

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2014-002270

RECEIVED

MAR 02 2015

S.C. Supreme Court

KEVIN BRADLEY, 339031,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

VOLUME I OF II

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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ATTORNEY FOR PETITIONER.

ATTORNEYS FOR RESPONDENT.

Kevin Bradley
Appellate Case 2014-002270
On the 2013 PCR Docketed at 2013-CP-45-00098
Indictment No. 2010-GS-45-30

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¹ Applicant originally filed a timely post-conviction relief application (Case No. 2010-CP-45-389) on September 29, 2010. In this original application, Applicant raised various allegations stemming from both Indict #2009-GS-45-249 and Indict # 2010-GS-45-030. Applicant filed an Amendment to that application on June 13, 2012. Due to the fact that both of these indictments are completely unrelated, the State requested PCR Counsel to file a separate PCR Application for Indictment #2010-GS-45-030. Subsequently, PCR Counsel filed a new PCR Application (Case NO. 2013-CP-45-098) for Indictment #2010-GS-45-030 on February 25, 2013)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF WILLIAMSBURG	)	
	)	
THE STATE	)	JANUARY 28, 2010
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
KELVIN BRADLEY,	)	2010-GS-45-30
	)	
DEFENDANT.	)	

BEFORE

THE HONORABLE CLIFTON NEWMAN

APPEARANCES

KIMBERLY BARR, ESQUIRE
ATTORNEYS FOR THE STATE

WILLIAM L. CARRAWAY, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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THE STATE VERSUS KELVIN BRADLEY

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1 MS. BARR: Your Honor, if it pleases the court, the
2 case before you is The State versus Kelvin Bradley. Your
3 Honor, this is an Indictment for Criminal Sexual Conduct
4 with a minor in the second degree.

5 Mr. Bradley wishes to enter a guilty plea. He waives
6 presentment to that charge to the Grand Jury. He is
7 represented at this time by Mr. Carraway.

8 THE COURT: All right. Mr. Bradley, do you want to
9 plead guilty to criminal sexual conduct with a minor second
10 degree?

11 MR. BARDLEY: That's correct, Your Honor.

12 THE COURT: Are you guilty of this crime?

13 MR. BARDLEY: Yes, Your Honor.

14 THE COURT: And do you understand that this offense
15 is classified under the law as being a most serious offense?

16 MR. BARDLEY: Yes, Your Honor.

17 THE COURT: And do you understand that if you commit
18 two or more most serious offenses you can be sentenced to
19 life without the possibility of parole?

20 MR. BARDLEY: Yes, Your Honor.

21 THE COURT: And you were convicted of two most
22 serious offenses yesterday, last night. And the state is
23 presenting this as if there is no prior conviction?

24 MS. BARR: Yes, sir, Judge.

25 THE COURT: So, do you understand that the possible

THE STATE VERSUS KELVIN BRADLEY

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1 penalty for this offense is up to twenty years in prison?

2 MR. BARDLEY: Yes, Your Honor.

3 THE COURT: Do you understand that you have this
4 case first presented to the Grand Jury of Williamsburg
5 County?

6 MR. BARDLEY: Yes, sir, Your Honor.

7 THE COURT: And do you understand that you have a
8 right to have a jury trial in this case, just as you had on
9 your other case?

10 MR. BARDLEY: Yes, Your Honor.

11 THE COURT: Do you understand that if you were to
12 have a jury trial, you would have a right to remain silent.
13 You would have the right to have Mr. Carraway, your lawyer,
14 cross examine any witnesses who may testify against you to
15 challenge any of the state's evidence. To bring in any
16 witnesses that you might have, and that you cannot be found
17 guilty unless the jury was convinced beyond a reasonable
18 doubt, based on the law and the evidence that you were
19 guilty?

20 MR. BARDLEY: Yes, Your Honor.

21 THE COURT: Do you want to give up each and every
22 one of those rights, and enter this guilty plea?

23 MR. BARDLEY: Yes, Your Honor.

24 THE COURT: Has anyone promised you anything to get
25 you to plead guilty?

THE STATE VERSUS KELVIN BRADLEY

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1 MR. BARDLEY: No, Your Honor.

2 THE COURT: Are you satisfied with the services of
3 your lawyer, Mr. Carraway in this case?

4 MR. BARDLEY: Yes, Your Honor.

5 THE COURT: Has he talked with you long enough and
6 in detail enough in your mind to accurately and fully
7 represent you in this guilty plea?

8 MR. BARDLEY: Yes, Your Honor.

9 THE COURT: And Mr. Carraway are you in agreement
10 with the guilty plea?

11 Mr. CARRAWAY: I am, Your Honor.

12 THE COURT: And, Mr. Bradley, tell me what you did
13 that makes you guilty of this charge?

14 MR. BARDLEY: Um, I had sex with a minor.

15 THE COURT: And what minor was that?

16 MR. BARDLEY: ~~REDACTED~~ VICTIM

17 THE COURT: ~~REDACTED~~? VICTIM

18 MR. BARDLEY: That's correct, Your Honor.

19 THE COURT: And how old is she?

20 MR. BARDLEY: I don't know her age.

21 THE COURT: You don't know her age?

22 MR. BARDLEY: No, sir.

23 THE COURT: How old do you believe she is?

24 MR. BARDLEY: Thirteen or fourteen.

25 THE COURT: Thirteen or fourteen?

THE STATE VERSUS KELVIN BRADLEY

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1 MR. BARDLEY: Yes, sir.

2 THE COURT: And at the time that you committed this
3 crime, did you understand that you were breaking the law?

4 MR. BARDLEY: Yes, Your Honor.

5 THE COURT: And today are you under the influence of
6 any drugs, alcohol, medication of any other sort or anything
7 else that would prevent you from fully understanding what
8 you are doing?

9 MR. BARDLEY: No, Your Honor.

10 THE COURT: And you want to plead guilty?

11 MR. BARDLEY: Yes, Your Honor.

12 THE COURT: And do you understand that the sentence
13 that you received last night for the one crime that this is
14 a totally separate Indictment in which you face a totally
15 separate sentence?

16 MR. BARDLEY: Yes, Your Honor.

17 THE COURT: All right. Has there been any plea
18 negotiations in this case?

19 MS. BARR: No, Your Honor.

20 THE COURT: Is that right, Mr. Carraway?

21 MR. CARRAWAY: That's correct.

22 THE COURT: Is that right, Mr. Bradley?

23 MR. BARDLEY: Yes, sir.

24 THE COURT: There has been plea negotiations?

25 MR. BARDLEY: No, no, no, I'm sorry.

THE STATE VERSUS KELVIN BRADLEY

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1 THE COURT: No plea negotiations. And that is
2 reflected on the plea form that you signed that says, the
3 plea is without negotiations or recommendations; is that
4 right?

5 MR. BARDLEY: That's correct, Your Honor.

6 THE COURT: And, you waive presentment to the Grand
7 Jury, as you have indicated by your initials as well; is
8 that right?

9 MR. BARDLEY: Yes, Your Honor.

10 THE COURT: Understanding the nature of the charge
11 and the possible punishment then, how do you plea?

12 MR. BARDLEY: Guilty, Your Honor.

13 THE COURT: All right. Mr. Barr.

14 MS. BARR: Your Honor, if it please the court. This
15 case came to the attention of law enforcement in August of
16 2009. The victim on the case that we tried and concluded on
17 yesterday was asked at the Durant Center whether or not the
18 defendant had committed a similar crime against any other
19 victims. And she told the forensic interviewer that a
20 friend of hers by the name of --- the name that he called
21 had a baby with ~~CHILD~~. And apparently, the young lady,
22 once her name was given was interviewed by law enforcement.
23 Her date of birth is ~~REDACTED~~, 1993. And, when I noticed in
24 the incident report her name, I remembered her name because
25 I actually had a case with her in DJJ Court where she was

THE STATE VERSUS KELVIN BRADLEY

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1 charged with not going to school. So, I pulled that old
2 file, and that case the DJJ case was in 2008. And according
3 to the case file required that she be evaluated prior to her
4 disposition. So, when I pulled the community evaluation
5 report and indicated at that time she was fifteen years old.

6 And she had a child who was between the age of one and two
7 years of age. And, she told the evaluator in 2008 that the
8 father of her child was Kelvin Bradley. Her mom who was
9 also interviewed, and her mom said that she did not realize
10 that Kelvin was as old as he was. In her words, he looks
11 just like a kid. I thought he was maybe about fifteen or
12 sixteen when he was coming around to see my daughter. The
13 child indicated that she was aware of how old he was. That
14 he was in ROTC in High School, and he was then in 2008 in
15 Army Reserves. She told the evaluator that he has twins
16 with a girl, and that girl is pregnant again with his child.
17 And she kind of just talked about that type of situation.

18 Judge, apparently after this girl named him as the
19 father she was receiving services through The Department of
20 Social Services. And they were required to pursue child
21 support/paternity against the defendant. A paternity test
22 was in fact done, and he was excluded as being the
23 biological father of her child.

24 Our office, through the Police Department spoke with
25 **VICTIM**'s mom on Monday, when we thought it was going to be

THE STATE VERSUS KELVIN BRADLEY

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1 a guilty plea. We told her she had the right to be there,
2 and she did not want to be there.

3 In addition, Officer Hamlet went to the school and
4 spoke with the young lady this morning. And she wrote out a
5 statement indicating her name and says.

6 "Judge, I just wanted to say that me and
7 Kelvin did have sex, and we use to talk, but he
8 was a good person and he never had to take
9 anything from me. I just wanted to say that I
10 don't want nothing to do with this situation. So,
11 if you can drop the charges on Kelvin Bradley,
12 that would be good, because --- well to me he
13 never harmed anyone not that I know of. So can
14 you please drop the charges against him."

15 And that is the extent of what she had to say as far as
16 that was concerned.

17 THE COURT: All right.

18 MS. BARR: And we believe based on the time that her
19 child was born that the sexual relationship would have
20 occurred, and she was approximately thirteen, and he was
21 either seventeen or eighteen.

22 THE COURT: Do you dispute and disagree with
23 anything that the Solicitor said, Mr. Bradley?

24 MR. BARDLEY: No, sir, Your Honor.

25 THE COURT: Do you agree with everything that she

THE STATE VERSUS KELVIN BRADLEY

10

1 said?

2 MR. BARDLEY: Yes, sir.

3 THE COURT: All right. I will accept the guilty
4 plea, and Mr. Carraway.

5 MR. CARRAWAY: Your Honor, as Kelvin told you he is
6 twenty-three years old. I got to know Kelvin about two
7 years ago. And I dealt with him on a civil matter or
8 whatever. And he is a very intelligent guy. He is a nice
9 guy. He is in the ROTC. Every time he is just as polite as
10 can be. He is always present. He is always curious. I
11 have always enjoyed talking with him every time I have met
12 him. I know his mom and dad. They have come by my officer
13 or whatever. And I would just ask you to be as lenient as
14 you possibly can with Kelvin, and would ask that you
15 consider a concurrent sentence for Kelvin, for whatever time
16 he gets for this to run concurrent. As I understand it, a
17 twenty-five year sentence was imposed on him by way of a
18 guilty verdict last night.

19 THE COURT: Mr. Bradley?

20 MR. BARDLEY: If you can Your Honor, I ask that you
21 too have mercy upon me, and run my sentence concurrently
22 with my other sentence from last night.

23 THE COURT: All right. This is a separate victim,
24 a separate crime; why is that?

25 MR. BARDLEY: Because by the length of time I am

THE STATE VERSUS KELVIN BRADLEY

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1 sentenced Your Honor, it's a pretty long time.

2 Your Honor, as I said last night, I understand now that
3 what I have done is wrong, Your Honor. But, Your Honor,
4 there is nothing possible I could do. I can't possibly take
5 any of it back. I am just asking that you have mercy upon
6 me today. To run these concurrent with my other sentence I
7 had last night, Your Honor. So I can maybe learn from this,
8 come home, and see my kids, Your Honor.

9 THE COURT: Mr. Barr?

10 MS. BARR: Judge, nothing else from the state.

11 THE COURT: Well, Mr. Bradley, at this point there
12 is not much point in worrying about you. My concern is the
13 effects of which you did and what will be your legacy that
14 you will have left behind once you go off to prison. We can
15 count up what that is. You have four children, two of them
16 are by different women. The one that you have three
17 children by, she says you all started relations when she was
18 fifteen. You have one girl that you had sex with at ten,
19 got pregnant at eleven. Another girl who age you don't know
20 how old she was. So how did you start having sex with her?

21 MR. BARDLEY: Your Honor, at that time I was still in
22 school, Your Honor. And I went to school. I was young. I
23 think I was in the tenth grade or maybe the eleventh grade
24 at the time, Your Honor. To be honest with you, Your Honor,
25 I was just young and foolish.

THE STATE VERSUS KELVIN BRADLEY

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1 THE COURT: That is your excuse?

2 MR. BARDLEY: Yes, Your Honor.

3 THE COURT: All right. Mr. Bradley, the sentence of
4 the court is that you be sent to The State The Department of
5 Corrections for five years. And the sentence is to run
6 consecutive to the sentence that your received the
7 Indictment, what is the case number of that?

8 MS. BARR: 09-249.

9 THE COURT: 09-240. The sentence is consecutive.
10 Good luck to you.

11 -- END OF TRANSCRIPT --

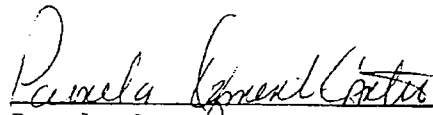
CERTIFICATE OF REPORTER

13

I, the undersigned Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the above captioned case, relative to appeal, in the court of General Sessions for Williamsburg County South Carolina on the 28th day of January 2010.

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

June 8, 2012


Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
2010-CP-45-389

KEVIN C. BRADLEY, #339031)
Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

**APPLICATION FOR
POST-CONVICTION RELIEF**

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Williamsburg County General Sessions Court
3. Name(s) of co-defendant(s) (if any) : N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) 2009-GS-45-0249 Criminal Sexual Conduct with Minor- First Degree
- (b) 2009-GS-45-0249 Criminal Sexual Conduct with Minor, Second Degree
- (c) 2010-GS-45-030 Criminal Sexual Conduct with Minor, Second Degree

Carolyn E. Williams
CAROLYN E. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 27, 2010- Twenty-Five (25) years concurrent.
 - (b) January 27, 2010 - Twenty (20) years concurrent.
 - (c) January 28, 2010 - Five (5) years consecutive to sentence imposed on Indictment No. 2009-GS-45-0249.
6. Check whether a finding of guilty was made
- (a) after a plea of guilty Yes Indictment No. 2010-GS-45-030.
 - (b) after a plea of not guilty Yes Indictment No. 2009-GS-45-249.
 - (c) after a plea of nolo contendere _____
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

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Carolyn E. Williams
 CAROLYN E. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) N/A

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

(a) The Applicant received Ineffective Assistance of Counsel prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) Trial counsel deprived the Applicant of his right to a direct appeal by failing to file a Notice of Appeal on his behalf following his jury trial on Indictment No. 2009-GS-45-0249.

(c) The Applicant's plea of guilty on Indictment No. 2010-GS-45-30 was not voluntarily and intelligently entered.

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

(a) Counsel failed to provide client effective assistance of counsel prior to and during his trial proceeding. Inasmuch as Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of the Applicant's trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal. .

(b) Trial counsel neglected to file a direct appeal for the Applicant and the Applicant did not knowingly waive his right to a direct appeal.

(c) The Applicant pleaded guilty on his 2010 indictment without being fully advised of his right to appeal the judgments and sentences entered against him the previous day.

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

(a) any petitions in a State Court under South Carolina law? n/a CAROLYN E WILLIAMS

CLERK OF COURT

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions 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 know, citations of any written opinions or orders entered pursuant to each such disposition:

i. n/a

ii. n/a

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 CAROLYN E. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

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? NO

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(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

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Carolyn E. Williams
CAROLYN E. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

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. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503.
- ii. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503
- iii. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii.

iii. _____

19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial on all charges.

20. Are you now under sentence from any other court that you have not challenged? no

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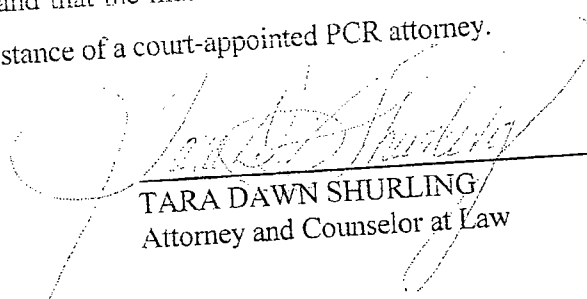
Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

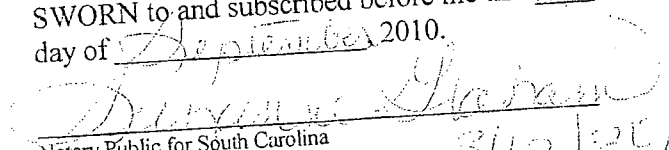
STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

VERIFICATION

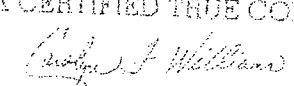
I, Tara Dawn Shurling, retained counsel for the Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 28th
day of September 2010.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

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CAROLYN F WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

KEVIN C. BRADLEY, #339031)
 Applicant,)
)
 v.)
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

2010-CP-45-389

**AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF**

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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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Williamsburg County General Sessions Court
3. Name(s) of co-defendant(s) (if any) : N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009-GS-45-0249 Criminal Sexual Conduct with Minor- First Degree
 - (b) 2009-GS-45-0249 Criminal Sexual Conduct with Minor, Second Degree
 - (c) 2010-GS-45-030 Criminal Sexual Conduct with Minor, Second Degree

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 27, 2010- Twenty-Five (25) years concurrent.
 - (b) January 27, 2010 - Twenty (20) years concurrent.
 - (c) January 28, 2010 – Five (5) years consecutive to sentence imposed on Indictment No. 2009-GS-45-0249.
6. Check whether a finding of guilty was made
- (a) after a plea of guilty Yes Indictment No. 2010-GS-45-030.
 - (b) after a plea of not guilty Yes Indictment No. 2009-GS-45-249.
 - (c) after a plea of nolo contendere _____
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) N/A

(b) N/A

(c) N/A

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

(a) The Applicant received Ineffective Assistance of Counsel prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) Trial counsel deprived the Applicant of his right to a direct appeal by failing to file a Notice of Appeal on his behalf following his jury trial on Indictment No. 2009-GS-45-0249.

(c) The Applicant's plea of guilty on Indictment No. 2010-GS-45-30 was not voluntarily and intelligently entered.

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

(a) Counsel failed to provide client effective assistance of counsel prior to and during his trial proceeding. Inasmuch as Counsel failed to recognize errors which occurred during his trial, and therefore failed to make appropriate objections, and supporting legal arguments relating thereto. Counsel's failure to make these objections may have changed the outcome of the Applicant's trial and deprived him of the opportunity to have these issues addressed on their merits on direct appeal. .

(b) Trial counsel neglected to file a direct appeal for the Applicant and the Applicant did not knowingly waive his right to a direct appeal.

(c) The Applicant pleaded guilty on his 2010 indictment without being fully advised of his right to appeal the judgments and sentences entered against him the previous day.

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

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions 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 know, 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? NO

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(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. Richard Strobel, Esquire, P. O. Box 349, Florence, SC 29503.

ii. William LeGrand Carraway, 124 South Academy St., Kingstree, SC 29556

iii.

(b) the proceedings at which each such attorney represented you:

i. 2009 Charges Trial Date of January 25- 27, 2010 and Sentencing

ii. 2010 Charge. plea after trial.

iii. _____

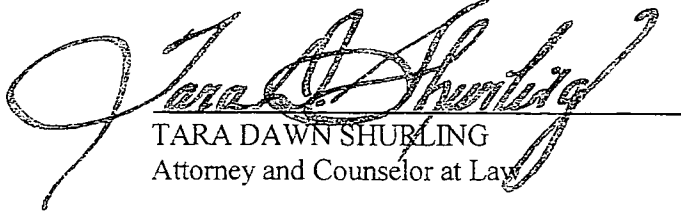
19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial on all charges.

20. Are you now under sentence from any other court that you have not challenged? no

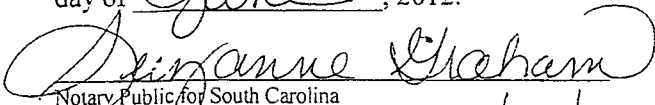
STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

VERIFICATION

I, Tara Dawn Shurling, *retained* counsel for the Applicant, 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. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 5th
day of June, 2012.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

FILED
12 JUN 12 AM 11:55
CLERK OF COURT
WILLIAMSBURG, S.C.

19 CP45 09 8

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS

KEVIN C. BRADLEY, #339031)
 Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

**APPLICATION FOR
 POST-CONVICTION RELIEF**

FILED
 13 FEB 25 PM 4:35
 SHARPE, J. CLERK OF COURT
 KINGSTREE, SC

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: Lee Correctional Institution, 990 Wisacky Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Williamsburg County General Sessions Court, 125 West Main Street, Kingstree, SC 29556
3. Name(s) of co-defendant(s) (if any) : N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2010-GS-45-030 Criminal Sexual Conduct with Minor, Second Degree
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 28, 2010 – Five (5) years consecutive to sentence imposed on Indictment No. 2009-GS-45-0249.

6. Check whether a finding of guilty was made
- (a) after a plea of guilty Yes Indictment No. 2010-GS-45-030.
- (b) after a plea of not guilty.
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? 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) N/A
- (b) N/A

(c) N/A

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

(a)) The Applicant received Ineffective Assistance of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) The Applicant's plea of guilty were not voluntary and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

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

(a) Counsel failed to provide client effective assistance of counsel prior to and during his guilty pleas proceeding. The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation.

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

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions 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 know, 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? Yes

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

(a) which grounds have been presented:

i. The Applicant received Ineffective Assistance of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

ii. The Applicant's plea of guilty were not voluntary and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

iii. n/a

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

i. PCR Application docketed at 2010-CP-45-0389 which addressed allegations concerning the Applicant's jury trial on January 27, 2010, on Indictment No. 2009-GS-45-0249 and allegations concerning subsequent plea on Indictment No. 2010-GS-45-030, on January 28, 2010. PCR Counsel has subsequently been advised that allegations concerning the judgment and sentence from the January 28, 2010 plea need to be addressed in a separate PCR application. Counsel for the Respondent has agreed not to assert the Statue of Limitations found at S.C. Code Ann. § 17-27-45 (A) as a time bar to this application in light of the Applicant's previous timely filing.

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(b) _____

(c) _____

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

(a) your arraignment and plea?

(b) your trial, if any?

(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. William L. Carraway, Esquire, 124 South Academy St. Kingstree, SC 29556.

(b) the proceedings at which each such attorney represented you:

i. Guilty Plea Proceeding.

ii.

iii. _____

19. State clearly the relief you seek in filing this application. Vacation of judgment and sentence. Applicant seeks a new trial on this charge

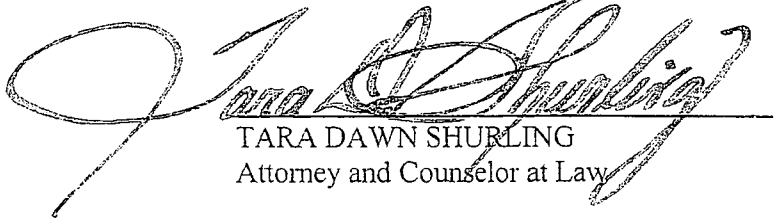
20. Are you now under sentence from any other court that you have not challenged? no

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

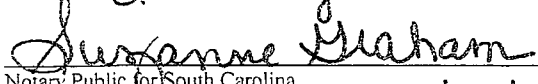
VERIFICATION

FILED
13 FEB 25 PM 4:35
SHARON W. STAGGERS
CLERK OF COURT
KINGS ISLE, S.C.

I, Tara Dawn Shurling, retained counsel for the Applicant, 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. The Applicant *does not* desire the assistance of a court-appointed PCR attorney.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 21ST
day of February 2013.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2013-CP-45-098

RETURN

V.

Respondent.

L.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

1 of 4

Department of Corrections, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "The Applicant received Ineffective Assistance of Counsel Prior and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution."
 - a. "Counsel failed to provide client effective assistance of counsel prior to and during his trial proceeding. The Applicants plea of were coerced by Counsels failure to provide adequate representation.
2. "The Applicant's plea of guilty was not voluntary and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel."

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, SCRCP.

III.

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, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 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. 668. 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. 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

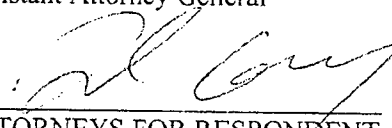
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

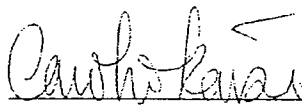
October 28, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
	)	
	)	2013-CP-45-098
	)	
KEVIN C. BRADLEY, #339031,	)	
	)	
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:

Tara Dawn Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive
Suite A
Columbia, SC 29204

DATED this 28th day of October, 2013.



Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF WILLIAMSBURG)

KEVIN C. BRADLEY, #339031)
 Applicant,)

2013-CP-45-098

v.)

**SECOND AMENDED APPLICATION
 FOR POST-CONVICTION RELIEF**

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

The Post-Conviction Relief Application previously filed on September 29, 2010 under docket number 2010-CP-45-389 and amended on February 25, 2013 is hereby amended to include the following additional allegations:

1. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the results of DNA testing had confirmed that the Applicant was not the father of a child conceived by the victim.

2. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the victim was not cooperating with the prosecution of the charges against he Applicant.

3. Plea Counsel was ineffective for neglecting to interview **VICTIM** concerning these charges where her original accusation against Applicant, that he had impregnated her, had been proved false by DNA testing.

4. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without discussing with him the ways in which the forensic evidence in this case, specifically the DNA test results, could be used to impeach the credibility of the victim's claims against the Applicant.

5. Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.

6. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30.

7. The Plea Court erred in accepting the Applicant's plea of guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly protested his guilt on the record during the plea proceeding.

8. Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.

9. Plea Counsel was ineffective for failing to discuss with the Applicant the potential use of character witnesses to testify in the Applicant's behalf if he went to trial by jury; specifically Sgt. Robert McClary, Debra Black, Manager at Skyes in Kingstree, South Carolina, Sgt. Staggers, employed with the 1052nd Transportation Company Army National Guard, and Frederick Davis of the Kingstree Police Department.

10. Plea Counsel was ineffective for failing to interview Joshua Edwards as a potential witness for the Applicant and failing to discuss with the Applicant the manner in which Joshua Edwards could be used as a defense witness if the Applicant proceeded to trial by jury where said witness was charged with and convicted for criminal sexual conduct relating to the victim in Applicant's Indictment No. 2010-GS-45-30: *Victim*

11. Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and for failing to fully explain to the Applicant his right to object to such an amendment.

12. Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.

13. Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a potential life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for a life without parole

201

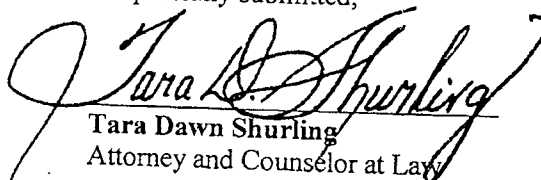
sentence pursuant to S.C.Code Ann. § 17-25-45 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until 2007.

14. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of Criminal Sexual Conduct with a Minor involving *victim*, the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.

15. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters.

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his guilty plea proceeding in the Court of General Sessions. Copies of these amendments have been served on opposing counsel, Daniel Gourley, Assistant Attorney General, and Plea Counsel for the Applicant, William LeGrand Carraway, Esquire.

Respectfully submitted,


Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT

This 20th day of May, 2014.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF WILLIAMSBURG)

KEVIN C. BRADLEY, #339031)

Applicant,)

2013-CP-45-098

v.)

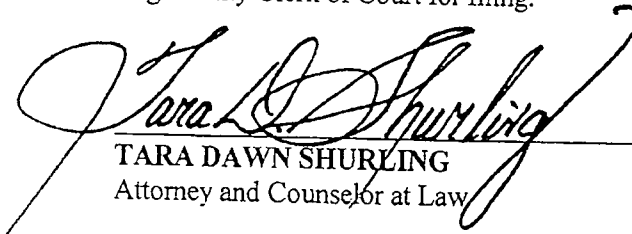
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

The undersigned attorney hereby certifies that a true copy of the Second Amended Post-Conviction Relief Application in the above matter has been faxed and hard copy by mail on this 20th day of May, 2014 to:

William LeGrand Carraway, Esquire
 124 South Academy Street
 Kingstree, SC 29556

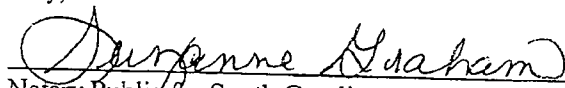
The original having been sent to the Williamsburg County Clerk of Court for filing.


 TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 20th day of
 May, 2014.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/2024

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF WILLIAMSBURG)

KEVIN C. BRADLEY, #339031)

2013-CP-45-098

Applicant,)

v.)

CERTIFICATE OF SERVICE

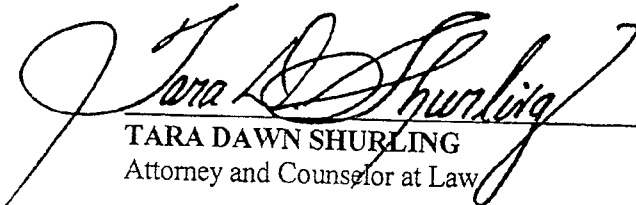
THE STATE OF SOUTH CAROLINA,)

Respondent.)

The undersigned attorney hereby certifies that a true copy of the Second Amended Post-Conviction Relief Application in the above matter has been faxed and hard copy by mail on this 20th day of May, 2014 to:

Daniel F. Gourley
 Assistant Attorney General
 P. O. Box 11549
 Columbia, SC 29211

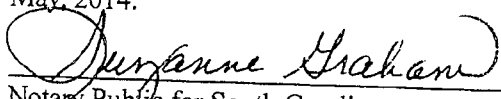
The original having been sent to the Williamsburg County Clerk of Court for filing.


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ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 20th day of
 May, 2014.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/2024

44

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG
STATE VS.

KEVIN BRADLEY,

AKA:

Race: Black

Sex: Male

Age: 20

DOB: 1989

SS#:

Address: [REDACTED]

City, State, Zip:

Kingstree, SC 29556

DL# [REDACTED]

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2010-GS-45-30

A/W#: M-170251

Date of Offense: October 1, 2006

S.C. Code §: 16-3-655 (B) (1)

CDR Code #: 0 / 3 / 9 / 6

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

in violation of § 16-3-655 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury, ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. (Defendant initial)

ATTEST:


Solidator
Defendant
Attorney for Defendant #1357WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 ~~years~~ months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and
assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department
of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2009-GS-45-249☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____Payment Terms:
☐ set by SCDPPPS

SPECIAL CONDITIONS:

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

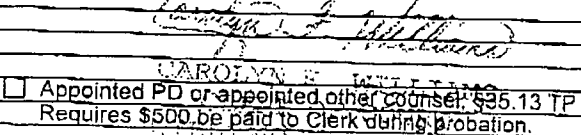
Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____


CAROLYN E. WILLIAMS
☐ Appointed PD or appointed other counsel: §35.13 TP
Requires \$500. be paid to Clerk during probation.

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL


Clerk of Court/ Deputy Clerk

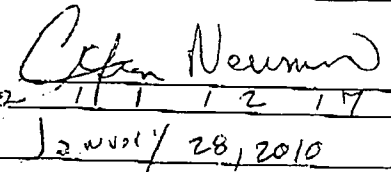
Court Reporter:



PRESIDING JUDGE

Judge Code:

Sentence Date:


2-11-12-17
January 28, 2010

ARREST WARRANT

M-170251

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
KINGSTREE

THE STATE

against

KEVIN BRADLEY

Address: KINGSTREE SC 29556

Phone: M Race: B Height: 5-7 Weight: 160

DL State: SC DL #: 1989 Agency OR#: SC0450200

DOB: [REDACTED] KINGSTREE POLICE DEPT.

Prosecuting Agency: CHIEF FORD / CPL. W. HAMLET

Prosecuting Officer: CRIMINAL SEXUAL CONDUCT WITH A

Offense: MINOR 2ND DEGREE Offense Code: 0396

Code/Ordinance Sec. 16-03-0655(B)(1), 0656

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant KEVIN BRADLEY

on 10-08-09

[Signature]

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Form Approved by
G.S. Admin. Center
July 28, 1994
SCSA 5.18

AFFIDAVIT

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
KINGSTREE

Personally appeared before me the affiant CHIEF ROBERT K. FORD / CPL. W. HAMLET

being duly sworn deposes and says that defendant KEVIN BRADLEY

did within this county and state on 10/01/2006 to 10/01/2007 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of KINGSTREE

in the following particulars: DESCRIPTION OF OFFENSE: 16-03-0655(B)(1), 0656 / CRIMINAL SEXUAL CONDUCT WITH A

MINOR 2ND DEGREE

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

THAT BETWEEN 2006 and 2007, ONE KEVIN BRADLEY DID COMMIT THE OFFENSE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE SECOND DEGREE BY HAVING SEXUAL INTERCOURSE WITH A MINOR UNDER THE AGE OF 14 RESULTING IN THE PREGNANCY OF THE MINOR ONE [REDACTED]. BRADLEY WAS IDENTIFIED BY BOTH THE MINOR DIAMOND DAVIS AND HER MOTHER LULA DAVIS AS THE PERSON BELIEVED TO BE THE FATHER OF THE BABY. CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE IS IN VIOLATION OF THE SC CODE OF LAWS ACCORDING TO SECTION CODE 16-03-0655(B)(1).

[Signature]

CAROLYN F. WILLIAMS

CLERK OF COURT

WILLIAMSBURG COUNTY

Signature of Affiant

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
KINGSTREE

Affiant's Address: 401 NORTH LONGSTREET STREET

KINGSTREE SC 29556

Affiant's Telephone: (843) 355-5435

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 10/01/2006 defendant KEVIN BRADLEY

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of KINGSTREE

DESCRIPTION OF OFFENSE: SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR,

VICTIM 11 TO 14 YRS OF AGE INCLUSIVE - SECOND DEG.

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on October 8, 2009

[Signature] (L.S.)

Signature of Issuing Judge

Judge Code: _____

Judge's Address C/O 401 N. LONGSTREET STREET

KINGSTREE SC 29556

Judge's Telephone 843-355-7484

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

Case: 09-

ORIGINAL

46

DOCKET NO. 2010-GS-45-30
The State of South Carolina
County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JANUARY TERM 2010

THE STATE
vs.

KEVIN BRADLEY

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR - SECOND DEGREE -
§16-3-655 (B) (1)

C. KELLY JACKSON, SOLICITOR

WITNESSES

KINGSTREE PD

W. Hamlet

ARREST WARRANT NUMBER

M 170251

D/A: 10/8/09

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

VERIFIED TRUE COPY
Carolee P. Williams
CAROLEE P. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

BAIL set by

Judge Barbara C. Coker
on October 9, 2009

Type and Amount: Bond Denied

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

Name: _____
Address: _____

Telephone: _____

CODEFENDANTS

48

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
- FIRST DEGREE AND CRIMINAL SEXUAL
CONDUCT WITH A MINOR - SECOND DEGREE

At a Court of General Sessions, convened on January 25, 2010, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR - FIRST DEGREE

That KEVIN BRADLEY did in Williamsburg County between June 1, 2008 and February 4, 2009, violated Section 16-3-655 (A) of the Code of Laws of South Carolina (1976), as amended, in that the defendant, a male over the age of eighteen (18) years, engaged in sexual battery with the victim, a child under the age of eleven (11) years old.

