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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

RODNEY ELLIOTT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002323

SUPPLEMENTAL APPENDIX

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Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

County of Dorchester

FILED - RECORDED
2011 MAR 25 PM 3:38
In the Court of Common Pleas
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
2001 CP 18-903

Rodney Elliott #251337
Full name and prison number (if any) of Applicant,

vs.

The State
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

FILED-RECORDED
2011 JUL 25 PM 2:29
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

INSTRUCTIONS — READ CAREFULLY

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

1. Place of detention Lieber Correctional Institution
Cooper Unit A-16
2. Name and location of Court which imposed sentence Dorchester County 1st. District.
101 Ridge Street St. George, South Carolina 29477
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 97GS 18-0238
 - (b) 97GS 18-0239
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 24, 1998
 - (b) 20 years in S.C.D.C
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ++ _____
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes _____

7. If you answered "yes" to (6), list

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

- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____

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

- i. Appeal Dismissed _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. November 16, 2000 _____
- ii. _____
- iii. _____

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

- i. Unpublished Opinion No 2000-UP-684 Submitted October 4, 2000 _____
- ii. Filed November 15, 2000 Anders v. California 386 _____
- iii. U.S 738 (1967) and state v. Williams, 305 S.C. 116, 406 S.E. 2d 357 (1991)
Order Denying Petition For ReHearing January 25, 2001

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

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

- (a) Lack of Jurisdiction over the subject matter and defendant _____
- (b) Improper Venue, Insfficiency of process and service _____
- (c) Failure to state facts sufficient to constite a cause of action _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) SEE ATTACHED DOCUMENTS AND EXHIBITS (46 PAGES ATTACHED) _____
- (b) _____
- (c) _____

- 11. Prior to this application have you filed with respect to this conviction
 - (a) any petition in a State Court under South Carolina Law? Yes
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____
 - (d) any other petitions, motions or applications in this or any other Court?
United States District Court

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. Petition of Habeaus Courpus For transcript and Legal rep.
 - ii. Motion for rehearing
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. United States District Court
 - ii. South Carolina Appeals Court
 - iii. South Carolina Supreme Court
 - iv. _____
- (c) the disposition thereof:
 - i. I received Counsel representation and transcript Febuary 22, 2000
 - ii. Lawyer put wrong transcript of record on file
 - iii. Appeal Dismissed
 - iv. Rehearing Denied
- (d) the date of each such disposition:
 - i. November 16, 2000
 - ii. January 25, 2001
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Unpublished opinion No. 2000-UP-684 Submitted Oct. 4th, 2000 Filed November
 - ii. 15,2000 Anders V. California 386 u.s 738 (1967) State V. Williams, 305
 - iii. S.C. 116 406 SE 2d 357 1991
 - iv. Court Stated it didn't discover any material fact or principle of Law that was overlooked or misapprehended.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No

14. If you answered "yes" to (1) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) State has Judicial Remedys to Exhaust
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? N/A
- (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? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Mr. Mark Liendecker
1810 old Trolley Road Summerville, S.C 29485
- ii. Mr. Eugene Dukes
100 Ridge street, St. George S.C. 29477
- iii. Mr. Robert pachak
South Carolina Appellate Defense 1122 Lady st. Suit 940 Columbia, S.C

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

- i. Preliminary Hearing
- ii. 1st trial march 6, 1998 and 2nd trial july 24, 1998
- iii. Direct Appeal

18. State clearly the relief you seek in filing this application.

That the court vacate my sentence due to the violation of my rights.

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

No

STATE OF SOUTH CAROLINA

County of Dorchester

VERIFICATION

I, Rodney Elliott, 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.

Rodney Elliott

SWORN to and subscribed before me this 24 day of July, 19 2001

[Signature] (L.S.)
Notary Public

My Commission Expires: 12/05/05

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

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

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

Rodney Elliott
Applicant

SWORN or affirmed to and subscribed before me this 24 day of July, 19 2001

[Signature]
Notary Public

My Commission Expires 12/05/05

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Rodney Elliott,

Appellant.

Appeal From Dorchester County
Luke N. Brown Jr., Circuit Court Judge

**ORDER DENYING
PETITION FOR REHEARING**

PER CURIAM: After careful consideration of the Petition for Rehearing in this matter, this Court is unable to discover any material fact or principle of law that was overlooked or misapprehended. It is therefore ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.

Thomas El Siff, J.

