with him  
19 the day of court?

20 A I don't recall specifically. I would estimate  
21 probably 15 or 20 minutes.

22 Q Okay. And you said during that discussion,  
23 there was confusion over the nonviolent and violent?

24 A During my discussion with him. I think at that  
25 time, and I looked it up because I wanted to make

1 absolutely certain, and I spoke to him afterwards.

2 Q Who on the sentencing sheet -- I'll show you  
3 this one. The Judge has the one we can use for him  
4 to look at. On the sentencing sheet where it's --  
5 there's a couple marks that are scratched out, do  
6 you recall how the sentencing sheet looked when you  
7 went over it with him?

8 A Honestly, I do not, but it appears from this  
9 that it was initially marked nonviolent and most  
10 serious. I can't really tell. And, no, I don't  
11 recall.

12 Q And do you recognize the initials next to where  
13 it was marked out nonviolent and put violent?

14 A This is the initials of Kate Usry, who's the  
15 Solicitor, I believe.

16 Q Did you initial it in any way or did Mr. Boney?

17 A No.

18 Q You said it was your opinion you believed,  
19 along with Mr. Boney, that he would be getting  
20 probation for this case?

21 A I hoped that's what would happen.

22 Q And what was the wording when you spoke to him  
23 regarding the sentencing, when you were explaining  
24 the sentencing sheet to him and the possibility of  
25 probation or if he could get 20 years; do you

1 recall?

2 A Not specifically, no. I cannot say that I do.

3 Q You said he was scheduled to plea on the roster  
4 and that he knew he was coming for the plea. When  
5 was that discussion that he knew he was coming for a  
6 plea?

7 A At the time of his last appearance is what I'm  
8 guessing. I don't have a notation of that.

9 However, I will say this: Clients don't just show  
10 up on a certain day and not know why they're there.  
11 And I certainly would never take a client in front  
12 of a judge who had no idea what he was doing. I  
13 mean, that makes no sense.

14 Q Do you recall if you represented him on his  
15 second -- at the time of his second appearance?

16 A According to my notes here, his first  
17 appearance would have been -- or the first date I  
18 have noted, and this information I have to get from  
19 the State, is October 26th. So I would have been  
20 representing him then. And his second appearance,  
21 looks like it would have been December the 9th. So  
22 since we got appointed and he was interviewed  
23 September 20th, yeah, we would have been  
24 representing him.

25 Q So you're saying October was his first

1 appearance?

2 A It looks like October 26th was his first  
3 appearance.

4 Q He was arrested in July. You said July 1st,  
5 2012; correct?

6 A That's correct. And, again, I'm going by the  
7 dates that are provided to us by the Solicitor's  
8 office.

9 Q Is it possible that he could have already had  
10 his second appearance in September and you did not  
11 get him till after his second appearance?

12 A Yes.

13 Q Okay. So is it fair to say, potentially, he  
14 might not have known at signing something at a  
15 second appearance whether it would be a roll call or  
16 a plea date?

17 A I don't know what he knew.

18 Q Do you recall -- you said the December 9th,  
19 2012, date just then. Do you recall having to  
20 change that because it was a Sunday?

21 A I recall him calling me, yes. And the  
22 Solicitor's office had obviously made an error on  
23 that.

24 Q And when he called you and discussed that with  
25 you, did y'all discuss that as a roll call date or a

1 plea date?

2 A I don't remember.

3 Q Because that's the date that was rescheduled to  
4 January 22nd; correct?

5 A (Witness nodded head.)

6 Q What is your protocol in your office getting  
7 messages from your paralegal or secretary?

8 A The protocol normally is if they want to leave  
9 a message, they're transferred to our voice mail or  
10 a paralegal's voice mail. If they just want someone  
11 to know that they've called, sometimes the secretary  
12 will send an e-mail to us.

13 Q And you said you were aware that Mr. Boney's  
14 parents had called you or your office?

15 A Upon review of my notes in his file, I don't  
16 see that they had called me at all before this.

17 Q But you testified earlier that you were aware  
18 that they had spoken to your paralegal; correct?

19 A Yes. They had spoken to my paralegal, but I  
20 don't think, again, that that was until after we had  
21 the plea. My understanding was they were not on  
22 very good terms with one another.

23 Q After the plea that day, you saw his mother;  
24 correct?

25 A I don't remember that, but I heard her

1 testimony that I did.

2 Q Were you the one that took Mr. Boney's  
3 belongings?

4 A I do recall that, yes.

5 Q So it's fair to say you did meet with her since  
6 she got the belongings from you?

7 A Yeah.

8 Q And you said you never discussed the right to  
9 appeal with your client?

10 A I don't remember that I did.

11 Q Do you normally discuss it with your client?

12 A It's something I don't normally discuss with  
13 them, no.

14 Q Do you recall if you discussed it with  
15 Mr. Boney?

16 A I don't.

17 Q You said, Normally it comes from the judge  
18 regarding that you have a notice of appeal; correct?

19 A Yes.

20 Q Do you recall if Judge Newman informed him of  
21 this right during the plea?

22 A I don't. I'm sure it's in the transcript.

23 Q Well, if I told you that it was not in the  
24 transcript, would you agree that Judge Newman didn't  
25 ask him about it?