COUNT TWO - CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

That KEVIN BRADLEY did in Williamsburg County between February 5, 2009 and August 14, 2009, violated Section 16-3-655 (B) of the Code of Laws of South Carolina (1976), as amended, in that the defendant, a male over the age of eighteen (18) years, engaged in sexual battery with the victim, a child between eleven (11) and fourteen (14) years of age.

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

CLERK OF COURT
WILLIAMSBURG COUNTY, S.C.
10 JAN 21 PM 12:41
BTL

C. Kelly J. [Signature]
SOLICITOR

BRADLEY, KEVIN CHRISTOPHE FBI # 170518RC0 SID# SC01751288 SCDC # 339031 (CONT

10/31/11	LEE	INCARCERATED	ADMINISTRATIVE
10/31/11	KIRKLAND	INCARCERATED	MEDICAL
9/26/11	LEE	INCARCERATED	ADMINISTRATIVE
9/26/11	EVANS	INCARCERATED	MEDICAL
5/25/11	LEE	INCARCERATED	ADMINISTRATIVE
5/24/11	KIRKLAND	INCARCERATED	MEDICAL
4/ 5/11	LEE	INCARCERATED	ADMINISTRATIVE
4/ 5/11	EVANS	INCARCERATED	MEDICAL
10/11/10	LEE	INCARCERATED	ADMINISTRATIVE
10/11/10	KIRKLAND	INCARCERATED	MEDICAL
9/13/10	LEE	INCARCERATED	ADMINISTRATIVE
9/13/10	KIRKLAND	INCARCERATED	MEDICAL
8/27/10	LEE	INCARCERATED	ADMINISTRATIVE
8/27/10	PALMETTO RCHLAN	AUTH ABSENCE (AWL)	MEDICAL
8/23/10	LEE	INCARCERATED	ADMINISTRATIVE
8/23/10	KIRKLAND	INCARCERATED	MEDICAL
7/26/10	LEE	INCARCERATED	ADMINISTRATIVE
7/26/10	KIRKLAND	INCARCERATED	MEDICAL
3/15/10	LEE	INCARCERATED	ADMINISTRATIVE
2/ 1/10	KIRKLAND	INCARCERATED	R&E PROCESSING
2/ 1/10	LIEBER	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL

*NO WORK ASSIGNMENTS *

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
LVL 3 - FULL TIME(NO EWC)	03/16/10	1/ 3/11	PLACED IN ST/SP CUSTODY

***** END OF REPORT *****

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 04/01/13
 OMCOMITA RELEASE DATE SCREEN C023981
 SCDC# > 339031 LOC: LEE
 BRADLEY, KEVIN CHRISTOPHE SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... Y
 SEXUAL PREDATOR...: PENDING
 DNA STATUS.....: COMPLETED
 GPS REQUIREMENT...: Y
 PREA DECISION.....
 CURRENT SENTENCE: 030-00-000 CONSECUTIVE SENTENCE ...: Y
 030-00-000 CURRENT SENT START DATE: 10/03/2009
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 04/01/2039 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 04/01/2039 NEXT PAROLE HEARING DATE: 04/01/2039

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 001258 ISS.....:

PFKEYS: 5: HISTORY OF DATE CHANGES

4-9 1 Sess-1 167.7.50.33 SCDC1395 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 04/01/13

C0239

BRADLEY, KEVIN CHRISTOPHE FBI # 170518RC0 SID# SC01751288 SCDC # 339031

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: LEE CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 30 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: CHE2137T

RACE....:B SEX...:M

PROJ MAXOUT DATE: 04/01/2039

PROJ PAROLE DATE: 04/01/2039

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 23 DATE OF BIRTH...: [REDACTED]/89

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			V/NV	CATEGORY
	YRS	MOS	DYS		START				
CRIM SEX COND.W/MINOR(2N	5	0	0	WILLIAMSBU	10/	8/20	9	V	4
CRIM SEX COND.W/MINOR(2N	20	0	0	WILLIAMSBU	10/	8/20	9	V	4
CRIM SEX COND.W/MINOR(1S	25	0	0	WILLIAMSBU	10/	3/20	9	V	5

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):

CODE NOT IN TABLE

HOLD

IRO

CATEG: 5

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

1/29/13	USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
10/23/12	USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
9/10/12	SOLICIT EMPLOYEE, I/M, VIO	CONVICTED	ADMIN
7/ 6/12	USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
2/27/12	USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
2/22/12	POSSESSION OF CONTRABAND	CONVICTED	MAJOR
2/22/12	USE, POSS NARC, MARIJ, UNAU	DROPPED	MAJOR
11/ 1/11	USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
10/10/11	POSSESSION OF CONTRABAND	CONVICTED	ADMIN
9/ 3/11	DAMAGE, DESTROY PROP. VAL	DROPPED	ADMIN
9/ 3/11	DAMAGE, DESTROY PROP. VAL	CONVICTED	ADMIN
7/17/11	THREATENING TO INFLICT H	DROPPED	MAJOR
7/17/11	INCITING/CREATING A DIST	CONVICTED	MAJOR
6/14/11	USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
6/14/11	REFUSING OR FAILING OBEY	CONVICTED	ADMIN
6/14/11	REFUSING OR FAILING OBEY	CONVICTED	ADMIN
3/15/11	INTERFERING WITH COUNT	DROPPED	OTHER
3/15/11	REFUSING OR FAILING OBEY	DROPPED	OTHER
1/ 6/11	GAMBLING AND LOAN SHARKI	CONVICTED	MAJOR
1/ 6/11	POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
12/31/10	POSSESSION OF CONTRABAND	CONVICTED	ADMIN
11/14/10	USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
10/24/10	EXHIBITIONISM AND PUBLIC	DROPPED	MAJOR

HISTORY OF MOVEMENTS:

1/16/13	LEE	INCARCERATED	ADMINISTRATIVE
1/16/13	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
6/ 5/12	LEE	INCARCERATED	ADMINISTRATIVE

52

6/ 5/12 EVANS

INCARCERATED

LDICAL

State of South Carolina

Court of Common Pleas

County of Williamsburg

2013-CP-45-00098

Kevin Christopher Bradley

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

May 27, 2014

Sumter, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Jr., Judge.

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

Tara Dawn Shurling, Esquire
Attorney for the Applicant

Daniel Gourley, Esquire
Attorney for the State

Daphne D. Helms

Circuit Court Reporter

I N D E X

Witness

William LeGrand Carraway

Direct Examination by Ms. Shurling.....	4
Cross-Examination by Mr. Gourley, ...	51
Redirect Examination by Ms. Shurling.....	60

Tyler B. Brown

Direct Examination by Ms. Shurling.....	61
---	----

Kevin Bradley

Direct Examination by Ms. Shurling.....	63
Cross-Examination by Mr. Gourley.....	77
Redirect Examination by Ms. Shurling.....	86

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
P-1	Joshua Edwards' file from LeGrand Carraway		15
P-2	note from <i>victim</i> 1/28/10		22
P-3	S.C. Code of Laws, Section 63-7-980		26

1 **The Court:** Okay.

2 **Mr. Gourley:** Judge, may it please the Court? This is
3 Kevin Bradley versus The State of South Carolina, docket
4 number 2013-CP-45-098. He is presently confined in the South
5 Carolina Department of Corrections pursuant to orders of
6 commitment of the Williamsburg County Clerk of Court. He was
7 true-bill indicted at the January 2010 term of the
8 Williamsburg County grand jury for criminal sexual conduct
9 with a minor in the second degree.

10 Mr. Carraway represented him. On January 28, 2010, he
11 pled guilty before the Honorable Clifton Newman -- Clifton
12 Newman. Judge Newman sentenced him to five years for the
13 C.S.C. in the second to run consecutive to the applicant's
14 prior charges or prior convictions. He did not appeal his
15 guilty plea or sentence.

16 Subsequently, the applicant filed a post-conviction
17 relief application alleging that he was being held in custody
18 unlawfully based on ineffective assistance of counsel and
19 involuntary guilty plea. After that, Ms. Shurling amended
20 his allegations on May 21st, 2014. The State made its return
21 on October 28, 2013, and again he is represented at this time
22 by Ms. Shurling. I'll turn it over to her.

23 (Ms. Shurling has an off-the-record discussion with Mr.
24 Bradley.)

25 **The Court:** Are you ready?

1 **Ms. Shurling:** Yes, sir.

2 **The Court:** Okay.

3 **Ms. Shurling:** Your Honor, at this time I would call Mr.
4 LeGrand Carraway as the applicant's first witness.

5 William LeGrand Carraway, after being duly sworn,
6 testified as follows:

7 **The Clerk:** State your full name and spell your last
8 name for the record, please.

9 **The Witness:** William LeGrand Carraway.
10 C-A-R-R-A-W-A-Y.

11 Direct Examination

12 By Ms. Shurling:

13 Q. Good afternoon, Mr. Carraway.

14 A. How are you?

15 Q. Just fine. Do you recall representing Kevin Bradley?

16 A. I do.

17 Q. And the charges that you -- rather, the charge that you
18 represented him on was a single count of second degree
19 criminal sexual conduct with a minor identified as *victim*
20 ; correct?

21 A. That's correct.

22 Q. And for purposes of this proceeding - I hate to do it -
23 but was this juvenile's name *victim*

24 A. Yes, it was.

25 Q. Okay. And when your client was initially charged, was

1 he accused of having impregnated Ms. Davis?

2 A. I think he was. Yes, he was along -- yeah, he was.

3 Q. So **VICTIM** initially said she had become pregnant
4 with Kevin Bradley's---

5 A. Yes, she did.

6 Q. ---baby?

7 A. Yes, she did.

8 Q. And that was subsequently disproven (verbatim) by
9 scientific testing---

10 A. That is correct.

11 Q. ---D.N.A. testing.

12 A. That is correct.

13 Q. Okay. After the discovery process moved forward and you
14 got copies of the D.N.A. testing and saw that Kevin Bradley
15 was not, in fact, the father of Ms. **VICTIM**'s child---

16 A. That's correct.

17 Q. ---did you ever request to interview her?

18 A. No. I know her. I know her and I know her mother well.
19 I know them in juvenile court, but I did not request to
20 interview her, no.

21 Q. Okay. Well, let's cut to the chase. Isn't it a fact
22 that you actually represented **VICTIM**?

23 A. I represent (verbatim) her in juvenile court; yes, I
24 did.

25 Q. And you represented her on a number of matters in family

1 court?

2 A. At least two or three, mostly things like truancy and
3 things like that. That's really what it was: Either her not
4 going to school because she was taking care of her baby or
5 that she was being bullied by some people at school. Yes.

6 Q. So during the same time period when you were
7 representing Kevin Bradley on these charges, you were also
8 representing the victim.

9 A. Not during the same time but I had represented her
10 before. Not during the same time but I had represented her
11 before; yes, I had.

12 Q. Well, how long before?

13 A. A couple of years before or a year before.

14 Q. Okay.

15 A. But I was not representing her at this time.

16 Q. Well, she already had the baby; correct?

17 A. Yes.

18 Q. Okay.

19 A. Yes, she did. Yeah.

20 Q. So---

21 A. Because I don't think she had but one baby and that's
22 generally what her truancy was about, taking care of the
23 baby, the baby being sick or not having day care, yes.

24 Q. Okay. Did you disclose to Kevin Bradley the fact that
25 you had previously represented---

1 A. He knew I knew her. Let me tell you what this is. This
2 was not a case to where -- she was a reluctant witness in
3 this case. She liked Kevin Bradley; she liked him. She
4 liked -- she did not want anything to be done to him in this.
5 She sent a note to the solicitor's office, and in that note
6 she said: We did have sex, but he never took anything from
7 me. He's never hurt anybody. I like him. He is a good
8 person. I don't want to have anything to do with this trial
9 or anything, and I would like for you to drop these charges.

10 Q. Were you provided a copy of that letter by---

11 A. Yes.

12 Q. ---the solicitor's office?

13 A. Yes, I was.

14 Q. And what's become of your file, Mr. Carraway?

15 A. I've got part of it right here. I've got some things
16 that I had in my office, and then I went by the solicitor's
17 office to get that, so I was well aware of that. The problem
18 here was going to be -- and I broke all of this down or
19 whatever, and I know all about that someone else was found to
20 be the father of the child.

21 Q. Okay.

22 A. The problem -- go ahead.

23 Q. And, Mr. Carraway, I hate -- I just don't want to get
24 too far afield. Let's go back and cover something first.

25 A. Okay.

1 Q. Did I not at some point request an opportunity to come
2 and review your file---

3 A. Yes, you did.

4 Q. ---in this case?

5 A. Yes, you did.

6 Q. And at that time I was advised that you could not locate
7 your file.

8 A. I think some of -- that's right. That's what I told
9 you.

10 Q. And have you ever subsequently advised -- at that time
11 do you acknowledge that I asked you if you were able to
12 locate it to let me know so I could review it?

13 A. Yeah. That was about a year and a half or two year --
14 about a year and a half ago, yeah.

15 Q. I'm not trying to be difficult---

16 A. Yeah.

17 Q. We've known each other a long time.

18 A. Okay.

19 Q. But -- but did you ever tell me you found your file?

20 A. No, I didn't.

21 Q. Okay. So you were provided a copy of that letter from
22 *Victim*

23 A. Yes, I was.

24 Q. Okay. And just so I'm clear on this, you never advised
25 Kevin Bradley that you actually formerly represented Ms.

~~VICTIM~~

1

2 A. No.

3 Q. ---in a number of situations.

4 A. No.

5 Q. Okay. Now, so we're clear, Ms. ~~XXXX~~ ^{VICTIM} initially reported
6 this to her family and others as Kevin Bradley having
7 impregnated her; correct?

8 A. Here's what happened. She reported this to D.S.S. She
9 told D.S.S. after she had this child that she thought Kevin
10 Bradley was the father of the child or that Kevin Bradley was
11 the father of the child.

12 Q. Correct.

13 A. And her mother also said that Kevin Bradley was coming
14 over to the house at that time and visiting her and that she
15 thought Kevin was younger because he was baby-faced. She
16 said he looked like he was about 14 or 15. So she allowed --
17 so he was coming over to the house. I don't think he was
18 taking her away from the house, but he was -- I think what
19 was happening was he was visiting at the house or whatever.
20 He would come over and watch T.V. or do whatever and -- but
21 she said, "I thought he was younger." So they were aware
22 around the period this happened.

23 Q. Okay.

24 A. Okay.

25 Q. So once these charges were initially brought, it was in

1 the aftermath of **VICTIM** having reported to the family court
2 that he was the father of her baby.

3 A. That's right.

4 Q. Okay.

5 A. What happened was Ms. Barr says that she recalls when
6 these other charges came up with this -- with the case with
7 Mr. Strobel, she recalls -- she said that she recalled back a
8 year and a half or two years before **VICTIM** stating about
9 having a baby, and she looked back at that time and saw that
10 Kevin had been -- that **VICTIM** had told D.S.S. that Kevin was
11 the dad or that she believed he was the dad.

12 Q. And what was -- do you recall the time period during
13 which she alleged that Mr. Bradley had impregnated her?

14 A. This child was born in June of 2007. So if you go back
15 to---

16 Q. You---

17 A. Now, you asked me a question now and I'm going to tell
18 you. She asked me -- here's what happened. His warrant said
19 I think from October of 2006 to October of 2007. I think
20 that's what his warrant states is when he was -- had had sex
21 with **VICTIM**. This child was born on June the 8th. So
22 I go back nine months to October 8th of 2006. **VICTIM**
23 actually had this child before she turned 14. She -- her
24 birthday is July the 13th. Kevin's is and the
25 baby was born a little over -- slightly over a month before

VICTIM**VICTIM**

1 **VICTIM** turned 14. So **VICTIM** said in her letter that she
2 and Kevin had had sex, but she didn't want to have anything
3 to do with it. The child was - I'm thinking if you go back
4 nine months from June 8th - was conceived sometime in
5 September or October of 2006.

6 Q. Do you have a copy of the indictment?

7 A. I do not have a copy of the indictment.

8 Ms. Shurling: Your Honor, for the record that's
9 2010-GS-45-30.

10 The Court: Uh-huh.

11 The Witness: I have a copy of the warrant.

12 Ms. Shurling: It should be in Your Honor's packet. I
13 assume that it is.

14 The Court: I got a copy of the plea sheet, but I
15 don't -- I got a copy of the indictment on the other case,
16 but I don't see a copy on that one.

17 Mr. Gourley: Your Honor, I have an extra copy. I
18 apologize.

19 The Court: I got two copies of the other indictment but
20 not this one.

21 Mr. Gourley: Okay.

22 Ms. Shurling: May I approach, Your Honor?

23 The Court: Yes, ma'am.

24 By Ms. Shurling:

25 Q. If you take a look at the indictment, what dates does it

1 allege?

2 A. The same -- the same as the warrant, October 1st, 2006,
3 to October 1st of 2007.

4 Q. Okay.

5 A. Here.

6 Q. Now, I'm going to back up and try to get a little
7 organized about this. Do you recall appearing with Mr.
8 Bradley before the Court on January 25th before his jury
9 trial started?

10 A. I do not.

11 Q. And attempting to enter a plea on the first and second
12 degree charges that Mr. Strobels was handling as well as the
13 second degree charge you were handling?

14 A. I do not recall that.

15 Q. Are you aware that your name appears on the cover of
16 that trial record?

17 A. I'm not aware of it.

18 Q. Okay.

19 A. I'm not saying it didn't happen. I'm just saying I'm
20 not aware of it.

21 Q. There it is.

22 A. Well, that's Richard Strobels and my name.

23 Q. Right.

24 A. So what I'm saying is---

25 Q. Both.

1 A. ---whatever is in here -- I'm not denying whatever this
2 may say. What I'm telling you is I don't recall anything
3 about it.

4 Q. Okay.

5 A. Okay.

6 Q. All right. Do you -- pardon me. Do you recall the
7 first time that you attempted to get a plea entered in this
8 case---

9 A. No, I do not.

10 Q. ---and falling apart?

11 A. No, I don't recall that.

12 Q. You have no recollection of that at all.

13 A. I don't, no. I'm the only public defender in
14 Williamsburg County. I do not remember a thing about that.

15 Q. Your Honor, a moment's indulgence. I will actually
16 approach again.

17 A. Okay.

18 Q. This is a transcript of a partial plea that fell through
19 on January 25th, 2010.

20 A. Okay.

21 Q. Is that familiar to you at all?

22 A. It's not familiar to me, but I don't -- I don't doubt
23 its authenticity. All right.

24 Q. Okay.

25 A. Okay.

1 Q. Do you recall when you first became aware that the State
2 had gone back to the grand jury a few days before the
3 trial---

4 A. Are you talking about Mr. Strobel's trial?

5 Q. Mr. Strobel's trial. When did you first become aware
6 that your client was staring a first degree C.S.C. with a
7 minor charge in the face, in addition to the second degree
8 charge you already knew about?

9 A. I don't know that I was all that aware of what -- that
10 was -- that was Mr. Strobel's case, of course, and I'm not
11 really quite aware of exactly what he was charged with and I
12 was not aware of the grand jury or whatever. There was not a
13 lot of communication between Mr. Strobel and I, and so, you
14 know, I guess -- I guess about the day of the trial or
15 whatever, but I don't -- but to answer your question: I do
16 not know when I became aware of it. I do not recall when.

17 Q. Okay. Do you recall representing Joshua Edwards?

18 A. I have represented him before; I believe I have. I know
19 I've represented his brother Ray-Ray and I believe -- I know
20 I've had Josh either as a juvenile or in criminal court for
21 something.

22 Q. At my request did you send me a copy of your file
23 concerning your representation of Joshua Edwards on a charge
24 of second degree criminal sexual conduct with a minor?

25 A. I do not recall that, but if I sent it to you...

1 Q. May I approach?

2 A. Yes.

3 Q. (Ms. Shurling shows a document to the witness.)

4 A. Now, what is your question on this?

5 Q. Do you -- having refreshed your recollection---

6 A. I do recall it now. I still do not recall it, but I
7 don't doubt that it happened. I can't think back now and
8 think, but I don't doubt that any of that's true.

9 Q. Okay. Is this your letterhead?

10 A. Yes, it is.

11 Q. Is that your signature?

12 A. That's my signature.

13 Q. And this document provides me with a copy of your file
14 on Joshua Edwards for his criminal sexual conduct with a
15 minor in the second degree.

16 A. Yes, it does.

17 Q. Correct?

18 A. Yes.

19 **Ms. Shurling:** All right. Now -- and, Your Honor, I
20 would move to introduce this as Applicant's 1.

21 **Mr. Gourley:** No objection, Your Honor.

22 **The Court:** Okay. It's in without objection.

23 (Plaintiff's Exhibit 1 was received in evidence.)

24 By Ms. Shurling:

25 Q. For the record, I've already supplied respondent a copy

1 of this file as well as Your Honor for your convenient
2 reference. This file deals with indictment number 2006-GS-
3 45-199 for criminal sexual conduct with a minor second
4 degree; correct?

5 A. Yes.

6 Q. And it alleges that sometime on or about April 27th,
7 2006, Joshua Edwards did have sex with a minor child less
8 than 14 but at least 11 years of age; correct?

9 A. Uh-huh. Yes. Are you talking about April of 2006?

10 Q. That's correct.

11 A. Okay. Which is 14 months before this particular child
12 was born.

13 Q. And to what are you referring to when you say that?

14 A. Well, I'm just saying -- I'm just telling you the facts.

15 Q. Well -- and, Mr. Carraway, I'm not trying to be
16 difficult.

17 A. Yeah.

18 Q. But you don't remember sending me this letter, but you
19 happen to remember what date that child was born?

20 A. I don't have to remember. This is a separate file here.

21 Q. And that's what I'm---

22 A. So, yeah. Yeah.

23 Q. What I'm asking is---

24 A. Yeah.

25 Q. ---where do you get your information that the child was

1 born 14 months after that?

2 A. On the paperwork here which says the child was born
3 June 8th, 2007, and I thought you said he had sex with the
4 child in April of 2006. I may be wrong.

5 Q. Correct.

6 A. Okay.

7 Q. But again, Joshua Edwards -- I mean, pardon me, Joshua
8 Edwards is alleged to have had sex with the same girl in
9 April 2006---

10 A. Yes.

11 Q. ---that our mutual client, Kevin Bradley, is alleged to
12 have had sex with her sometime between October 1st, 2006, and
13 October 1st, 2007.

14 A. That's correct. Yeah.

15 Q. So the time period between their respective liaisons
16 with **VICTIM** was May, June, July, August, September,
17 October, roughly a six-month difference.

18 A. Something like -- yes.

19 Q. Okay.

20 A. Yeah.

21 Q. Just so we're clear.

22 A. Yeah.

23 Q. And do you -- having now refreshed your recollection
24 concerning this case, are you now prepared to acknowledge
25 that the victim in Joshua Edwards' case that you represented

- 1 him on was **VICTIM**, the same victim in Kevin Bradley's
2 case---
- 3 A. Yes.
- 4 Q. ---that you were representing him on?
- 5 A. Yes. Yes.
- 6 Q. So at the same time you were representing -- during the
7 same time period that you were representing Kevin Bradley,
8 you had previously very recently represented Joshua
9 Edwards---
- 10 A. Yes, I had.
- 11 Q. ---in a case involving *victim*.
- 12 A. Yes.
- 13 Q. And you had represented *victim* is.
- 14 A. Yes.
- 15 Q. Did you inform your client, Kevin Bradley, of your
16 representation of either of those individuals?
- 17 A. No.
- 18 Q. Okay. Once it was established through D.N.A. that Kevin
19 Bradley was not the baby (verbatim) daddy, did you take any
20 steps to ascertain whether or not -- let me back up for a
21 moment. The letter you refer to as having been in your file,
22 what was the date of that?
- 23 A. January 28th of 2010.
- 24 Q. And that is, according to my records, the very day that
25 your client pleaded and was sentenced on the charge involving

1 her.

2 A. Yes.

3 Q. When did you find out about the D.N.A. testing
4 disproving paternity?

5 A. He and I discussed that a couple of months before over
6 at the jail when that came in.

7 Q. So a couple of months before?

8 A. Certainly some weeks before because I remember he and I
9 talking about that.

10 Q. Okay. Did you discuss with him the fact that if he
11 proceeded to trial by a jury that you could potentially
12 exploit the fact that ~~VICTIM~~ had originally explained her
13 pregnancy by blaming it on Kevin---

14 A. He and I -- yes, we did discuss that and I'll tell you
15 what we said. His mother was going to -- ~~VICTIM~~ is a
16 very nice young lady. Her mother also -- and she would have
17 been a reluctant witness against him, but she would have said
18 she had already told D.S.S. before that she thought that he
19 was her -- the father of this child. Her mother had already
20 said that he was coming over to the house during the time
21 this child may have been conceived or whatever.

22 So I guess what she was thinking was that she had sex
23 with him more often than she had with Joshua Edwards or
24 whatever, and that's why she stated that Kevin was the father
25 of the child. But we're still talking about she said that to

1 D.S.S. Her mother said that he was visiting over during that
2 time, and this child was born before she turned 14 while she
3 was still 13. This child was born over a month before she
4 turned 14.

5 So I know she would have been a reluctant witness, and I
6 discussed this with him that her mom -- her mom didn't
7 dislike him. **VICTIM** liked him or whatever, but they were
8 still going to come in -- to be prepared for them to come in
9 and say that he had sex with her back during the time that
10 this child was conceived which was when she was 13 and when
11 he was 17, not 18, but he was 17. He actually -- his
12 birthday is . . . and he would not have -- that's when
13 he would have turned 18. In . . . of 2007 is when he
14 would have turned 18.

15 So really we're talking about back at the time of --
16 from -- certainly he turned -- all of this activity that she
17 believed, this sexual activity that she believed, she
18 believed that sometime around September or October when she
19 thought back, she thought -- and she named D.S.S. and her
20 mother said he was coming over to the house in September or
21 October of 2006. He turned 17 . . . of 2006. So
22 that's what he and I discussed.

23 I said: Now, if we go to trial -- now, you know **VICTIM**
24 and she's going to -- she's not going to come off as a liar
25 to the jury. She's going to come off as someone who the

1 solicitor is making come in here and say this, and her mother
2 is not vindictive, I don't think, towards him either when I
3 talked to her, but she stated that before.

4 Q. Okay.

5 A. Okay?

6 Q. May I---

7 A. So that was his problem.

8 Q. May I please see the letter from **VICTIM** ~~REDACTED~~ ~~REDACTED~~?

9 A. Yes, you may. And in this letter she says, "Hi, my name
10 is **VICTIM** ~~REDACTED~~. I have"---

11 Q. Uh---

12 A. Excuse me.

13 Q. Excuse me. I didn't---

14 A. No, excuse me.

15 Q. ---ask you the question, Mr. Carraway.

16 A. Well...

17 **The Court:** Just let -- let her see the letter and then
18 she'll ask you a question.

19 **The Witness:** All right. If you'll look in the first
20 sentence, that's what she says, that he and I had sex. She
21 does not say in that that we did not have sex. Had she said
22 that, we'd have had a trial.

23 By Ms. Shurling:

24 Q. How did you get this letter?

25 A. I got it from the solicitor.

1 Q. And it is, in fact, clock-stamped January 28th, 2010,
2 Office of the Solicitor.

3 A. That's correct.

4 Q. The day of the plea.

5 A. That's right.

6 Ms. Shurling: Move to introduce as Applicant's 2.

7 Mr. Gourley: No objection, Your Honor.

8 The Court: Okay. It's in without objection.

9 (Plaintiff's Exhibit 2 was received in evidence.)

10 The Court: Can you tell me where all this is going?

11 Ms. Shurling: Applicant's 2, Your Honor.

12 The Court: I understand that, but this file on Josh
13 Edwards who was sentenced in July of 2006 -- he was in prison
14 when all this went down. What's that got to do with any of
15 this?

16 Ms. Shurling: I'm going to get there, Your Honor. I'm
17 sorry.

18 The Court: Okay.

19 By Ms. Shurling:

20 Q. Going back for a moment to your representation of Joshua
21 Edwards---

22 A. Yeah.

23 Q. Mr. Bradley was tried, convicted, and sentenced and also
24 pleaded January 27th and 28th of 2010; correct?

25 A. Yes, ma'am.

1 Q. All right. And Joshua Edwards was already sentenced on
2 July 18th, 2006.

3 A. That's right.

4 Q. On charges of criminal sexual conduct with a minor.

5 A. That's right. That's 12 months before this child was
6 born.

7 Q. I understand. But my question is -- and I believe it's
8 asked and answered. You never informed Mr. Bradley of this
9 previous representation---

10 A. No.

11 Q. ---of Joshua Edwards.

12 A. No.

13 Q. Now, the D.N.A. testing proved that the baby that
14 **VICTIM** had was not the child of Kevin Bradley.

15 A. That's correct. No matter if it was Josh Edwards' or
16 not, it was not his. It was not his child.

17 Q. You anticipate my next question. Was it ever in your
18 representation of Joshua Edwards -- when you sent me the
19 file, it says, "I'm sending you a copy of my file," and the
20 file contains a sentencing sheet, the arrest warrant, and the
21 indictment. Were you ever provided D.N.A. testing that tied
22 Joshua Edwards to the infant? Was the infant -- was Josh
23 Edwards the baby's daddy?

24 A. Not that I know. All that I -- he did not deny his
25 guilt here, and all I knew was that this child was -- all I

1 felt that was important in representing him was that it
2 wasn't his child, and I don't know whether ~~REDACTED~~ **VICTIM** ~~REDACTED~~'s
3 child was Joshua Edwards'. All I know is it wasn't Kevin
4 Bradley's.

5 Q. And these few pieces of paper that you sent me is the
6 whole file that---

7 A. That's it.

8 Q. ---you've got for Joshua Edwards.

9 A. Yes, it is.

10 Q. You didn't get any discovery from---

11 A. No.

12 Q. ---the State?

13 A. No, because he did not deny what -- and his generally --
14 now, if I may go into exactly why that letter is important
15 there: Before I plead someone guilty on something here, a
16 lot of times I tell the solicitor -- I say I want to sit in
17 -- "I want to sit in this conference room with you and I want
18 to sit off to the side, and I want you to ask this victim
19 here what she's going to say here, and then I can go to my
20 guy and say, 'Look, I've heard what she's going to say
21 here.'" This is -- she may say -- she may equivocate or
22 whatever and then -- but rather than me hearing what ~~REDACTED~~ **VICTIM**
23 ~~REDACTED~~ was going to say -- and I was aware of these D.S.S.
24 reports before and all about the children or whatever. I had
25 seen the D.S.S. report where she told them that, but that

1 letter there indicated to me -- and I told him: If Kim Barr
2 puts her up on the stand, she's going to tell what she
3 believes is the fact anyway.

4 Q. And you would then have been able to impeach her with
5 the fact that she had previously accused your client of
6 fathering her baby.

7 A. That does not impeach her on the fact that she had sex
8 with him. She just thought he was the father of that baby.
9 She thought he was the father of that baby. Now, I don't
10 think she would have gotten up on the stand. She's already
11 stated in there that they did have sex or whatever and that
12 she's already stated to D.S.S. and her mother stated that he
13 was coming over to the house at the time this child was
14 conceived, and the child was born before she turned 14.

15 Q. And, again, if you can share with me the document that
16 established the date of the birth of the child.

17 A. (Mr. Carraway hands a document to Ms. Shurling.)

18 **Ms. Shurling:** Thank you. Your Honor, I would move to
19 introduce as Applicant's 3 this document which is a copy of a
20 code section, and at the bottom it has a short-form
21 memorandum from the Office of the Solicitor indicating that
22 the child was born June 8th, 2007, and that Kevin had been
23 excluded as the father.

24 **The Court:** Josh Edwards is excluded, too, because Josh
25 Edwards is in prison at that time because Josh Edwards got

1 sentenced July of 2006 to 40 months, and the child was born
2 the next June. He couldn't have fathered it either unless
3 she made a conjugal visit to the prison.

4 **Ms. Shurling:** Evidently a very busy young lady, Your
5 Honor.

6 **The Court:** But Josh Edwards is in prison. That's why I
7 can't...

8 **Ms. Shurling:** I understand.

9 **The Court:** A year before the baby was born. He got
10 sentenced July of 2006. You told me the baby was born June
11 of 2007. Josh Edwards could not have fathered that baby
12 either. He's in pri -- he may have been -- he's been in
13 prison over year before the baby was born.

14 **Ms. Shurling:** Eleven months.

15 **The Court:** Okay.

16 **Ms. Shurling:** Still longer than pregnant is.
17 Applicant's 3, Your Honor.

18 **Mr. Gourley:** No objection, Your Honor.

19 **The Court:** She couldn't have had the baby either.

20 (Plaintiff's Exhibit 3 was received in evidence.)

21 By Ms. Shurling:

22 Q. Were you working with Mr. Strobel in trying to work out
23 a package deal for Kevin Bradley?

24 A. No, I was not, and I'm just answering that. Now, should
25 I have been? That's a different story. I wasn't sure about

1 the facts of his particular case, about all of those. I was
2 not -- I was not made privy. He and I did not work together.
3 All I knew is that Kevin withdrew his guilty plea, and I was
4 not sure, you know, exactly what the defense was.

5 Now, if it were about, yes, but she was 11 -- and it
6 seems like he may have said something like that to me when we
7 were talking about our case before about different dates
8 there that actually was after this time or whatever, but to
9 answer your question, I didn't have any contact with Mr.
10 Strobel about this.

11 Q. Okay. Well, let me ask you this: At the time of the
12 plea the day following his trial---

13 A. Uh-huh.

14 Q. ---you were aware that he had been convicted the
15 previous day of two most serious strikes.

16 A. Yes, ma'am.

17 Q. And you had made arrangements for him to enter the plea
18 and the State to treat it as a first strike. Correct?

19 A. I don't know about any of that. What I knew was that he
20 was facing 20 years, so I don't know anything about the
21 strikes. I don't -- I don't recall now that that's what I
22 was considering, but I do know he was facing 20 years on this
23 charge with **VICTIM**, and as we discussed, I could tell
24 it would be awfully tough to shake them from what her -- I
25 believed that she was going to get on the stand and

1 reluctantly testify that she had had sex with him back at the
2 time certainly when she was 13 because she, I believe, would
3 have convinced the jury that she believed that he was the
4 father of the baby anyway. So that's what we didn't want to
5 get into, me trying to shake some 13 or 14-year-old girl up
6 on the stand as to -- about -- and particularly when her mom
7 says he was around at the house at that time or around that
8 time.

9 Q. What was your understanding of the maximum penalty your
10 client was facing on the guilty plea concerning *victim*
11

12 A. Twenty years. That was my understanding.

13 Q. Well, was there any discussion of the fact that this
14 could be a second most violent strike and net him a life-
15 without-parole sentence?

16 A. I never -- I never con -- I never talked to him about
17 that. All I was thinking about was 20 years, but to answer
18 your question, no, I don't recall any conversation about
19 that.