William J. Kosar, J.

A. A. Hunter, J.

Columbia, South Carolina
January 25, 2001, 2000

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Rodney Elliott,

Appellant.

Appeal From Dorchester County
Luke N. Brown, Jr., Circuit Court Judge

Unpublished Opinion No. 2000-UP-684
Submitted October 4, 2000 - Filed November 15, 2000

APPEAL DISMISSED

Assistant Appellate Defender Robert M. Pachak, of SC
Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Robert E. Bogan, all of Columbia; and
Solicitor Walter M. Bailey, of Summerville, for
respondent.

Review

PER CURIAM: Rodney Elliott appeals his conviction for criminal sexual conduct with a minor, second degree. On appeal, counsel for Elliott has filed a final brief along with a petition to be relieved as counsel. Elliott has filed a pro se brief.

1. Did the arresting officer file affidavit with the wrong magistrate in violation of protective services investigation?
2. Did the arresting officer know in civil actions arrest is only permitted in certain cases?
3. Did civil action with the (DSS) investigation and the arresting officer in consistent with the rules of the family court?
4. Did nature of termination of civil action require to satisfy element of favorable termination to support action for malicious prosecution?
5. Did investigation violate protection from domestic abuse proceedings involving family court?
6. Did the arresting officer violate the provisions will abublish law of criminal domestic violence with the arrest of the defendant?
7. Did the (DSS) violate its statutory duty to bring before family court meritorious allegations of child abuse and neglect?
8. Did the (DSS) and law enforcement officer have a statutory duty as define?
9. Did the circumstances where persons are not to be arrested but may be served process by the family court apply to the defendant?
10. Did the officer not know or understand that what he is doing violate the defendants rights?
11. Did (DSS) official violate the defendants rights with the investigation interviews gathering information that was kept confidential and to use in family court proceedings involving his child? See exhibit (M.A.), (M.B.), and (M.C.)
12. Did the state itself violate the family court proceeding, when defendant had consent to have a lawyer representation interviewed regarding matters and violate his rights? Transcript July 24, 1998 page 165 line 12-21 and transcript March 6, 1998 page 154 line 5-12.
13. Did the state violate due process, equal protection or search and seizure provisions of state constitution of parent liberty interest and his children?
14. Did the Dorchester solicitor have a duty to make required disclosures of all the discovery? See exhibit M, A-B & C.
15. Did the solicitor have a duty to discuss the facts emergency protective custody statute has specific dead lines and detail procedures that safeguard the rights of parents and their children?

16. Did the solicitor violate the legal representation of the defendants children proceeding in by acting as counsel?

17. Did prosecutor, DSS and the family court was in strict comply with the schedule or hearing? See preliminary report exhibit L3. A & B.

18. Did prosecutor, DSS and the family court, prosecute the defendant for contempt?

19. Did the prosecutor violate the constitution in its prosecution of the defendant?

20. Did the solicitor ignored legal rights of defendant, in the facts of courts was without jurisdiction? All reports that are not indicated must be classified as unfounded. See court exhibit defendants I.D. transcript July 24, 1998 page 233 line 1-25 and exhibit (N.A.) and (N.B.)

21. Did the solicitor use fraudulent documents and representations constitute act of fraud. See exhibits A-through K-4?

22. Weather defendant was subjected to a violation of double jepardy clause? See pros.

Argument I
Unauthorize Arrest

Officer Marshall arrested the defendant in violation of the South Carolina department of social services, notice of child protective services DSS form 3072 states: You will be interviewed and asked to provide information about yourself, the child and the family. Other individuals may also be interviewed regarding their knowledge of this matter. The information will be part of evidence and to provide appropriate services if deemed necessary. Information gathered during the investigation will be kept confidential and shared only as provided for by state law. You have the right to have an attorney for family court proceedings involving child abuse and neglect. If you cannot afford one, one will be appointed for you under South Carolina law. Notice of child protective services investigation under (DSS) is a civil procedure. The nature of termination of civil action required to satisfy element favorable termination to support action for malicious prosecution. Authority of officers in all counties and municipalities, a law enforcement officer investigating a case of suspected child abuse or neglect or responding to a request for assistance by the department as it investigates a case of suspected child abuse or neglect has authority to take emergency protective custody of the child. In counties where activity occurred. Transcript March 6, 1998 page 149 line 6-15 and transcript July 24, 1998 page 165 line 12-20. The department shall designate by policy and procedure the local department office responsible for procedures. When a child resides in a county other than the one in which the activity under investigation occurred, the probable cause hearing required by law and the hearing may be held in county of the law enforcement officers jurisdiction. The action shall be applicable in domestic relations action. See exhibit N.A. and N.B. after trial and sentencing of defendant.