SALLY HENRY - REDIRECT BY MR. WHITMIRE

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1           **A**     I wouldn't have any reason not to.

2           **Q**     And you just said that you were aware that  
3           Mr. Boney's parents called after the plea. Do you  
4           remember what they were calling about?

5           **A**     I did not speak to them, so, no, I don't.

6           **MS. GOOD:** No further questions, Your Honor.

7           **MR. WHITMIRE:** Beg the Court's indulgence.

8                   (Pause.)

9                               REDIRECT EXAMINATION

10          BY MR. WHITMIRE:

11          **Q**     Just one question for you, Ms. Henry. Was  
12          Mr. Boney aware that he was pleading guilty straight  
13          up as indicted that day?

14          **A**     Yes.

15          **MR. WHITMIRE:** No further questions, Your  
16          Honor.

17          **THE COURT:** Recross.

18          **MS. GOOD:** No, sir.

19          **THE COURT:** Thank you, ma'am. You may step  
20          down.

21          **MR. WHITMIRE:** Your Honor, just request that  
22          Ms. Henry be released from her subpoena.

23          **MS. GOOD:** No objection.

24          **THE COURT:** You're free to go. Thank you,  
25          ma'am.

1           **MR. WHITMIRE:** Furthermore, Respondent rests.

2           **THE COURT:** Any reply?

3           **MS. GOOD:** No, sir.

4           **THE COURT:** Any argument?

5           **MS. GOOD:** Your Honor, I would briefly like to  
6 draw on some points.

7           Your Honor, we're asking you to overturn this  
8 conviction based on the fact that Mr. Boney was not  
9 aware that he was going to be on the mandatory Sex  
10 Offender Registry. I believe if you look at the  
11 transcript, it's obvious that Ms. Henry argued or  
12 was confused about the Sex Offender Registry due to  
13 the new case that came out. She was corrected on  
14 the record by Judge Newman.

15           And in addition, Your Honor, you've heard the  
16 mitigating evidence that his mother and stepfather  
17 would have given if they would have been there for a  
18 plea.

19           And finally, Your Honor, regarding the Prozac,  
20 we have entered the Prozac into evidence, and we did  
21 count it. And there was, I believe, there were 70  
22 left. If you look at the prescription date and what  
23 he was prescribed one time a day, if you do the math  
24 on it, it adds up to the fact that he took five that  
25 day instead of just one as there was no other ones

1 missing or there's no additional in there. The math  
2 does add up to that. So we ask that you vacate this  
3 conviction and return it to the Solicitor's office.

4 **MR. WHITMIRE:** In reply, Your Honor, regarding  
5 the Sex Offender Registry, Mr. Boney did testify  
6 that he was aware of CSC requiring Sex Offender  
7 Registry. In fact, he testified he knew that when  
8 he pled guilty to ABHAN from a CSC second on a prior  
9 charge.

10 Furthermore, in clarification, Ms. Henry  
11 testified to the conversation she had -- colloquy  
12 she had with Judge Newman regarding lifetime  
13 registration versus registration for a determined  
14 specific period of time. However, he was aware he  
15 would register. Regardless, it is a collateral  
16 consequence.

17 Third, regarding mitigation, Ms. Henry has  
18 given credible testimony that Mr. Boney was at odds  
19 with his parents in the later half of the  
20 representation. They had kicked him out. At that  
21 time, Mr. Boney or Ms. Henry, no one testified, that  
22 he in fact desired to have his parents there at the  
23 plea. They were there at the first plea.

24 Then last regarding the Prozac, the numerical  
25 difference itself is insignificant and mostly not

1 relative simply for the fact that Mr. Boney admitted  
2 that he had abused Prozac and taken two of them on  
3 the day of the offense. He has a clear, within the  
4 record, from what Ms. Henry testified to, history of  
5 taking his medication at irregular intervals. The  
6 fact that there's a certain number count left now  
7 really lacks any probative value.

8 And regardless, Ms. Henry testified to her  
9 general practice procedure, her opinion of how  
10 Mr. Boney conducted himself. She is not bound by  
11 the duty of clairvoyance to know that someone might  
12 be abusing drugs when they're appearing normal.  
13 Furthermore, his mild mental illness itself did not  
14 necessitate Ms. Henry to undergo a mental  
15 evaluation. There is no evidence presented in this  
16 court today about a psychological evaluation.  
17 Therefore, Applicant has not met his burden of proof  
18 to show that she was even deficient in this regard.

19 **MS. GOOD:** Your Honor, regarding the Prozac, I  
20 want to clarify that he testified on the record he  
21 had five that day. And in regard to that, the plea  
22 does have to be voluntarily and intelligently made,  
23 and the use of his Prozac that day makes his plea  
24 involuntary in the fact he could not understand  
25 everything that was going on and believed that there

1       was nonviolent versus no Sex Offender Registry to  
2       possibility of probation, thinking he's going to get  
3       to appeal. There was a lot of confusion that day as  
4       a result of him taking that Prozac, and not  
5       necessarily that has to do anything with Ms. Henry,  
6       but the fact that the whole plea together with the  
7       fact of Ms. Henry misadvising him makes it an  
8       involuntary plea.