20 Q. Well, at the time of this plea in January of 2010,
21 17-25-45 was in existence.

22 A. Okay.

23 Q. Was it not? The strike law?

24 A. I believe it was.

25 Q. Okay.

1 A. But---

2 Q. And---

3 A. I talked to him about 20 -- that's what I was worried
4 about, 20 years.

5 Q. And both first and second degree criminal sexual conduct
6 with a minor are both most serious offenses.

7 A. Okay.

8 Q. Correct?

9 A. Yes, they are.

10 Q. Okay.

11 A. Now, I didn't know -- with his age at about this time I
12 wasn't sure about all of that with his age at that time and
13 all, but I do know I felt confident in telling him that you
14 are facing up to 20 additional years for **VICTIM** and
15 we discussed that I thought she and her mom would be
16 believable if it came into court.

17 Ms. Shurling: May I approach?

18 The Court: Yes, ma'am.

19 By Ms. Shurling:

20 Q. Let me get you to look at the remarks of Judge Newman
21 during the sentencing at the end of the jury trial.

22 A. Yeah, I see what he says.

23 Q. Okay. "If you're convicted of that pending charge,
24 that's life without the possibility of parole. The judge has
25 no role in sentencing." Your Honor, I'm looking at page 299,

1 again my trial transcript, the remarks of Judge Newman. So
2 Judge Newman was certainly considering that if he was
3 convicted on that other outstanding second degree charge it
4 would be a mandatory L-WOP; correct?

5 A. I wasn't there. I don't know what he was thinking, but
6 if he said that, then that's what he -- then obviously that's
7 what he was thinking, but I wasn't there for that.

8 Q. Did you have any discussions with your client about the
9 fact that he was potentially looking at life without parole
10 for a second?

11 A. I recall telling him -- the answer is: I do not recall
12 talking to him about anything about a second or third most
13 serious offense and a possibility of life. I recall
14 discussing with him about the 20 years he was looking at
15 which is exactly what Judge Newman mentioned to him on his
16 plea is that that's what you're looking at.

17 Q. A moment's indulgence, Your Honor. Do you have a copy
18 of the plea transcript?

19 A. No. I take that back; I do. Which page?

20 Q. Could you look at page 3, please? And this is the
21 January 28th, 2010---

22 A. Okay.

23 Q. ---guilty plea transcript.

24 A. Uh-huh.

25 Q. Specifically lines 14 through 23.

1 A. Yes.

2 Q. In this portion of the plea record, Judge Newman
3 specifically indicates that the State is presenting this as
4 if there is no prior conviction.

5 A. Yeah.

6 Q. Correct?

7 A. Yes.

8 Q. And Judge Newman specifically notes that he could have
9 been the recipient of a mandatory L-WOP sentence but for that
10 agreement by the State.

11 A. Uh-huh.

12 Q. Correct?

13 A. Yes.

14 Q. So you were aware that a life-without-parole sentence
15 was being held over your client's head.

16 A. I don't know that it was being held over his head.

17 Q. Well, there was a possibility.

18 A. I mean -- well, when he said this at this point or
19 whatever -- but I was telling him 20 years. That's what I
20 told him.

21 Q. Again, do you disagree that the plea transcript reflects
22 that the judge told him that if he went to trial and were
23 convicted on the second degree charge involving **VICTIM**,
24 he would have gotten life without parole and that the judge
25 had no role in sentencing in that event, that it would be

1 automatic?

2 A. I don't see where he says he would have no role. He may
3 have said that the day before or whatever, but I do see where
4 he does say that about if he were convicted and he's already
5 had two or more serious offenses that he could be sentenced
6 with life without the possibility of parole. And he says,
7 "You were convicted of two most serious offenses yesterday,
8 last night, and the State is presenting this as if there is
9 no prior conviction." And then he says, "That you understand
10 now that they're presenting this as a first, that the -- that
11 the possible penalty for this offense is up to 20 years in
12 prison." But I didn't tell him that.

13 Q. But the Court did.

14 A. The Court did.

15 Q. Okay. And you were very familiar with your client's
16 birthday awhile ago. Could you tell me what it is again?

17 A. [REDACTED]/89.

18 Q. And, once again, your client was alleged to have had sex
19 with **VICTIM** [REDACTED] between October 1st, 2006, and October 1st,
20 2007; correct?

21 A. Yes.

22 Q. Which means that from -- in that window of opportunity
23 that's addressed by the indictment, from October 1st, 2006,
24 until July 16th, 2007, your client was not yet 18, was he?

25 A. He was 17 when the child was even born. He wasn't 18

1 until after the child was born. So, yes, he was 17 during
2 all times that -- really, they may talk about up until
3 October of 2007, but if they're talking about this child and
4 everything, he was 17 years old. He didn't turn 18 until two
5 weeks after the baby was born. So he was 17. So we're not
6 talking about 18. What they're really talking about is 17
7 and what **VICTIM** ~~████████~~ ~~████████~~ would have testified to was back in
8 October of 2006 when he was only two or three months past the
9 age of 17.

10 Q. I'm going to back up for a moment. On page 3, lines 5
11 through 6---

12 A. Okay.

13 Q. ---the prosecutor says, "He waives presentment to the
14 grand jury." Do you see that?

15 A. Yep.

16 Q. Can you advise the Court what, if any, advice you gave
17 your client concerning his right to have the charge presented
18 to the grand jury?

19 A. He -- I told him about that and he said he wanted to do
20 it now, and the judge even -- I think the judge always
21 requires them to initial this plea sheet if they are waiving.
22 So -- but to -- I do not recall a lot about this or whatever,
23 but that's generally what is done. The judge asks them if
24 they want to waive this or whatever, and I got the idea that
25 he wanted to go ahead and do this at this time because he had

1 had the experience the day before of what happened and gotten
2 the time he got the day before. And I got -- I got the idea
3 he wanted to go ahead and do this at this time, but, of
4 course, that's just -- you know, he was over there. He -- he
5 was -- I didn't get the idea he was reluctant at all about
6 it.

7 Q. Okay. Your Honor, on page 7 of the plea record the
8 Court does -- although it was initially put on the record by
9 Deputy Solicitor Barr on page 7, lines 6 through 9, the Court
10 does ask the applicant if he wishes to waive grand jury
11 presentment. My question, Mr. Carraway, is: What did you
12 explain to Mr. Bradley about grand jury presentment, about
13 the function of the grand jury and what it is that -- what
14 their role is in the judicial process?

15 A. Well, I told him they would look to see that if there
16 was cause to send it on up. They would look to see if that
17 was there.

18 Q. Do you -- are you familiar with the case called Graham
19 v. Florida?

20 A. No.

21 Q. Graham v. Florida would be the U.S. Supreme Court
22 decision which held that a minor may not be sentenced to life
23 without parole in a case involving a life sentence for
24 anything other than homicide.

25 A. Okay.

1 Q. That case was argued prior to this plea but decided
2 after the plea. Is it your position that you didn't have any
3 discussions with Mr. Bradley about his exposure to a sentence
4 of life without parole?

5 A. No, I -- no, I don't recall having any. I was thinking
6 about the 20 years that I knew he had there.

7 Q. Did -- when the Court advised your client of the fact
8 that he was potentially looking at life without parole if he
9 were convicted on that charge, if the State had not agreed to
10 treat it as having no prior record, did you consider
11 challenging that position with the fact that your client was,
12 in fact, less than 18 years old the majority of the period of
13 time---

14 A. No, I---

15 Q. ---when this was alleged---

16 A. ---did not consider that.

17 Q. ---to have occurred?

18 A. I didn't consider that, no.

19 Q. And to your knowledge, to be fair, were you aware of the
20 pendency of that landmark decision---

21 A. No---

22 Q. ---in the U.S.---

23 A. ---I was not.

24 Q. ---Supreme Court at the time?

25 A. I was not.

1 Q. Okay. I'm going to go back to the actual amended
2 application for a few minutes.

3 **The Court:** Had the solicitor's office noticed him of
4 life without the possibility of parole?

5 **Ms. Shurling:** I'm sorry, sir. I'm not hearing you
6 well.

7 **The Court:** Had the solicitor's office served notice on
8 him prior to the plea of life without parole?

9 **Ms. Shurling:** They had not.

10 **The Court:** Okay. So he couldn't have gotten it anyway.

11 **Ms. Shurling:** Oh, I understand, sir, but the operative
12 question - and I'll sum this up at the end - is that he was
13 being told if he took this opportunity, waived his right to
14 go to the grand jury and entered the plea that he could plead
15 as if it was a first offense and the most he would face is
16 20 years. If he didn't do it and it went to the grand jury,
17 there would be an opportunity for the State to make it a
18 life-without-parole case, in which case they certainly had
19 plenty of time to serve notice if they did it that way.
20 Okay.

21 **The Court:** I see, but it didn't happen that way. He
22 came out a whole lot better with a five-year sentence on the
23 plea than he would have -- I mean, if he -- if he gets
24 granted this relief, then he's looking at life without the
25 possibility of parole on the second go-round.

1 **Ms. Shurling:** I don't believe so now, Your Honor, in
2 light of Graham v. Florida.

3 **The Court:** Well, that's true. In light of Florida he's
4 not, but he's looking at 20 years which is the same thing
5 he's---

6 **Ms. Shurling:** I understand and I will certainly address
7 that on the record.

8 **The Court:** You've made that point well and I understand
9 that.

10 By Ms. Shurling:

11 Q. Were you aware that at the end of the trial the previous
12 day that your client had specifically professed his innocence
13 with regard to the charge against -- involving activity
14 involving **VICTIM**?

15 A. No, I was not aware of that.

16 Q. And, again, despite what the transcript cover says, you
17 weren't there?

18 A. I was not there when he was found guilty. I think what
19 they're talking about is late afternoon or night or whatever.
20 I don't recall. I don't recall being there when he was --
21 when he was convicted and sentenced, no. I'm not saying I
22 wasn't; I'm saying I sure don't recall it.

23 Q. May I approach?

24 A. You may.

25 Q. (Ms. Shurling shows a document to Mr. Carraway.) Could

1 you publish -- it's on page 299 of the transcript I've been
2 using, lines 15 through 18.

3 A. Okay. So this is what he said the night before when he
4 was being sentenced after being convicted or late, late that
5 day. This is what he said there; right?

6 Q. Correct.

7 A. Okay.

8 Q. And can you read that for us for the record, please?

9 A. Yeah. "Could we just -- I don't want to plead guilty
10 because I know I'm not guilty of that crime, but couldn't we
11 just go ahead and get it over and get that to run
12 concurrently with this charge?"

13 Q. And if you will look just ahead of that at the portion
14 of Judge Newman's comments on that same page, in green what
15 does -- what has Judge Newman just said to him when Kevin
16 Bradley made the statements you just published?

17 A. This reflects that he said, "Unfortunately, however, if
18 you are convicted of that pending charge, that's life without
19 the possibility of parole," and he does go on to say, "The
20 judge has no role in the sentencing."

21 Q. I knew I'd read it somewhere.

22 A. Okay.

23 Q. So the day before, Judge Newman has told him if he's
24 convicted on that charge, it will be life without parole and
25 judge -- and the judge won't have any say-so in it.

1 A. That's what he said. That's what that says that he
2 said, so I---

3 Q. And immediately -- and immediately after that your
4 client says---

5 A. He still---

6 Q. "I don't"---

7 A. ---said, "I don't want to plead guilty."

8 Q. "Because I'm not guilty." Correct?

9 A. Yeah. Yeah.

10 Q. And, again, he freely admitted having sex with the
11 victim in the previous case.

12 A. Yeah.

13 Q. So -- but he was adamant at this juncture that he was
14 not guilty with regard to **VICTIM**.

15 A. Uh-huh.

16 Q. Okay. When the judge gave your client five years and
17 imposed the sentence to be served consecutively to the
18 sentence imposed on 2010-GS-45-30 which was the two-count
19 indictment from the previous day, why didn't you ask him to
20 clarify whether he intended the five years to be consecutive
21 to the aggregate term on that indictment or just the second
22 degree?

23 To be clear, on the trial from the previous day, your
24 client got 25 years for first degree C.S.C. with a minor and
25 20 for second degree C.S.C. with a minor, concurrent with

1 each other. The five years that he received on the **VICTIM**
2 charge was ordered to be served consecutively with that
3 indictment number, but it doesn't specify as to whether or
4 not it's consecutive to the aggregate term on that indictment
5 or whether it's only consecutive to the second degree charge.
6 Did you consider asking for clarification on that point?
7 A. I thought at the time he was saying it was consecutive.
8 Q. He did. My question is -- the day before, your client
9 got 25 years for first degree C.S.C. with a minor.
10 A. Okay.
11 Q. On the same indictment he was also charged with second
12 degree C.S.C. with a minor, and he got 20 years concurrent on
13 that. My question is: When the judge said five years
14 consecutive to that indictment---
15 A. I know what you're saying. I know what you're saying.
16 Yeah.
17 Q. If it were consecutive only to the other second degree,
18 it would have been an aggregate 25.
19 A. Okay.
20 Q. If it's consecutive to the aggregate sentence on the
21 other indictment, it's an aggregate 30. It makes a
22 difference in five years -- of five years; pardon me.
23 A. What he said is, "The sentence is to run consecutive to
24 the sentence that you received on the indictment which is the
25 case number of 09-249." I just thought that he was adding

1 the five years to the 25. I didn't think he was just putting
2 five years just to go on the 20 for it to be -- to mean what?
3 I don't know what that would have meant. So that was my
4 thought right there at the time was that he was putting it to
5 the 25. It was -- that's what seemed clear to me, that he
6 was adding it to the 25. I wouldn't have thought that he
7 would have just added five to the 20 and, you know, what --
8 you know, but anyway, that's not what I thought. I thought
9 he was adding five to the 25. That's why I didn't ask him.

10 Q. I understand.

11 A. Yeah.

12 Q. But at that point you were aware that **VICTIM** ~~was not~~ was not
13 a cooperative witness.

14 A. That's right.

15 Q. That it had turned out the baby wasn't your client's.

16 A. It wasn't his---

17 Q. Okay.

18 A. ---and she was not -- she would not have been
19 cooperative. However, in that statement she does not deny --
20 it says that they did have sex, and when you couple that with
21 her saying that to D.S.S. and her mother saying he was over
22 at the time which would have been around September or October
23 of 2006 which is, you know, obviously well before the child
24 was born or whatever there and when she was still 13 -- the
25 child was born when she was still 13. So for those reasons,

1 that's -- that's why -- and knowing her as I know her or
2 whatever, you know... And being reluctant sometimes is a lot
3 more effective than being seeming vindictive.

4 Q. Mystery solved. May I approach?

5 A. Yeah.

6 Q. This is the transcript of the aborted guilty plea
7 proceeding January 25th, 2010.

8 A. Okay.

9 Q. If you would look at page 4, lines 15 through 18.

10 A. Okay. (The witness complies.) Okay. I've read it.
11 What -- what's your question?

12 Q. The transcript, in fact, establishes that you were there
13 the previous day when there was an attempt to enter the plea.

14 A. First thing in the morning or whenever in the morning
15 with Richard Strobels when he backed out of -- when he did not
16 want to plead to the first of which he says: I wasn't even
17 aware I was charged with a first. I'm willing to plead to a
18 second, but this first is the first I know is what you stated
19 before. So---

20 Q. Correct.

21 A. ---yeah.

22 Q. So the -- prior to the trial when there was an aborted
23 attempt to enter the plea, you were there. The record
24 reflects---

25 A. Yeah, I would have been---

1 Q. ---that you were there.

2 A. I would have been there. I was thinking when you were
3 talking about -- that this was at some months before or
4 something when this happened. Obviously I would have been
5 there with Richard to do the guilty plea on the first and the
6 -- on the two charges he had along with mine, yeah.

7 Q. Thank you. A moment's indulgence, Your Honor. Just
8 checking off my list, Your Honor; it will be quickly. Did
9 you -- prior to the entry of this plea, did you explain to
10 your client that he had a right to a direct appeal from the
11 convictions and sentences that had been handed down at the
12 jury trial at which Mr. Strobel represented him?

13 A. I don't think I told him anything about those.

14 Q. Pardon?

15 A. I don't -- I don't think I told him anything about his
16 cases with Mr. Strobel, no.

17 Q. Okay. So did you in any way advise him that if he were
18 to successfully pursue a direct appeal from the judgments and
19 sentences that were handed down at the jury trial that he
20 would still be stuck with what had happened in the guilty
21 plea proceeding relevant to the separate indictment on

22 *victim* ..?

23 A. I didn't tell him that.

24 Q. Okay.

25 A. I didn't go into that.

- 1 Q. With regard to the letter from **VICTIM** to you that
2 was dated the same day as the plea---
- 3 A. I think she wrote that letter to the solicitor's office.
4 I don't think she wrote -- she didn't write that to me, but
5 that's a letter that I think somebody went to the school and
6 got and she wrote that out, so that -- she didn't send that
7 to me, but I saw it.
- 8 Q. Pardon me. With regard to the letter that was turned
9 over to you by---
- 10 A. The solicitor's office.
- 11 Q. ---the solicitor's office.
- 12 A. Right.
- 13 Q. It doesn't say: Dear who.
- 14 A. That's right.
- 15 Q. It just says, "My name is."
- 16 A. Yeah.
- 17 Q. In which she says that me and Kevin did have sex and
18 that we used to talk.
- 19 A. Uh-huh.
- 20 Q. She doesn't say when she engaged in sexual activity with
21 him.
- 22 A. She didn't say when there, but she did tell D.S.S.
23 before that she thought he was the father of the baby, and
24 her mother said that he was coming to the house at that time.
- 25 Q. Okay. Well, there's a big jump from coming to the house

1 and necessarily having intercourse, isn't there?

2 A. I wouldn't -- she says they had sex, and she had said
3 before that she thought he was the father of the baby which
4 is about -- back in October -- would have been conceived back
5 in October of 2006, so...

6 Q. Okay. Running down these real quickly, I think I asked
7 you, but in case I didn't: Did you discuss with your client
8 the fact of and the methodology you could use to impeach
9 victim with her previous accusations concerning
10 paternity if you went to trial?

11 A. No, because I knew that -- I knew where that would end
12 up or whatever. I knew what she would say was that I thought
13 he was the guy or whatever. Obviously it was somebody else,
14 but like I said, she wasn't trying to -- she was not a
15 vindictive witness or whatever. She wouldn't have come off
16 as somebody trying to nail him or whatever. She was
17 reluctant -- even in that letter, she said I don't want to
18 have anything to do with this, but he and I did have sex.
19 And she had stated before to D.S.S.: He's the father of this
20 baby.

21 Q. Did you discuss with Kevin Bradley the possibility that
22 the State might not even proceed with prosecution on this
23 charge if she declined to cooperate as a witness for the
24 prosecution?

25 A. No. I -- I didn't -- I got the idea they were going to

1 follow through on it and -- and that if they did bring her in
2 that she would come in and tell what she believed to be the
3 truth anyway and not only that they had sex but that that
4 would go together with her prior statement that he was the
5 father of the child back in October of 2006 when we had this.
6 I felt that is what she was going to say or whatever.

7 Now, you go in and start getting into a trial or
8 whatever and then it starts falling that way, then you're
9 really -- you know, he's looking at -- I believe he would
10 have had to pay -- he would have been sentenced, if he were
11 found guilty, to more than five additional years. And every
12 year is precious, every single one. It doesn't seem like,
13 well, when 25 years -- what's the difference between five and
14 ten? Hey, one of these days you're going to be walking out
15 of here and you want to walk out five years before when you
16 would have been walking out. So I didn't feel bad when he
17 got -- I expected the five additional years. I hoped perhaps
18 it would be consecutive, but I think, as Judge Newman has
19 said before, you know, you're not going to get a free crime
20 here.

21 Q. Let me ask you this: Now that we've established that
22 you were, in fact, present on January 25th when the plea
23 was---

24 A. If I'd known that was -- I mean, if I had known that was
25 when you were talking about, I would have thought that. I

1 was thinking this was a prior term of court that something --
2 that they had tried that or whatever.

3 Q. That's okay.

4 A. I thought that's what you were talking about. Go ahead.

5 Q. On January 25th---

6 A. Yes, ma'am.

7 Q. ---which turned out to be the first day of trial---

8 A. Yes.

9 Q. ---but is when they were attempting to get the plea
10 through---

11 A. Oh, I was standing right there. I remember that now.

12 Q. Okay.

13 A. I remember that now, yeah.

14 Q. Well, at the end -- the judge has questioned him about
15 the two charges on the indictment Mr. Strobel is representing
16 him on, and then they move along and the judge says, "And do
17 you want to give up those rights and plead guilty?" And Mr.
18 Bradley speaks up, page 7, lines 4 through 5: "No, Your
19 Honor. I don't want to give up my rights." The Court: "You
20 want a jury trial?" Mr. Bradley: "Yes, Your Honor." The
21 judge: "All right. There's no plea. A jury trial." And
22 the proceeding is adjourned.

23 A. Yep.

24 Q. Did you consider at that point asking the Court for a
25 brief recess so that you and Mr. Strobel could ascertain what

1 the problem was with Mr. Bradley, why---

2 A. I did not -- I did not think of that, no.

3 Q. Okay. Both first and second degree C.S.C. with a minor
4 are both most serious counts under 17-25-45; correct?

5 A. Yes, they are.

6 Q. So from the standpoint of him having a strike on his
7 record, it really wasn't going to matter whether it was a
8 plea to first or second degree.

9 A. Yeah.

10 Q. And the sticking point, as you understood it, with Mr.
11 Bradley was that he was not wanting to say that he had had
12 sex with the first victim before she turned 11.

13 A. He was not willing to plead to a first degree.

14 Q. Exactly.

15 A. Yeah.

16 Q. Okay. Did you consider asking for a very brief recess
17 to give you and Mr. Strobel the opportunity to determine
18 whether or not the solicitor's office might have been willing
19 to let him plead to three counts of second degree instead of
20 one first and one second?

21 A. What I really recall about the reason he didn't plead
22 guilty was they -- he was willing to plead to a certain
23 amount of time, but they held out for more time than he
24 wanted and that's -- that's what I recall why he didn't plead
25 guilty on this, that there was some offer and I thought it

1 was a little high and I think he thought it was a little high
2 and that's -- that was my recollection of why he didn't plead
3 guilty that day. He thought, man, this is a lot of time. If
4 they would offer this, I might do it, but they're offering --
5 this is an awful lot they're offering here. I don't recall
6 what it was, but as I recall, time was the problem there.
7 And I can't disagree with what -- it was a lot of time they
8 were talking about, and I understood -- I can understand why
9 he felt that way, but that was my recollection, that it was
10 all a time deal there, that if they'd gone down -- he wanted
11 four or five years less than what they were offering him or
12 whatever. That was my recollection.

13 Q. All right. But at the outset of this proceeding the
14 record indicates that he's going to plead to count one on the
15 two-count indictment, count one being first degree criminal
16 sexual conduct, and they're going to drop count two which was
17 the second degree charge concerning the same victim.

18 A. That's right. If he'd plead to the first, they would
19 drop the -- drop the second.

20 Q. And then he was going to also plead to the one second
21 degree charge that you represented him on on ~~second~~ **VICTIM**.

22 A. Yeah.

23 Q. And first degree carried 25 to life. Second degree
24 carried zero to 20 at the time.

25 A. Uh-huh.

1 Q. Correct?

2 A. Yes.

3 Q. Okay. So the State with a first degree plea had a
4 guaranteed 25 because that was the statutory minimum;
5 correct?

6 A. If he was found guilty.

7 Q. If he pled, they had a guaranteed 25-year sentence.

8 A. Yeah.

9 Q. To first degree because that's the least the judge could
10 give him.

11 A. Yeah.

12 Q. So when the plea started to fall apart, my question is:
13 Why would you not have asked for the opportunity to try to
14 work it out so if he pled to three counts of second degree,
15 he still -- he would have been looking at an exposure of
16 60 years.

17 A. What they were talking about here---

18 **Mr. Gourley:** Objection, Your Honor. I'm going to
19 object.

20 **The Witness:** If I can go back to this---

21 **The Court:** Okay.

22 **Mr. Gourley:** This is all speculation. There's no
23 telling---

24 **The Court:** Actually you've asked him this four times.
25 I understand the issue.

1 **Ms. Shurling:** I wasn't sure he did.

2 **The Court:** He did.

3 **The Witness:** Mainly this was an offer of more years
4 than he -- and I can understand where he was from (verbatim).
5 I thought it was a little high. I understand where Kevin was
6 coming from, but he just did not want to plead to the number
7 of years they were offering him is my recollection. He
8 wanted it somewhat lower, and I understand where he was
9 coming from. That's what I recall the problem was there.

10 **Ms. Shurling:** Okay. No further questions, Your Honor.

11 Cross-Examination

12 By Mr. Gourley:

13 Q. Mr. Carraway, you're the only public defender in
14 Williamsburg?

15 A. I was.

16 Q. You were. Okay. And as a public defender in
17 Williamsburg, how many -- how many clients would you estimate
18 that you've had over the 23 years, 22 years? Hundreds?

19 A. Hundreds.

20 Q. Fair to say? Okay. And how many times did you meet
21 with the applicant prior to his plea?

22 A. I saw him over at the jail. We'd talk a few times over
23 there. I don't know how many times or whatever, and I always
24 told him, you know -- he discussed -- I remember us
25 discussing when the test came back that he was not the

1 father---

2 Q. Uh-huh.

3 A. And I told him -- I said: You know, don't worry about
4 it. You need to worry about the other one. That's the real
5 one you need to worry about there.

6 Q. Uh-huh. Did y'all go over the discovery material of the
7 evidence in the case?

8 A. Yeah. I wasn't so sure at that time, until I talked to
9 him, exactly what ~~XXXXXX~~ **VICTIM** was going to say and I didn't
10 know when this thing came back or whatever whether -- what --
11 what her position was going to be, and this was months before
12 this trial or whatever.

13 Q. Right.

14 A. But you know -- you know, we talked about that.

15 Q. Okay. Did he ever tell you that he slept with *Victim*
16 -

17 A. I don't recall him ever telling me that.

18 Q. Okay. What was his version of the facts that you
19 recall?

20 A. I don't recall us talking about what happened there. We
21 just talked about what she said happened there, and I just
22 sort of always assumed that it did happen---

23 Q. Okay.

24 A. ---because I knew her and, you know, I just didn't see a
25 reason why she would make it up and say he was the father if

1 she'd never had sex with him or whatever. I know her and I
2 think he knows her or whatever, and I just never had the idea
3 that -- and I never really had the idea too much whether that
4 was -- whether the D.N.A. came back that it would matter that
5 much because I just didn't think she would make that up. And
6 he never told me -- we never talked about it. He never told
7 me he didn't do it.

8 Q. Uh-huh.

9 A. We just didn't talk about it.

10 Q. Was there any evidence pointing to the fact that Ms.
11 ~~SAINT~~ **VICTIM** was lying or any evidence exonerating the applicant?

12 A. He never denied any of that.

13 Q. Okay.

14 A. He didn't -- he didn't deny it. He didn't admit it. We
15 didn't -- I think we just -- we just sort of assumed that it
16 happened.

17 Q. Now, how did it come about that he wanted to plead
18 guilty? Do you recall?

19 A. Well, the next day they brought him over and, of course,
20 you know, I mean, what is anybody going to do in the position
21 he was in or whatever? He was in a -- he was -- you know, he
22 was just shellshocked from the day before, I would imagine.
23 I don't know, but I would imagine somebody would be. I mean,
24 that was a -- you know, you always have hope in a trial or
25 whatever. He wasn't familiar with the court system. He had

1 hope that things -- hopes that things would go his way in
2 that trial or whatever and then they didn't and he got all
3 that time.

4 Q. Right.

5 A. And I recall the next day that -- like I've always said,
6 you know, I always assume that -- I think in our
7 conversations we always assumed this had happened or
8 whatever.

9 Q. Right.

10 A. And he just wanted to plead the next day---

11 Q. Okay.

12 A. ---is what I recall. He wanted to plead and go ahead
13 and do it and, I mean, his experience the day before sort of
14 led him to believe that, you know, if things didn't go well
15 in this one, it's not going to go well in that one either.

16 Q. Now, had your investigation completed when the applicant
17 informed you he wanted to plead guilty?

18 A. Was my investigation completed?

19 Q. Yeah, your investigation into the case.

20 A. Well, I had already seen what the most important thing
21 was is exactly -- not only if it happened but was she still
22 likely to come to court and say it happened? Something can
23 happen, and even though she was reluctant to come, that note
24 indicated there that they had had sex and I knew about when
25 you put that together with the other claiming that he was the

1 father of the child or whatever -- I could see where that was
2 going to lead to. I thought the letter was authentic. It
3 appeared to be her handwriting---

4 Q. Right.

5 A. ---and I know what she and her mom had said before or
6 whatever. So I could see down that road and he -- I do not
7 recall him ever protesting to me: I never did this; I never
8 touched her; I never had sex with her.

9 Q. Right.

10 A. Our only hope was is that maybe she, because she did
11 like him or whatever -- and I say like him, that she -- he's
12 a nice fellow. He's a good guy.

13 Q. Uh-huh.

14 A. That maybe she just would deny it---

15 Q. Okay.

16 A. ---or at this point say it didn't happen or whatever.

17 Q. Okay. Okay.

18 A. And if that happens, well, what are they going to do?
19 You know, they can cross her or whatever, but I mean...

20 Q. Right.

21 A. But it indicates that she would have -- well, he did
22 have sex, that she would have -- if they'd called her in
23 there and put her up on the stand, she would have told the
24 truth.

25 Q. And the mother or through the solicitor the mother was

1 aware of the relationship as well?

2 A. Her mother stated in this that he used to come over to
3 the house; during that time he was 15 or 16. I thought he
4 was 14 or 15. She said he looked like a -- looked like a
5 very young guy, looked much younger or whatever. So she
6 would have talked about that timeline of when he was coming
7 over there and, of course, she said in her letter that -- and
8 I guess the solicitor could have asked her about that letter
9 if she tried to change her story up on the stand: What do
10 you mean? And you said before that he was the father of your
11 child. So all of those things would have come together.

12 I mean, if you do this enough, you know, don't count on
13 these things not being brought together by a skillful
14 solicitor. I mean, you don't have to be that skillful. I
15 mean, it's just -- I mean, that's just -- those are just
16 three pieces right there that fit right together.

17 Q. And, again, you were aware that he wasn't the father of
18 the child.

19 A. Yes.

20 Q. Okay.

21 A. Yeah, he and I had talked about that.

22 Q. All right. Did you advise him of his constitutional
23 rights?

24 A. Yes, I did.

25 Q. Did he seem to understand those?

- 1 A. Yes, he did.
- 2 Q. And whose decision was it to plead guilty?
- 3 A. It was his decision.
- 4 Q. He pled guilty on January 28, 2010; right?
- 5 A. That sounds about right, yeah.
- 6 Q. Okay.
- 7 A. Yeah.
- 8 Q. And then Graham v. Florida didn't come out 'til May 17,
- 9 2010.
- 10 A. I don't know when it came out.
- 11 Q. That's when it came out.
- 12 A. Yeah. All right. You're telling me that. Okay. All
- 13 right.
- 14 Q. So that's about three or four months after his plea?
- 15 A. Okay. Yes.
- 16 Q. And you weren't aware of Graham v. Florida at the time.
- 17 A. I was not aware of it. No, I was not.
- 18 Q. Regarding sentencing clarification, was there any
- 19 question in your mind that Judge Newman would sentence him to
- 20 the 25 to 30?
- 21 A. That's what I thought. I thought he was adding the five
- 22 to the 25.
- 23 Q. Because if he's adding it to the 20, it would have just
- 24 -- might as well run it concurrent at that point.
- 25 A. Well, that would have been right, but it is a question

1 to ask. He did not---

2 Q. Correct.

3 A. He did not clarify which one he was making that
4 consecutive to. That is true, but I just... That was my
5 assumption though.

6 Q. Okay. And then your former representation of Joshua
7 Edwards, did that in any way---

8 A. No.

9 Q. ---affect your representation of Kevin Bradley?

10 A. No.

11 Q. Okay. Did you feel you owed Joshua Edwards a duty---

12 A. No.

13 Q. ---of loyalty?

14 A. Nothing.

15 Q. Okay. And do you feel you represented Kevin Bradley to
16 the best of your abilities?

17 A. Yes, I do, and I still think that what we did there that
18 day was the best thing for him.

19 Q. Okay. And in regards to your representation of *victim*
20 did that in any way affect your representation of
21 Kevin Bradley?

22 A. No, it didn't. It actually helped me to know her to
23 know -- if she'd been a stranger, I wouldn't have -- she's
24 just a nice person and very believable and whatever -- she
25 wouldn't -- she wouldn't have said she had sex with him if

1 she hadn't.

2 Q. Okay. And that---

3 A. And I don't think a jury -- I believe that and I think a
4 jury would have seen: Why is she saying she had sex with him
5 and she didn't?

6 Q. And so your representation of ~~██████████~~ **VICTIM** ~~██████████~~ actually
7 gave you some insight into---

8 A. Yes, it did.

9 Q. ---the possible trial testimony---

10 A. Yes.

11 Q. ---of her---

12 A. Very nice person. Very nice person.

13 Q. Okay. And did you feel you owed ~~██████████~~ **VICTIM** ~~██████████~~ any type
14 of duty of loyalty?

15 A. Well, you know, I -- not any -- I mean, I like *victim*

16 I didn't feel like representing him in this had
17 anything -- was not really in conflict or whatever there.

18 Q. Okay.

19 A. Because I don't think she would have -- you know, I just
20 know where that would have ended up.

21 Q. Okay. So, again, your representation of *victim*,
22 in no way affected your representation---

23 A. No.

24 Q. ---of Kevin Bradley.

25 A. No.

1 **Mr. Gourley:** All right. No other questions. Thank
2 you, Mr. Carraway.

3 **Ms. Shurling:** Briefly. Something I forgot to put on
4 the record.

5 Redirect Examination

6 By Ms. Shurling:

7 Q. This doesn't happen often. Back probably 30 years ago
8 you taught me a tennis lesson or two, didn't you, Mr.
9 Carraway?

10 A. Yes, I did.

11 Q. And I believe after one of those tennis lessons we even
12 went out for a drink after the tennis lesson; correct?

13 A. Yes, we did.

14 Q. Okay. And that was like 35, 30 years ago, something
15 like that?

16 A. Let's say -- let's just say it was a few years ago, 10
17 -- you know, maybe 10 or 15. My memory -- it was -- you
18 know, it was 10 or 15 years ago maybe when we were 25. Let's
19 just leave it at that. How about that?

20 Q. You were still a tennis pro, not a lawyer; right?

21 A. That's right.

22 Q. Okay.

23 A. Yes.

24 Q. Thank you very much.

25 A. All right.

1 **The Court:** All right. Thank you. I didn't know you
2 played tennis. I learned something today. We're going to
3 take a five-minute break for the court reporter.

4 **Ms. Shurling:** And my last witness won't take long at
5 all; I promise.

6 **The Court:** That's good.

7 (Whereupon, a short break was taken.)

8 **Ms. Shurling:** Your Honor, I would call Tyler Brown.

9 Tyler B. Brown, after being duly sworn, testified
10 as follows:

11 **The Clerk:** Please state your full name and spell your
12 last name for the record.

13 **The Witness:** I'm Assistant Solicitor Tyler Bryant
14 Brown. Last name is B-R-O-W-N.

15 Direct Examination

16 By Ms. Shurling:

17 Q. Thank you. Mr. Brown, I apologize for having you here
18 so late. At my request did you bring the solicitor's
19 office's file concerning a charge against Joshua Lamont
20 Edwards found in indictment 2006-GS-45-199?

21 A. I do not have the full file. I have the scanned copy of
22 all pertinent documents from it, but, yes, I do have that
23 with me.