Argument II
Violated Termination

Det. Marshall obtained arrest in violation of termination with (DSS) notice of child protective services investigation. The department of social services investigation is a civil proceeding, and its determination would be by family court. See exhibit (O) No. 1 dated 7-23-98, 5 pages including, statutes that authorizes law enforcement officer to take child into emergency protective custody without consent of child's parent or guardian if officer has probable cause to believe that child's is in imminent danger does not violate rights of marital privacy under federal constitution. Parents due process liberty interest in care and custody of their children is not absolute children have statutory rights to be free from abusive or neglectful situations and emergency protective custody statutes has specific dead lines and detailed procedures that safeguard rights of parents and their children. A protection order related to domestic or family violence. Issues by a state, tribe, or territory is valid if the issuing court had jurisdiction over the parties and subject matter under the laws of the state, tribe, or territory. There is a presumption in favor of validity where and order appears authentic

on its face. See preliminary report. A defendant must have been given reasonable notice and the opportunity to be heard before the foreign order was issued, however in the case heard must have been given as soon as possible after the order was issued, consistent with due process. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order. The family court should have made an order to arrest the defendant, not Det. Marshall which did not witness a freshly committed crime.

Argument III
Malicious Prosecution

By whom order for arrest is made an order for the arrest of the defendant must be obtained from a judge, magistrate or clerk of court in which or before whom the action is brought. Affidavit to arrest the order for the arrest of the defendant must be obtained from a judge magistrate or clerk of the court in which or before whom the action is brought. Affidavit to obtain order for arrest, the order may be made when it shall appear to the proper officer by the affidavit of the plaintiff or of any other person that a cause of action exists and that the case from the facts stated is one of those mentioned. Once magistrate dismissed this case, the court lacked subject matter jurisdiction when state reinstated case by presenting defendant with direct presentment indictments when defendant was not given chance to waive such action. Therefore when prosecutor reindicted defendant again for this same charge, they violated defendant's rights. In a frequently quoted passage the United States Supreme Court said in part. "The state with all its resources and power should not be allowed to make repeated attempts to convict an individual as well as enhancing the possibility that even though innocent he may be found guilty." In case at bar, the first trial resulted in a mistrial the conclusion that jeopardy has attached begins, rather than ends. The case evidence shows state was not given (2) but three (3) chances to present this case and evidence and or case to a tribunal. Once the state case was thrown out during magistrate proceeding. See exhibit L3, A-B. They should not be allowed to reindict again when magistrate found a lack of evidence for case to go to general sessions. The failure, as noted previously of initial proceeding before magistrate was a product of state failure, as noted previously of initial proceeding before magistrate was product of state failure to prove case. should go to the general session inter alia unlike defendant request in first trial for a mistrial. This case nor should defendant have been subjected to vindictive prosecution of state in order that goal of conviction be achieved. By constantly bringing defendant into court of law and need for restraining power of state more prevalent. Because, to allow state inbridled power to do to defendant what they did, gives them card blanche to do this in violation of defendant constitutional rights. Hence, sole purpose of preliminary hearing is to determine if enough evidence exist for case to go to general sessions and once court ruled it did not the state was without power to bring defendant into court under

indictment which court had no subject matter jurisdiction subsequently to analyze a double jeopardy claim in the context of a civil sanction, court looks at the face of a statute to determine if it establishes a criminal or civil penalty, and then determines if statutory scheme is so punitive in purpose or effect as to transform what was intended as a civil sanction into a criminal penalty. If a sanction is determined to be civil nature and has not been transformed into a clause is not implicated and there is no need to conduct the same elements test applicable to successive prosecutions and multiple punishment cases. See exhibit sheet mark (N.C. 5) in determining whether a civil sanction is so punitive in nature as to have been transformed into a criminal sanction for purpose of double jeopardy appellate court reviews whether the sanction involves an affirmative disability or restraint.