9               **MR. WHITMIRE:** Just briefly, Your Honor, in  
10       reply. This is a credibility case, either Ms. Henry  
11       provided credible testimony to this Court regarding  
12       her impressions, her general practice, her  
13       representation in this matter, or Mr. Boney and his  
14       parents provided credible testimony. The record  
15       reflects what it reflects.

16              **THE COURT:** Mr. Boney, you're under oath. You  
17       understand that?

18              **MR. BONEY:** Yes, sir.

19              **THE COURT:** Your date of birth on your sentence  
20       sheet is [REDACTED], [REDACTED]; is that correct?

21              **MR. BONEY:** That's correct.

22              **THE COURT:** Are you receiving any type of  
23       mental health treatment at the department of  
24       corrections?

25              **MR. BONEY:** No, sir.

1           **THE COURT:** Are you prescribed any medications  
2           that you're not taking now?

3           **MR. BONEY:** No, sir.

4           **THE COURT:** Have you taken any medications  
5           today?

6           **MR. BONEY:** No, sir.

7           **THE COURT:** What's your understanding of what  
8           would occur if I granted your application for  
9           post-conviction relief?

10          **MR. BONEY:** That my case would go back to the  
11          Solicitor's office and I would start over again.

12          **THE COURT:** Okay. So you know that if you  
13          prevail on post-conviction relief, you go back and  
14          you face criminal sexual conduct with a minor in the  
15          second degree and lewd act?

16          **MR. BONEY:** Yes, sir.

17          **THE COURT:** And that's -- you want to pursue  
18          the application?

19          **MR. BONEY:** Yes, sir.

20          **THE COURT:** How old was the girl at the time?

21          **MR. BONEY:** She was 15, a week away from being

22          16.

23          **THE COURT:** And you were how old?

24          **MR. BONEY:** Twenty-seven.

25          **THE COURT:** All right. I'll notify you of a

1 decision in writing. Thank you.

2 MS. GOOD: Thank you, Your Honor.

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END OF PROCEEDINGS

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## C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 14th of April, 2014.

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

October 28, 2014

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR  
Circuit Court Reporter

|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                   |                     |                                           |                                            |                                                                                                                                                                                                                                                                                                        |
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1800-892-2256

359-0770

1866-760-7889



356-4334

Fastmail

Broke car handles → 808-0672

January  
22 Call Call

1-877-892-8477

Stone EA 107  
359-6131

359-6131

Unemployment

Enterprise

Confirmation number → 44MFGH

412.07

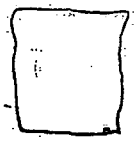
If you need someone  
to talk to call me  
Heather (603) 892-2256  
803-760-0422