24 Q. Okay. And can you tell us for the record, please, who
25 the victim was on the count of second degree criminal sexual

1 conduct with a minor named in that indictment?

2 A. Right. In the -- let me check and see if it actually
3 names it in the indictment itself.

4 Q. It doesn't.

5 A. It does not. But in the incident report which I also
6 have -- are you going to want me to use the full name? You
7 said you were going to go for privacy, but I guess it's
8 already out there at this point.

9 Q. I think -- I think because I found it in a couple of the
10 transcripts I just abandoned that effort at one point.

11 A. In that case, the incident report that is attached to
12 the indictment and warrant all allege the victim's name is

13 **VICTIM**
~~REDACTED~~.

14 Q. **VICTIM**
~~REDACTED~~.

15 A. That's correct.

16 Q. So regardless of when her baby was subsequently born,
17 that indictment number on which counsel of record was LeGrand
18 Carraway involved the victim, **VICTIM**
~~REDACTED~~.

19 A. Right. Now, I don't know anything about the baby being
20 born. It is -- **VICTIM**
~~REDACTED~~ is the victim in that case.

21 Q. Thank you. No further questions.

22 A. Thank you.

23 Mr. Gourley: No questions, Your Honor.

24 The Court: All right. You can step down.

25 The Witness: Thank you, Your Honor.

1 **The Court:** I already knew that.

2 **Ms. Shurling:** Kevin Bradley.

3 Kevin Bradley, after being duly sworn, testified as
4 follows:

5 **The Clerk:** Please state your full name and spell your
6 last name for the record.

7 **The Witness:** Kevin Bradley, B-R-A-D-L-E-Y.

8 Direct Examination

9 By Ms. Shurling:

10 Q. Mr. Bradley, you understand that this is a separate
11 record and a separate P.C.R. from the one we heard earlier
12 addressing your jury trial.

13 A. I do.

14 Q. Okay. So I'm going to cover something very briefly that
15 we covered at the end of your hearing on your jury trial and
16 that's the fact that on January 25th, right after you were
17 found guilty at the jury trial on January 27th, 2010, you
18 made statements on the record to the judge about wanting to
19 go ahead and do the plea. Correct?

20 A. Correct.

21 Q. But, in fact, on the first day of trial, January 25th,
22 2010, before a trial ever started there was an attempt to
23 enter a plea on one of the charges that you were represented
24 by Mr. Strobel on and one of the charge -- and the charge,
25 the only charge, that you were represented by LeGrand

1 Carraway on; correct?

2 A. No, ma'am. Actually the plea was for the -- plead
3 guilty to first degree and all the other charges would be
4 dropped.

5 Q. All right. Mr. Bradley, have you got your copy of the
6 January 25th hearing?

7 A. No, not that one.

8 Q. One moment, please. Page 3, lines 1 through 18,
9 indicate that on the two-count indictment on which you were
10 represented by Mr. Strobel you were pleading to first degree
11 C.S.C. with a minor and they were dropping the second degree
12 count relating to the victim in the first degree count. Then
13 it says that you were also pleading as charged and waiving
14 grand jury presentment on the single count of C.S.C. with a
15 minor on which you were represented by LeGrand Carraway, does
16 it not?

17 A. Yes.

18 Q. So the plea that was attempted before your jury trial
19 was to one count of C.S.C. with a minor, first degree.

20 A. Uh-huh.

21 Q. Involving the victim from the jury trial.

22 A. Correct.

23 Q. And they were dropping the second degree involving the
24 victim from the jury trial.

25 A. Correct.

1 Q. And you were also supposed to be pleading to the second
2 degree C.S.C. involving victim.

3 A. Well, I didn't wanted (verbatim) to plead to that.

4 Q. I didn't ask you that. I said according to what was put
5 on the record by the solicitor, what was fixing to happen was
6 they were going to drop the one count of C.S.C. second with a
7 minor involving the victim from the jury trial and you were
8 going to plead to first degree involving that same victim and
9 plead to another count of second degree involving a whole
10 different victim, **VICTIM** ; correct?

11 A. Correct.

12 Q. And then at some point during this proceeding the judge
13 asked if you want to give up those rights and plead guilty,
14 and you say, "No, Your Honor, I don't want to give up my
15 rights."

16 A. That's correct.

17 Q. Okay. Now, why did you stop this plea?

18 A. Because I did not wanted (verbatim) to plead guilty to
19 the first degree nor did I wanted (verbatim) to plead guilty
20 to the victim charge.

21 Q. Okay. When you went to trial on the charge of first
22 degree, were you aware that it carried a sentence of 25 years
23 to life?

24 A. Yes. Yes, ma'am.

25 Q. All right. But the judge gave you 25 years.

1 A. Yes, ma'am.

2 Q. And once he gave you 20 and 25 concurrent, at the end of
3 that trial you asked if you could just go ahead and plead to
4 that other count; correct?

5 A. Correct.

6 Q. Why were you so anxious to plead to that other count at
7 that time?

8 A. Because the judge had just stated prior to me making
9 that statement that he would give -- that I would get -- if
10 found guilty, I would get life without parole and he has no
11 role in that.

12 Q. Okay. Had it not been for the threat of a life-without-
13 parole sentence, if you were convicted of second degree with
14 regard to *victim* would you have ever pleaded guilty?

15 A. No, I would not.

16 Q. Prior to the plea proceeding held on January 28th, 2010,
17 had you ever seen this letter that Mr. Carraway testified was
18 turned over to him by the solicitor's office?

19 A. Today is my first day seeing this letter.

20 Q. After you were convicted and entered your plea, did you
21 write Mr. Carraway and request a copy of your discovery
22 materials?

23 A. I did.

24 Q. And when you received those discovery materials from Mr.
25 Carraway, was this letter in that file?

1 A. I have never received discovery materials from Mr.
2 Carraway.

3 Q. So you wrote and asked for them, but you never got them.

4 A. Correct.

5 Q. All right. Did Mr. Carraway ever tell you that he had,
6 in fact, been ~~██████████~~ **VICTIM** ~~██████████~~'s lawyer?

7 A. No, he has not.

8 Q. Did he tell you that he was Joshua Edwards' lawyer on
9 charges involving the same victim, ~~██████████~~ **VICTIM** ~~██████████~~?

10 A. No, he has not.

11 Q. If you had known that he had represented both the victim
12 in your charges and someone else who had also been prosecuted
13 for having sex with the same minor, would you have wanted him
14 to be your lawyer?

15 A. No, I would not.

16 Q. Is there any way that you would have ever waived a
17 potential conflict of interest if you'd been made aware of---

18 A. No.

19 Q. ---his representation of those individuals?

20 A. Of course not. No.

21 Q. Okay. Now, hard question: You got five years
22 consecutive. That bumped you up from 25 years to 30. You
23 understand that.

24 A. Yes.

25 Q. Do you understand that if you were to get what you're

1 asking for which is a new trial on the charge involving Ms.
2 Davis, that if you were convicted on that charge you could
3 get up to 20 years?

4 A. I understand.

5 Q. And that if the judge were to give you 20 years
6 consecutive to the sentence you got at trial, you could be
7 looking at 50 years instead of 30.

8 A. I understand.

9 Q. And more specifically, you turned 18 ~~January 1, 2007~~, 2007;
10 correct?

11 A. Correct.

12 Q. So if the solicitor's office were able to convince
13 ~~the victim~~ **VICTIM** to narrow it down and claim that she could
14 pinpoint the time she had sex with you to sometime after your
15 18th birthday, you would potentially be exposing yourself to
16 life without parole if you were convicted of second degree
17 under those circumstances.

18 A. Correct.

19 Q. And I've explained to you the decision of the U.S.
20 Supreme Court in Graham versus Florida, have I not, the case
21 that said you can't give life---

22 A. Oh, yes, ma'am.

23 Q. ---to a juvenile?

24 A. Yes, ma'am. You explained that to me; yes, ma'am.

25 Q. Okay. So I have explained to you that in my opinion

1 where the act is alleged to have occurred sometime between
2 October 1st, 2006, and October 1st, 2007, that if the State
3 couldn't narrow it down that I believe there would be a
4 constitutional problem with them seeking to give you a life-
5 without-parole sentence since the majority of that window
6 alleged by the indictment was prior to your 18th birthday;
7 right?

8 A. Correct.

9 Q. But I also told you there weren't any cases on point.

10 A. Yes, ma'am.

11 Q. Didn't I?

12 A. Yes, ma'am.

13 Q. And that that was, you know, the hopefully learned
14 opinion of someone with 35 years appellate experience but
15 that I could never guarantee what an appellate court would
16 do. Correct?

17 A. Correct.

18 Q. All right. So we covered that. Now, when the judge
19 gave you five years consecutive to the indictment from your
20 jury trial, did you understand from the beginning that that
21 meant you had a 30-year sentence?

22 A. All I knew is I had five extra years to something, just
23 didn't know what.

24 Q. Okay. And did -- was there any discussion between you
25 and Mr. Carraway as to whether or not that five years was

1 consecutive to the 25 or whether it was potentially only
2 consecutive to the 20?

3 A. No.

4 Q. If you had understood that the record was ambiguous on
5 that point, would you have wanted him to file a motion to
6 reconsider sentence and ask the judge for clarification on
7 that point?

8 A. Yes.

9 Q. When the plea broke down on January 25th, 2010, at that
10 point would you have wanted the opportunity to have further
11 discussions with both Mr. Strobel and Mr. Carraway about what
12 could possibly be worked out for you to enter a plea that
13 avoided an admission of guilt to first degree C.S.C.?

14 A. Yes.

15 Q. And were you given any such opportunity by either of
16 these lawyers?

17 A. No, ma'am.

18 Q. You were on bond on the charges from the jury trial;
19 correct?

20 A. Correct.

21 Q. And you've heard Mr. Strobel say that you violated that
22 bond in some way by having contact with the victim's family
23 or with the victim in that case? Did you hear that
24 testimony?

25 A. I heard that testimony.

1 Q. Is that accurate?

2 A. That's incorrect.

3 Q. Why did you lose your bail bond prior to your jury trial
4 on the charges involving the young lady from the jury trial?

5 A. Well, after recent -- well, after I received my
6 discovery after my conviction, I received this letter from
7 Mr. Strobel which was in my Rule 5 Brady which was from Ms.
8 Gaye Allen Cook and she stated that she -- this was dated
9 October 8th, 2009, the same date of the arrest warrant for
10 ~~██████████~~ **VICTIM** ~~██████████~~, and in this letter it says that, "Dear
11 Corporal Hamlet, attached you will find copies of the records
12 for the minor child, ~~██████████~~ **CHILD** ~~██████████~~, and it is noted that
13 these records are being released to you pursuant of
14 (verbatim) the subpoena issued to our office for records.
15 Please feel free to share the enclosed information with the
16 Williamsburg County solicitors as your office work (verbatim)
17 together to protect the emotional and physical wellbeing of
18 my patient, ~~██████████~~ **CHILD** ~~██████████~~. As stated during our phone
19 conversation earlier this morning, I will be happy to
20 cooperate with your office and solicitor as you seek to
21 protect my patient, ~~██████████~~ **CHILD** ~~██████████~~. ~~██████████~~ **CHILD** ~~██████████~~ has made a
22 disclosure of chronicle (verbatim) sexual abuse and named her
23 cousin (verbatim) boyfriend as the alleged offender.
24 ~~██████████~~ **CHILD** ~~██████████~~ presents with P.T.S.D. symptoms and also presents
25 with depression, all clinically appropriate reason"---

1 Q. Mr. Bradley, I'm going to interrupt you for a second.

2 A. Okay.

3 Mr. Gourley: Judge, I just would like to object. This
4 is all irrelevant. We're here on a guilty plea. We're not
5 here on Mr. Strobel's representation or anything to do with
6 the jury trial.

7 Ms. Shurling: He -- it...

8 The Court: Yeah. How has that got anything to do---

9 Ms. Shurling: Mr. Bradley, what I asked you was: What
10 do you have that verifies why your bond was revoked on the
11 charges?

12 Mr. Gourley: Again, Your Honor, that's irrelevant to
13 the guilty plea.

14 Ms. Shurling: Your Honor, I believe it goes to the
15 credibility of the testimony heard today. Your Honor has
16 heard testimony that my client's bond was revoked because he
17 just refused to listen and refused to stay away from the
18 family of the victim, and the documentation available to the
19 Court indicates that his bond was revoked because he picked
20 up the charge on *victim* as (verbatim).

21 Mr. Gourley: And that was all for the jury trial, Your
22 Honor. We're here on the guilty plea.

23 The Court: Yeah. Well, I understand that. That should
24 have been brought out in the other hearing.

25 Mr. Gourley: Correct.

1 **The Court:** That has nothing to do with this hearing;
2 right? It was in his first P.C.R. with the trial. This has
3 nothing to do with this hearing. It was revoked in the jury
4 trial because he got -- his lawyer said he contacted the
5 victim and now he's saying---

6 **Ms. Shurling:** I'll move on, Your Honor..

7 **The Court:** So that has nothing to do with this guilty
8 plea.

9 **The Witness:** But my bond wasn't revoked. Actually, I
10 was just denied bond on this *victim* case.

11 **The Court:** Okay.

12 **The Witness:** I never was...

13 **The Court:** So if he was denied bond on this *VICTIM*
14 ~~case~~ case, it is pertinent but---

15 **Ms. Shurling:** Okay. So---

16 **The Court:** But that's just something -- the magistrate
17 denied his bond.

18 **Ms. Shurling:** I'll clarify.

19 **The Court:** Okay.

20 By Ms. Shurling:

21 Q. So you're saying your other bond wasn't revoked. It's
22 just you were arrested on *VICTIM* ~~case~~ and you didn't make
23 bond on that case.

24 A. That's correct.

25 Q. Thank you for that clarification.

1 The Court: Okay.

2 By Ms. Shurling:

3 Q. Okay. So you didn't know about your lawyer's
4 representation of Joshua Edwards. You didn't know about your
5 lawyer representing ~~_____~~ **VICTIM** ~~_____~~. You didn't know that
6 ~~_____~~ **VICTIM** ~~_____~~ had indicated she didn't want anything to do
7 with these charges? Is that correct?

8 A. That's correct.

9 Q. If you'd known any of those things, would you have
10 waived your right to trial by jury by entering a plea?

11 A. I would not. I would not waive my rights.

12 Q. Okay. What did your lawyer tell you about grand jury
13 presentment and your rights to have the grand jury entertain
14 the indictment?

15 A. There was no discussion at all. I actually didn't find
16 out there was no indictment until I pled right then and there
17 that there was no indictment.

18 Q. Okay. So at the plea proceeding itself is the first
19 time you became aware that there wasn't actually a true-
20 billed indictment.

21 A. Correct.

22 Q. And whatever is on the record concerning grand jury
23 presentment is all you knew about grand jury presentment.

24 A. Correct.

25 Q. Okay. While we're talking about potential conflicts

1 here, this is -- this is really going way back and stretching
2 probably beyond what I have to worry about, but I'm just
3 about that obsessive-compulsive, so bear with me. I did tell
4 you that many years ago, probably 30 years ago, that I had
5 taken tennis lessons from LeGrand Carraway. Correct?

6 A. Oh, yes.

7 Q. And I also told you that we saw each other socially back
8 during that time period and we're friends.

9 A. Okay. Yes.

10 Q. Okay. And I advised you of that relationship, however
11 distant in the past it was, and told you that if that
12 affected whether or not you wanted me to be your lawyer you
13 needed to tell me, that I felt like I could handle the case?

14 A. Correct.

15 Q. But it was up to you; right?

16 A. Yes.

17 Q. And what did you say?

18 A. I said I wanted you to be my lawyer.

19 Q. And you waived any potential conflict of interest
20 regarding my previous social acquaintance with Mr. Carraway.

21 A. Correct.

22 Q. And you waive it again today?

23 A. I am; yes, ma'am.

24 Q. Okay. Have I basically covered what you wanted to cover
25 as regards the guilty plea proceeding?

1 A. Well, you know, I just -- I just want to state for the
2 record that had counsel would have investigated more and we
3 had more discussions and as well as -- as well as letting me
4 know that there was no indictment and the State really had no
5 case whatsoever, I would have wanted to go to trial instead
6 of just pleading guilty to a case that was -- that was just
7 made up.

8 Q. Well, you're stealing the thunder from my last couple of
9 questions, so let's just get it; okay?

10 A. Okay. I'm sorry.

11 Q. On January 25th when you first talked to the Court about
12 entering a plea, when you weren't willing to say you did it
13 and that you wanted to waive your right to a jury trial, the
14 whole plea proceeding just ended; right?

15 A. Correct.

16 Q. And at the end of the trial the judge made it clear to
17 you that in his judgment you were facing a potential life-
18 without-parole sentence if you were convicted on the second
19 degree charge involving *victim*

20 A. Correct.

21 Q. On the record during this plea proceeding you make
22 certain admissions about conduct with *victim* .. Were
23 those statements true?

24 A. No, not at all.

25 Q. And why did you make them?

1 A. Because the judge told me the night prior when I had
2 asked him, "Can I just plead to this charge to get it over
3 with?" he said that I have to convince him that I'm guilty.
4 So I took the judge's advice and I lied under oath and made
5 up something just to convince him.

6 Q. And you did so because of what?

7 A. Because I did not wanted (verbatim) to have life without
8 parole.

9 Q. Thank you. Is there anything else that I've neglected
10 to bring to the attention of Judge Cothran?

11 A. I believe that's all.

12 Q. Thank you. No further questions. Please listen
13 carefully to the questions put to you by the respondent and
14 answer them truthfully.

15 Cross-Examination

16 By Mr. Gourley:

17 Q. Mr. Bradley, how many times did you meet with Mr.
18 Carraway prior to your plea?

19 A. Twice.

20 Q. Okay. Did y'all go over discovery?

21 A. No.

22 Q. No. Did y'all discuss any possible defenses?

23 A. No.

24 Q. Okay. Did you ever give him any type of leads of
25 witnesses?

1 A. No, I didn't.

2 Q. Okay. And you recall waiving your constitutional
3 rights, your right to a jury trial, present witnesses, so on
4 and so forth during your plea?

5 A. I recall saying I didn't wanted (verbatim) to waive
6 those rights---

7 Q. During your plea on January 28th, do you recall waiving
8 your constitutional rights?

9 A. Oh, okay. Well, yeah.

10 Q. Okay.

11 A. Because of the courts (verbatim) coerced me to do it.

12 Q. Okay. Do you recall telling the plea judge that the
13 sentence you received from your trial was -- do you recall
14 the plea judge telling you that the sentence you received
15 from your trial was completely separate from what you were
16 doing on January 28th?

17 A. You said it was a separate victim; correct?

18 Q. That was a separate sentence. It had nothing to do with
19 what you were doing on January 28th when you were pleading
20 guilty.

21 A. Can you specify where is that mentioned?

22 Q. Do you have a transcript? Have you got a copy of it?

23 Ms. Shurling: Which transcript?

24 Mr. Gourley: The 28th. Your Honor, may I approach?

25 The Court: Yes, sir.

1 **Mr. Gourley:** Right here, Mr. Bradley. Page 6. Read
2 for me lines 12 through 16.

3 **Ms. Shurling:** Is that page 6?

4 **Mr. Gourley:** Yes, ma'am. I'm sorry. Page 6, lines 12
5 through 16.

6 **Ms. Shurling:** You have to remember the old lady's hard
7 of hearing. I'm sorry.

8 **Mr. Gourley:** That's no problem.

9 **The Witness:** Okay.

10 By Mr. Gourley:

11 Q. All right. So Judge Newman did advise you that this was
12 a complete and total and separate sentence.

13 A. He did.

14 Q. Okay. And you recall telling the plea judge that you
15 were satisfied with Mr. Carraway's services?

16 A. Again, that was because the judge told me that I have to
17 convince him of being guilty and it's just to make the guilty
18 plea go on.

19 Q. All right. So you lied to the judge?

20 A. I did.

21 Q. Okay. Did you lie to the judge when you told him you
22 had a long enough time to speak with him---

23 A. I did.

24 Q. ---him being Mr. Carraway?

25 A. I did. I did.

1 Q. Okay. What about the fact that you told him no one was
2 promising you or threatening you to plead guilty?

3 A. I actually said that -- yes, in the beginning. I said
4 that there was something promised because from my
5 understanding that it was going to be a sentence that would
6 have run concurrent, and if you take a look at the sentencing
7 sheet---

8 Q. Uh-huh.

9 A. ---the box is marked by -- it says, "Recommendation by
10 the State."

11 Q. Okay.

12 A. And then later she went back and went without
13 negotiation, recommendation, and initialed it.

14 Q. Okay.

15 A. So it was initially a recommendation - from my
16 understanding it was - and then everybody was looking as if I
17 was speaking crazy, so I just went with the flow. I wanted
18 the plea to be over with.

19 Q. Mr. Bradley, the Court asked you if anyone had promised
20 you anything to get you to plead guilty and you said, "No."
21 Do you refute that?

22 A. Again, I just did it to convince the judge as he asked
23 me to the prior night before.

24 Q. And then in regards to plea negotiations, the Court
25 advised you that there were no plea negotiations and that the

1 reflected -- and that's reflected on the plea form. I can't
2 talk. And that is reflected on the plea form that you signed
3 that says, "The plea is without negotiations or
4 recommendations," and you said, "That's correct." Do you
5 recall that?

6 A. However, again, there is -- the box is marked
7 "Recommendations by the State."

8 Q. I understand.

9 A. By Ms. Barr.

10 Q. But the judge advised you that there was no plea
11 negotiations or recommendations made by the State and you
12 said, "Yes, sir."

13 A. Well, after, you know, we had the discussion.

14 Q. Right. And you told the judge that you wanted to plead
15 guilty; right?

16 A. That's correct.

17 Q. And you told the judge that you were guilty because you
18 had sex with **VICTIM**?

19 A. Correct.

20 Q. Okay. And that she was under the age of 14 when you had
21 sex.

22 A. No, I didn't say that.

23 Q. You did not say that.

24 A. No, I did not.

25 Q. If the transcript reflects that you said that, would you

1 refute it?

2 A. If the transcript says it, then it is correct.

3 Mr. Gourley: Okay. And, Your Honor, that's page 5,
4 line 23 through 25.

5 The Court: Okay.

6 By Mr. Gourley:

7 Q. And you also told the judge that at the time you were
8 committing the offense you knew that you were breaking the
9 law; right?

10 A. Well, back to the question that you just asked me, can
11 you just recite what does the transcript says (verbatim)---

12 Q. Sure.

13 A. ---for the record?

14 Q. It says, "The Court: How old do you believe she is?"
15 Your answer, "13 or 14." The Court---

16 A. And your question was again?

17 Q. That you were -- that you had sex with ~~██████████~~ ^{VICTIM}, a
18 person under the age of 14.

19 A. Well---

20 Q. Right?

21 A. I said 14.

22 Q. Okay. 13 or 14. So you had sex with ~~██████████~~ ^{VICTIM} who
23 was 13 or 14 at the time; correct?

24 A. No, I did not.

25 Q. You did not.

1 A. I did not have sex with---

2 Q. So you lied to the Court.

3 A. I did.

4 Q. Okay.

5 A. The judge asked me to lie. In order for him to accept
6 my guilty plea is the only way I could have---

7 Q. And you lied to the Court because you were scared of
8 getting a life without parole -- a longer sentence; right?

9 A. Because the judge threatened me with life without
10 parole.

11 Q. So you pled because you were scared of getting a longer
12 sentence?

13 A. I pled because the judge said I would get life without
14 parole.

15 Q. Okay.

16 A. According to trial transcript page 299.

17 Q. All right. And do you recall agreeing with the facts as
18 presented by the solicitor during your guilty plea?

19 A. I'm sorry?

20 Q. The solicitor read the facts of what they would present
21 had they gone to trial, and you agreed with those facts. Do
22 you recall that?

23 A. Again, it was to convince the judge, but I disagree, of
24 course.

25 Q. Okay.

1 A. It was just to convince the judge as asked.

2 Q. In the transcript it reflects that you agreed with that;
3 right?

4 A. The transcript also reflects at the trial page 299 that
5 the only way that the guilty plea will be accepted is if I
6 convince the judge.

7 Q. And, again, you lied to the judge in order to convince
8 him; right?

9 A. That's correct.

10 Q. Okay. Now, regarding your appeal, did you ask your
11 attorney to file an appeal?

12 A. As soon as he said five years consecutive, I immediately
13 said to Mr. Carraway, "I want to appeal."

14 Q. Did you do this in writing?

15 A. Immediately.

16 Q. Did you do it in writing or did you ask---

17 A. In front of the judge, in front of the courtroom I said,
18 "I want to appeal."

19 Q. Okay. You stated that Mr. Carraway should have done
20 some more investigation. What more investigation should he
21 have done, Mr. Bradley?

22 A. Well, as you -- as you notice, this letter that just
23 came out of nowhere the day on -- of this plea is -- he
24 should have investigated where did this letter come from, if
25 it was authentic.

1 Q. Uh-huh.

2 A. Was this person -- he should have -- he's never even
3 questioned the victim.

4 Q. Uh-huh.

5 A. So -- and for him to just ask for a plea with no
6 indictment, it should have just been a big question mark from
7 right from the beginning.

8 Q. Mr. Bradley, you didn't have to plead guilty though. It
9 was your decision---

10 A. Of course.

11 Q. ---to plead guilty.

12 A. Of course, but there was a threat of life without
13 parole.

14 Q. Right. And if you would have been convicted, you could
15 have been sentenced to life without parole.

16 A. Is that true?

17 Q. It's possible. Were you ever noticed for life without
18 parole?

19 A. I was never served a notice, but again, like I said, I
20 was threatened by the judge and the State of being---

21 Q. All right.

22 A. Of having life without parole.

23 Q. Now, regarding the indictments, you waived presentment
24 to the grand jury. Do you recall that, where you initialed
25 saying, "I waive presentment to the grand jury"? Right?

1 A. At the beginning where I -- where the plea went down?

2 Q. Uh-huh.

3 A. Correct.

4 Mr. Gourley: Okay. Your Honor, I have no further
5 questions. Thank you, Mr. Bradley.

6 The Court: Okay. Have you got anything further?

7 Redirect Examination

8 By Ms. Shurling:

9 Q. If you had not pleaded that day -- nobody was saying you
10 were fixing to go to trial on the ~~charges~~ **VICTIM** charges that
11 day, were they?

12 A. No, ma'am.

13 Q. Okay. And so if you had declined to waive grand jury
14 presentment and had insisted that the case go to the grand
15 jury, there would have been a time gap between the jury trial
16 on the Gaines case and when you were eventually tried on the
17 *victim* case; correct?

18 A. Correct.

19 Mr. Gourley: Again, Your Honor, I would object. That's
20 speculation. There's no way to know when the solicitor would
21 have called this case to trial.

22 Ms. Shurling: Well, we know they couldn't have tried it
23 that day.

24 Mr. Gourley: They could have tried it the next day.

25 The Witness: Well, the grand jury was not able to

1 create an indictment, so there would have to be a time gap
2 because there was no indictment. So it could not have been
3 tried that week of that commencement.

4 **The Court:** That's true.

5 By Ms. Shurling:

6 Q. The grand jury had, in fact, just met the previous week,
7 had they not?

8 A. Correct, on the 21st of January.

9 Q. And you know that for a fact because you know you were
10 indicted by the grand jury on the *victim* se on the first
11 degree count January 21st; correct?

12 A. That's correct.

13 Q. So, by definition, there would have been a gap before
14 the next meeting of the grand jury.

15 A. Correct.

16 Q. During which the State could have served you with notice
17 to seek life without parole.

18 A. Correct.

19 Q. And, in fact, under 17-25-45 that you've now had a
20 chance to review with me, if you had been convicted of a
21 second most serious strike, it would have been automatic;
22 correct?

23 A. Correct.

24 **Ms. Shurling:** Thank you. No further questions.

25 **Mr. Gourley:** Nothing further, Your Honor.

1 **The Court:** You can step down. All right. That's the
2 end of the case?

3 **Ms. Shurling:** Your Honor, given the lateness of the
4 hour and the complexity of the two cases that we've heard
5 today, I was going to ask for leave of Court to order the
6 transcripts from today's proceedings and when we receive
7 those transcripts to both sides present proposed orders.

8 **Mr. Gourley:** Judge, I've taken notes. I'm prepared to
9 present my proposed orders.

10 **The Court:** I'm not -- I ain't going to take that much
11 time on it.

12 **Ms. Shurling:** Pardon?

13 **The Court:** You can submit me a proposed order, but I've
14 got good notes of the transcript, and I'll be glad to give
15 you ten days to submit me orders.

16 **Mr. Gourley:** That's fine.

17 **Ms. Shurling:** Thank you, Your Honor.

18 **Mr. Gourley:** And, Judge, if I may, I do have a couple
19 of closing comments on the conflict of interest.

20 **The Court:** Okay.

21 **Mr. Gourley:** Your Honor, Jackson v. State states that
22 the fact that counsel does not advise the defendant of
23 potential conflict of interest does not affect the
24 constitutionality of the conviction. State v. Gregory stands
25 for the proposition that a mere possibility of conflict of

1 interest is insufficient to impugn a criminal conviction, and
2 then also, Your Honor, I'm going to hand up Duncan v. State.
3 The applicant must show that his counsel actively represented
4 conflicting interests to establish a claim of ineffective
5 assistance of counsel.

6 The Court: Okay.

7 Mr. Gourley: And, Your Honor, I have copies of those
8 cases for you, and I've handed those to Ms. Shurling as well.

9 The Court: Okay. Thank you.

10 Ms. Shurling: Only briefly in reply, Your Honor, I
11 would ask the Court while it's fresh on your memory to recall
12 the testimony of Mr. Carraway and the fact that his comments
13 regarding the truth and veracity of ~~██████████~~ ^{VICTIM}, her
14 personality and how well he knew her, all related back to his
15 interaction with this victim as her lawyer and, therefore, we
16 would submit that his testimony here today indicates that his
17 judgments in this case and the advice he gave Mr. Bradley
18 were directly affected by that previous attorney/client
19 relationship with the victim, *victim*

20 I would state for the record, Your Honor, that I have
21 attempted to locate ~~██████████~~ ^{VICTIM} to have her here for this
22 post-conviction relief hearing. I was not able to find any
23 location information for this young lady that was available
24 to me doing the traditional runs that we do.

25 The information provided to us here today by Mr.

1 Carraway was never provided to me previously. I had written
2 Mr. Carraway and asked for the opportunity to review his
3 file. I had, in fact, issued a subpoena for him to bring his
4 file to court today. After having told me that the file
5 could not be located and that if and when he found it he
6 would notify me, it came to court with him today for the
7 first time. I did not know that he had located it.

8 The letter from ~~REDACTED~~ **VICTIM** -- purportedly from
9 ~~REDACTED~~ **VICTIM** to the solicitor's office has -- no, I
10 apologize, Your Honor. It's the memo from the solicitor's
11 office on Plaintiff's Exhibit 3, has an address on it in
12 Kingstree, South Carolina. This is, of course, dated a long
13 time ago, and I have no idea whether or not the young lady is
14 still at that address. But I did not have that address
15 available to me at the time I was preparing for this
16 proceeding. So I would ask that the record be held open for
17 10 days for me to be given the opportunity to try to
18 interview her.

19 **Mr. Gourley:** And, Your Honor, I would -- I would be
20 opposed to that.

21 **The Court:** Well, I'll -- it will probably take us 10
22 days to get this order in place. If you find -- I'm not
23 going to hold it open for an additional hearing or any more
24 testimony, but if you find her and if her testimony is
25 substantially different from what I've heard today, then I'll

1 allow you to file whatever motion for me to hear it.

2 Ms. Shurling: Thank you, Your Honor.

3 The Court: Okay.

4 Mr. Gourley: Thank you, Judge.

5 The Court: All right?

6 Ms. Shurling: That's it, Your Honor.

7 The Court: Okay. I'll see y'all at 9:30 in the
8 morning.

9 (Whereupon, the proceedings were concluded.)

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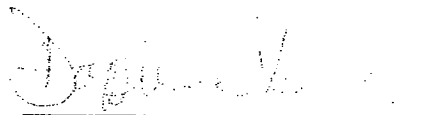
24

25

1 I, the undersigned Daphne D. Helms, official court
2 reporter for the Fifth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate, and complete transcript of record of all the
5 proceedings had and evidence introduced in the trial of the
6 captioned case, relative to appeal, in the circuit court for
7 Williamsburg County, South Carolina, on the 27th of May,
8 2014.

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

11
12
13 June 3, 2014

14 
15 _____

16 Daphne D. Helms, court reporter
17
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21
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25

LEGRAND CARRAWAY

ATTORNEY AT LAW

P. O. BOX 819

124 SOUTH ACADEMY STREET
carrawaylaw@fci-i.net

KINGSTREE, SOUTH CAROLINA 29556-0819

TELEPHONE:
OFFICE: (843) 355-7222
FAX: (843) 354-3206

December 11, 2013

BY EMAIL ONLY: tdslaw@shurlinglaw.comLaw Office of Tara Dawn Shurling
3614 Landmark Drive
Columbia, SC 29204

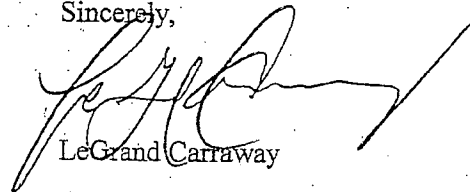
RE: The State v. Joshua Edwards

Dear Ms. Shurling:

Per your request, I am sending you a copy of my file on Joshua Edwards for his criminal sexual conduct with a minor in the second degree.

If you need any further information, please contact me.

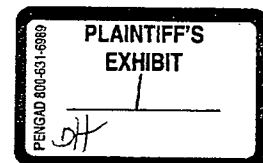
Sincerely,


LeGrand Carraway

LC/bc

Enclosures as stated

A CERTIFIED TRUE COPY
of the original
RETURNED TO: [Signature]
CLERK OF COURT
WILLIAMSBURG COUNTY



STATE OF SOUTH CAROLINA

COUNTY OF
STATEWilliamsburg

VS.

Joshua Lamont Edwards

AKA:

Race:

B

Sex:

M

Age:

18

DOB:

07/17/87

SS#:

Address:

[REDACTED] Ave.

City, State, Zip

Kingstree, SC 29556

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006 -GS- 45 - 199

A/W#:

H-076979

Date of Offense:

April 27, 2006

S.C. Code §:

16-3-655(2)

CDR Code #:

0131916☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Criminal Sexual Conduct w/ Minor, Second Degreein violation of §16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0131916☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTORNEY

Shirley V. Barr
SolicitorJoshua Edwards
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

Fine:

§14-1-206 (Assessments 107.5%)	\$	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35-13 (Public Def/Prob)	\$500	\$
§73-3, 1B TP (Law Enforce. Funding)	\$25	\$
§33-7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
% to County (if paid in installments)	\$	\$
QTAL	\$	\$

Carolyn J Williams

Clerk of Court/ Deputy Clerk

Court Reporter:

Melissa Winfield

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmis. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
0131916
July 18, 2006

Blue - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

ARREST WARRANT

H-076979

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
KINGSTREE, SC

 THE STATE
against

JOSHUA EDWARDS (06-1965)

 Address: AVENUE
KINGSTREE, SC 29556
Phone: SSN:
 Sex: M Race: B Height: 5'2 Weight: 160
DL #:

 DOB: Agency ORI#: 0450200

 Prosecuting Agency: KINGSTREE POLICE DEPT.