The solicitor erred in improperly presenting indictments that were invalid transcript July 22, 24, 1998 pg. 6 lines 12-25, pg. 7 lines 1-4 warrants having been dismissed because of domestic matters, see July 22,24, transcript pg. 27 lines 6-16, also pg. 32 lines 18-21 order of magistrate could not be revived by writing into supporting affidavit additional words necessary to change crime. Solicitor whiteout change dates and copied dismissed Indictments and made forged ones to create a true bill see exhibit (C & D) May 1997 court of general sessions where the second (s) in session has lone 7 see exhibit (F) for February 1997 court of general sessions where the second (s) in session is factual notice arrest warrant number 97DOR12 docket number 97GS18-0238 exhibit (F). Compare to exhibit (E) docket number 97GS18-0239. Arrest warrant number 97DOR13 both are second degree indictments. Notice staple marking how they match back side of both indictments. See exhibit (E & F). Exhibit (D) docket number 997GS18-0239 first degree has true bill stamped and signed by grand jury Dan Villiger 05-15-97. Notice there is no verdict rendered March 6, 1998, also bottom if page says Note: place check "mark" in one (1) space above and foreman sign. Compare exhibit (B) docket number 97GS18-0239 no grand jury signature petit jury foreman William Spaulding 07-24-98. Not guilty verdict note write "not guilty" or "guilty" and foreman sign. Note exhibit (A) docket number 97GS18-0238 has no grand jury signature also note: write "not guilty" or "guilty" and foreman sign. Compare words or instructions different to exhibit (B) docket number 97GS18-0239. Exhibit (I) case number 97GS18-0238 warrant number D.I. The state vs. Rodney Elliott, Criminal Sexual Conduct with a Minor 2nd. The defendant Teal Ethrige is committed to depart ment of corrections for 20 years. July 24, 1998 signed by the Honorable Luke N. Brown although the solicitor knew that the face of the affidavits were both of the same in the statement used in exhibits J(1) and K(3) the solicitor continued to charge the appellant for a common law crime which carries the same finding on one as it finds for the other. Indictments constitutes finding of probable cause. To charge a person with a crime by formal legal process; Esp. by grand jury presentation prosecutorial misconduct a prosecutor's improper or illegal act esp. involving an attempt to persuade the jury to wrongfully convict a defendant or assess an unjustified punishment.

If prosecutorial misconduct results in a mistrial a later prosecution may be barred under double jeopardy clause (see Pro Se) note forged documents exhibit (C). Indictment number 97GS18-0238 reverse side solicitor signature changed three times as well as August 17, 1995 and June 1, 1996, see exhibit (E). To indictment number 97GS18-0239 reverse side March 1, 1995 and August 1995. February 27, 1997. Also see exhibit (F) indictment 97GS18-0238 August 1, 1995. June 1, all supporting facts that indictments were forged and never taken back to the grand jury. To perform its public responsibility a grand jury has broad investigative authority in determining whether a crime has been committed and in identifying the perpetrators, and grand jury investigation is not complete until all clues have been exhausted and every witness examined. An indictment survives legal scrutiny if the offense is stated with sufficient certainty and particularity to enable the court to know what judgement to pronounce and defendant to know what he is called upon to answer and whether he may plead and acquittal or conviction thereof. (domestic violence) biological child as known to as a family as prescribed not Familial as prescribed by the common law statute to any person that is head of the household. Prosecutor amended indictment to change the nature of the offense changes thus rendering a subject jurisdiction matter for family court. In which there were no probable cause to go to general sessions according to a magistrates finding of lack of probable cause thus making the amendment illegal and a violation of South Carolina code of law. Statues for domestic and common law matter have been misconstrued. The prosecutor also erred in pitting the testimony of defense witness transcript July 22, 24, 1998 pg. 169 lines 1-19, pg. 181 lines 18-24. The solicitor repeated the event by questioning defendant about a prior family court issue that was irrellevant to the case but to establish a finding of fact and commit a misjustice of character against the defendant. State's exhibit No. 3 transcript July 22-24 pg. 233 lines 2-4.

Argument IV Gross Neglagent

Hearing at time arrest was made on merits of emergency protective removal petition must be scheduled but not necessarily completed, within 35 days of receipt of removal petition. Det. Marshall should have known this.