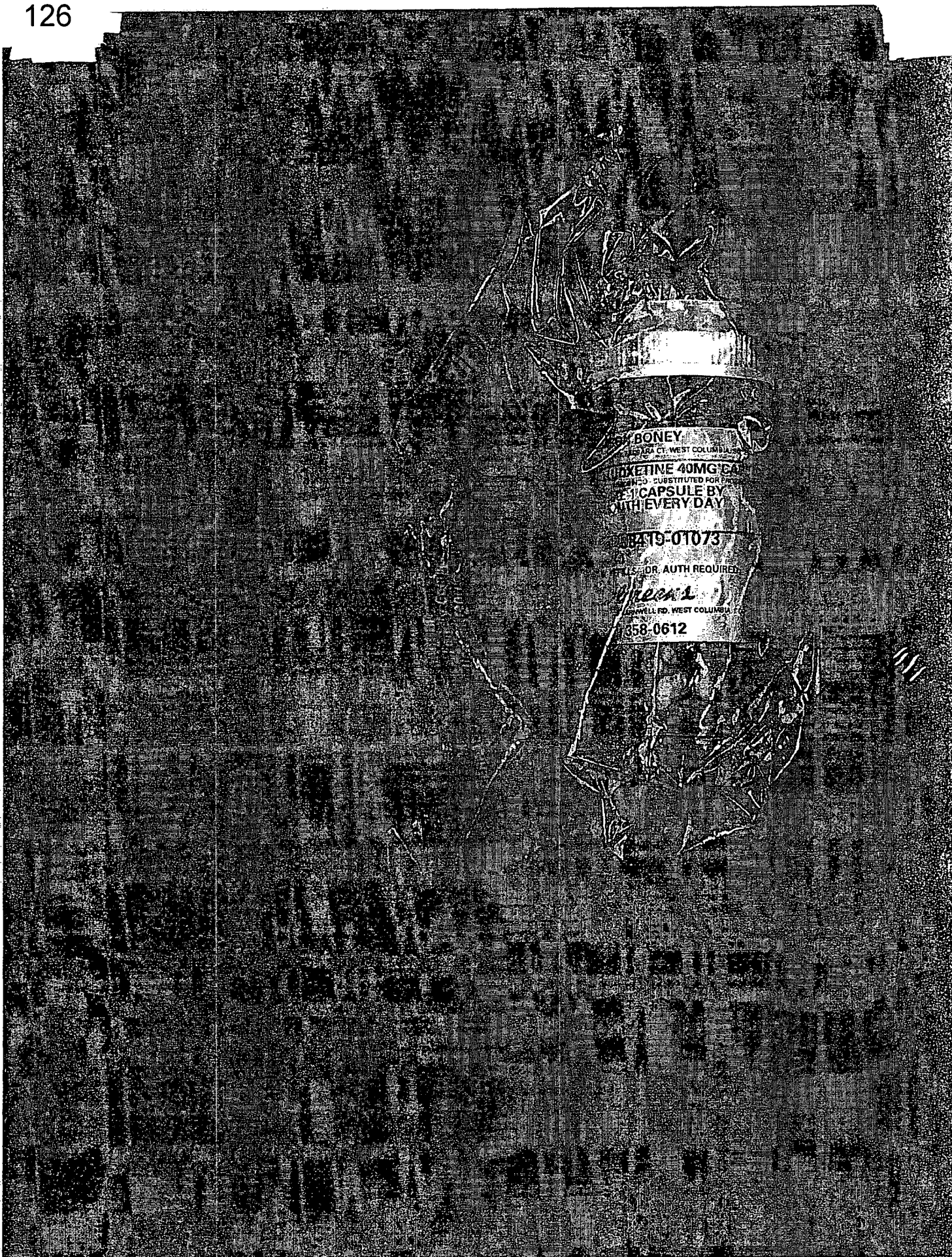


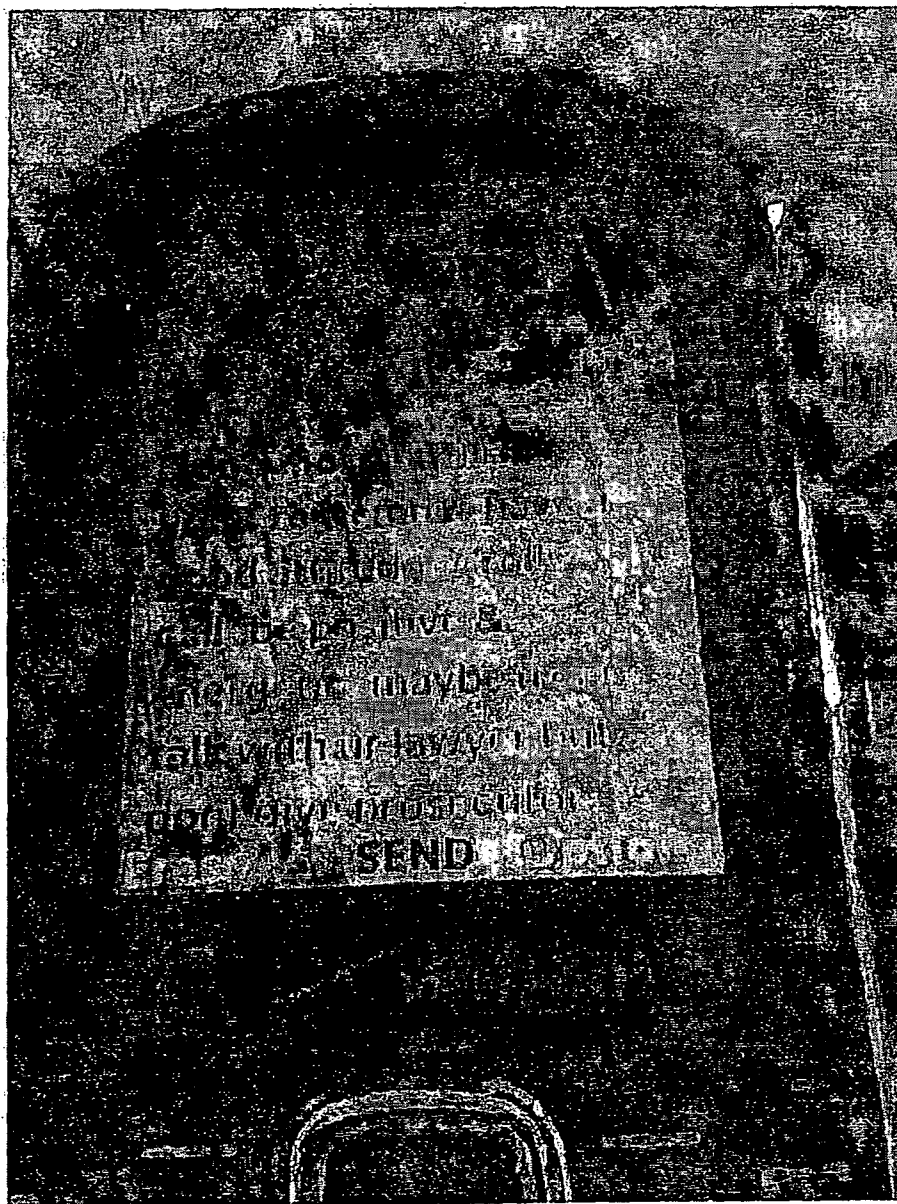
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FIX II  
SENT  
can be positive &  
energetic. maybe u can  
talk with ur lawyer but  
dont give prosecutor  
any info. good luck on  
JOB. Call me. Luv ya  
bunches!!!!  
Sent  
Time 1/22/85 3 am  
Erase SEND Options

INBOX

From: Jason

I am scared and cant  
find sally

Stored:  
Tue Jan 22 8:55 am

Received:  
Tue Jan 22 9:55 am

Erase REPLY Options

To Jason To

ingong 2 be okay. Hang  
in there. Call me later.  
Luv ya more!!!