 Prosecuting Officer: LT. B.L. SMITH

 Offense: GSC WITH A MINOR UNDER THE AGE
OR 14 BUT OLDER THAN 11 Code: 0385

 Code/Ordinance Sec. 16-3-655(B)

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
defendant Joshua Edwards
on 05-01-06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
KINGSTREE, SC

 Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on APRIL 27, 2006

 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of KINGSTREE, SC)
in the following particulars:

DESCRIPTION OF OFFENSE:

GSC WITH A MINOR UNDER THE AGE OF 14 BUT OLDER THAN 11 / SECTION CODE 16-3-655(B)
I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
THAT ON APRIL 27, 2006 BETWEEN THE HOURS OF 2030 AND 2200 AT THE LOCATION OF 7-A
KINGSPONTE APARTMENTS LOCATED WITHIN THE CITY LIMITS OF KINGSTREE, SC, ONE
JOSHUA EDWARDS DID COMMIT THE OFFENSE OF GSC WITH A MINOR UNDER THE AGE OF 14 BUT
OLDER THAN 11, IN THAT HE DID WILLFULLY AND UNLAWFULLY ENGAGE IN THE ACT OF SEXUAL
INTERCOURSE WITH A MINOR CHILD 12 YEARS OF AGE. MR. EDWARDS WAS IDENTIFIED BY
THE VICTIM AS THE PERSON WHO SEXUAL ASSAULTED HER. CSC WITH A MINOR UNDER THE AGE
OF 14 BUT OLDER THAN 11 IS IN VIOLATION OF THE SC CODE OF LAWS ACCORDING TO SECTION
CODE 16-3-655(B).

 Sworn to and subscribed before me
on May 1, 2006
Carole Cocke (L.S.)
Signature of Issuing Judge

Signature of Affiant

Affiant's Address 401 N. LONGSTREET STREETKINGSTREE, SC 29556Affiant's Telephone 355-5435

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
KINGSTREE, SC

ARREST WARRANT

 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on APRIL 27, 2006 defendant JOSHUA EDWARDS

 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of KINGSTREE, SC) as set forth below:

DESCRIPTION OF OFFENSE:

GSC WITH A MINOR UNDER THE AGE OF 14 BUT OLDER THAN 11 / SECTION CODE 16-3-655(B)
Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Carole Cocke (L.S.)
Signature of Issuing Judge
Judge's Address 401 N. LONGSTREET STREETKINGSTREE, SC 29556Judge's Telephone 355-5435

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

AFFIDAVIT

FILED

05 MAY -3 PH 2:36
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

WITNESSES

Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____
Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____
Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____
Name: _____	Name: _____	Name: _____	Name: _____
Address: _____	Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____	Telephone: _____

CODEFENDANTS

WITNESSED BY

Carolee Ceekey
Judge
on *May 1, 2006*
Type and Amount: *20,000.00 cash penalty*

Name of Surety: _____

PRELIMINARY HEARING held by _____

Judge _____
on _____
Defense Attorney _____

Decision: _____

DISPOSITION before _____

Judge _____
on _____
by _____
(Indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition: _____
Sentence: _____

JURORS

DOCKET NO. 2006-GS-45- 199

The State of South Carolina

County of WILLIAMSBURG

FILED

05 JUL 29 PM 1:26

CLERK OF COURT
KINGSTREE, S.C.

COURT OF GENERAL SESSIONS

JULY TERM 2006

THE STATE
vs.

JOSHUA EDWARDS

ARREST WARRANT NUMBER

H 076979

D/A: 5/1/06

ACTION OF GRAND JURY

True bill

Berla Baker
Foreperson of Grand Jury

Date: *6/29/06*

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR - (SECOND DEGREE)

C. KELLY JACKSON, SOLICITOR

WITNESSES

KINGSTREE PD

Bobbie Lynn Smith

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR
– (SECOND DEGREE)

At a Court of General Sessions, convened on July 10, 2006, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR –
SECOND DEGREE

That **JOSHUA EDWARDS** did in Williamsburg County on or about April 27, 2006, engaged in sexual battery with victim, a minor child who was less than fourteen years of age but at least eleven years old, by having sexual intercourse with her, in violation of Section 16-3-655(2) of the Code of Laws of South Carolina (1976), as amended.

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CLERK OF COURT
WILLIAMSBURG, S.C.

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

C. Kelly Jachno
SOLICITOR

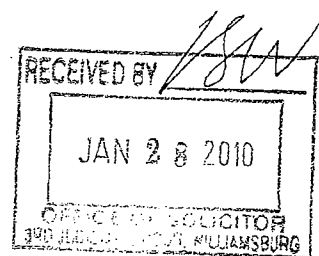
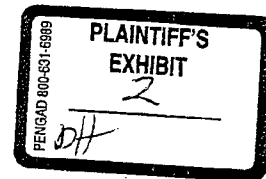
Hi my name is ~~_____~~ ~~_____~~ **VICTIM**

I Just had wanted to say
that me and Kevin did had
Sex and we use to talk
but he was a good person
and he never had take anything
from me and I Just want
to say that I don't want
nothing to do with this
situation so If you can
drop the charges on Kevin
Bradley that would be good
because well to me he
never had harmed
anyone ~~th~~ Not that I
know or so Can
You please try to drop
the charges against
him

July 28, 2010

151

A CERTIFIED TRUE COPY
Sharon W. Straggers
 SHARON W. STRAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY



VICTIM

Love ~~_____~~

Love ~~to~~ ~~the~~ ~~the~~

SECTION 63-7-980. Cooperation between DSS and law enforcement.

(A) The department must cooperate with law enforcement agencies within the area it serves and establish procedures necessary to facilitate the referral of child protection cases to the department.

(B)(1) Where the facts indicating abuse or neglect also appear to indicate a violation of criminal law, the department must notify the appropriate law enforcement agency of those facts within twenty-four hours of the department's finding for the purposes of police investigation. The law enforcement agency must file a formal incident report at the time it is notified by the department of the finding.

(2) When the intake report is of alleged sexual abuse, the department must notify the appropriate law enforcement agency within twenty-four hours of receipt of the report to determine if a joint investigation is necessary. The law enforcement agency must file a formal incident report at the time it is notified of the alleged sexual abuse.

(C) The law enforcement agency must provide to the department copies of incident reports generated in any case reported to law enforcement by the department and in any case in which the officer responsible for the case knows the department is involved with the family or the child. The law enforcement officer must make reasonable efforts to advise the department of significant developments in the case, such as disposition in summary court, referral of a juvenile to the Department of Juvenile Justice, arrest or detention, trial date, and disposition of charges.

(D) The department must include in its records copies of incident reports provided under this section and must record the disposition of charges.

A CERTIFIED TRUE COPY

Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

OFFICE OF THE
 SOLICITOR
 3rd JUDICIAL CIRCUIT

TO: _____

FROM: Trina-KPDRE: Kevin BradleyDATE: [REDACTED] (11/18/93)[REDACTED] Bradley-child[REDACTED] 2007

Has a letter saying Kevin
was excluded as the
father.

VICTIM's
[REDACTED]'s address

[REDACTED] Drive
Kingstree, SC 29556



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	
 KEVIN C. BRADLEY, #339031	)	 2013-CP-45-098
Applicant,	)	
	)	Applicant's Memorandum in Support of PCR
v.	)	Application in the Form of a Proposed Order
THE STATE OF SOUTH CAROLINA,	)	
Respondent.	)	
_____	)	

I.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Williamsburg County Clerk of Court. The Applicant was originally indicted for Second Degree Criminal Sexual Conduct with a Minor on Indictment No. 2009-GS-45-249. The State subsequently sought an amendment to the original indictment to add a count of First Degree Criminal Sexual Conduct with a Minor involving the same Victim as the original indictment for Second Degree Criminal Sexual Conduct with a Minor. The true billed, amended indictment charging Applicant with both first degree CSC with a minor and second degree CSC with a minor was true billed by the Grand Jury on January 21, 2010. Applicant was represented by retained counsel, Richard Strobel, Esquire.

Applicant was also indicted for a separate count of Criminal Sexual Conduct with a Minor Second Degree involving a different Victim in Indictment No. 2010-GS-45-30. Applicant was represented on that charge by Assistant Public Defender, Legrand Carraway. On January 25, 2010, Applicant appeared before the Honorable Clifton Newman for a guilty plea proceeding at which he was expected to enter pleas to one count of Criminal Sexual Conduct with a Minor 1st Degree from Amended Indictment No. 2009-GS-45-249 and one count of Second Degree Criminal Sexual Conduct with a Minor on Indictment No. 2010-GS-45-30. The State had agreed to dismiss count two of Amended Indictment No. 2009-GS-45-249 which charged Applicant with Second Degree CSC with a Minor involving the same minor as referenced in Count One of that indictment. At that proceeding, the Applicant was anticipated to waive Grand Jury presentment on Indictment No. 2010-GS-45-30. That plea proceeding was terminated before the Court accepted Applicant's pleas

after he advised the Court that he did not “want to give up [his] rights.” Plea Hearing, 1.25.2010, Tr. p. 7, ll. 1-9. Attorney Carraway, spoke once on the record during this plea proceeding. Plea Hearing, 1.25.2010, Tr. p. 4, ll. 15 – 18. Likewise, Attorney Strobel spoke out only once during this proceeding and that was when he introduced an affidavit prepared by him in anticipation of the pleas. Plea Hearing, 1.25.2010, Tr. p. 4, ll. 12 – 14.

Applicant proceeded to trial by jury before the Honorable Clifton Newman on Indictment No. 2009-GS-45-249 later in the same day as the attempted plea proceeding; January 25, 2010. Applicant was found guilty as charged on both counts of Indictment No. 2009-GS-45-249 and was sentenced by Judge Newman to twenty-five (25) years incarceration for First Degree CSC with a Minor, and twenty (20) years for Second Degree CSC with a Minor. Said sentences were specifically ordered to be served concurrent with each other. No direct appeal from these judgments and sentences was perfected on behalf of Applicant.

On January 27, 2010, immediately after the Court imposed sentences on both counts of Indictment No. 2009-GS-45-249, Judge Newman reminded Applicant that he was looking at a mandatory life without parole sentence if he was ultimately convicted on the other pending charge against him. Trial Tr. p. 299, ll. 4 – 11. Applicant then asked if he could just go ahead and plead guilty, be sentenced on his other outstanding charge and be sentenced concurrently. While Applicant stated that he did not want to plead guilty, because he knew he was not guilty of that crime, he indicated a desire to just plead and “get it over with” and receive concurrent sentences. He reminded the Court that he had reached a plea agreement with the State on these charges before his trial. Trial Tr. p. 299, ll. 12 – 18. At that juncture, Judge Newman informed Applicant that;

Well, I don't accept guilty pleas from people who are not guilty. I only take guilty pleas from people who are guilty. They have to convince me, just as the Solicitor has to convince the jury that you are guilty in this case, you've got to convince me that you are guilty in that other case before I can accept a guilty plea. We'll give you overnight to think about that.

Trial Tr. p. 299, ll. 19 – 25.

The following day, January 28, 2010, Applicant once again appeared before Judge Newman, at which time he entered a plea of guilty on Indictment No. 2010-GS-45-030 on which he was charged with Second Degree CSC with a Minor. Said indictment had not yet been presented to the Grand Jury. Applicant waived his right to Grand Jury presentment on the record during this plea proceeding. There were no plea negotiations entered in exchange for Applicant's plea on that

indictment with the exception of the fact that the State agreed to allow Applicant to plead as though he had no prior convictions. Plea Hearing, 1.28.2010, Tr. p. 3, ll. 21 – 23. He was sentenced by Judge Newman to five (5) years imprisonment for that offense. It was expressly ordered that said sentence be served consecutively to the sentence imposed on Indictment No. 2009-GS-45-249. The record reflects that Judge Newman did not specify whether the five (5) year sentence was to be consecutive to the aggregate term imposed on 2009-GS-45-249 or consecutive to the Twenty (20) year sentence imposed for Second degree Criminal Sexual Conduct with a Minor. Plea Hearing, 1.28.2010, Tr. p. 12, ll. 3 – 10.

Applicant originally filed an Application for Post-Conviction Relief on September 29, 2010. The State made Return to said application on September 7, 2011. In said application, docketed at 2010-CP-45-389, Applicant raised allegations concerning the judgments and sentences imposed against him following his jury trial on Indictment No. 2009-GS-45-0249, as well as allegations addressing the judgment and sentence imposed following his plea of guilty on Indictment No. 2010-GS-45-030. Pursuant to agreement with the State, Applicant subsequently filed a separate application separating his claims concerning his guilty plea on Indictment No. 2010-GS-45-030 from the allegations addressing his jury trial. That Application was docketed at 2013-CP-45-00098.

An evidentiary hearing was convened in this matter at the Sumter County Courthouse on May 27, 2014. Applicant was present for this proceeding and was represented by Tara Dawn Shurling, of the Richland County Bar. The Respondent was represented by Daniel Gourley, Assistant Attorney General.

II.

ALLEGATIONS RAISED

The Applicant has alleged generally that he received ineffective assistance of counsel prior to and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as, Article I, Section 14, of the South Carolina Constitution. In support of that claim he has raised the following specific allegations in his Application for Post-Conviction Relief:

1. Plea Counsel failed to provide client effective assistance of counsel prior to and during his plea proceeding. The Applicant's plea of guilty was coerced by Counsel's failure to provide adequate representation. Trial Counsel failed to file a direct appeal for the Applicant and the Applicant did not knowingly waive his right to a direct appeal.
2. The Applicant's plea of guilty was not voluntarily and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

In his Second Amended Application for Post-Conviction Relief, filed on May 21, 2014, the Applicant raised the following additional specific allegations:

1. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the results of DNA testing had confirmed that the Applicant was not the father of a child conceived by the victim.
2. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the victim was not cooperating with the prosecution of the charges against the Applicant.
3. Plea Counsel was ineffective for neglecting to interview **VICTIM** concerning these charges where her original accusation against Applicant, that he had impregnated her, had been proved false by DNA testing.
4. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without discussing with him the ways in which the forensic evidence in this case, specifically the DNA test results, could be used to impeach the credibility of the victim's claims against the Applicant.
5. Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.
6. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30.

7. The Plea Court erred in accepting the Applicant's plea of guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly protested his guilt on the record during the plea proceeding.

8. Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.

9. Plea Counsel was ineffective for failing to discuss with the Applicant the potential use of character witnesses to testify in the Applicant's behalf if he went to trial by jury; specifically Sgt. Robert McClary, Debra Black, Manager at Skyes in Kingstree, South Carolina, Sgt. Stagers, employed with the 1052nd Transportation Company Army National Guard, and Frederick Davis of the Kingstree Police Department.

10. Plea Counsel was ineffective for failing to interview Joshua Edwards as a potential witness for the Applicant and failing to discuss with the Applicant the manner in which Joshua Edwards could be used as a defense witness if the Applicant proceeded to trial by jury where said witness was charged with and convicted for criminal sexual conduct relating to the victim in Applicant's Indictment No. 2010-GS-45-30; ~~REDACTED~~.

11. Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and for failing to fully explain to the Applicant his right to object to such an amendment.

12. Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.

13. Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a potential life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for a life without parole sentence pursuant to S.C. Code Ann. § 17-25-45 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until 2007.

14. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of

Criminal Sexual Conduct with a Minor involving **VICTIM**, the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.

15. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters.

III.

EVIDENCE BEFORE THE COURT

In deciding this collateral action this Court has before it a copy of the pre-trial hearing held on January 25, 2010, the sentencing portion of the trial record dated January 25 -27, 2010, a transcript of the January 28, 2010 guilty plea proceeding, a transcript of the PCR hearing held on May 27, 2014, the exhibits introduced during the PCR proceeding, the Applicant's records from the South Carolina Department of Corrections and the records of the Williamsburg County Clerk of Court regarding the subject conviction and sentence. What follows below are this Court's findings of fact and rulings of law as required by S.C. Ann. §17-27-80.¹

IV.

STANDARD OF REVIEW

This Application for Post-Conviction Relief generally raises numerous specific allegations of ineffective assistance of counsel. The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000). In a Post-Conviction Relief proceedings, the Applicant has the burden of proof to establish that he is entitled to relief by a preponderance of the evidence. Rule 71.1(e), S.C.R.Civ.P.

¹ For purposes of supporting this Order on appeal, the finding of fact and rulings of law contained herein may be viewed as interchangeable as may be necessary to affirm the ruling of this Court on any appeal which may follow.

In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Defense Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). In other words, the Applicant must show that, but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. *Id.*; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. *Ard v. Catoe*, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

In the context of a guilty plea, the operative question becomes whether a defendant, but for counsel's errors and omissions, would have exercised his right to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985). Further, the applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty. *Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006). A guilty plea, along with the resulting waiver of fundamental constitutional rights, is valid only if made voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969) ("For, as we have said, a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality.").

On the one hand, where Defense Counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). On the other hand, counsel may not explain away errors and omissions

which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. In the case of *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the Supreme Court of South Carolina found that,

Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

V.

DISCUSSION

In this case, the Applicant alleges generally that Plea Counsel failed in multiple regards in his representation of Applicant prior to and during his guilty plea proceedings. On the facts of this case, this Court is constrained to agree. The Applicant has met his burden of proof concerning multiple errors and omissions of Trial Counsel which acted to deprive him of the ability to enter a knowing and voluntary plea. Having evaluated each of these allegations, this Court finds that there exists a reasonable probability that Applicant would not have waived his constitutional right to trial by jury on this charge but for these errors and omissions of Plea Counsel. In order to demonstrate both the nature of Counsel's errors and omissions, and the prejudice to the Applicant arising there from, it is necessary and helpful to consider the following summary of portions of the General Sessions records and PCR hearing record.

RELEVANT TESTIMONY

During the sentencing portion of Applicant's trial, Judge Newman made it clear that Applicant was facing a mandatory life without parole sentence on his remaining charge of Second Degree Criminal Sexual Conduct with a Minor. The day after his conviction by jury on Amended Indictment No. 2009-GS-45-249, January 28, 2010, Applicant appeared before Judge Newman, and entered a plea of guilty to one count of Second Degree Criminal Sexual Conduct with a Minor on

Indictment No. 2010-GS-45-30. The charge on that indictment involved a different victim from the complaining witness in Applicant's jury trial. Although she was not named in Indictment No. 2010-GS-45-30, testimony at Applicant's PCR hearing involving this plea, clearly establishes that the victim in this case was **VICTIM**. PCR Tr. p. 4, ll. 17-24. At the time of this plea, the Court noted that the State was presenting the charge as if Applicant had no prior conviction for a most serious offense despite his convictions for two such offenses the previous day. Plea Hearing, 1.28.2010, Tr. p. 3, ll. 21-24. The Court specifically advised Applicant that, *"if you commit two or more most serious offenses you can be sentenced to life without the possibility of parole."* Plea Hearing, 1.28.2010, Tr. p. 3, ll. 17-20, (Emphasis added).

Applicant waived his right to Grand Jury presentment on the record, and admitted on the record to having had sex with a minor he estimated to be thirteen or fourteen at the time. Plea Hearing, 1.28.2010, Tr. p. 5, l. 12-p. 7, l. 9.

The record from Applicant's plea indicates that the Victim from Applicant's jury trial was actually the source of the information supplied to law enforcement regarding the second alleged victim; **VICTIM**. Plea Hearing, 1.28.2010, Tr. p. 7, ll. 14-23. The prosecutor advised the Court that she had recognized the girl's name from a DJJ case, and pulled the community evaluation report from that case and discovered that the girl had a young child and that she had named Applicant as the father of her baby. The girl's mother was reported as saying she didn't realize how old Applicant was because, *"he looks just like a kid."* Plea Hearing, 1.28.2010, Tr. p. 7, l. 21-p. 8, l. 11. The prosecutor acknowledged that DSS conducted a paternity test which *excluded* Applicant as the biological father of the girl's child. Plea Hearing, 1.28.2010, Tr. p. 8, ll. 18-23.

During the plea proceeding the State published a letter written by the alleged victim on the morning of the plea. Although she continued to claim Applicant had sex with her, she said she didn't want anything to do with the situation, and asked that the State drop the charge against Applicant. Plea Hearing, 1.28.2010, Tr. p. 9, ll. 3-14.

It is clear from the plea record that the State assumed the Victim had intercourse with Applicant around the same time she conceived her child, even though her claim from that time period that Applicant was her baby's father was scientifically proved to be false. It is apparent that the prosecution chose to believe this girl was mistaken about the paternity of her baby to the exclusion of another plausible explanation; that she lied about having had intercourse with Applicant to protect the child's real biological father. Neither does it seem that anyone considered

the possibility than she continued to assert that she and Applicant had engaged in sex with each other to avoid getting in trouble for having knowingly made false statements to the police, DSS and the Family Court. Plea Hearing, 1.28.2010, Tr. p. 9, ll. 15-21.

Indictment No. 2010-GS-45-30, alleged that Applicant committed Second Degree Criminal Sexual Conduct with a Minor between October 1, 2006 and October 1, 2007. The Applicant's date of birth is 1989. Therefore, from October 1, 2006 through July 16, 2007, Applicant was only 17 years old. That means that for 8 and ½ months of the 12 month time frame covered by this indictment, Applicant himself was a minor. See, Warrant M-170251 for Applicant's date of birth.

In his PCR testimony, Plea Counsel, LaGrand Carraway acknowledged the following:

- He knew the victim and her mother well. PCR Tr. p. 5, ll. 18-19;
- He had previously represented the alleged victim in this case in multiple matters in Family Court. PCR Tr. p. 5, l. 21- p. 6, l. 17;
- Although he claimed Applicant was aware that Plea Counsel knew **VICTIM**, he did not claim he disclosed his previous representation of her to Applicant, PCR Tr. p. 6, l. 24- p. 7, l. 9. He in fact admitted that he had not done so. PCR Tr. p. 8, l. 24- p. 9, l. 4;
- PCR Counsel requested access to review his file and was told most of it was lost;
- Plea Counsel agreed to notify PCR Counsel if his file was located. Plea Counsel did not subsequently advise PCR Counsel that the file had been located, however, during the PCR hearing it became apparent he had the file with him in court. PCR Tr. p. 8, ll. 10-20;
- He was provided a copy of the letter from the victim by the Solicitor's Office. PCR Tr. p. 7, ll. 10-13 and p. 8, ll. 21-23;
- **VICTIM** did tell DSS that Applicant was the father of her child. PCR Tr. p. 9, ll. 5-22;
- The charge against Applicant was brought in the aftermath of **VICTIM** reporting to the Family Court that Applicant was the father of her child. PCR Tr. p. 9, l. 25- p. 10, l. 3;
- **VICTIM**'s child was born **VICTIM** 2007 which, Plea Counsel asserted, would have put its conception date at approximately **VICTIM**, 2006. PCR Tr. p. 10, l. 12- p. 11, l. 5;

- Applicant turned 18 years old on [REDACTED] 2007; See Plaintiff's Exhibit No. 2 and Arrest Warrant No. M-170251;
- Plea Counsel had no recollection of participating in the attempted plea hearing on January 25, 2010; PCR Tr. p. 12, l. 6- p. 13, l. 14.
- Plea Counsel did not recall being aware that a new charge of First Degree Criminal Sexual Conduct with a Minor had been brought against Applicant just days before his jury trial on the charges on which Applicant was represented by Richard Strobel. PCR Tr. p. 14, ll. 1-16.

During his PCR testimony, Plea Counsel was asked if he had ever represented an individual named Joshua Edwards. He acknowledged that he had represented this person's brother, Ray-Ray, before and stated that he believed he had represented Joshua either as a juvenile or a criminal court matter. PCR Tr. p. 14, ll. 17-21. Plea Counsel was asked if he recalled sending PCR Counsel a copy of his file documents showing he actually represented Joshua Edwards on a charge of Second Degree Criminal Sexual Conduct with a Minor, and he testified that he did not. Ultimately, this witness identified his signature on a transmittal letter providing PCR Counsel with his file concerning his representation of Joshua Edwards on a charge of Second Degree Criminal Sexual Conduct with a Minor. That letter, along with the documents provided with it, were introduced as *Plaintiff's Exhibit No. 1*. Those records indicate that Joshua Edwards was alleged to have had sex with a minor child over 11 years of age, but less than 14 on April 27, 2006. He pleaded guilty to that charge and was sentenced on July 18, 2006. Plea Counsel ultimately acknowledged that he represented Joshua Edwards in that case, and that **VICTIM**, the same Victim alleged in Applicant's case, was the Victim in Joshua Edwards's case. PCR Tr. p. 17, l. 23- p. 18, l. 14. He admitted that he never told Applicant about having represented Joshua Edwards and **VICTIM**. PCR Tr. p. 18, ll. 15-17.

Plea Counsel recalled being aware that DNA testing had proved Applicant was not the father of **VICTIM**'s child "certainly some weeks" before the date of the plea, and he expressly recalled discussing the test results with Applicant at the jail. PCR Tr. p. 18, l. 21- p. 19, l. 9. When asked if he discussed the possibility of using **VICTIM**'s false claim that Applicant fathered her child to the advantage of the defense if Applicant went to trial, Plea Counsel claimed he had, but focused his attention on the fact that **VICTIM**'s mother would also have been a witness who had told DSS that she thought Applicant was the child's father because he had been coming over to her

VICTIM
 home visiting **VICTIM** during the time period when she was believed to have conceived her baby. PCR Tr. p. 19, l. 10- p. 20, l. 22. Interestingly, Plea Counsel's PCR testimony reflects his opinion that **VICTIM** was "a very nice young lady", and confirms that he told Applicant that **VICTIM** was "not going to come off as a liar to the jury." PCR Tr. p. 19, l. 15-20, l. 25.

Plea Counsel's PCR testimony reflects his belief that **VICTIM** genuinely "thought he was the father of that baby." His testimony confirms the fact that he apparently never even considered the possibility that this young woman had intentionally lied about the father of her child in order to protect the true biological father of the infant. Neither does his testimony indicate that he gave any consideration to the fact that the Victim in Applicant's other case, the one which went to trial by jury, was the person who initially pointed the finger at Applicant with the police concerning **VICTIM**. PCR Tr. p. 25, ll. 4 – 14.

Plea Counsel admitted that he did not work with Attorney Strobel to try and work out a package deal for Applicant concerning both sets of charges. Interestingly, he testified that he didn't have any contact with "Mr. Strobel about this." He went so far as to claim that, "all I knew is that Kevin withdrew his guilty plea and I was not sure, you know, exactly what the defense was." PCR Tr. p. 27, ll. 2 – 10. As previously noted, both Attorney Strobel and Attorney Carraway appear listed as counsel for Applicant on the cover of the January 25, 2010 plea hearing before Judge Newman. The cover of the transcript reflects that the pleas that were attempted that day were on Indictments No. 2009-GS-45-249 and 2010-GS-45-030. The record of that proceeding does reflect that Attorney Carraway was present at that proceeding and responded directly to one question from Judge Newman. Plea Hearing, 1.25.2010, Tr. p. 4, ll. 15 – 18.

In his PCR testimony Attorney Carraway testified that he thought Applicant was looking at a possible maximum sentence of twenty (20) years if he was convicted on this charge of Second Degree Criminal Sexual Conduct despite the fact that he had been convicted of two most serious counts the previous day. PCR Tr. p. 27, l. 11 – p. 28, l. 12. He did not recall any conversation about his client being exposed to life without parole pursuant to S.C. Code Ann. §17-25-45, the so-called strike law, if he were convicted of another count of Second Degree Criminal Sexual Conduct with a Minor. PCR Tr. p. 28, l. 13 – p. 29, l. 16. Plea Counsel was asked about the portion of the trial transcript when Judge Newman advised Applicant that he would be exposed to a life without parole sentence for a second most serious offense if he were convicted "on that pending charge." Trial Tr. p. 299, ll. 7 – 11. Plea Counsel responded by asserting that he wasn't there when these statements

were made in court. PCR Tr. 30, ll. 5 – 7. Next he was questioned about the fact that the transcript of Applicant's January 28, 2010 plea indicated that Judge Newman commented on the fact that he could have gotten life without parole on this charge, but for the State's agreement to accept his plea to this charge "*as if there is no prior conviction.*" Plea Hearing, 1.28.2010, Tr. 3, ll. 14 – 24. Even after reviewing these portions of the record, Plea Counsel insisted that he did not think a life without parole sentence was being held over Applicant's head and that a twenty year sentence was what he told him he was facing. PCR Tr. p. 30, l. 17- p. 31, l. 20. He emphasized that the day of the plea, Judge Newman never said he would have had no role in deciding whether Applicant got a sentence of life without parole if he had been convicted at a trial. PCR Tr. p. 32, ll. 2 – 12.

Plea Counsel acknowledged that Applicant was alleged to have had sex with **VICTIM** sometime between October 1, 2006 and October 1, 2007. He further acknowledged that Applicant's birth date is 1989 and thus, that he would not have turned 18 years old until 2007. He went on to admit that Applicant did not turn 18 until after **VICTIM**'s child was born. PCR Tr. p. 32, l. 15 – p. 33, l. 9. During the PCR hearing, Plea Counsel indicated that he was not familiar with the United States Supreme Court's holding in *Graham v. Florida*². He went on to confirm that at the time of Applicant's plea, he was not aware of the pendency of this landmark ruling. PCR Hearing, Tr. p. 34, l. 18 – p. 35, l. 25.

Plea Counsel testified that he did not discuss anything about Applicant's right to a direct appeal on the judgments and sentences handed down at the jury trial on the charges that Attorney Strobel represented him on. Neither did he warn Applicant that if he were to win a subsequent appeal from the judgments and sentences imposed at his jury trial, that reversal would in no way effect the judgment and sentence he would receive as a result of him waiving grand jury presentment and proceeding with a plea on Indictment No. 2010-GS-45-030. PCR Tr. p. 43, ll. 7 – 25.

Plea Counsel acknowledged being aware that **VICTIM** was a reluctant witness and that she had in fact written a letter to the Solicitor's Office asking them to drop Applicant's charge involving her. He acknowledged that although this letter said she and Applicant had sex, it did not say when they had engaged in sex with one another. Plea Counsel obviously attached significance to the fact that **VICTIM**'s mother had told the police that Applicant had been coming over to her home to visit **VICTIM** during the time period when this girl got pregnant. PCR Tr. p. 44, l. 1 – p.

² 560 U.S. 48 (2010)

45, l. 5. There is nothing before this Court indicating that the mother ever reported having observed any evidence that Applicant had been intimate with her daughter during this time period.

Plea Counsel admitted in his PCR testimony that he never discussed with Applicant how the fact that **VICTIM** had falsely accused him of fathering her child might be used to impeach **VICTIM** if this case went to trial. His responses reflect his personal opinions concerning **VICTIM** and his belief that she thought she was being truthful when she accused Applicant of fathering her baby. It is apparent that Plea Counsel never considered the possibility that **VICTIM** was not being truthful when she tried to blame Applicant for her pregnancy. Likewise, he did not seem to consider that her reluctance to completely exonerate Applicant might have been born out of fear of getting in trouble for lying to DSS and law enforcement until science proved her accusations to be false. PCR Tr. p. 45, l. 6 – p. 46, l. 6. He further admitted that he never discussed the possibility with his client that the State might not even prosecute him on the charge involving **VICTIM** since she clearly was not cooperating with the prosecution. PCR Tr. p. 45, l. 21 – p. 46, l. 6.

Judge Newman gave Applicant a sentence of five (5) years consecutive to the sentence imposed following his jury trial on Indictment No. 2009-GS-45-0249 for his plea on Indictment No. 2010-GS-45-030. Indictment No. 2009-GS-45-0249 was a two count indictment on which the jury found Applicant guilty of one count of First Degree CSC with a Minor and one count of Second Degree CSC with a Minor. Applicant received concurrent sentences of twenty-five (25) and twenty (20) years on those two counts. At his guilty plea proceeding on Indictment No. 2010-GS-45-030, Judge Newman did not specify whether the five (5) year sentence imposed was to be served consecutive to the aggregate term imposed on both counts of Indictment No. 2009-GS-45-0249 or whether it was intended to be consecutive only to the twenty (20) sentence imposed for the Second Degree CSC with a Minor judgment. This distinction could have resulted in a five (5) year difference in Applicant's total aggregate sentence. Plea Counsel testified that he assumed the Court intended the sentence imposed at the plea to be consecutive to the aggregate twenty-five (25) year sentence imposed on Indictment No. 2009-GS-45-0249 and did not consider seeking clarification on this point. PCR Tr. p. 39, l. 16 – p. 41, l. 11.

After having his recollection refreshed, Plea Counsel remembered being present when a plea to both indictments fell apart before Judge Newman on January 25, 2010 immediately before Applicant's jury trial on Indictment No. 2009-GS-45-0249. PCR Tr. p. 46, l. 21 – 47, l. 13. He

admitted that when the plea began to fall apart and it was apparent the plea wasn't going to go through, it never occurred to him to ask for a brief recess to see if he could work out a modification with the State that would have permitted the plea to go through. PCR Tr. p. 47, l. 11 – p. 51, l. 9. During cross-examination by the State, Plea Counsel admitted that Applicant had never admitted having sex with **VICTIM**. He admitted that, based on his knowledge of the alleged Victim, he just assumed “it did happen...” and because he “knew her”.....he testified that he,

[D]idn't see a reason why she would make it up and say he was the father if she'd never had sex with him or whatever. I know her and I think he knows her or whatever, and I just never had the idea that - - and I never really had the idea too much whether that was - - whether the DNA came back that it would matter that much because I just didn't think she would make that up.

PCR Tr. p. 52, l. 24 – p. 53, l. 5.

Plea Counsel admitted that the day following Applicant's conviction at his jury trial he “was just shell shocked from the day before.” He further acknowledged that Applicant “wasn't familiar with the Court system.” PCR Tr. p. 53, ll. 17 – 25.

Despite acknowledging that Applicant had never admitted having had sex with **VICTIM**, in his PCR testimony Plea Counsel emphasized the fact that Applicant had never denied having sex with the girl to him. Further, he went on to state that he felt that the note she wrote the day of the plea indicated that if Applicant went to trial **VICTIM** would have testified that “well, he did have sex.....” He felt that if they went to trial, “if they had called her in there and put her on the stand, she would have told the truth.” PCR Tr. p. 55, ll. 18 – 24.

Plea Counsel denied that his previous representation of Joshua Edwards had any impact on his duties to Applicant. His answers to questions concerning this subject reflect a total lack of consideration for the fact that evidence concerning Joshua Edwards might have been used to Applicant's advantage, depending upon the content of **VICTIM**'s trial testimony, if his case had proceeded to trial. PCR Tr. p. 58, ll. 6 – 14. Likewise, he asserted that his representation of **VICTIM** in no way impacted his ability to represent Applicant to the best of his ability. He indicated that having represented **VICTIM** helped him because it enabled him to know that she was “just a nice person, a very believable” person who “wouldn't have said she had sex with him if she hadn't.” PCR Tr. p. 58, l. 19 – p. 1.

Applicant also presented as a witness, Assistant Solicitor Tyler Bryant Brown, who verified for the record that the unnamed minor victim in Indictment No. 2006-GS-45-199, charging Joshua Lamont Edwards with Second Degree CSC with a Minor, was **VICTIM**. He further confirmed that counsel of record on that indictment was LeGrand Carraway. PCR Tr. p. 61, l. 13 – p. 62, l. 22.