Detective Marshall knew as defined in protection from domestic abuse trial transcript July 22,24, pg. 157-165 all testimony: A) "abuse" means 1) physical harm bodily, assault, or threat of physical harm; 2) sexual criminal offenses, as otherwise defined by statue; committed against a family or household member; B) "Family or household member" parent and children; C) "Court" means the family court; D) Order of protection means and order of protection issued to protect the petitioner or minor family or household member where the respondent has received notice of the proceedings and has had an opportunity to be heard. Provided however, the court must have due regard for any prior family court orders issued in an action between the parties. Reporting of

domestic violence Detective Marshall knew the criminal sexual conduct with minors §16-3-655 and §16-3-655(2) would not be the right code to use in this case. "Household member"; in the statutory offense of criminal domestic violence of a high and aggravated nature §16-3-655 the common law crime of assault and battery of a high and aggravated nature §16-3-651 to §16-3-659 criminal sexual conduct definitions (A) "actor" means a person accused of criminal sexual conduct (B) "aggravated coercion" (C) "aggravated force" (D) "intimate parts" sexual battery (E) "victim" means the person alleging to have been subjected to criminal sexual conduct. Detective Marshall knew that working with department of social services (DSS) who must be competent in law enforcement procedures, fact finding. A person who commits the crime of criminal domestic violence of a high and aggravated nature is guilty of a misdemeanor and upon conviction, must be fined not more than three thousand dollars or imprisoned not more than 10 years or both. The provisions of this section create statutory offense of criminal domestic violence of a high and aggravated nature and must not be misconstrued to codify the common law crime of assault and battery of high and aggravated nature. In §16-3-655 and §16-3-655(2) "Actor is in a position of a familial and it is the family", and the court is the family court shall have exclusive jurisdiction.

Argument V State Laws

The law enforcement officer had a duty; if a law enforcement officer clearly states to the department at the time the officer delivers physical control of the child to the department, that the child is not to be returned to the home or place with a relative before a probable cause hearing regardless of the out come of a preliminary investigation the department immediately must take legal custody of the child. In this case, at a preliminary investigation as provided in this section within seventy two (72) hours after the child was taken into emergency protective custody and shall make recommendations concerning return of the child to the home on placement with a relative or other person to the family court or take ther appropriate action as provided in this chapter while the legislature has amended (3) times the basic process remains the same. Not in the defendants case.

Argument VI Subject Matter

The defendant has a right to consent to the investigation interview by law enforcement and DSS family court under the circumstances. Also, a right to know what the charge is. See exhibit L3, L3A, L3B, and N.C., N.C. 1, 2, 3; and 4. Defendant sought to have information leading to arrest. A person arrested by virtue of process or taken into custody by an officer in this state has a right to know from the officer who arrest is made. It is unlawful for an officer to neglect on request to exhibit to the person arrest or any other person acting in his behalf the precept by virtue of which the arrest is made. The family court shall have exclusive jurisdiction over all proceedings and delinquent

children. It is the policy of this state to reunite the child with his family in a timely manner whether or not the child has been placed in the care of the state voluntarily. The subject and purpose of the statute.

Argument VII
Affirmative Defense

State failed in its Brady requires disclosure of the material facts. State knew the child in this case was defendant's natural biological child: So was the Brady requirement violated by the state and was the punishment also violated? A protection order related to domestic or family violence, issued by a state, tribe, or territory, valid if the issuing court had subject matter under the laws of the state, tribe, or territory. There is a presumption in favor of validity where an order appears authentic on its face. A defendant must have been given reasonable notice and the opportunity to be heard before the foreign order was issued; however, in the case of an ex parte order, notice and opportunity to be heard must have been given as soon as possible after the order was issued, consistent with due process. Failure to provide reasonable notice and opportunity to be heard is affirmative defense to any charge or process filed seeking enforcement of a foreign protection order. Defendant did not go through these procedures. Statute that authorizes law enforcement officers to take child into emergency protective custody without consent of child's parent or guardian if officer has probable cause to believe that child is in imminent danger does not violate rights of marital privacy under federal constitution, parents due process liberty interest in care and custody of their children is not absolute. Children have statutory rights to be free from abusive or neglectful situations, and emergency protective custody statute has specific guide lines that safe guard the rights of parents and their children. See exhibit (N.A. and N.B.) also form 3072: July 24, 1998 transcript pg. 114 line 8-14, pg. 114 line 24-25, pg. 115 line 1-2, and pg. 116 line 1-12, pg. 126 line 22-24, pg. 127 line 8-20, pg. 131 line 18-25, pg. 132 line 1-25, pg. 133 line 16-25, pg. 134 line 15-25, pg. 147 line 19-25, pg. 151 line 8-25, pg. 153 line 20-21, pg. 158 line 1-25, pg. 159 line 1-25, pg. 160 line 1-25, pg. 161 line 1-2, and 18-25. On the same page it seems the removal of custody initiation proceeding in notice of child protective services investigation started in N. Carolina and was never handled by South Carolina DSS where alleged acts occurred no provisions of the South Carolina law authorize and officer to take custody of a child for a family court order by taking the child from the noncustodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at appointed hour unless an individual has committed a criminal offense a sheriff may not arrest that individual solely for violation of a family court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the protection from domestic abuse act are misdemeanors and officer may arrest according to the procedures set forth. The defendant did go to trial under the §16-3-655 and §16-3-655(2) under the violations of the state laws in the trial.