Sent  
Tue Jan 22, 10:00 am

SEND CONT

# ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Jason Boney,  
S.C.D.C. No. 354029,

2014 AUG -5 P 12:08

BETH A. CARRIGG  
CLERK OF COURT  
Applicant  
LEXINGTON, SC)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

C.A. No. 2013-CP-32-1511

v.

State of South Carolina,

Respondent.

## ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 30, 2013. Respondent made its Return. An evidentiary hearing into the matter was convened on April 14, 2014 at the Lexington County Courthouse. Applicant was present and was represented by Anna R. Good, Esq. Respondent was represented by Assistant Attorney General Walt Whitmire.

## PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the October 2012 term of the Court of General Sessions for Lexington County for criminal sexual conduct with a minor, second-degree (2012-GS-32-2465). Assistant Public Defender Salley J. Henry represented Applicant. On January 22, 2013, Applicant pleaded guilty as indicted. The Honorable Clifton Newman sentenced Applicant to a term of imprisonment for ten (10) years. Applicant did not appeal his sentence or conviction.

At the PCR hearing, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
  - a. failure to submit Applicant for a mental evaluation;
  - b. failure to adequately apprise Applicant of the terms of the plea agreement and the constitutional implications of entering a guilty plea;
  - c. failure to present Applicant's mother and stepfather during the mitigation phase of the plea hearing;
  - d. failure to file a notice of appeal.
2. Involuntary Guilty Plea:
  - a. Applicant allegedly abused prescription medication and was incompetent to knowingly and voluntarily enter his guilty plea

BETH A. CARRIGG  
CLERK OF COURT  
LEXINGTON, SC

2014 AUG -5 P 12:04

FILED

### SUMMARY OF TESTIMONY AT THE PCR HEARING

WPK  
#2

Applicant testified he met with counsel on occasions prior to the plea hearing. He stated that the first meeting occurred in October of 2012. He stated they discussed proceeding to trial. He was provided a copy of discovery materials from counsel. He stated that he told counsel that he was suicidal. He stated that he bonded out of pre-trial detention during the pendency of his case. He stated that the next meeting with counsel occurred on the morning of his plea hearing. He stated that it was his impression he was attending a roll call appearance instead of entering a plea that day. Applicant recalled the events of the morning in an attempt to convince this Court that he was misled. He stated that he was initially unable to locate counsel. He stated he tried checking around. Court personnel allegedly informed him that his name was not on the roll call roster. He testified that the news surprised him. Upon further investigation, Applicant was informed by personnel from the Solicitor's Office that he was scheduled to plead guilty that day. He stated he contacted family and expressed his apprehension about the new development. He stated that he met counsel at 10:30 a.m. He expressed his concerns to counsel. He claims that they did not discuss his case, the charges, and the terms of plea agreement on this occasion. He

stated that counsel advised him to enter the plea. He stated that he was clothed in jeans and a t-shirt, and asserted that he would have dressed himself in nicer clothing had he known that he was proceeding to a plea hearing.

He opined that the stress and anxiety of the events that morning led him to abusing prescription medication. He stated that he originally took one Prozac pill, then another, followed by three more pills. His prescription to the medication for the relevant time period was moved into evidence. He speculated that as a result of his alleged drug abuse, he was unable to comprehend his discussions with counsel prior to the plea. He stated he could not comprehend his colloquy with the plea judge. He asserted that he felt "loopy" during the plea colloquy. He stated that he did not want to plead guilty.

*WHL*  
*#3*  
Applicant stated he attempted to phone his mother after the plea hearing. He stated the attempt failed and he was unable to inform his mother of his sentence. He stated that he discussed an appeal with counsel and directed her to file a notice of appeal. He stated that counsel assured him that if he desired an appeal, she would file the notice on his behalf.

Applicant's mother testified. She stated Applicant was living with her prior to the disposition of his charges. She claimed she tried contacting counsel for status updates on Applicant's case, but was not able to get information from the Public Defender's office. She stated that she was unaware Applicant was scheduled to plead guilty on January 22, 2013. Similar to Applicant, she stated that she was under the impression he was scheduled for a roll call appearance. Copies of incomplete phone records in the form of text messages between Applicant and his mother were offered into evidence. She stated that she learned that Applicant had been sentenced to imprisonment. She met counsel at the courthouse to collect Applicant's belongings and discovered that he drafted a note to her and placed it on the windshield of his

truck. She stated that she also secured Applicant's journal and various papers from his truck. She testified that Applicant is a wonderful son and a good father who was in the process of turning his life around prior to his current incarceration. She stated that she would have offered the same sentiment had counsel requested she address the plea judge during the mitigation phase of the hearing.