In his own testimony at his PCR hearing, Applicant asserted the following:

- His guilty plea attempt on January 25, 2010 fell apart because he did not want to plead to first degree CSC with a Minor on the Indictment on which he was represented by Mr. Strobel, and he did not want to plead guilty to Second degree CSC with a Minor with regard to **VICTIM**. PCR Tr. p. 63, l. 7 – p. 65, l. 20;
- At the end of his trial he asked if he could go ahead and just plead to his other pending charge because the Judge had just told him if he was convicted he would get life without parole and the judge would have no role in deciding the sentence. PCR Tr. p. 66, ll. 2 – 11;
- He would never have pleaded guilty on the charge involving **VICTIM**, had it not been for the threat of a mandatory life without parole sentence if he was convicted on that charge. PCR Tr. p. 66, ll. 12 – 15;
- Prior to the day of his PCR hearing, he had never actually seen the letter that Plea Counsel stated was turned over to him before the plea proceeding. PCR Tr. p. 16 – 19;
- He had previously written Plea Counsel and requested a copy of his discovery materials, but he had never received anything back from Plea Counsel in response to this request. PCR Tr. p. 66, l. 20 – p. 67, l. 4;
- Plea Counsel never advised him that he had previously represented **VICTIM**. PCR Tr. p. 67, ll. 5 – 7;
- Plea Counsel never disclosed to him the fact that he had represented another individual also accused of having sexually assaulted **VICTIM**, Joshua Edwards. PCR Tr. p. 67, ll. 8 – 10;
- Applicant testified that he would not have wanted Plea Counsel to represent him had he known that this lawyer had previously represented both **VICTIM** and Joshua Edwards. He would not, under any circumstances, have waived a potential conflict of interest had he known that his attorney had represented these individuals. PCR Tr. p. 67, ll. 11 – 20 and PCR Tr. p. 74, ll. 3 – 11;
- He understood that the Judge had given him a five (5) year sentence that was consecutive to something, but he wasn't sure consecutive to what. Had he known it was possible, he would have wanted Plea Counsel to ask for clarification as to whether that five (5) year term was consecutive to the aggregate twenty-five (25) year term imposed after his jury trial or

whether it was meant to be consecutive only as to his twenty (20) year sentence for Second Degree CSC with a Minor; PCR Tr. 69, l. 18 – p. 70, l. 8;

- When his guilty plea broke down on the day of his trial, he would have wanted his attorneys to explore the possibility of a plea that did not involve an admission of guilt on the charge of First Degree CSC with a Minor. PCR Tr. p. 70, ll. 9 – 17;
- Plea Counsel never discussed Grand Jury Presentment with him prior to his guilty plea proceeding. He was not aware that there was no indictment against him on the charge involving ~~Victim~~ until “right then and there” during his plea proceeding. What little discussion was on the record during his plea proceeding is all he knew about his rights with regard to the Grand Jury. PCR Tr. p. 74, ll. 12 – 24;
- Applicant acknowledged that he made admissions on the record about having engaged in sex with ~~Victim~~, but clearly asserted that those admissions were not truthful. He testified that the only reason he lied to the Court about those admissions, and other matters, was his fear that he would get an automatic life without parole sentence if his guilty plea wasn’t accepted by the Court. PCR Tr. p. 76, l. 11 – p. 77, l. 8; PCR Tr. p. 79, l. 14 – p. 80, l. 23; PCR Tr. p. 81, l. 17 – p. 84, l. 9;
- Applicant asserted that his understanding had been that the State was going to recommend a concurrent sentence if he pleaded guilty. He pointed out that his sentencing sheet in fact reflects that the portion of the form that stated, “*Recommendation by the State*” was originally checked off and that notation was subsequently crossed out and changed. He testified that he did not point this fact out to the Court because he wanted the plea to be over, and felt the need to “*convince the judge*”; as he had been told the night before that he had to do. PCR Tr. p. 80, ll. 1 – 23; PCR Tr. p. 80, l. 24 – p. 81, l. 16;
- Applicant asserted that Plea Counsel should have investigated whether this letter supposedly from ~~Victim~~, which was not produced until the day of his plea, was authentic. PCR Tr. p. 84, ll. 19 – 25.

A.

Allegations 1 and 2, Original PCR Application
Allegations 1 – 4, Second Amended Application
filed on May 21, 2014

Plea Counsel was ineffective for advising Applicant to enter a plea of guilty to this charge without advising him, in advance of the plea proceeding, that the Victim was not cooperating with the prosecution and had written a letter asking the State to drop this charge against him. Plea Counsel further failed to provide Applicant reasonable effective assistance of counsel when he failed to advise Applicant of the ways in which the defense might use the Victim’s original false allegation that he had fathered her child to impeach her credibility if Applicant proceeded to trial by jury. Plea Counsel was also

ineffective for failing to interview the Victim concerning this charge once it was proven through DNA testing that Applicant was not her child's father.

The record below supports Applicants claim that this charge originally arose out of a claim that Applicant had fathered ^{VICTIM} [REDACTED]'s child. The evidence and testimony before this Court demonstrates that this claim was subsequently proven false and the DSS action against Applicant for support of ^{VICTIM} [REDACTED]'s child was dismissed after the test results were reported to the Family Court. Plea Counsel has acknowledged that Applicant never admitted having had sex with this girl until the guilty plea proceeding on January 28, 2010. Likewise, it is apparent that the girl's mother based her support of the girl's original claim on the mere fact tat Applicant had been a guest in her home during the approximate time period when the girl would have conceived her child. There is no testimony before this Court which indicates that the mother was ever privy to any evidence of intimate contact between her child and Applicant.

The evidence adduced during this PCR proceeding indicates that another individual, Joshua Edwards, was charged with Criminal Sexual Conduct with a Minor in connection with this same girl during a time period that apparently predated the conception of her child. This evidence, as well as the DNA test results, clearly established that this young girl was sexually active before Applicant alleged visitation in the girl's home, and would have potentially provided evidence with which ^{VICTIM} [REDACTED] could have been impeached depending upon the content of her trial testimony. Certainly the evidence that this young girl tried to blame her pregnancy on Applicant could have been used by the defense to argue that she had been trying to protect the identity of the true father of her child when she lied to the police and the Family Court, as opposed to her simply not knowing which of several sexual partners had fathered her child. Likewise, Applicant could have questioned her concerning whether she was "sticking to her story" about having had sex with Applicant even after the DNA test results were released because she feared getting in trouble for lying about who was the father of her child. In addition, Plea Counsel failed to explore the connection between ^{VICTIM} [REDACTED] and the Victim in Applicant's unrelated case involving ^{CHILD} [REDACTED] G. despite the fact that the accusation against Applicant regarding ^{VICTIM} [REDACTED] originated with ^{CHILD} [REDACTED] G. not [REDACTED]. Plea Counsel's PCR testimony confirms that he never gave any consideration to the fact that the Victim in Applicant's other case, the one which went to trial by jury, was the person who initially pointed the finger at Applicant with the police concerning ^{VICTIM} [REDACTED] PCR Tr. p. 25, ll. 4 - 14.

Plea Counsel was also ineffective for failing to interview ~~_____~~ ^{VICTIM} concerning this charge once the DNA results eliminated any possibility that Applicant had impregnated her. Plea Counsel, for reasons that will be discussed *infra*, had a relationship with the young girl in question and should have sought the opportunity to interview her. Plea Counsel clearly neglected an opportunity to potentially question this girl concerning her claim that Applicant had engaged in sex with her once her allegation that he was the father of her child were disproven. This complaining witness was a minor, and Plea Counsel would have arguably needed her mother's permission to talk to her about Applicant's charge. Plea Counsel acknowledged, however that he knew the girl and her mother well, and his testimony suggests that he enjoyed a good relationship with them both. In addition, the indictment in this case alleged that Applicant had sex with this girl sometime between October 1, 2006 and October 1, 2007. Applicant turned 18 years old on _____, 2007. Plea Counsel never questioned this girl about whether she could testify under oath that Applicant had sex with her before _____ 2007.

During the PCR hearing held on this application, PCR Counsel indicated that she had unsuccessfully attempted to locate and interview ~~_____~~ ^{VICTIM} as a potential witness for Applicant's PCR proceeding. When an address for this girl was discovered on a document produced by Plea Counsel during his PCR testimony, PCR Counsel requested leave of Court to leave the record open for a short time for further evidence to be submitted in the event she was able to locate and interview this witness using that address. This Court has subsequently been advised that PCR Counsel has been unsuccessful in locating and interviewing ~~_____~~ ^{VICTIM}. While the burden of proof is on Applicant on collateral review, this Court recognizes that Applicant, acting through his PCR Counsel, has exercised due diligence in trying to locate this witness for his PCR hearing. Despite Applicant's inability to produce testimony from ~~_____~~ ^{VICTIM}, it is apparent to this Court that Plea Counsel had access to this girl at the time of this plea and did not make any attempt to talk to her about this case.

For all the reasons set forth above, this Court finds that Applicant has met his burden of proof concerning these allegations. This Court finds that Plea Counsel was ineffective on these allegations and further, that the record establishes that there is a reasonable probability that Applicant would not have pleaded guilty but for these errors and omissions of counsel.

B.

Allegations 1 and 2, Original PCR Application

Allegation 6 and 8, Second Amended Application
filed on May 21, 2014

Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30. Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.

At the time of Applicant's plea on this charge, he had just been convicted by jury the previous day on two unrelated charges. During that proceeding, Applicant had contested his guilt of the more serious of the two charges he was on trial for. Plea Counsel admitted in his PCR testimony that he never discussed with Applicant the fact that he had a right to pursue a direct appeal from the judgments and sentences entered during his jury trial. Significantly, he never advised Applicant that if he won a direct appeal on his judgments and sentences arising from his jury trial, his judgment and sentence from his guilty plea would be unaffected by that reversal and would still stand with full force. Likewise, Plea Counsel clearly did not advise Applicant of his right to a direct appeal from the judgment and sentences entered in connection with this plea. On the facts of this case, this Court finds that Plea Counsel was ineffective for failing to discuss these matters with Applicant. It is apparent that Applicant's plea was entered in response to repeated warning from the lower court that he would be subject to a sentence of life without parole for Second Degree Criminal Sexual Conduct with a Minor, pursuant to S.C. Code Ann. §17-25-45, if he were to be convicted of that offense without the benefit of the plea agreement with the State to consider his plea a first offense. The landmark decision in *Graham v. Florida*³ was filed on May 17, 2010. For reasons which will be discussed further *infra*, that decision would have been very beneficial to Applicant and would likely have resulted in him going to trial on the charge in this case. Applicant's PCR testimony confirms that he would not have pleaded guilty had it not been for the threat that he would receive life without parole for this charge if he went to trial and were convicted of this charge. In light of the fact that Applicant's plea was not entered until January 28,

³ 560 U.S. 48, 130 S.Ct. 2011 (filed May 17, 2010)

2010, there exists a reasonable probability that a direct appeal from the judgment and sentence entered on that date would have still been pending at the time of the high court's ruling in *Graham*, *supra*, less than four months later. The testimony before this Court indicates that, but for these errors, among several others, Applicant would not have waived his right to grand jury presentment and to trial by jury. For these reasons, Applicant is entitled to relief on these grounds as well.

C.

Allegations 1 and 2, Original PCR Application
 Allegation 5 Second Amended Application
 filed on May 21, 2014

Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.

As noted in the testimony summary above, Applicant repeatedly professed his innocence on the charge involved in this application both during the failed attempt at a plea on January 25, 2010 before his jury trial on Indictment No. 2009-GS-45-249 and immediately following his sentencing at that trial. He consistently indicated that he did not want to waive his right to trial by jury and plea guilty on that charge. Only after being repeatedly warned that the Court would not accept his plea unless he admitted his guilt, did Applicant finally acquiesce and plead guilty to this charge. Plea Counsel has admitted that Applicant never admitted his guilt on this charge to him. Further, this was not a situation where Applicant had ultimately confessed his guilt to Plea Counsel. Plea Counsel has admitted that Applicant never acknowledged his guilt of this charge to him. It is also clear that Plea Counsel never asked the Court to entertain an *Alford*⁴ plea from Applicant on this charge. The remarks of Judge Newman on the record following the sentencing at Applicant's jury trial establish his policy with regard to accepting pleas from defendants who would not acknowledge their guilt. Judge Newman stated,

Well, I don't accept guilty pleas from people who are not guilty. I only take guilty pleas from people who are guilty. They have to convince me, just as the Solicitor has to convince the jury that you are guilty in this case, you've got to convince me that you are guilty in that other case before I can accept a guilty plea. We'll give you overnight to think about that.

⁴ *North Carolina v. Alford*, 400 U.S. 25 (1970).

Trial Tr. p. 299, ll. 19 – 25. Further, despite the fact that Applicant was essentially begging to plea even though he maintained he was innocent, Judge Newman gave no indication that he would entertain an *Alford* plea as distinguished from a guilty plea.⁵ Applicant asserts that Plea Counsel was ineffective for advising him to plead guilty, and for permitting him to enter a plea of guilty, when he knew Applicant had steadfastly denied his guilt on that charge in open court the previous day. On the facts of this case, this Court is constrained to agree. The totality of the record before this Court does not support a finding that Applicant's plea was knowingly and voluntarily entered.

Guilty pleas effectively waive all non-jurisdictional errors. *State v. Munsch*, 287 S.C. 313, 338 S.E.2d 329 (1985); *Whetsell v. State*, 276 S.C. 295, 277 S.E.2d 891 (1981). In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980); *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976).

[A] plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats...misrepresentation... or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business.....

Brady v. United States, 397 U.S. 742, 755 (1970). On the record before this Court, it appears that Plea Counsel allowed his client to make an admission of guilt by pleading guilty despite the claims of innocence he made in response to repeated warnings from the Plea Court that he would get life without parole if convicted of the offense charged. It is equally evident that Plea Counsel did so without adequately investigating the strength of the State's case and without advising Applicant adequately of methods and evidence which might be utilized at a trial to impeach the credibility of the alleged Victim. Applicant has met his burden of proof regarding his claim that he would not have entered his guilty plea in this case had it not been for the ineffective assistance of counsel he received prior to and during his guilty plea proceeding.

D.

Allegations 1 and 2, Original PCR Application

⁵ There is no indication that Plea Counsel was present during Applicant's colloquy with the bench following his sentencing at his jury trial and therefore, this Court can not attribute knowledge of Judge Newman's remarks to Plea Counsel. This Court notes this exchange for the purpose of demonstrating that any attempt at entering an *Alford* plea on this charge would likely have been fruitless.

Allegation 12 Second Amended Application
filed on May 21, 2014

Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.

Plea Counsel provided Applicant ineffective assistance of Counsel where he failed to ask the Plea Judge for clarification as to whether the consecutive five (5) year sentence imposed following his plea on Indictment No. 2010-GS-45-30 was intended to be consecutive to the aggregate term imposed for both counts on Indictment No. 2009-GS-45-0249, or, whether it was the intent of the Plea Court that the sentence be consecutive only as to the twenty (20) year sentence imposed for Second Degree Criminal Sexual Conduct on that indictment. Plea Counsel's PCR testimony reflects that he merely assumed that it was the intent of the Court to make the sentence on the plea consecutive to the aggregate term imposed on Indictment No. 2009-GS-45-0249. In so doing, Plea Counsel totally abandoned his role as an advocate and neglected an opportunity to potentially reduce his client's effective sentence by five (5) years. This Court finds that Plea Counsel was ineffective for failing to request clarification on this point from the Plea Judge.

Where this Court has found that vacation of the judgment and sentence entered as a result of this plea is appropriate on other grounds, the grant of remand to the Court of General Sessions for clarification of sentence appears pointless. To protect Applicant's interests in the event the grant of a new trial were to be overturned on appeal, however, this Court finds that remand for a hearing to clarify the intent of the sentencing judge is warranted and appropriate.

E.

Allegations 1 and 2, Original PCR Application
Allegation 13 Second Amended Application
filed on May 21, 2014

Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a potential life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for a life without parole sentence pursuant to S.C.Code Ann. § 17-25-45 where the sexual battery charged in this indictment

was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until 2007.

As previously noted, Applicant's plea was entered on January 28, 2010. While *Graham v. Florida, supra*, was not decided by the U.S. Supreme Court until May 17, 2010, it was argued before the high court on November 9, 2009. Thus, had Plea Counsel, a public defender, kept abreast of important criminal cases in which the United States Supreme Court had granted certiorari, he would have known that the question of whether an individual could be sentenced to life without parole for an offense, other than murder, that he committed while he was a minor, was pending decision by the high court in *Graham*. Had he been aware of that case, he would have known how crucial it was to determine whether the State could prove, beyond a reasonable doubt, that the act alleged occurred before 2007.

The record indicates that Applicant waived grand jury presentment on this charge. Thus, his case obviously was not about to go to trial that day if he declined to plead immediately following his jury trial. Inasmuch as the State secured an amended indictment against the Applicant on Indictment No. 2009-GS-45-0249 on Thursday, January 21, 2010, it is apparent that the State would not have been able to indict Applicant on this charge for at least three weeks after the date of the plea. Therefore, it is not unreasonable to conclude that Plea Counsel might easily have delayed Applicant's prosecution on this charge until after the Supreme Court's ruling in *Graham*. The record before this Court establishes that Plea Counsel never considered arguing that the State should not be permitted to seek a sentence of life without parole for a crime, other than murder, committed by an individual who was a minor at the time of the crime. He certainly did not discuss this potential line of defense against an LWOP sentence with Applicant even though, as the records before this Court demonstrate, the threat of such a sentence was the catalyst which ultimately caused him to enter his guilty plea. This Court finds that Plea Counsel was ineffective for failing to consider challenging the threat of a LWOP sentence on this charge based upon the State's inability to prove that the crime occurred when Applicant was still a minor and for failing to advise Applicant that such a line of argument might be effectively advanced by the defense.

F.

Allegations 1 and 2, Original PCR Application

Allegations 15 and 14, Second Amended Application
filed on May 21, 2014

Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters. In addition, Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of Criminal Sexual Conduct with a Minor involving ~~_____~~ ^{VICTIM}, the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.

The PCR testimony of Plea Counsel establishes that Plea Counsel had represented the Victim, ~~_____~~ ^{VICTIM}, in a number of matters prior to serving as Applicant's defense attorney in this matter. Given the age of the alleged Victim at the time this charge was brought against Applicant, it is safe to assume that Plea Counsel had represented her in the fairly recent past. Plea Counsel's PCR testimony indicates that he knew ~~_____~~ ^{VICTIM} and her mother well. PCR Tr. p.5, ll. 18-19As previously noted, his PCR testimony reflects his opinion that ~~_____~~ ^{VICTIM} was "a very nice young lady." He admitted that he told Applicant that ~~_____~~ ^{VICTIM} was "not going to come off as a liar to the jury." PCR Tr. p. 19, l. 15-20, l. 25. Plea Counsel's PCR testimony reflects his personal belief that ~~_____~~ ^{VICTIM} sincerely "thought he was the father of that baby."

Plea Counsel's testimony verifies the fact that he apparently never even considered the possibility that his former client, the Victim in Applicant's case, had intentionally lied about the paternity of her child in order to protect the true biological father of the infant. He admitted that he neither considered, nor discussed with Applicant, the fact that her previous false allegations of paternity might be used to challenge her credibility if Applicant went to trial by jury on this charge.

It is well established that in order to prove a Sixth Amendment violation due to a conflict of interest arising from multiple representation, a defendant who did not object at trial, must demonstrate an actual conflict of interest adversely affected by his attorney's performance. *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001); *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). In this case, there is no evidence that Applicant had any knowledge at the time of his plea that his attorney also represented ~~_____~~ ^{VICTIM}. An actual conflict of interest is established when one shows that his attorney owed a duty to a party whose interests were adverse to

his own. *Jackson, supra*; *Duncan v. State*, 281 S.C.435, 315 S.E.2d 809 (1984). A party asserting a conflict of interest must show that his counsel actively represented conflicting interests as a constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993).

Applicant has established through the testimony of Plea Counsel that he represented **VICTIM** in multiple matters. Although he was less than clear as to the exact nature of the representation, his PCR testimony plainly demonstrates that his representation of this young girl influenced his judgment concerning Applicant's case. Plea Counsel expressed personal opinions concerning her veracity based upon his knowledge of the girl from having represented her. Counsel admitted that he never even considered obvious avenues for potential impeachment of this alleged Victim if this case went to trial. He not only didn't explain to Applicant how **VICTIM** might be impeached at a trial, he admittedly never disclosed the fact that he represented **VICTIM**. In addition, Plea counsel acknowledged that he never even considered arguing that **VICTIM** might be maintaining that she had sex with Applicant, even after her story about being impregnated by him was proven to be false, because she did not want to get in legal trouble herself for having lied to the police, DSS and the Family Court about the paternity of her child. Applicant has demonstrated that Plea Counsel was acting out of divided loyalty between these two clients. In so doing, he deprived Applicant of legal advice concerning this viable defense strategy, because his professional loyalty to **VICTIM** was such that he refused to even consider the fact that she might be lying. While it is impossible to know to what degree this factor affected Plea Counsel's judgment on the subject, the very real risk is that he didn't want to get one client into legal trouble by pointing out an obvious motive for her to lie about his other client; the Applicant.

The records below, as well as Applicant's PCR testimony, indicate that he did not want to plead guilty to this crime. Only after being repeatedly threatened with a life without parole sentence did the Applicant yield and plead guilty. While this Court normally gives great weight to admissions of guilt made in the context of a judicial proceeding, the facts in this case support Applicant's assertion that he lied about his guilt in order to "convince" the Plea Judge to accept his plea so he could avoid a life without parole sentence. Absent advice from Plea Counsel as to how the alleged Victim's story, as well as the testimony of her mother, could be challenged if he went to trial, Applicant was left with the understanding that it would be his word against that of a fourteen year old girl and her mother if the case went to trial. Applicant has unambiguously stated that he

would not have pleaded guilty to this charge had he been aware of these factors. Under those circumstances this Court is constrained to find that Plea Counsel had a conflict of interest in representing Applicant on this charge, that his divided loyalties prejudiced Applicant's ability to receive adequate legal advice from his attorney and that Applicant's plea was not knowingly and voluntarily entered with the benefit of effective assistance of counsel.

With regard to Applicant's allegation that Plea Counsel also had a conflict of interest in that he represented Joshua Edwards, another individual who was prosecuted for having had sex with ~~_____~~ ^{VICTIM}, when she was less than fourteen years of age, this Court finds that while Plea Counsel should have disclosed this representation to Applicant, there is no evidence which establishes that Applicant was prejudiced by Plea Counsel's previous representation of this individual.

CONCLUSION

For all the foregoing reasons, this Court now finds that the Applicant has met his burden of proof with regard to his claim that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his guilty plea proceedings. This Court finds that the record supports Applicant's claims that his plea was not knowingly and voluntarily entered with the benefit of reasonable professional assistance of counsel. Accordingly, the Applicant's judgment and sentence are hereby reversed and his case is remanded to the Williamsburg County Court of General Sessions for a new trial.

IT IS SO ORDERED.

R. Ferrell Cothran, Jr.
Presiding Circuit Judge
Third Judicial Circuit

This ____ day of _____, 2014.

I.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Williamsburg County Clerk of Court. The Applicant was originally indicted for Second Degree Criminal Sexual Conduct with a Minor on Indictment No. 2009-GS-45-249. The State subsequently sought an amendment to the original indictment to add a count of First Degree Criminal Sexual Conduct with a Minor involving the same Victim as the original indictment for Second Degree Criminal Sexual Conduct with a Minor. The true billed, amended indictment charging Applicant with both first degree CSC with a minor and second degree CSC with a minor was true billed by the Grand Jury on January 21, 2010. Applicant was represented by retained counsel, Richard Strobel, Esquire.

Applicant was also indicted for a separate count of Criminal Sexual Conduct with a Minor Second Degree involving a different Victim in Indictment No. 2010-GS-45-30. Applicant was represented on that charge by Assistant Public Defender, Legrand Carraway. On January 25, 2010, Applicant appeared before the Honorable Clifton Newman for a guilty plea proceeding at which he was expected to enter pleas to one count of Criminal Sexual Conduct with a Minor 1st Degree from Amended Indictment No. 2009-GS-45-249 and one count of Second Degree Criminal Sexual Conduct with a Minor on Indictment No. 2010-GS-45-30. The State had agreed to dismiss count two of Amended Indictment No. 2009-GS-45-249 which charged Applicant with Second Degree CSC with a Minor involving the same minor as referenced in Count One of that indictment. At that proceeding, the Applicant was anticipated to waive Grand Jury presentment on Indictment No. 2010-GS-45-30. That plea proceeding was terminated before the Court accepted Applicant's pleas after he advised the Court that he did not "want to give up [his] rights." Plea Hearing, 1.25.2010, Tr. p. 7, ll. 1-9. Attorney Carraway, spoke once on the record during this plea proceeding. Plea Hearing, 1.25.2010, Tr. p. 4, ll. 15 – 18. Likewise, Attorney Strobel spoke out only once during this proceeding and that was when he introduced an affidavit prepared by him in anticipation of the pleas. Plea Hearing, 1.25.2010, Tr. p. 4, ll. 12 – 14.

Applicant proceeded to trial by jury before the Honorable Clifton Newman on Indictment No. 2009-GS-45-249 later in the same day as the attempted plea proceeding; January 25, 2010.

Applicant was found guilty as charged on both counts of Indictment No. 2009-GS-45-249 and was sentenced by Judge Newman to twenty-five (25) years incarceration for First Degree CSC with a Minor, and twenty (20) years for Second Degree CSC with a Minor. Said sentences were specifically ordered to be served concurrent with each other. No direct appeal from these judgments and sentences was perfected on behalf of Applicant.

On January 27, 2010, immediately after the Court imposed sentences on both counts of Indictment No. 2009-GS-45-249, Judge Newman reminded Applicant that he was looking at a mandatory life without parole sentence if he was ultimately convicted on the other pending charge against him. Trial Tr. p. 299, ll. 4 – 11. Applicant then asked if he could just go ahead and plead guilty, be sentenced on his other outstanding charge and be sentenced concurrently. While Applicant stated that he did not want to plead guilty, because he knew he was not guilty of that crime, he indicated a desire to just plead and “get it over with” and receive concurrent sentences. He reminded the Court that he had reached a plea agreement with the State on these charges before his trial. Trial Tr. p. 299, ll. 12 – 18. At that juncture, Judge Newman informed Applicant that;

Well, I don't accept guilty pleas from people who are not guilty. I only take guilty pleas from people who are guilty. They have to convince me, just as the Solicitor has to convince the jury that you are guilty in this case, you've got to convince me that you are guilty in that other case before I can accept a guilty plea. We'll give you overnight to think about that.

Trial Tr. p. 299, ll. 19 – 25.

The following day, January 28, 2010, Applicant once again appeared before Judge Newman, at which time he entered a plea of guilty on Indictment No. 2010-GS-45-030 on which he was charged with Second Degree CSC with a Minor. Said indictment had not yet been presented to the Grand Jury. Applicant waived his right to Grand Jury presentment on the record during this plea proceeding. There were no plea negotiations entered in exchange for Applicant's plea on that indictment with the exception of the fact that the State agreed to allow Applicant to plead as though he had no prior convictions. Plea Hearing, 1.28.2010, Tr. p. 3, ll. 21 – 23. He was sentenced by Judge Newman to five (5) years imprisonment for that offense. It was expressly ordered that said sentence be served consecutively to the sentence imposed on Indictment No. 2009-GS-45-249. The record reflects that Judge Newman did not specify whether the five (5) year sentence was to be consecutive to the aggregate term imposed on 2009-GS-45-249 or consecutive to the Twenty (20)

year sentence imposed for Second degree Criminal Sexual Conduct with a Minor. Plea Hearing, 1.28.2010, Tr. p. 12, ll. 3 – 10.

Applicant originally filed an Application for Post-Conviction Relief on September 29, 2010. The State made Return to said application on September 7, 2011. In said application, docketed at 2010-CP-45-389, Applicant raised allegations concerning the judgments and sentences imposed against him following his jury trial on Indictment No. 2009-GS-45-0249, as well as allegations addressing the judgment and sentence imposed following his plea of guilty on Indictment No. 2010-GS-45-030. Pursuant to agreement with the State, Applicant subsequently filed a separate application separating his claims concerning his guilty plea on Indictment No. 2010-GS-45-030 from the allegations addressing his jury trial. That Application was docketed at 2013-CP-45-00098.

An evidentiary hearing was convened in this matter at the Sumter County Courthouse on May 27, 2014. Applicant was present for this proceeding and was represented by Tara Dawn Shurling, of the Richland County Bar. The Respondent was represented by Daniel Gourley, Assistant Attorney General.

II.

ALLEGATIONS RAISED

The Applicant has alleged generally that he received ineffective assistance of counsel prior to and during his trial in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as, Article I, Section 14, of the South Carolina Constitution. In support of that claim he has raised the following specific allegations in his Application for Post-Conviction Relief:

3. Plea Counsel failed to provide client effective assistance of counsel prior to and during his plea proceeding. The Applicant's plea of guilty was coerced by Counsel's failure to provide adequate representation. Trial Counsel failed to file a direct appeal for the Applicant and the Applicant did not knowingly waive his right to a direct appeal.
4. The Applicant's plea of guilty was not voluntarily and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

In his Second Amended Application for Post-Conviction Relief, filed on May 21, 2014, the Applicant raised the following additional specific allegations:

1. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the results of DNA testing had confirmed that the Applicant was not the father of a child conceived by the victim.
2. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the victim was not cooperating with the prosecution of the charges against he Applicant.
3. Plea Counsel was ineffective for neglecting to interview **VICTIM** concerning these charges where her original accusation against Applicant, that he had impregnated her, had been proved false by DNA testing.
4. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without discussing with him the ways in which the forensic evidence in this case, specifically the DNA test results, could be used to impeach the credibility of the victim's claims against the Applicant.
5. Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.
6. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30.
7. The Plea Court erred in accepting the Applicant's plea of guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly protested his guilt on the record during the plea proceeding.
8. Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.

9. Plea Counsel was ineffective for failing to discuss with the Applicant the potential use of character witnesses to testify in the Applicant's behalf if he went to trial by jury; specifically Sgt. Robert McClary, Debra Black, Manager at Skyes in Kingstree, South Carolina, Sgt. Staggers, employed with the 1052nd Transportation Company Army National Guard, and Frederick Davis of the Kingstree Police Department.

10. Plea Counsel was ineffective for failing to interview Joshua Edwards as a potential witness for the Applicant and failing to discuss with the Applicant the manner in which Joshua Edwards could be used as a defense witness if the Applicant proceeded to trial by jury where said witness was charged with and convicted for criminal sexual conduct relating to the victim in Applicant's Indictment No. 2010-GS-45-30; ~~Victim~~.

11. Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and for failing to fully explain to the Applicant his right to object to such an amendment.

12. Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.

13. Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a potential life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for a life without parole sentence pursuant to S.C.Code Ann. § 17-25-45 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until 2007.

14. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of Criminal Sexual Conduct with a Minor involving ~~Victim~~, the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.

15. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters.

III.

EVIDENCE BEFORE THE COURT

In deciding this collateral action this Court has before it a copy of the pre-trial hearing held on January 25, 2010, the sentencing portion of the trial record dated January 25 -27, 2010, a transcript of the January 28, 2010 guilty plea proceeding, a transcript of the PCR hearing held on May 27, 2014, the exhibits introduced during the PCR proceeding, the Applicant's records from the South Carolina Department of Corrections and the records of the Williamsburg County Clerk of Court regarding the subject conviction and sentence. What follows below are this Court's findings of fact and rulings of law as required by S.C. Ann. §17-27-80.⁶

IV.

STANDARD OF REVIEW

This Application for Post-Conviction Relief generally raises numerous specific allegations of ineffective assistance of counsel. The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000). In a Post-Conviction Relief proceedings, the Applicant has the burden of proof to establish that he is entitled to relief by a preponderance of the evidence. Rule 71.1(e), S.C.R.Civ.P.

In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Defense Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. *Strickland v. Washington*, 466 U.S. 668 (1984). In other words, the Applicant must show that, but

⁶ For purposes of supporting this Order on appeal, the finding of fact and rulings of law contained herein may be viewed as interchangeable as may be necessary to affirm the ruling of this Court on any appeal which may follow.

for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. *Id.*; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. *Ard v. Caloe*, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

In the context of a guilty plea, the operative question becomes whether a defendant, but for counsel's errors and omissions, would have exercised his right to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985). Further, the applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty. *Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006). A guilty plea, along with the resulting waiver of fundamental constitutional rights, is valid only if made voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238, 242-43 (1969) ("For, as we have said, a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality.").

On the one hand, where Defense Counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). On the other hand, counsel may not explain away errors and omissions which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. In the case of *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the Supreme Court of South Carolina found that,

Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

V.

DISCUSSION

In this case, the Applicant alleges generally that Plea Counsel failed in multiple regards in his representation of Applicant prior to and during his guilty plea proceedings. On the facts of this case, this Court is constrained to agree. The Applicant has met his burden of proof concerning multiple errors and omissions of Trial Counsel which acted to deprive him of the ability to enter a knowing and voluntary plea. Having evaluated each of these allegations, this Court finds that there exists a reasonable probability that Applicant would not have waived his constitutional right to trial by jury on this charge but for these errors and omissions of Plea Counsel. In order to demonstrate both the nature of Counsel's errors and omissions, and the prejudice to the Applicant arising therefrom, it is necessary and helpful to consider the following summary of portions of the General Sessions records and PCR hearing record.

RELEVANT TESTIMONY

During the sentencing portion of Applicant's trial, Judge Newman made it clear that Applicant was facing a mandatory life without parole sentence on his remaining charge of Second Degree Criminal Sexual Conduct with a Minor. The day after his conviction by jury on Amended Indictment No. 2009-GS-45-249, January 28, 2010, Applicant appeared before Judge Newman, and entered a plea of guilty to one count of Second Degree Criminal Sexual Conduct with a Minor on Indictment No. 2010-GS-45-30. The charge on that indictment involved a different victim from the complaining witness in Applicant's jury trial. Although she was not named in Indictment No. 2010-GS-45-30, testimony at Applicant's PCR hearing involving this plea, clearly establishes that the victim in this case was **VICTIM**. PCR Tr. p. 4, ll. 17-24. At the time of this plea, the Court noted that the State was presenting the charge as if Applicant had no prior conviction for a most serious offense despite his convictions for two such offenses the previous day. Plea Hearing, 1.28.2010, Tr. p. 3, ll. 21-24. The Court specifically advised Applicant that, "*if you commit two or*

more most serious offenses you can be sentenced to life without the possibility of parole." Plea Hearing, 1.28.2010, Tr. p. 3, ll. 17-20, (Emphasis added).

Applicant waived his right to Grand Jury presentment on the record, and admitted on the record to having had sex with a minor he estimated to be thirteen or fourteen at the time. Plea Hearing, 1.28.2010, Tr. p. 5, l. 12-p. 7, l. 9.

The record from Applicant's plea indicates that the Victim from Applicant's jury trial was actually the source of the information supplied to law enforcement regarding the second alleged victim; ~~██████████~~ ^{VICTIM}. Plea Hearing, 1.28.2010, Tr. p. 7, ll. 14-23. The prosecutor advised the Court that she had recognized the girl's name from a DJJ case, and pulled the community evaluation report from that case and discovered that the girl had a young child and that she had named Applicant as the father of her baby. The girl's mother was reported as saying she didn't realize how old Applicant was because, *"he looks just like a kid."* Plea Hearing, 1.28.2010, Tr. p. 7, l. 21-p. 8, l. 11. The prosecutor acknowledged that DSS conducted a paternity test which *excluded* Applicant as the biological father of the girl's child. Plea Hearing, 1.28.2010, Tr. p. 8, ll. 18-23.