In the prosecution for Dorchester, the prosecutor violated the defendant. In all child abuse and neglect proceedings children must be appointed legal counsel and a guardian ad litem by the family court. Counsel for the child in no case may be the same as counsel for the parent guardian or other person subjected to the proceeding or any governmental or social agency involved in the proceeding. Where a statute is complete plain and unambiguous legislative intent must be determined from the language of the statute itself.

A) defendant claims that his due process rights protected by the sixth and fourteenth amendments were violated when there were no waiver of his rights from the family court to the court of general sessions. See exhibit (H) motion to set bond compare with exhibit (G). B) The defendant claims that the court violated article V §12 by allowing case to proceed although there was no family court hearing of domestic matters. Statutes §16-3-655 domestic Vs. common law misconstrued to codify the law governing a familial Vs. family in which defendant is the natural biological father. The courts erred by not allowing the defendant a directed verdict in the grounds that evidence viewed in the light most favorable to the state was not enough to proceed with the case. Transcript July 22-24, 1998 pg. 233 lines 1-25, pg. 132 lines 1-25. This motion was asked to the questions at the end of all the testimony. Thus raising violation of subject matter jurisdiction questionable to the court which had no jurisdiction to try defendant according to a magistrates finding lack of probable cause. See exhibit L3, L3A, L3B. The courts erred in not allowing defendant lawyer question witness about the truthfulness of witness's statement being that the witness story change and could have had impeachable offences that brought the first trial March 6, 1998 to a mistrial and would do the same or have defendant acquitted.

Argument VIII
Unconstitutional Sentence

Conditions for early parole for certain offenders. Not with standing any provision, and not with standing any other provision of law an inmate who was convicted of, or plead guilty or nolo contendere to an offense against a house hold member shall be eligible for parole after serving one fourth of his prison term when the inmate at the time was convicted of an offense against the house hold member or in post conviction proceeding pertaining to domestic violence, as provided and suffered at the hands of the house hold member. Domestic abuse act are misdemeanors and an officer may arrest according to the procedures set forth. In this case defendant is a body of expo facto. see Exhibit (O) 5. pages



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

FILED-RECORDED
2001 AUG 13 AM 10:23

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

CHARLIE CONDON
ATTORNEY GENERAL

August 9, 2001

Honorable Cheryl Graham
Clerk of Court, Dorchester County
101 Ridge Street
St. George, South Carolina 29477

- RE: ✓ Alvin Cavanaugh, 141090 vs. State of South Carolina
2001-CP-18-906
- ✓ Walter Clark, 275404 vs. State of South Carolina
2001-CP-18-859
- ✓ Rodney Elliott, 251337 vs. State of South Carolina
2001-CP-18-903
- ✓ Nathaniel Mack, 273857 vs. State of South Carolina
2001-CP-18-793
- ✓ Kelley D. Smith, 271088 vs. State of South Carolina
2001-CP-18-858
- ✓ John Walker, 267588 vs. State of South Carolina
2001-CP-18-0483

Dear Ms. Graham:

The following individuals have filed Post-Conviction Relief Applications in Dorchester County. The purpose of this letter is to request that attorneys be appointed to represent them with their PCR matters.

If you have any questions, please feel free to contact me.

Sincerely,

Charmaine Palmer-Roberts
Legal Assistant to
Elizabeth R. McMahon
Assistant Attorney General

/cpr

Exhibit H

WITNESSES

Det: Marshall

RECEIVED

DEC 1 2000

S.C. Court of Appeals

ARREST WARRANT #:

97DOR12

Arrested on December 31, 1996

ACTION OF GRAND JURY

Foreman:

Grand Jury

VERDICT

Guilty

Foreman:

Petit Jury

Date: 1-24-98

DOCKET #: 97GS18-0238

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS
Term: May, 1997

THE STATE

vs.