Applicant's step-father testified on his behalf. He described Applicant as a partial resident of his home. He stated that he made attempts to speak with counsel on the day of the representation. He stated his efforts fell short and that he was only able to speak an assistant he believed to be named Trish. Similar to his wife, he stated that he would have testified on Applicant's behalf during the mitigation phase of the plea hearing.

*WHL  
#4*  
Counsel testified to her course of conduct during the representation. She stated that she has worked with the Public Defender's office for nearly twenty years. She provided a brief chronology of her appointment and developments in Applicant's case. Applicant was arrested in July of 2012. Counsel's first interview with Applicant occurred in September, followed by an office consultation with Applicant in November. Counsel described the policies and procedures utilized by Circuit Public Defender Madsen in selecting attorneys for appointment. She also described her general procedures in conducting her initial meeting with a new client, which includes apprising the client of the nature of charge, his constitutional rights, and the maximum exposure to incarceration. At the initial meeting in this matter, Applicant informed counsel of his anxiety disorder. Ms. Henry indicated that she knew of the Applicant's emotional issues. Counsel asserted that a mental health evaluation was unnecessary, based upon her observations and interactions with Applicant. She noted that she has submitted clients for evaluation in past cases and would have done so in this case, if it would have appeared to be warranted. She also

stated that her understanding was that the Applicant was on bad terms with his mother and step-father during the representation. Sometime after he bonded out, his parents kicked him out of their home. As a result, she understood that the Applicant had been living out of his truck prior to the plea hearing. Counsel recalled receiving a letter from Applicant's mother and speaking to her during the representation. She noted that she would have obtained Applicant's expressed consent prior to releasing information to his mother regarding the case. Counsel has reviewed the call logs from the Public Defender's Office in anticipation of the hearing.

WPA  
#5  
Counsel stated that the Applicant told her of his version of the events that led to his arrest. She stated that he claimed he was entrapped by his common-law wife. He explained that his common-law wife had planned a feigned trip with the children and her friends in order to provide an opportunity to catch him committing adultery. The wife and her friends furtively followed Applicant to the victim's home and eventually observed Applicant commit adultery, which constituted criminal sexual misconduct with a minor.

Counsel stated that the case was not necessarily a plea from the beginning. She independently evaluated the State's evidence and developed an impression on the strength of the State's case. Yet, as the case developed, the Applicant decided he wanted to enter a guilty plea. She recalled plea negotiations with the solicitor and noted the solicitor was steadfast on pleading Applicant as indicted. Through the discovery of new inculpatory evidence that Applicant had engaged in sexual intercourse with the victim when she was even younger, counsel stated the solicitor was in the process of indicting Applicant on a new and more serious offense near the time of the plea hearing. As a result, Applicant decided to plead as indicted in order to avoid the prospect of more serious charges. Counsel stated the additional charge was ultimately *nol prosequi* after the plea hearing.

Counsel discussed the terms of the plea offer and the collateral consequences with the Applicant, including mandatory post-incarceration registry as a sex offender. As a matter of general procedure, counsel stated she does not typically discuss an appeal with a client in prior to a plea. She explained her confusion at the plea hearing regarding mandatory post-incarceration G.P.S. monitoring and that it resulted from new precedent concerning the length of monitoring. Counsel was adamant that she provided notice to the Applicant and that he was well aware that his case had been scheduled for a guilty plea on January 22, 2013. She stated convincingly that "clients just don't show up and plead." Counsel stated that Applicant provided her no reason to believe he was ambushed or off guard that morning that he scheduled to plead guilty. Similarly, Applicant's conduct that day gave her no reason to believe that he was intoxicated. Counsel testified that she requested a probationary sentence in her mitigation case. After the plea hearing, counsel met with Applicant's mother to provide her with his personal belongings

#### APPLICABLE LAW

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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must

overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, supra. 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.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

WJH  
#1  
This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, the Court finds that Applicant's testimony not to be credible when he asserts that he was not aware of what he was doing when he entered his plea, that he was coerced, and that he did not understand the process and his rights. Alleged statements about being suicidal were not enough to require evaluation. He failed to present sufficient evidence regarding Strickland's prejudice prong on the majority the allegations before the Court. No evidence was offered to show how abuse of Prozac would have hampered his cognition and

render his plea involuntary. He presented no medical personnel or pharmacist to allow the court to evaluate his claim that he was "loopy." The plea judge obviously saw nothing to raise a concern, nor did his attorney.

While it is understandable that relatives of a defendant want to know about the defendant's case, the discussions between an attorney and her client are generally confidential. Counsel gave a very reasonable explanation of why things would not be discussed with someone other than the Applicant, particularly where counsel understood there to be tension between the Applicant and his relatives. Applicant's Sixth Amendment protections do not extend to his mother and step-father. Counsel has no duty to communicate and apprise Applicant's parents of developments in the case.

A.