During the plea proceeding the State published a letter written by the alleged victim on the morning of the plea. Although she continued to claim Applicant had sex with her, she said she didn't want anything to do with the situation, and asked that the State drop the charge against Applicant. Plea Hearing, 1.28.2010, Tr. p. 9, ll. 3-14.

It is clear from the plea record that the State assumed the Victim had intercourse with Applicant around the same time she conceived her child, even though her claim from that time period that Applicant was her baby's father was scientifically proved to be false. It is apparent that the prosecution chose to believe this girl was mistaken about the paternity of her baby to the exclusion of another plausible explanation; that she lied about having had intercourse with Applicant to protect the child's real biological father. Neither does it seem that anyone considered the possibility than she continued to assert that she and Applicant had engaged in sex with each other to avoid getting in trouble for having knowingly made false statements to the police, DSS and the Family Court. Plea Hearing, 1.28.2010, Tr. p. 9, ll. 15-21.

Indictment No. 2010-GS-45-30, alleged that Applicant committed Second Degree Criminal Sexual Conduct with a Minor between October 1, 2006 and October 1, 2007. The Applicant's date of birth is . . . 1989. Therefore, from October 1, 2006 through July 16, 2007, Applicant was only 17 years old. That means that for 8 and ½ months of the 12 month time frame

covered by this indictment, Applicant himself was a minor. See, Warrant M-170251 for Applicant's date of birth.

In his PCR testimony, Plea Counsel, LaGrand Carraway acknowledged the following:

- He knew the victim and her mother well. PCR Tr. p. 5, ll. 18-19;
- He had previously represented the alleged victim in this case in multiple matters in Family Court. PCR Tr. p. 5, l. 21- p. 6, l. 17;
- Although he claimed Applicant was aware that Plea Counsel knew **VICTIM**, he did not claim he disclosed his previous representation of her to Applicant, PCR Tr. p. 6, l. 24- p. 7, l. 9. He in fact admitted that he had not done so. PCR Tr. p. 8, l. 24- p. 9, l. 4;
- PCR Counsel requested access to review his file and was told most of it was lost;
- Plea Counsel agreed to notify PCR Counsel if his file was located. Plea Counsel did not subsequently advise PCR Counsel that the file had been located, however, during the PCR hearing it became apparent he had the file with him in court. PCR Tr. p. 8, ll. 10-20;
- He was provided a copy of the letter from the victim by the Solicitor's Office. PCR Tr. p. 7, ll. 10-13 and p. 8, ll. 21-23;
- **VICTIM** did tell DSS that Applicant was the father of her child. PCR Tr. p. 9, ll. 5-22;
- The charge against Applicant was brought in the aftermath of **VICTIM** reporting to the Family Court that Applicant was the father of her child. PCR Tr. p. 9, l. 25- p. 10, l. 3;
- **VICTIM**'s child was born June 8, 2007 which, Plea Counsel asserted, would have put its conception date at approximately October 8, 2006. PCR Tr. p. 10, l. 12- p. 11, l. 5;
- Applicant turned 18 years old on **2007**; See Plaintiff's Exhibit No. 2 and Arrest Warrant No. M-170251;
- Plea Counsel had no recollection of participating in the attempted plea hearing on January 25, 2010; PCR Tr. p. 12, l. 6- p. 13, l. 14.
- Plea Counsel did not recall being aware that a new charge of First Degree Criminal Sexual Conduct with a Minor had been brought against Applicant just days before his jury trial on the charges on which Applicant was represented by Richard Strobel. PCR Tr. p. 14, ll. 1-16.

During his PCR testimony, Plea Counsel was asked if he had ever represented an individual named Joshua Edwards. He acknowledged that he had represented this person's brother, Ray-Ray, before and stated that he believed he had represented Joshua either as a juvenile or a criminal court matter. PCR Tr. p. 14, ll. 17-21. Plea Counsel was asked if he recalled sending PCR Counsel a copy of his file documents showing he actually represented Joshua Edwards on a charge of Second Degree Criminal Sexual Conduct with a Minor, and he testified that he did not. Ultimately, this witness identified his signature on a transmittal letter providing PCR Counsel with his file concerning his representation of Joshua Edwards on a charge of Second Degree Criminal Sexual Conduct with a Minor. That letter, along with the documents provided with it, were introduced as *Plaintiff's Exhibit No. 1*. Those records indicate that Joshua Edwards was alleged to have had sex with a minor child over 11 years of age, but less than 14 on April 27, 2006. He pleaded guilty to that charge and was sentenced on July 18, 2006. Plea Counsel ultimately acknowledged that he represented Joshua Edwards in that case, and that ~~_____~~ ^{VICTIM}, the same Victim alleged in Applicant's case, was the Victim in Joshua Edwards's case. PCR Tr. p. 17, l. 23- p. 18, l. 14. He admitted that he never told Applicant about having represented Joshua Edwards and ~~_____~~ ^{VICTIM}. PCR Tr. p. 18, ll. 15-17.

Plea Counsel recalled being aware that DNA testing had proved Applicant was not the father of ~~_____~~ ^{VICTIM}'s child "certainly some weeks" before the date of the plea, and he expressly recalled discussing the test results with Applicant at the jail. PCR Tr. p. 18, l. 21- p. 19, l. 9. When asked if he discussed the possibility of using ~~_____~~ ^{VICTIM}'s false claim that Applicant fathered her child to the advantage of the defense if Applicant went to trial, Plea Counsel claimed he had, but focused his attention on the fact that ~~_____~~'s mother would also have been a witness who had told DSS that she thought Applicant was the child's father because he had been coming over to her home visiting ~~_____~~ ^{VICTIM} during the time period when she was believed to have conceived her baby. PCR Tr. p. 19, l. 10- p. 20, l. 22. Interestingly, Plea Counsel's PCR testimony reflects his opinion that ~~_____~~ ^{VICTIM} was "a very nice young lady", and confirms that he told Applicant that ~~_____~~ ^{VICTIM} was "not going to come off as a liar to the jury." PCR Tr. p. 19, l. 15-20, l. 25.

Plea Counsel's PCR testimony reflects his belief that ~~_____~~ genuinely "thought he was the father of that baby." His testimony confirms the fact that he apparently never even considered the possibility that this young woman had intentionally lied about the father of her child

in order to protect the true biological father of the infant. Neither does his testimony indicate that he gave any consideration to the fact that the Victim in Applicant's other case, the one which went to trial by jury, was the person who initially pointed the finger at Applicant with the police concerning ~~Victim~~. PCR Tr. p. 25, ll. 4 – 14.

Plea Counsel admitted that he did not work with Attorney Strobel to try and work out a package deal for Applicant concerning both sets of charges. Interestingly, he testified that he didn't have any contact with *"Mr. Strobel about this."* He went so far as to claim that, *"all I knew is that Kevin withdrew his guilty plea and I was not sure, you know, exactly what the defense was."* PCR Tr. p. 27, ll. 2 – 10. As previously noted, both Attorney Strobel and Attorney Carraway appear listed as counsel for Applicant on the cover of the January 25, 2010 plea hearing before Judge Newman. The cover of the transcript reflects that the pleas that were attempted that day were on Indictments No. 2009-GS-45-249 and 2010-GS-45-030. The record of that proceeding does reflect that Attorney Carraway was present at that proceeding and responded directly to one question from Judge Newman. Plea Hearing, 1.25.2010, Tr. p. 4, ll. 15 – 18.

In his PCR testimony Attorney Carraway testified that he thought Applicant was looking at a possible maximum sentence of twenty (20) years if he was convicted on this charge of Second Degree Criminal Sexual Conduct despite the fact that he had been convicted of two most serious counts the previous day. PCR Tr. p. 27, l. 11 – p. 28, l. 12. He did not recall any conversation about his client being exposed to life without parole pursuant to S.C. Code Ann. §17-25-45, the so-called strike law, if he were convicted of another count of Second Degree Criminal Sexual Conduct with a Minor. PCR Tr. p. 28, l. 13 – p. 29, l. 16. Plea Counsel was asked about the portion of the trial transcript when Judge Newman advised Applicant that he would be exposed to a life without parole sentence for a second most serious offense if he were convicted *"on that pending charge."* Trial Tr. p. 299, ll. 7 – 11. Plea Counsel responded by asserting that he wasn't there when these statements were made in court. PCR Tr. 30, ll. 5 – 7. Next he was questioned about the fact that the transcript of Applicant's January 28, 2010 plea indicated that Judge Newman commented on the fact that he could have gotten life without parole on this charge, but for the State's agreement to accept his plea to this charge *"as if there is no prior conviction."* Plea Hearing, 1.28.2010, Tr. 3, ll. 14 – 24. Even after reviewing these portions of the record, Plea Counsel insisted that he did not think a life without parole sentence was being held over Applicant's head and that a twenty year sentence was what he told him he was facing. PCR Tr. p. 30, l. 17- p. 31, l. 20. He emphasized that the day of the plea,

Judge Newman never said he would have had no role in deciding whether Applicant got a sentence of life without parole if he had been convicted at a trial. PCR Tr. p. 32, ll. 2 – 12.

Plea Counsel acknowledged that Applicant was alleged to have had sex with **VICTIM** sometime between October 1, 2006 and October 1, 2007. He further acknowledged that Applicant's birth date is July 17, 1989 and thus, that he would not have turned 18 years old until 2007. He went on to admit that Applicant did not turn 18 until after **VICTIM**'s child was born. PCR Tr. p. 32, l. 15 – p. 33, l. 9. During the PCR hearing, Plea Counsel indicated that he was not familiar with the United States Supreme Court's holding in *Graham v. Florida*⁷. He went on to confirm that at the time of Applicant's plea, he was not aware of the pendency of this landmark ruling. PCR Hearing, Tr. p. 34, l. 18 – p. 35, l. 25.

Plea Counsel testified that he did not discuss anything about Applicant's right to a direct appeal on the judgments and sentences handed down at the jury trial on the charges that Attorney Strobel represented him on. Neither did he warn Applicant that if he were to win a subsequent appeal from the judgments and sentences imposed at his jury trial, that reversal would in no way effect the judgment and sentence he would receive as a result of him waiving grand jury presentment and proceeding with a plea on Indictment No. 2010-GS-45-030. PCR Tr. p. 43, ll. 7 – 25.

Plea Counsel acknowledged being aware that **VICTIM** was a reluctant witness and that she had in fact written a letter to the Solicitor's Office asking them to drop Applicant's charge involving her. He acknowledged that although this letter said she and Applicant had sex, it did not say when they had engaged in sex with one another. Plea Counsel obviously attached significance to the fact that **VICTIM**'s mother had told the police that Applicant had been coming over to her home to visit **VICTIM** during the time period when this girl got pregnant. PCR Tr. p. 44, l. 1 – p. 45, l. 5. There is nothing before this Court indicating that the mother ever reported having observed any evidence that Applicant had been intimate with her daughter during this time period.

Plea Counsel admitted in his PCR testimony that he never discussed with Applicant how the fact that **VICTIM** had falsely accused him of fathering her child might be used to impeach **VICTIM** if this case went to trial. His responses reflect his personal opinions concerning **VICTIM** and his belief that she thought she was being truthful when she accused Applicant of fathering her baby. It is apparent that Plea Counsel never considered the possibility that **VICTIM**

⁷ 560 U.S. 48 (2010)

D. was not being truthful when she tried to blame Applicant for her pregnancy. Likewise, he did not seem to consider that her reluctance to completely exonerate Applicant might have been born out of fear of getting in trouble for lying to DSS and law enforcement until science proved her accusations to be false. PCR Tr. p. 45, l. 6 – p. 46, l. 6. He further admitted that he never discussed the possibility with his client that the State might not even prosecute him on the charge involving **VICTIM** since she clearly was not cooperating with the prosecution. PCR Tr. p. 45, l. 21 – p. 46, l. 6.

Judge Newman gave Applicant a sentence of five (5) years consecutive to the sentence imposed following his jury trial on Indictment No. 2009-GS-45-0249 for his plea on Indictment No. 2010-GS-45-030. Indictment No. 2009-GS-45-0249 was a two count indictment on which the jury found Applicant guilty of one count of First Degree CSC with a Minor and one count of Second Degree CSC with a Minor. Applicant received concurrent sentences of twenty-five (25) and twenty (20) years on those two counts. At his guilty plea proceeding on Indictment No. 2010-GS-45-030, Judge Newman did not specify whether the five (5) year sentence imposed was to be served consecutive to the aggregate term imposed on both counts of Indictment No. 2009-GS-45-0249 or whether it was intended to be consecutive only to the twenty (20) sentence imposed for the Second Degree CSC with a Minor judgment. This distinction could have resulted in a five (5) year difference in Applicant's total aggregate sentence. Plea Counsel testified that he assumed the Court intended the sentence imposed at the plea to be consecutive to the aggregate twenty-five (25) year sentence imposed on Indictment No. 2009-GS-45-0249 and did not consider seeking clarification on this point. PCR Tr. p. 39, l. 16 – p. 41, l. 11.

After having his recollection refreshed, Plea Counsel remembered being present when a plea to both indictments fell apart before Judge Newman on January 25, 2010 immediately before Applicant's jury trial on Indictment No. 2009-GS-45-0249. PCR Tr. p. 46, l. 21 – 47, l. 13. He admitted that when the plea began to fall apart and it was apparent the plea wasn't going to go through, it never occurred to him to ask for a brief recess to see if he could work out a modification with the State that would have permitted the plea to go through. PCR. Tr. p. 47, l. 11 – p. 51, l. 9. During cross-examination by the State, Plea Counsel admitted that Applicant had never admitted having sex with **VICTIM**. He admitted that, based on his knowledge of the alleged Victim, he just assumed "*it did happen...*" and because he "*knew her*".....he testified that he,

[D]idn't see a reason why she would make it up and say he was the father if she'd never had sex with him or whatever. I know her and I think he knows her or whatever, and I just never had the idea that - - and I never really had the idea too much whether that was - - whether the DNA came back that it would matter that much because I just didn't think she would make that up.

PCR Tr. p. 52, l. 24 – p. 53, l. 5.

Plea Counsel admitted that the day following Applicant's conviction at his jury trial he *"was just shell shocked from the day before."* He further acknowledged that Applicant *"wasn't familiar with the Court system."* PCR Tr. p. 53, ll. 17 – 25.

Despite acknowledging that Applicant had never admitted having had sex with ~~_____~~ ^{VICTIM}, in his PCR testimony Plea Counsel emphasized the fact that Applicant had never denied having sex with the girl to him. Further, he went on to state that he felt that the note she wrote the day of the plea indicated that if Applicant went to trial ~~_____~~ ^{VICTIM}, would have testified that *"well, he did have sex....."* He felt that if they went to trial, *"if they had called her in there and put her on the stand, she would have told the truth."* PCR Tr. p. 55, ll. 18 – 24.

Plea Counsel denied that his previous representation of Joshua Edwards had any impact on his duties to Applicant. His answers to questions concerning this subject reflect a total lack of consideration for the fact that evidence concerning Joshua Edwards might have been used to Applicant's advantage, depending upon the content of ~~_____~~ ^{VICTIM}'s trial testimony, if his case had proceeded to trial. PCR Tr. p. 58, ll. 6 – 14. Likewise, he asserted that his representation of ~~_____~~ ^{VICTIM}, in no way impacted his ability to represent Applicant to the best of his ability. He indicated that having represented ~~_____~~ ^{VICTIM}, helped him because it enabled him to know that she was *"just a nice person , a very believable"* person who *"wouldn't have said she had sex with him if she hadn't."* PCR Tr. p. 58, l. 19 – p. 1.

Applicant also presented as a witness, Assistant Solicitor Tyler Bryant Brown, who verified for the record that the unnamed minor victim in Indictment No. 2006-GS-45-199, charging Joshua Lamont Edwards with Second Degree CSC with a Minor, was ~~_____~~ ^{VICTIM}. He further confirmed that counsel of record on that indictment was LeGrand Carraway. PCR Tr. p. 61, l. 13 – p. 62, l. 22.

In his own testimony at his PCR hearing, Applicant asserted the following:

- His guilty plea attempt on January 25, 2010 fell apart because he did not want to plead to first degree CSC with a Minor on the Indictment on which he was represented by Mr.

Strobel, and he did not want to plead guilty to Second degree CSC with a Minor with regard to ~~VICTIM~~. PCR Tr. p. 63, l. 7 – p. 65, l. 20;

- At the end of his trial he asked if he could go ahead and just plead to his other pending charge because the Judge had just told him if he was convicted he would get life without parole and the judge would have no role in deciding the sentence. PCR Tr. p.66, ll. 2 – 11;
- He would never have pleaded guilty on the charge involving ~~VICTIM~~. had it not been for the threat of a mandatory life without parole sentence if he was convicted on that charge. PCR Tr. p. 66, ll. 12 – 15;
- Prior to the day of his PCR hearing, he had never actually seen the letter that Plea Counsel stated was turned over to him before the plea proceeding. PCR Tr. p. 16 – 19;
- He had previously written Plea Counsel and requested a copy of his discovery materials, but he had never received anything back from Plea Counsel in response to this request. PCR Tr. p. 66, l. 20 – p. 67, l. 4;
- Plea Counsel never advised him that he had previously represented ~~VICTIM~~. PCR Tr. p. 67, ll. 5 – 7;
- Plea Counsel never disclosed to him the fact that he had represented another individual also accused of having sexually assaulted ~~VICTIM~~, Joshua Edwards. PCR Tr. p. 67, ll. 8 – 10;
- Applicant testified that he would not have wanted Plea Counsel to represent him had he known that this lawyer had previously represented both ~~VICTIM~~ and Joshua Edwards. He would not, under any circumstances, have waived a potential conflict of interest had he known that his attorney had represented these individuals. PCR Tr. p. 67, ll. 11 – 20 and PCR Tr. p. 74, ll. 3 – 11;
- He understood that the Judge had given him a five (5) year sentence that was consecutive to something, but he wasn't sure consecutive to what. Had he known it was possible, he would have wanted Plea Counsel to ask for clarification as to whether that five (5) year term was consecutive to the aggregate twenty-five (25) year term imposed after his jury trial or whether it was meant to be consecutive only as to his twenty (20) year sentence for Second Degree CSC with a Minor; PCR Tr. 69, l. 18 – p. 70, l. 8;
- When his guilty plea broke down on the day of his trial, he would have wanted his attorneys to explore the possibility of a plea that did not involve an admission of guilt on the charge of First Degree CSC with a Minor. PCR Tr. p. 70, ll. 9 – 17;
- Plea Counsel never discussed Grand Jury Presentment with him prior to his guilty plea proceeding. He was not aware that there was no indictment against him on the charge involving ~~VICTIM~~ until "right then and there" during his plea proceeding. What little

discussion was on the record during his plea proceeding is all he knew about his rights with regard to the Grand Jury. PCR Tr. p. 74, ll. 12 – 24;

- Applicant acknowledged that he made admissions on the record about having engaged in sex with ~~VICTIM~~, but clearly asserted that those admissions were not truthful. He testified that the only reason he lied to the Court about those admissions, and other matters, was his fear that he would get an automatic life without parole sentence if his guilty plea wasn't accepted by the Court. PCR Tr. p. 76, l. 11 – p. 77, l. 8; PCR Tr. p. 79, l. 14 – p. 80, l. 23; PCR Tr. p. 81, l. 17 – p. 84, l. 9;
- Applicant asserted that his understanding had been that the State was going to recommend a concurrent sentence if he pleaded guilty. He pointed out that his sentencing sheet in fact reflects that the portion of the form that stated, "*Recommendation by the State*" was originally checked off and that notation was subsequently crossed out and changed. He testified that he did not point this fact out to the Court because he wanted the plea to be over, and felt the need to "*convince the judge*"; as he had been told the night before that he had to do. PCR Tr. p. 80, ll. 1 – 23; PCR Tr. p. 80, l. 24 – p. 81, l. 16;
- Applicant asserted that Plea Counsel should have investigated whether this letter supposedly from ~~VICTIM~~, which was not produced until the day of his plea, was authentic. PCR Tr. p. 84, ll. 19 – 25.

A.

Allegations 1 and 2, Original PCR Application
Allegations 1 – 4, Second Amended Application
filed on May 21, 2014

Plea Counsel was ineffective for advising Applicant to enter a plea of guilty to this charge without advising him, in advance of the plea proceeding, that the Victim was not cooperating with the prosecution and had written a letter asking the State to drop this charge against him. Plea Counsel further failed to provide Applicant reasonable effective assistance of counsel when he failed to advise Applicant of the ways in which the defense might use the Victim's original false allegation that he had fathered her child to impeach her credibility if Applicant proceeded to trial by jury. Plea Counsel was also ineffective for failing to interview the Victim concerning this charge once it was proven through DNA testing that Applicant was not her child's father.

The record below supports Applicants claim that this charge originally arose out of a claim that Applicant had fathered ~~VICTIM~~'s child. The evidence and testimony before this Court demonstrates that this claim was subsequently proven false and the DSS action against Applicant for support of ~~VICTIM~~'s child was dismissed after the test results were reported to the Family Court. Plea Counsel has acknowledged that Applicant never admitted having had sex with this girl

until the guilty plea proceeding on January 28, 2010. Likewise, it is apparent that the girl's mother based her support of the girl's original claim on the mere fact that Applicant had been a guest in her home during the approximate time period when the girl would have conceived her child. There is no testimony before this Court which indicates that the mother was ever privy to any evidence of intimate contact between her child and Applicant.

The evidence adduced during this PCR proceeding indicates that another individual, Joshua Edwards, was charged with Criminal Sexual Conduct with a Minor in connection with this same girl during a time period that apparently predated the conception of her child. This evidence, as well as the DNA test results, clearly established that this young girl was sexually active before Applicant alleged visitation in the girl's home, and would have potentially provided evidence with which ~~_____~~ ^{VICTIM} could have been impeached depending upon the content of her trial testimony. Certainly the evidence that this young girl tried to blame her pregnancy on Applicant could have been used by the defense to argue that she had been trying to protect the identity of the true father of her child when she lied to the police and the Family Court, as opposed to her simply not knowing which of several sexual partners had fathered her child. Likewise, Applicant could have questioned her concerning whether she was "sticking to her story" about having had sex with Applicant even after the DNA test results were released because she feared getting in trouble for lying about who was the father of her child. In addition, Plea Counsel failed to explore the connection between ~~_____~~ ^{VICTIM} and the Victim in Applicant's unrelated case involving ~~_____~~ ^{CHILD} G. despite the fact that the accusation against Applicant regarding ~~_____~~ ^{VICTIM} originated with ~~_____~~ ^{CHILD} G. not ~~_____~~ ^{VICTIM}. Plea Counsel's PCR testimony confirms that he never gave any consideration to the fact that the Victim in Applicant's other case, the one which went to trial by jury, was the person who initially pointed the finger at Applicant with the police concerning ~~_____~~ ^{VICTIM}. PCR Tr. p. 25, ll. 4 - 14.

Plea Counsel was also ineffective for failing to interview ~~_____~~ ^{VICTIM} concerning this charge once the DNA results eliminated any possibility that Applicant had impregnated her. Plea Counsel, for reasons that will be discussed *infra*, had a relationship with the young girl in question and should have sought the opportunity to interview her. Plea Counsel clearly neglected an opportunity to potentially question this girl concerning her claim that Applicant had engaged in sex with her once her allegation that he was the father of her child were disproven. This complaining witness was a minor, and Plea Counsel would have arguably needed her mother's permission to talk to her about Applicant's charge. Plea Counsel acknowledged, however that he knew the girl and her mother

well, and his testimony suggests that he enjoyed a good relationship with them both. In addition, the indictment in this case alleged that Applicant had sex with this girl sometime between October 1, 2006 and October 1, 2007. Applicant turned 18 years old on , 2007. Plea Counsel never questioned this girl about whether she could testify under oath that Applicant had sex with her before , 2007.

During the PCR hearing held on this application, PCR Counsel indicated that she had unsuccessfully attempted to locate and interview ~~XXXXXXXXXX~~ ^{VICTIM} as a potential witness for Applicant's PCR proceeding. When an address for this girl was discovered on a document produced by Plea Counsel during his PCR testimony, PCR Counsel requested leave of Court to leave the record open for a short time for further evidence to be submitted in the event she was able to locate and interview this witness using that address. This Court has subsequently been advised that PCR Counsel has been unsuccessful in locating and interviewing ~~XXXXXXXXXX~~ ^{VICTIM}. While the burden of proof is on Applicant on collateral review, this Court recognizes that Applicant, acting through his PCR Counsel, has exercised due diligence in trying to locate this witness for his PCR hearing. Despite Applicant's inability to produce testimony from ~~XXXXXXXXXX~~ ^{VICTIM}, it is apparent to this Court that Plea Counsel had access to this girl at the time of this plea and did not make any attempt to talk to her about this case.

For all the reasons set forth above, this Court finds that Applicant has met his burden of proof concerning these allegations. This Court finds that Plea Counsel was ineffective on these allegations and further, that the record establishes that there is a reasonable probability that Applicant would not have pleaded guilty but for these errors and omissions of counsel.

B.

Allegations 1 and 2, Original PCR Application
Allegation 6 and 8, Second Amended Application
filed on May 21, 2014

Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30. Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No.

2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.

At the time of Applicant's plea on this charge, he had just been convicted by jury the previous day on two unrelated charges. During that proceeding, Applicant had contested his guilt of the more serious of the two charges he was on trial for. Plea Counsel admitted in his PCR testimony that he never discussed with Applicant the fact that he had a right to pursue a direct appeal from the judgments and sentences entered during his jury trial. Significantly, he never advised Applicant that if he won a direct appeal on his judgments and sentences arising from his jury trial, his judgment and sentence from his guilty plea would be unaffected by that reversal and would still stand with full force. Likewise, Plea Counsel clearly did not advise Applicant of his right to a direct appeal from the judgment and sentences entered in connection with this plea. On the facts of this case, this Court finds that Plea Counsel was ineffective for failing to discuss these matters with Applicant. It is apparent that Applicant's plea was entered in response to repeated warning from the lower court that he would be subject to a sentence of life without parole for Second Degree Criminal Sexual Conduct with a Minor, pursuant to S.C. Code Ann. §17-25-45, if he were to be convicted of that offense without the benefit of the plea agreement with the State to consider his plea a first offense. The landmark decision in *Graham v. Florida*⁸ was filed on May 17, 2010. For reasons which will be discussed further *infra*, that decision would have been very beneficial to Applicant and would likely have resulted in him going to trial on the charge in this case. Applicant's PCR testimony confirms that he would not have pleaded guilty had it not been for the threat that he would receive life without parole for this charge if he went to trial and were convicted of this charge. In light of the fact that Applicant's plea was not entered until January 28, 2010, there exists a reasonable probability that a direct appeal from the judgment and sentence entered on that date would have still been pending at the time of the high court's ruling in *Graham*, *supra*, less than four months later. The testimony before this Court indicates that, but for these errors, among several others, Applicant would not have waived his right to grand jury presentment and to trial by jury. For these reasons, Applicant is entitled to relief on these grounds as well.

C.

⁸ 560 U.S. 48, 130 S.Ct. 2011 (filed May 17, 2010)

Allegations 1 and 2, Original PCR Application
 Allegation 5 Second Amended Application
 filed on May 21, 2014

Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.

As noted in the testimony summary above, Applicant repeatedly professed his innocence on the charge involved in this application both during the failed attempt at a plea on January 25, 2010 before his jury trial on Indictment No. 2009-GS-45-249 and immediately following his sentencing at that trial. He consistently indicated that he did not want to waive his right to trial by jury and plea guilty on that charge. Only after being repeatedly warned that the Court would not accept his plea unless he admitted his guilt, did Applicant finally acquiesce and plead guilty to this charge. Plea Counsel has admitted that Applicant never admitted his guilt on this charge to him. Further, this was not a situation where Applicant had ultimately confessed his guilt to Plea Counsel. Plea Counsel has admitted that Applicant never acknowledged his guilt of this charge to him. It is also clear that Plea Counsel never asked the Court to entertain an *Alford*⁹ plea from Applicant on this charge. The remarks of Judge Newman on the record following the sentencing at Applicant's jury trial establish his policy with regard to accepting pleas from defendants who would not acknowledge their guilt. Judge Newman stated,

Well, I don't accept guilty pleas from people who are not guilty. I only take guilty pleas from people who are guilty. They have to convince me, just as the Solicitor has to convince the jury that you are guilty in this case, you've got to convince me that you are guilty in that other case before I can accept a guilty plea. We'll give you overnight to think about that.

Trial Tr. p. 299, ll. 19 – 25. Further, despite the fact that Applicant was essentially begging to plea even though he maintained he was innocent, Judge Newman gave no indication that he would entertain an *Alford* plea as distinguished from a guilty plea.¹⁰ Applicant asserts that Plea Counsel was ineffective for advising him to plead guilty, and for permitting him to enter a plea of guilty,

⁹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

¹⁰ There is no indication that Plea Counsel was present during Applicant's colloquy with the bench following his sentencing at his jury trial and therefore, this Court can not attribute knowledge of Judge Newman's remarks to Plea Counsel. This Court notes this exchange for the purpose of demonstrating that any attempt at entering an *Alford* plea on this charge would likely have been fruitless.

when he knew Applicant had steadfastly denied his guilt on that charge in open court the previous day. On the facts of this case, this Court is constrained to agree. The totality of the record before this Court does not support a finding that Applicant's plea was knowingly and voluntarily entered.

Guilty pleas effectively waive all non-jurisdictional errors. *State v. Munsch*, 287 S.C. 313, 338 S.E.2d 329 (1985); *Whetsell v. State*, 276 S.C. 295, 277 S.E.2d 891 (1981). In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of his plea. *State v. Hazel*, 275 S.C. 392, 271 S.E.2d 602 (1980); *State v. Lambert*, 266 S.C. 574, 225 S.E.2d 340 (1976).

[A] plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats...misrepresentation... or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business.....

Brady v. United States, 397 U.S. 742, 755 (1970). On the record before this Court, it appears that Plea Counsel allowed his client to make an admission of guilt by pleading guilty despite the claims of innocence he made in response to repeated warnings from the Plea Court that he would get life without parole if convicted of the offense charged. It is equally evident that Plea Counsel did so without adequately investigating the strength of the State's case and without advising Applicant adequately of methods and evidence which might be utilized at a trial to impeach the credibility of the alleged Victim. Applicant has met his burden of proof regarding his claim that he would not have entered his guilty plea in this case had it not been for the ineffective assistance of counsel he received prior to and during his guilty plea proceeding.

D.

Allegations 1 and 2, Original PCR Application

Allegation 12 Second Amended Application filed on May 21, 2014

Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.

Plea Counsel provided Applicant ineffective assistance of Counsel where he failed to ask the Plea Judge for clarification as to whether the consecutive five (5) year sentence imposed following his plea on Indictment No. 2010-GS-45-30 was intended to be consecutive to the aggregate term imposed for both counts on Indictment No. 2009-GS-45-0249, or, whether it was the intent of the Plea Court that the sentence be consecutive only as to the twenty (20) year sentence imposed for Second Degree Criminal Sexual Conduct on that indictment. Plea Counsel's PCR testimony reflects that he merely assumed that it was the intent of the Court to make the sentence on the plea consecutive to the aggregate term imposed on Indictment No. 2009-GS-45-0249. In so doing, Plea Counsel totally abandoned his role as an advocate and neglected an opportunity to potentially reduce his client's effective sentence by five (5) years. This Court finds that Plea Counsel was ineffective for failing to request clarification on this point from the Plea Judge.

Where this Court has found that vacation of the judgment and sentence entered as a result of this plea is appropriate on other grounds, the grant of remand to the Court of General Sessions for clarification of sentence appears pointless. To protect Applicant's interests in the event the grant of a new trial were to be overturned on appeal, however, this Court finds that remand for a hearing to clarify the intent of the sentencing judge is warranted and appropriate.

E.

Allegations 1 and 2, Original PCR Application
Allegation 13 Second Amended Application
filed on May 21, 2014

Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a potential life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for a life without parole sentence pursuant to S.C.Code Ann. § 17-25-45 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until 2007.

As previously noted, Applicant's plea was entered on January 28, 2010. While *Graham v. Florida, supra*, was not decided by the U.S. Supreme Court until May 17, 2010, it was argued before the high court on November 9, 2009. Thus, had Plea Counsel, a public defender, kept abreast of important criminal cases in which the United States Supreme Court had granted certiorari, he would have known that the question of whether an individual could be sentenced to life without

parole for an offense, other than murder, that he committed while he was a minor, was pending decision by the high court in *Graham*. Had he been aware of that case, he would have known how crucial it was to determine whether the State could prove, beyond a reasonable doubt, that the act alleged occurred before 2007.

The record indicates that Applicant waived grand jury presentment on this charge. Thus, his case obviously was not about to go to trial that day if he declined to plead immediately following his jury trial. Inasmuch as the State secured an amended indictment against the Applicant on Indictment No. 2009-GS-45-0249 on Thursday, January 21, 2010, it is apparent that the State would not have been able to indict Applicant on this charge for at least three weeks after the date of the plea. Therefore, it is not unreasonable to conclude that Plea Counsel might easily have delayed Applicant's prosecution on this charge until after the Supreme Court's ruling in *Graham*. The record before this Court establishes that Plea Counsel never considered arguing that the State should not be permitted to seek a sentence of life without parole for a crime, other than murder, committed by an individual who was a minor at the time of the crime. He certainly did not discuss this potential line of defense against an LWOP sentence with Applicant even though, as the records before this Court demonstrate, the threat of such a sentence was the catalyst which ultimately caused him to enter his guilty plea. This Court finds that Plea Counsel was ineffective for failing to consider challenging the threat of a LWOP sentence on this charge based upon the State's inability to prove that the crime occurred when Applicant was still a minor and for failing to advise Applicant that such a line of argument might be effectively advanced by the defense.

F.

Allegations 1 and 2, Original PCR Application

Allegations 15 and 14, Second Amended Application filed on May 21, 2014

Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters. In addition, Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of

interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of Criminal Sexual Conduct with a Minor involving ~~VICTIM~~, the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.

The PCR testimony of Plea Counsel establishes that Plea Counsel had represented the Victim, ~~VICTIM~~, in a number of matters prior to serving as Applicant's defense attorney in this matter. Given the age of the alleged Victim at the time this charge was brought against Applicant, it is safe to assume that Plea Counsel had represented her in the fairly recent past. Plea Counsel's PCR testimony indicates that he knew ~~VICTIM~~ and her mother well. PCR Tr. p.5, ll. 18-19As previously noted, his PCR testimony reflects his opinion that ~~VICTIM~~ was "a very nice young lady." He admitted that he told Applicant that ~~VICTIM~~ was "not going to come off as a liar to the jury." PCR Tr. p. 19, l. 15-20, l. 25. Plea Counsel's PCR testimony reflects his personal belief that ~~VICTIM~~ sincerely "thought he was the father of that baby."

Plea Counsel's testimony verifies the fact that he apparently never even considered the possibility that his former client, the Victim in Applicant's case, had intentionally lied about the paternity of her child in order to protect the true biological father of the infant. He admitted that he neither considered, nor discussed with Applicant, the fact that her previous false allegations of paternity might be used to challenge her credibility if Applicant went to trial by jury on this charge.

It is well established that in order to prove a Sixth Amendment violation due to a conflict of interest arising from multiple representation, a defendant who did not object at trial, must demonstrate an actual conflict of interest adversely affected by his attorney's performance. *Thomas v. State*, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001); *Jackson v. State*, 329 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). In this case, there is no evidence that Applicant had any knowledge at the time of his plea that his attorney also represented ~~VICTIM~~. An actual conflict of interest is established when one shows that his attorney owed a duty to a party whose interests were adverse to his own. *Jackson, supra*; *Duncan v. State*, 281 S.C.435, 315 S.E.2d 809 (1984). A party asserting a conflict of interest must show that his counsel actively represented conflicting interests as a constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation. *Langford v. State*, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993).