*WPA #8*  
Applicant failed to meet his burden to prove counsel was ineffective for not submitting him for a competency or criminal responsibility evaluation. Due process prohibits the conviction of an incompetent defendant, and this right may not be waived by a guilty plea. Lee v. State, 396 S.C. 314, 320; 721 S.E.2d 442, 446 (Ct. App. 2011). "The test of competency to enter a plea is the same as required to stand trial." The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." Lee v. State, 396 S.C. 314, 320; 721 S.E.2d 442, 446 (Ct. App. 2011) (internal citations and quotations omitted). "In order to find that petitioner's trial counsel was ineffective for refusing to request a Blair hearing on petitioner's competency to stand trial, petitioner must show that counsel was deficient and that the deficiency prejudiced the outcome of petitioner's proceedings." Matthews v. State, 358 S.C. 456, 459, 596 S.E.2d 49, 50-51 (2004). To show "prejudice within the context of counsel's failure to fully

investigate the petitioner's mental capacity, the [petitioner] need only show a reasonable probability that he was either insane at the time [the crime was committed] or incompetent at the time of the plea." Matthews, 358 S.C. at 459, 596 S.E.2d at 50.

This Court finds Applicant did not present sufficient evidence to overcome counsel's credible testimony. In adjudicating credibility here, this Court notes counsel's ample experience representing criminal clients. Furthermore, Applicant notably did not indicate that his mild disclosed psychological disorder impacted the disposition of his prior conviction. It is impractical to impose a *per se* duty on a criminal defense attorney to submit a client for an evaluation when the client has previously received mental health treatment or projects mood affectations reasonably associated with one having to cope with the prospect of conviction and incarceration. Regardless, the allegation rests upon mere speculation where Applicant has failed to produce expert testimony and findings regarding competency or criminal responsibility. See Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR."). Therefore, this allegation is denied and dismissed.

B.

Applicant failed to meet his burden to prove counsel was ineffective for failing to adequately apprise Applicant of the terms of the plea agreement and the constitutional implications of entering a plea. "A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). Dalton v. State, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). "An applicant

may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness." Porter, 368 S.C. at 383–84, 629 S.E.2d at 356.

The credible evidence is that counsel apprised the Applicant about the elements of the offense and his sentencing exposure from the outset of the representation. Noting that Applicant pleaded as indicted, without recommendation or negotiations, Applicant received sound advice here. Applicant has not presented any credible evidence to the contrary. Furthermore, Applicant has failed to meet Strickland's prejudice prong. Counsel testified credibly that Applicant was primarily induced to enter a guilty plea in January of 2013 in hopes of avoiding exposure to more serious charges and the strength of the case against him. Therefore, this allegation is denied and dismissed.

WPH  
#10

Similarly, the allegation that counsel was ineffective in failing to adequately advise him of the collateral consequences of his conviction is without merit. "The imposition of a sentence may have a number of collateral consequences ... and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences." Brown v. State, 306 S.C. 381, 382, 412 S.E.2d 399, 400 (1991). "Refusing to invalidate a plea where the court had failed to advise the defendant that he might be civilly committed, even though commitment flowing from the crime he committed was, for all intents and purposes, automatic." Page v. State, 364 S.C. 632, 638, 615 S.E.2d 740, 742 (2005) (citing Cuthrell v. Director, 475 F.2d 1364, 1366–67 (4th Cir.1973). Regardless, counsel advised Applicant on mandatory registry as a sex offender. Applicant has not shown that counsel provided inaccurate advice on the matter. See Smith v. State, 329 S.C. 280, 283, 494 S.E.2d 626, 628 (1997) ([I]f the defendant's attorney undertakes to advise the defendant about parole eligibility and gives

erroneous advice, then the plea may be collaterally attacked.”). The allegation that counsel’s confusion over the prospect of lifetime G.P.S. monitoring at the plea hearing constituted deficient performance is facially without merit. See State v. Dykes, 403 S.C. 499, 744 S.E.2d 505 (2013) (“[S]tatutory requirement of lifetime monitoring without judicial review related to an assessment of risk of reoffending violates due process.”). There has been no proof that the confusion demonstrated in the plea transcript created prejudice to the Applicant.

C.

Applicant failed to prove counsel was ineffective for failing to present his mother and step-father in mitigation at the plea hearing. A defendant has a right to counsel at sentencing. Jones v. United States, 783 F.2d 1477, 1482 (9th Cir. 1986). Counsel’s failure to introduce family mitigating evidence at sentencing in this non-capital case has not been shown to be likely to change the outcome, so no prejudice has been shown. Jackson v. Roth, 24 F.3d 1002 (7th Cir. 1994). This Court’s finds that counsel’s reasoning that Applicant’s parents would not have been favorable mitigation witnesses at sentencing was valid in light of the particular circumstances here. At a minimum, counsel performed within the accepted parameters of competence in assessing the benefit versus harm that might be derived from having these relatives speak on the Applicant’s behalf at the plea. See Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993) (“This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial.”). Applicant’s prejudice argument was entirely speculative in light of the fact that Applicant was a recidivist sexual offender. (Plea Tr. pp.6-7). See Garrett v. State, 320 S.C. 353, 465 S.E.2d 349 (1995) (A trial judge is allowed broad discretion in sentencing within statutory limits.). Applicant’s mother and step-father have demonstrated in their PCR testimony that anything they might have offered at sentencing would

WSP  
#11

be basic character testimony, and there is no proof that this would have been likely to have changed the outcome of the proceedings.

D.

Applicant failed to meet his burden to prove counsel was ineffective for failing to file a notice of appeal on his behalf. “[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.”

Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000).

Although counsel testified she typically does not advise a client on an appeal prior to a plea hearing, Applicant testified they discussed the matter. This Court does not find the Applicant’s testimony to be credible. Counsel testified credibly about her diligence in this regard. See Burt v. Titlow, 134 S. Ct. 10, 17, 187 L. Ed. 2d 348 (2013) (“It should go without saying that the absence of evidence cannot overcome the ‘strong presumption that counsel’s conduct [fell] within the wide range of reasonable professional assistance’ ”). Therefore, this allegation is denied and dismissed.

E.

Applicant has failed to prove his alleged abuse of Prozac rendered his plea involuntary. A guilty plea may not be accepted unless it is voluntarily and understandingly made. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969). “The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him.” Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). This Court finds this allegation suspect in light of the plea judge

accepting the plea and Applicant's silence on the matter at the plea hearing. This Court finds counsel's testimony that Applicant did not demonstrate alarming conduct on the day of his plea to be credible. Applicant offered his Prozac bottle as an exhibit. The fact that the bottle is five pills short and that he testified that he took five pills that morning, even if true, does not constitute sufficient evidence that Applicant did not understand what he was doing. There was no expert testimony about what impact taking five Prozac pills over the period of time involved in this case would have had upon the Applicant, so the court is left to speculate. There is no evidence about post-plea effects of an alleged overdose.

WAK #13  
As to the testimony and text messages concerning the Applicant's lack of prior knowledge about the purpose of the court date, the Applicant bears the burden of proof to show that there was deficient performance of counsel that prejudiced him under the Strickland definition. Even if the Applicant and his mother were under the false assumption that Applicant was only at court for a roll call appearance on January 22, 2013, that does not demonstrate deficient performance of counsel. The reason he came to court is not determinative of whether his guilty plea was entered in violation of Boykin v. Alabama.

Regardless, Applicant has failed to meet Strickland's prejudice prong. As previously stated, the Applicant has provided no credible scientific evidence that the ingestion of five Prozac pills rendered him incompetent to knowingly and voluntarily plead guilty. Furthermore, this Court notes Applicant addressed the plea judge in an intelligent and cogent manner indicative of a person of sound mind. His attorney testified that she saw no reason for concern as to his competency at the time of the plea. Therefore, this allegation is denied and dismissed.

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BETH A. CARRIG  
CLERK OF COURT  
LEXINGTON, SC

F.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

#### CONCLUSION

WAL #14  
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

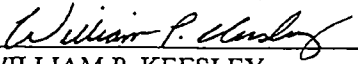
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

#### IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 29<sup>th</sup> day of May, 2014.

  
WILLIAM P. KEESLEY  
Presiding Judge  
Eleventh Judicial Circuit

Edgefield, South Carolina

FILED  
2014 AUG -5 P 12:10  
BETH A. CARINGG  
CLERK OF COURT  
LEXINGTON, SC

#15

WITNESSES

Lexington County Sheriffs Department

S. Grant

Law Enforcement Case #: 12012021

KWU

ARREST WARRANT NUMBER

M304670

DOCKET NO. 2012-GS-32-02465

**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2012

THE STATE

vs.

Jason Cooke Boney

ACTION OF GRAND JURY

**RETURN**

Foreperson of Grand Jury

Date: 10/1/2012

VERDICT

CDR #: 0397

Indictment for

Criminal Sexual Conduct with a Minor, 2nd  
Degree

§ 16-03-0655(B)(2)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

|                         |   |                                           |
|-------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | INDICTMENT FOR                            |
|                         | ) | Criminal Sexual Conduct with a Minor, 2nd |
| COUNTY OF LEXINGTON     | ) | Degree                                    |
|                         | ) |                                           |
|                         |   | § 16-03-0655(B)(2)                        |

At a Court of General Sessions, convened on October 2012, the Grand Jurors of Lexington County present upon their oath:

That **Jason Cooke Boney** did in Lexington County, South Carolina on or Between September 1, 2009 and June 30, 2012, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree

(1) by engaging in sexual battery with a minor who was fourteen (14) years of age or less but who was eleven (11) years of age; or

(2) by engaging in a sexual battery with a minor who is at least fourteen (14) years of age but who was less than sixteen (16) years of age, and the Defendant was in a position of familial, custodial, or official authority to coerce the victim to submit or was older than the victim,

to wit: engaging in sexual intercourse, to include vaginal intrusion and/or fellatio, upon Minor \_\_\_\_\_, date of birth \_\_\_\_\_; in violation of Section 16-3-655(B)(2), [formerly 16-3-655(3)] S.C. Code of Laws, 1976, as amended.

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

  
 ASSISTANT SOLICITOR