Applicant has established through the testimony of Plea Counsel that he represented ~~VICTIM~~ in multiple matters. Although he was less than clear as to the exact nature of the representation, his PCR testimony plainly demonstrates that his representation of this young girl

influenced his judgment concerning Applicant's case. Plea Counsel expressed personal opinions concerning her veracity based upon his knowledge of the girl from having represented her. Counsel admitted that he never even considered obvious avenues for potential impeachment of this alleged Victim if this case went to trial. He not only didn't explain to Applicant how ~~_____~~ ^{VICTIM} might be impeached at a trial, he admittedly never disclosed the fact that he represented ~~_____~~ ^{VICTIM}. In addition, Plea counsel acknowledged that he never even considered arguing that ~~_____~~ ^{VICTIM} might be maintaining that she had sex with Applicant, even after her story about being impregnated by him was proven to be false, because she did not want to get in legal trouble herself for having lied to the police, DSS and the Family Court about the paternity of her child. Applicant has demonstrated that Plea Counsel was acting out of divided loyalty between these two clients. In so doing, he deprived Applicant of legal advice concerning this viable defense strategy, because his professional loyalty to ~~_____~~ ^{VICTIM} was such that he refused to even consider the fact that she might be lying. While it is impossible to know to what degree this factor affected Plea Counsel's judgment on the subject, the very real risk is that he didn't want to get one client into legal trouble by pointing out an obvious motive for her to lie about his other client; the Applicant.

The records below, as well as Applicant's PCR testimony, indicate that he did not want to plead guilty to this crime. Only after being repeatedly threatened with a life without parole sentence did the Applicant yield and plead guilty. While this Court normally gives great weight to admissions of guilt made in the context of a judicial proceeding, the facts in this case support Applicant's assertion that he lied about his guilt in order to "convince" the Plea Judge to accept his plea so he could avoid a life without parole sentence. Absent advice from Plea Counsel as to how the alleged Victim's story, as well as the testimony of her mother, could be challenged if he went to trial, Applicant was left with the understanding that it would be his word against that of a fourteen year old girl and her mother if the case went to trial. Applicant has unambiguously stated that he would not have pleaded guilty to this charge had he been aware of these factors. Under those circumstances this Court is constrained to find that Plea Counsel had a conflict of interest in representing Applicant on this charge, that his divided loyalties prejudiced Applicant's ability to receive adequate legal advice from his attorney and that Applicant's plea was not knowingly and voluntarily entered with the benefit of effective assistance of counsel.

With regard to Applicant's allegation that Plea Counsel also had a conflict of interest in that he represented Joshua Edwards, another individual who was prosecuted for having had sex with

VICTIM when she was less than fourteen years of age, this Court finds that while Plea Counsel should have disclosed this representation to Applicant, there is no evidence which establishes that Applicant was prejudiced by Plea Counsel's previous representation of this individual.

CONCLUSION

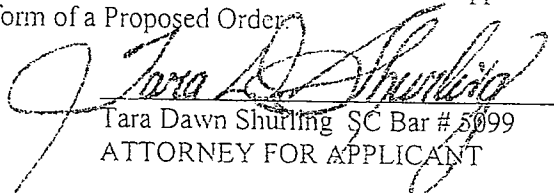
For all the foregoing reasons, this Court now finds that the Applicant has met his burden of proof with regard to his claim that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his guilty plea proceedings. This Court finds that the record supports Applicant's claims that his plea was not knowingly and voluntarily entered with the benefit of reasonable professional assistance of counsel. Accordingly, the Applicant's judgment and sentence are hereby reversed and his case is remanded to the Williamsburg County Court of General Sessions for a new trial.

IT IS SO ORDERED.

R. Ferrell Cothran, Jr.
Presiding Circuit Judge
Third Judicial Circuit

This ____ day of _____, 2014.

Document above submitted as a Memorandum in Support of the PCR Application, addressed herein, submitted to the Court in the form of a Proposed Order.


Tara Dawn Shurling SC Bar # 5099
ATTORNEY FOR APPLICANT

This 4th day of August, 2014

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

Kevin C. Bradley, #339031,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2013-CP-45-098

ORDER OF DISMISSAL

WILLIAMSBURG COUNTY
CLERK OF COURT
KINGSTREE, S.C.

2014 AUG 25 PM 12:01

FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on February 25, 2013¹ and May 20, 2014. Respondent made its amended return on October 28, 2013. An evidentiary hearing into the matter was convened on May 27, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant was true bill indicted at the January 2010 term of the Williamsburg County Grand Jury for Criminal Sexual Conduct with a Minor—Second Degree (2010-GS-45-30). William LeGrand Carraway, Esquire represented Applicant. On January 28, 2010, Applicant pled guilty before the Honorable Clifton Newman. Judge Newman sentenced

¹ Applicant originally filed a timely post-conviction relief application (Case No. 2010-CP-45-389) on September 29, 2010. In this original application, Applicant raised various allegations stemming from both indictment # 2009-GS-45-249 and indictment # 2010-GS-45-030. Due to the fact that both of these indictments are completely unrelated, the State requested PCR Counsel to file a separate PCR application for indictment # 2010-GS-45-030. Subsequently, PCR Counsel filed a new PCR application (Case No. 2013-CP-45-098) for indictment # 2010-GS-45-030 on February 25, 2013.

Applicant to five years for Criminal Sexual Conduct in the Second Degree to run consecutive to his current sentences. Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

1. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the results of DNA testing had confirmed that the Applicant was not the father of a child conceived by the victim.
2. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the victim was not cooperating with the prosecution of the charges against the Applicant.
3. Plea Counsel was ineffective for neglecting to interview *victim* concerning these charges where her original accusation against Applicant, that he had impregnated her, had been proved false by DNA testing.
4. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without discussing with him the ways in which the forensic evidence in this case, specifically the DNA test results, could be used to impeach the credibility of the victim's claims against the Applicant.
5. Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.
6. Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010- GS-45-30.
7. The Plea Court erred in accepting the Applicant's plea of guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly protested his guilt on the record during the plea proceeding.
8. Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30 to Second Degree Criminal

Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.

9. Plea Counsel was ineffective for failing to discuss with the Applicant the potential use of character witnesses to testify in the Applicant's behalf if he went to trial by jury; specifically Sgt. Robert McClary, Debra Black, Manager at Skyes in Kingstree, South Carolina, Sgt. Stagers, employed with the 1052nd Transportation Company Army National Guard, and Frederick Davis of the Kingstree Police Department.
10. Plea Counsel was ineffective for failing to interview Joshua Edwards as a potential witness for the Applicant and failing to discuss with the Applicant the manner in which Joshua Edwards could be used as a defense witness if the Applicant proceeded to trial by jury where said witness was charged with and convicted for criminal sexual conduct relating to the victim in Applicant's indictment No. 2010-GS-45-30; *victim*
11. Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and for failing to fully explain to the Applicant his right to object to such an amendment.
12. Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.
13. Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for life without parole sentence pursuant to S.C. Code Ann. § 17-25-25 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until 2007.
14. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of Criminal Sexual Conduct with a Minor involving *victim* the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.

15. Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Additionally, Applicant presented testimony from plea counsel, William Legrand Caraway, Esquire (hereinafter "Plea Counsel"). This Court also had before it a copy of plea transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, and the amended return.

During the evidentiary hearing, Applicant called Plea Counsel to testify. Plea Counsel stated that he has been a public defender for Williamsburg County for the majority of his career. Plea Counsel stated he has represented hundreds of criminal clients during the course of his career. Plea counsel stated he was appointed to represent Applicant and met with him three or four times prior to his guilty plea. Plea Counsel stated he reviewed and discussed the discovery material with Applicant prior to his plea. Plea Counsel stated Applicant informed him that he wanted to plead guilty the day after he was convicted of a separate unrelated indictment (2009-GS-45-249). Plea Counsel stated that he advised Applicant that he might want to present the charge to the Grand Jury, but Applicant was adamant that he wanted to plead guilty. As a result, Applicant initialed everything and waived his right to present the charge to the Grand Jury. Plea Counsel recalled that Applicant was not willing to accept the guilty plea offer because it was too much time. Plea Counsel could not recall whether he appeared before Judge Newman for Applicant's joint guilty plea involving both indictment 2009-GS-45-0249 and 2010-GS-45-30.

Plea Counsel stated Applicant was charged with Criminal Sexual Conduct—Second Degree. Plea Counsel stated the Victim alleged that Applicant was the father of her child.

However, Plea Counsel stated a paternity test proved that Applicant was not the father of the Victim's child. Plea counsel recalled discussing the results of paternity test with Applicant prior to his plea. Plea counsel stated that he did not discuss any defenses because Applicant never denied committing the crime. Plea Counsel explained that he and Victim were in a relationship. Plea Counsel stated the mother of the Victim was aware of the relationship and Victim wrote a letter to the plea court stating that she and Applicant had sex. Plea Counsel stated that he was aware of the letter and had reviewed the letter with Applicant. Plea Counsel stated that there was no question that Judge Newman sentenced Applicant to five years consecutive to the higher of the two sentences from his previous conviction.²

Plea Counsel stated that he only advised Applicant that he could be sentenced up to twenty years. Plea Counsel stated Applicant was never noticed for life without parole. Plea Counsel did not recall advising Applicant that this was his second or third most serious strike. Plea Counsel stated the solicitor was allowing Applicant to plead as if this were his first most serious strike. Plea Counsel stated Applicant was seventeen turning eighteen during the dates alleged in the indictment. Plea Counsel stated that he was not aware of Graham v. Florida, 560 U.S. 48, 176 L.Ed. 2d 825 (2010). Plea Counsel stated that Graham was decided well after Applicant's guilty plea. Id.

Plea Counsel stated that he represented Joshua Edwards (hereinafter "Edwards") in a prior Criminal Sexual Conduct case involving the same Victim. Plea Counsel stated that he represented Edwards several years prior to his representation of Applicant. Plea Counsel stated that his prior representation of Edwards did not affect his representation of Applicant. Plea

² Applicant was previously convicted on January 27, 2010, for Criminal Sexual Conduct of a Minor—First Degree and Criminal Sexual Conduct of a Minor—Second Degree (2009-GS-45-249). The Honorable Clifton Newman sentenced Applicant twenty-five years imprisonment for Criminal Sexual Conduct with a Minor—First Degree and twenty years for Criminal Sexual Conduct with a Minor—Second Degree. The sentences were to run concurrently.

Counsel stated he did not feel he owed Edwards any type of duty of loyalty. Plea Counsel concluded that he represented and advised Applicant to the best of his abilities.

Plea Counsel stated he represented Victim two or three times for some truancy issues several years prior to his representation of Applicant. Plea Counsel stated Victim actually liked Applicant and did not want him to be sent to jail. Plea Counsel recalled that Victim wrote a letter to the plea court explaining that they did have sex, but he never hurt her. Plea Counsel stated the mother of the Victim knew Applicant visited their house on multiple occasions. Plea Counsel stated Victim's mother knew of their relationship but was under the impression Applicant was much younger than his actual age. Plea Counsel stated Applicant was aware that he had represented Victim on prior occasions. Plea Counsel stated that his prior representation of Victim in no way affected his representation of Applicant. Plea Counsel further stated that his prior representation of Victim may have helped his representation of Applicant. Plea Counsel concluded that his prior representation was not a conflict and he represented Applicant to the best of his abilities.

Following Plea Counsel's testimony, Applicant called Assistant Solicitor Tyler Brown to testify. Assistant Solicitor Brown testified that he had a partial copy of the solicitor's file relating to Joshua Edwards case. Assistant Solicitor Brown stated the Victim in Edward's case was ~~XXXXXXXXXX~~ ^{VICTIM} the same victim in Applicant's case. Assistant Solicitor Brown further stated William Legrand Caraway was counsel of record for Edwards' case.

Following Assistant Solicitor Brown's testimony, Applicant testified on his own behalf. Applicant stated that he met with Plea Counsel twice prior to his plea. Applicant could not recall reviewing discovery material or discussing any possible defenses. Applicant stated that he wrote Plea Counsel requesting his discovery material but never received them. Applicant stated that he

did not give Plea Counsel any leads or witnesses to investigate. Applicant recalled the plea court reviewing his constitutional rights. Applicant testified that he was going to plea on January 25, 2010 to both indictment numbers 2009-GS-45-249 and 2010-GS-45-030. Applicant stated he was to plead guilty to Criminal Sexual Conduct—First Degree and all other charges would be dropped. Applicant stated he would not have pled guilty to indictment number 2010-GS-45-030 if he had not been threatened with the possibility of life without parole. Applicant recalled the plea court advising him that the sentence he received as a result of his guilty plea was totally separate from his sentences he received as a result of his prior conviction.³ Applicant further stated he was under the impression that he was pleading guilty pursuant to a recommendation by the State. However, Applicant agreed that the plea court advised him that there was no recommendation or negotiations during the guilty plea colloquy.

Applicant recalled telling the plea court that he was satisfied with his attorney's services and he had enough time to speak with Plea Counsel. Applicant recalled telling the plea court that no one had promised or threatened him in order to get him to plead guilty. Applicant recalled telling the plea court that he wished to plead guilty. Applicant recalled telling the plea court that he had sex with the Victim, who was a person under the age of fourteen (14). Applicant stated that he lied to the plea court because he did not have sex with the Victim.

Applicant stated he was not told of a possible conflict of interest from Plea Counsel's prior representation of Edwards or Victim. Applicant stated had he known about Plea Counsel's prior representation he would not have wanted Plea Counsel as his attorney. Applicant stated he asked Plea Counsel to file an appeal of his guilty plea immediately following his guilty plea.

³ Applicant was previously convicted on January 27, 2010, for Criminal Sexual Conduct of a Minor—First Degree and Criminal Sexual Conduct of a Minor—Second Degree (2009-GS-45-249). The Honorable Clifton Newman sentenced Applicant twenty-five years imprisonment for Criminal Sexual Conduct with a Minor—First Degree and twenty years for Criminal Sexual Conduct with a Minor—Second Degree. The sentences were to run concurrently.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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.

Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the results of DNA testing had confirmed that the Applicant was not the father of a child conceived by the victim.

This Court finds that the Applicant's allegation that Plea Counsel was ineffective for advising Applicant to plead guilty to indictment 2010-GS-45-30 when DNA results proved Applicant was not the father of the Victim's child is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Plea Counsel stated he reviewed and discussed the discovery material with Applicant prior to his plea. Plea Counsel stated Victim alleged that Applicant was the father of her child. However, Plea Counsel stated a paternity test proved that Applicant was not the father of the Victim's child. Plea counsel recalled discussing the results of paternity test with Applicant prior to his plea. Plea Counsel stated Applicant informed him that he wanted to plead guilty the day after he was convicted of a separate unrelated indictment (2009-GS-45-249). As a result, Applicant waived his right to the grand jury process. Plea Counsel further stated it was Applicant's decision to plead guilty.

Additionally, a review of the record reveals Applicant's guilty plea was entered freely and voluntarily and Applicant had a full understanding of the consequences of pleading guilty. The plea court advised Applicant of the potential sentences for the charges he was facing. (Pl. tr. p. 3-4). The plea court advised Applicant that he was pleading to strike offenses, and if convicted of another strike offense, he would be sentenced to life without the possibility of parole. (Pl. tr. p.

3-4). Applicant was advised of his right to a jury trial, his right to have the indictment presented to grand jury, his right to challenge the State's evidence, and his right to testify at trial. (Pl tr. p. 4-7). Lastly, Applicant told the Court it was his decision alone to plead guilty, that he was pleading straight up without any promises as to sentence, and that he had not been threatened in any way to plead guilty. (Pl tr. p. 4-6). This Court finds Counsel thoroughly explained the guilty plea proceeding with the Applicant.

Based on the foregoing, this Court finds Plea Counsel thoroughly advised Applicant prior to his guilty plea. This Court finds Applicant pled guilty with full knowledge of the results of the DNA paternity test. Plea Counsel stated there was no question Applicant and Victim had a sexual relationship. Plea Counsel's conclusion is further supported by letter written by Victim admitting their sexual relationship (Pl tr. p. 9). This Court finds Applicant knowingly, voluntarily, and intelligently pled guilty with the advice of competent counsel. Furthermore, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct when the victim was not cooperating with the prosecution of the charges against the Applicant

This Court finds Applicant's allegation that Plea Counsel was ineffective for advising Applicant to plead guilty when the Victim was not cooperating with the prosecution to be without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Plea Counsel stated Victim actually liked Applicant and did not want him to be

sent to jail. Plea Counsel recalled that Victim wrote a letter to the plea court explaining that she and Applicant had sex, but he never hurt her. Plea Counsel stated the mother of the Victim knew Applicant visited their house on multiple occasions. Plea Counsel stated Victim's mother knew of their relationship but was under the impression Applicant was much younger than his actual age.

This Court finds Applicant has failed to provide any competent evidence that Victim was not cooperating with the prosecution. To the contrary, Victim provided prosecution with a letter admitting that they had a sexual relationship. Additionally, Victim's mother was aware of their relationship and would have objected to it had she known Applicant's true age. This Court notes Victim did not testify at the PCR hearing, and there is no evidence that Victim would have testified to anything that would have been favorable to Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for neglecting to interview Victim concerning these charges where her original accusation against Applicant, that he had impregnated her, had been proved false by DNA testing.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to interview Victim after the DNA results had proven Applicant was not the father of her child to be without merit. This Court notes Victim did not testify at the PCR hearing, and there is no evidence that Victim would have testified to anything that would have been favorable to Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without discussing with him the ways in which the forensic evidence in this case, specifically the DNA test results, could be used to impeach the credibility of the victim's claims against the Applicant

This Court finds Applicant's allegation that Plea Counsel was ineffective for advising Applicant to plead guilty without discussing with him the ways in which the DNA evidence

could be used to impeach the Victim's credibility is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Plea Counsel stated Victim actually liked Applicant and did not want him to be sent to jail. Plea Counsel recalled that Victim wrote a letter to the plea court explaining that they did have sex, but he never hurt her. Plea Counsel stated the mother of the Victim knew Applicant visited their house on multiple occasions. Plea Counsel stated Victim's mother knew of their relationship but was under the impression Applicant was much younger than his actual age. Plea Counsel further stated he discussed the results of the DNA test with Applicant prior to his guilty plea.

This Court finds Plea Counsel thoroughly discussed the potential impacts of the results of the DNA test with Applicant prior to his guilty plea. This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct on Indictment No. 2010-GS-45-30 where the Applicant openly declared his innocence at the time of his plea.

This Court finds Applicant's allegation that Plea Counsel was ineffective for permitting his client to enter a plea of guilty to Second Degree Criminal Sexual Conduct where Applicant had previously denied his guilt is without merit. This Court finds Counsel's testimony credible while Applicant's testimony is not credible. This Court characterizes Applicant's allegation as a claim that his guilty plea was involuntary. However, Plea Counsel stated Applicant informed him that he wanted to plead guilty the day after he was convicted of a separate unrelated

indictment (2009-GS-45-249). As a result, Applicant waived his right to the grand jury process and pled guilty. Plea Counsel stated that it was Applicant's decision to plead guilty.

Additionally, a review of the record reveals Applicant's guilty plea was entered freely and voluntarily, and Applicant had a full understanding of the consequences of pleading guilty. The plea court advised Applicant of the potential sentences for the charges he was facing. (Pl tr. p. 3-4). The plea court advised Applicant that he was pleading to strike offenses and if convicted of another strike offense would be sentenced to life without the possibility of parole. (Pl. tr. p. 3-4). Applicant was advised of his right to a jury trial, his right to have the indictment presented to grand jury, his right to challenge the State's evidence, and his right to testify at trial. (Pl tr. p. 4-7). Lastly, Applicant told the Court it was his decision alone to plead guilty, that he was pleading straight up without any promises as to sentence, and that he had not been threatened in any way to plead guilty. (Pl tr. p. 4-6). This Court finds Counsel thoroughly explained the guilty plea proceeding with the Applicant.

Based on the foregoing, this Court finds Plea Counsel thoroughly advised Applicant prior to his guilty plea. This Court finds Applicant knowingly, voluntarily, and intelligently pled guilty with the advice of competent counsel. Furthermore, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for advising the Applicant to plea guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct without explaining to him that if he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010- GS-45-30.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to advising him to plead guilty without explaining to him that if he were he were to succeed in getting his convictions and sentences from his jury trial overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010- GS-45-30 is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony was not credible.

The Court notes Applicant proceeded to a jury trial and was convicted of a completely unrelated indictment on January 27, 2010.⁴ Applicant was represented by separate counsel. Applicant is now attempting to argue that Plea Counsel had a duty to advise Applicant that if he were to succeed in getting his convictions and sentences from his jury trial⁵ overturned on appeal, such a reversal would not afford him the opportunity to challenge the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30. This Court is not inclined to extend Plea Counsel's duties to include informing Applicant of possible outcomes resulting from a wholly separate indictment and conviction in which he did not represent Applicant. Additionally, this Court notes the plea court advised Applicant "that this is a totally separate indictment in which you face a totally separate sentence." (Pl tr. p. 6) This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional

⁴ Applicant was previously convicted on January 27, 2010, for Criminal Sexual Conduct of a Minor—First Degree and Criminal Sexual Conduct of a Minor—Second Degree (2009-GS-45-249). The Honorable Clifton Newman sentenced Applicant twenty-five years imprisonment for Criminal Sexual Conduct with a Minor—First Degree and twenty years for Criminal Sexual Conduct with a Minor—Second Degree. The sentences were to run concurrently

⁵ Applicant proceeded to jury trial on indictment # 2009-GS-45-249.

norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

The Plea Court erred in accepting the Applicant's plea of guilty on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly protested his guilt on the record during the plea proceeding.

This Court finds Applicant's allegation that Counsel was ineffective for allowing Applicant to plead guilty where he protested his guilt on the record during the plea proceeding is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. This Court characterizes Applicant's argument as a claim that his plea was involuntary. A review of the record reveals Applicant's guilty plea was entered freely and voluntarily and Applicant had a full understanding of the consequences of pleading guilty. The plea court advised Applicant of the potential sentences for the charges he was facing. (Pl tr. p. 3-4). The plea court advised Applicant that he was pleading to strike offenses and if convicted of another strike offense would be sentenced to life without the possibility of parole. (Pl. tr. p. 3-4). Applicant was advised of his right to a jury trial, his right to have the indictment presented to grand jury, his right to challenge the State's evidence, and his right to testify at trial. (Pl tr. p. 4-7). Lastly, Applicant told the Court it was his decision alone to plead guilty, that he was pleading straight up without any promises as to sentence, and that he had not been threatened in any way to plead guilty. (Pl tr. p. 4-6). This Court finds Counsel thoroughly explained the guilty plea proceeding with the Applicant.

Based on the foregoing, this Court finds Plea Counsel thoroughly advised Applicant prior to his guilty plea. This Court finds Applicant knowingly, voluntarily, and intelligently pled

guilty with the advice of competent counsel. Furthermore, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for failing to preserve the Applicant's right to a direct appeal from the judgment and sentence entered pursuant to his plea on Indictment No. 2010-GS-45-30 to Second Degree Criminal Sexual Conduct where the Applicant clearly did not waive his right to such an appeal.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to preserve Applicant's right to a direct appeal is without merit. This Court finds Counsel's testimony credible while Applicant's testimony is not credible. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480 (2000). They instead held that "counsel 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." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court also finds the Applicant has failed to carry his burden of proving he expressed his desire to appeal to plea counsel. This Court finds there is no proof that any appeal taken from the Applicant's guilty plea would have been meritorious. This Court also finds there is no proof that a rational defendant would want to appeal especially since the Applicant received the five years out of a possible twenty year sentence. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective in this regard.

Plea Counsel was ineffective for failing to discuss with the Applicant the potential use of character witnesses to testify in the Applicant's behalf if he went to trial by jury; specifically Sgt. Robert McClary, Debra Black, Manager at Skyes in Kingstree, South Carolina, Sgt. Staggers, employed with the 1052nd Transportation Company Army National Guard, and Frederick Davis of the Kingstree Police Department.

This Court finds Applicant's allegation that Plea Counsel failed to discuss the potential use of various character witnesses is without merit. This Court finds Plea Counsel's testimony to be credible while Applicant's testimony is not credible. This Court notes that none of the above listed character witnesses testified at the PCR hearing, and there is no evidence that any of these witnesses would have testified to anything that would have been favorable to Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with

the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, this Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for failing to interview Joshua Edwards as a potential witness for the Applicant and failing to discuss with the Applicant the manner in which Joshua Edwards could be used as a defense witness if the Applicant proceeded to trial by jury where said witness was charged with and convicted for criminal sexual conduct relating to the victim in Applicant's indictment No. 2010-GS-45-30; VICTIM

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to interview Edwards as a potential witness is without merit. This Court finds Plea Counsel's testimony to be credible while Applicant's testimony is not credible. This Court notes that Edwards did not testify at the PCR hearing, and there is no evidence that Edwards would have testified to anything that would have been favorable to Applicant. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, this Court finds that Applicant has

failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and for failing to fully explain to the Applicant his right to object to such an amendment.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to object to a material amendment to Applicant's indictment without presentation to the Grand Jury and his failure to fully explain Applicant's right to object to such an amendment to be without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. Plea Counsel stated Applicant informed him that he wanted to plead guilty the day after he was convicted of a separate unrelated indictment (2009-GS-45-249). Plea Counsel stated he advised Applicant that he should present the charge to the Grand Jury. However, Plea Counsel stated Applicant insisted that he plead guilty. As a result, Applicant waived his right to the grand jury process. Additionally, the record reveals Applicant wishing to give up his right to have the case presented to the Grand Jury of Williamsburg County. (Pl tr. p. 4; p. 7). After being fully advised of his rights, Applicant freely admitted his guilt. (Pl tr. p. 7) This Court finds Plea Counsel fully advised Applicant of his rights to the Grand Jury process and Applicant knowingly and intelligently waived his rights. This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for neglecting to obtain clarification from the presiding judge concerning whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to request the plea judge to clarify whether it was his intent that the five (5) year sentence imposed on Indictment No. 2010-GS-45-30 be served consecutively to both sentences imposed on 2009-GS-45-0249 or just consecutively to the twenty (20) year sentence imposed for criminal sexual conduct second degree is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony not credible. Plea Counsel stated that there was never any question that the sentence imposed by the plea judge was to run consecutive to the twenty-five year sentence imposed on 2009-GS-45-0249. This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for advising the Applicant to enter a plea of guilty on this charge based on the threat that the State could seek a life without parole sentence against him were he convicted on this indictment at trial by jury without discussing with the Applicant the possibility of arguing that he would be ineligible for life without parole sentence pursuant to S.C. Code Ann. § 17-25-25 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until 2007.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to advise Applicant that he could not face life without parole under S.C. Code Ann § 17-25-25 where the sexual battery charged in this indictment was alleged to occurred sometime between October 1, 2006 and October 1, 2007 and the Applicant did not turn eighteen (18) years old until

2007 is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony not credible. Applicant relies on the recent United States Supreme Court decision Graham v. Florida, 560 U.S. 48, 176 L.Ed. 2d 825 (2010) in support of his argument that he could not have been sentenced to life without parole. Plea Counsel stated that Applicant was never noticed for life without parole and he only advised him that he could be sentenced up to twenty years. Furthermore, Graham was decided well after Applicant's guilty plea. See Gilmore v. State, 314 S.C. 453, 445 S.E.2d 454 (1994) (attorney is not required to be clairvoyant or anticipate changes in the law which were not in existence at time of trial), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). Furthermore, Applicant was eighteen years old during a portion of the dates alleged in the indictment thereby making Graham inapplicable.

Based on the foregoing this Court finds Plea Counsel was not ineffective for failing to advise Applicant that he could potentially argue a life without parole sentence under S.C. Code Ann. § 17-25-25 would be unconstitutional. As stated above, Plea Counsel cannot be held ineffective for failing to anticipate changes in the law. Additionally, Applicant was never noticed for life without parole and it is pure speculation if he ever would have been. This Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite

prejudice required for relief pursuant to Strickland. Furthermore, Applicant's allegation that he only pled guilty in order to avoid a life sentence is insufficient to show prejudice. See Wicker v. State, 310 S.C. 8, 12, 425 S.E.2d 25, 27 (1992) (finding pleading guilty to avoid a possibly greater sentence, without more, does not render a guilty plea involuntary). Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel had represented Joshua Edwards on a number of criminal charges including one count of Criminal Sexual Conduct with a Minor involving VICTIM the same minor alleged to be the victim on Indictment No. 2010-GS-45-30.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to disclose a potential conflict of interest in representing Applicant where he represented Edwards on one count of Criminal Sexual Conduct with a Minor involving Victim to be without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. This Court notes that the fact that counsel does not advise a defendant of a potential conflict of interest does not affect the constitutionality of a conviction. Jackson v. State, 328 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). Furthermore, the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction. State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005). Additionally, Applicant must show that his counsel actively represented conflicting interest to establish a claim of ineffective assistance of counsel. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984).

During the PCR hearing, Plea Counsel stated that he has been a public defender for Williamsburg County for the majority of his career. Plea Counsel stated he has represented hundreds of criminal clients during the course of his career. Plea Counsel stated that he

represented Edwards in a prior Criminal Sexual Conduct case involving the same Victim. Plea Counsel stated that he represented Edwards several years prior to his representation of Applicant. Plea Counsel stated that his prior representation of Edwards did not affect his representation of Applicant. Plea Counsel stated he did not feel he owed Edwards any type of duty of loyalty. Plea Counsel concluded that he represented and advised Applicant to the best of his abilities.

This Court finds that Plea Counsel did not have an actual conflict because he represented Edwards several years prior to his representation of Applicant. Plea Counsel testified that no conflict existed and Applicant failed to point to an actual conflict. Nothing in Plea Counsel's representation suggests Plea Counsel's prior representation of Edwards in any way affected his representation of Applicant. To the contrary, Plea Counsel testified –and this Court found credible– that he represented Applicant to the best of his abilities and he owed no duty of loyalty to Edwards. Based on the foregoing, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Plea Counsel was ineffective for failing to disclose to the Applicant a potential conflict of interest in representing the Applicant where Plea Counsel represented the victim in a number of legal matters.

This Court finds Applicant's allegation that Plea Counsel was ineffective for failing to disclose a potential conflict of interest in representing Applicant where he represented Victim on prior Department of Juvenile Justice matters is without merit. This Court finds Plea Counsel's testimony credible while Applicant's testimony is not credible. This Court notes that the fact

that counsel does not advise a defendant of a potential conflict of interest does not affect the constitutionality of a conviction. Jackson v. State, 328 S.C. 345, 354, 495 S.E.2d 768, 773 (1998). Furthermore, the mere possibility of a conflict of interest is insufficient to impugn a criminal conviction. State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005). Additionally, Applicant must show that his counsel actively represented conflicting interest to establish a claim of ineffective assistance of counsel. Duncan v. State, 281 S.C. 435, 315 S.E.2d 809 (1984).

During the PCR hearing, Plea Counsel stated he represented Victim two or three times for some truancy issues several years prior to his representation of Applicant. Furthermore, Plea Counsel stated Applicant was aware that he had represented Victim on prior occasions. Plea Counsel stated that his prior representation of Victim in no way affected his representation of Applicant. Plea Counsel further stated that his prior representation of Victim may have helped his representation of Applicant. Plea Counsel concluded that his prior representation was not a conflict and he represented Applicant to the best of his abilities.

This Court finds that Plea Counsel did not have an actual conflict because he represented Victim several years prior to his representation of Applicant. Plea Counsel testified that no conflict existed. Nothing in Plea Counsel's representation suggests Plea Counsel's prior representation of Victim negatively impacted his representation of Applicant. To the contrary, Plea Counsel testified –and this Court found credible– that he represented Applicant to the best of his abilities and he owed no duty of loyalty to Victim. Based on the foregoing, this Court finds Counsel's actions were reasonable under the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Additionally, this Court finds that Applicant has failed to establish the requisite prejudice

required for relief pursuant to Strickland. Therefore, this Court finds that Plea Counsel was not ineffective and that this allegation must be denied and dismissed with prejudice.

Accordingly, this Court finds Applicant failed to prove the first prong of the Strickland test – that Plea Counsel failed to render reasonably effective assistance of under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant failed to prove the second prong of Strickland – that he was prejudiced by Plea Counsel’s performance. This Court concludes Applicant has not met his burden of proving Plea Counsel failed to render reasonably effective assistance. See Frazier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

ALL OTHER ALLEGATIONS

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

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance and Applicant’s plea was knowingly and voluntarily entered. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

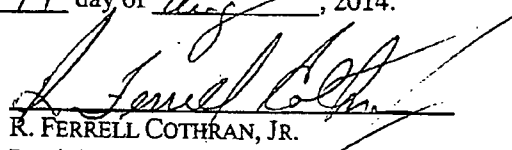
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel’s receipt of written notice of entry of judgment to secure the appropriate

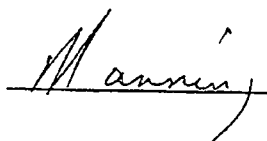
appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review,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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of Aug, 2014.


 R. FERRELL COTHAN, JR.
 Presiding Judge
 Third Judicial Circuit

, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG
IN THE COURT OF COMMON PLEAS

KEVIN BRADLEY, #339031

Applicant,

v.

STATE OF SOUTH CAROLINA,

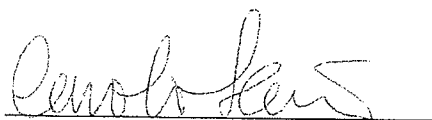
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Tara Dawn Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite A
Columbia, SC 29204

This 29th day of September, 2014.


Caroline Kaiser, Legal Assistant
For Respondent

SWORN to before me this 29th day of September, 2014.


Notary Public for South Carolina.
My Commission Expires: 5/14/2024

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Presiding Judge

RECEIVED

OCT 23 2014

2013-CP-45-098

S.C. SUPREME COURT

KEVIN C. BRADLEY, 339031

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief filed August 25, 2014 and received by Counsel on September 30, 2014.


Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 21st day of October, 2014.

Other Counsel of Record:
Daniel Gourley, Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Presiding Judge

2013-CP-45-098

RECEIVED

OCT 23 2014

S.C. Supreme Court

KEVIN C. BRADLEY, 339031

Applicant,

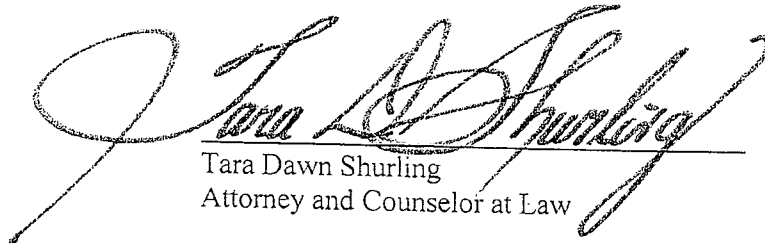
v.

THE STATE OF SOUTH CAROLINA,

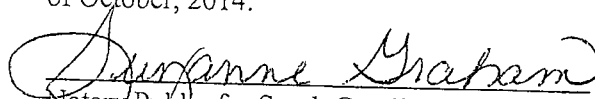
Respondent.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Daniel Gourley, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 21st day of October, 2014.


Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE me this 21st day
of October, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24