Rodney Elliott

INDICTMENT FOR

0805

CRIMINAL SEXUAL CONDUCT WITH A MINOR

SECOND DEGREE -- 16-3-655(2)

Note: Write "Not Guilty" or "Guilty"
and Foreman sig.

OF SOUTH CAROLINA

INDICTMENT #9-18-0238

County of Dorchester

Exhibit(A)

At a Court of General Sessions, convened on May 15, 1997,
the Grand Jurors of Dorchester County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE — 16-3-655(2)

That Rodney Elliott did in Dorchester County between the dates of August
17, 1995 and June 1, 1996, wilfully and unlawfully engage in criminal sexual
conduct with a minor in the second degree in that Rodney Elliott engaged in
sexual battery with Minor _____, who was 11 years of age.

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

SOLICITOR

Margaret M. Donald

Exhibit(B)

WITNESSES

Det. Marshall

ARREST WARRANT #:

97DOR13

Arrested on December 31, 1996

ACTION OF GRAND JURY

Foreman:

Grand Jury

VERDICT

Not Guilty

Foreman:

Petit Jury

Date: 7-24-98

DOCKET #: 97GS18-0239

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: May, 1997

THE STATE

vs.

Rodney Elliott

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

FIRST DEGREE (16-3-655)

Exhibit (B)

STATE OF SOUTH CAROLINA)
)
County of Dorchester) **INDICTMENT #97GS18-0239**

At a Court of General Sessions, convened on May 15, 1997,
the Grand Jurors of Dorchester County present upon their oath:

COUNT: **CRIMINAL SEXUAL CONDUCT WITH MINOR
FIRST DEGREE (16-3-655)**

That Rodney Elliott did in Dorchester County between the dates of March 1,
1995 and August 17, 1995, wilfully and unlawfully engage in criminal sexual
conduct with a minor in the first degree in that Rodney Elliott engaged in
sexual battery with Minor who was 10 years of age.

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

SOLICITOR Margaret H. McDonald

EXHIBIT 117

WITNESSES

Det. Marshall

DOCKET #: 97GS18-0238

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: MAY, 1997 7

THE STATE

vs.

Rodney Elliott

ARREST WARRANT #:

97DOR12

Arrested on December 31, 1996

INDICTMENT FOR

0805

CRIMINAL SEXUAL CONDUCT WITH A MINOR

SECOND DEGREE — 16-3-655(2)

ACTION OF GRAND JURY

TRUE BILL

By _____

Date _____

Foreman: Don Village 5/15/97
Grand Jury

VERDICT

Not guilty

guilty

Foreman: [Signature]
Petit Jury

Date: March 6, 1998

to place "which" in brackets in original

Exhibit (D)

WITNESSES

Det. Marshall

ARREST WARRANT #:

97DOR13

Arrested on December 31, 1996

ACTION OF GRAND JURY

TRUE BILL *PERSONAL FILE*

By: _____

Date: _____

Foreman: *Don Villip* *5/15/97*
Grand Jury

VERDICT

Not Guilty " "

Guilty " "

Foreman: _____

Petit Jury
Date: *March 6, 1998.*

DOCKET #: 97GS18-0239

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: **MAY, 1997.**

THE STATE

vs.

Rodney Elliott

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

FIRST DEGREE (16-3-655)

EXHIBIT (E)

WITNESSES

DOCKET #: 97-3018-0209

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: Regular, 1997

THE STATE

vs.

Rooney Elliott

ARREST WARRANT #:

97DCR12

Arrested on December 31, 1996

INDICTMENT FOR

2925

CRIMINAL SEXUAL CONDUCT WITH A MINOR

SECOND DEGREE — 16-3-655(2)

ACTION OF GRAND JURY

TRUE BILL

DATE

FOREMAN

Foreman: Don Allig 2/27/97
Grand Jury

VERDICT

Personal
FILE
RB

Foreman:

Fecit Jury
Date:

Exhibit ()

WITNESSES

1997 1/23/97

ARREST WARRANT #:

573CR12

Arrested on December 31, 1996

ACTION OF GRAND JURY

TRUE BILL

DATE

FOREMAN

Foreman: *Don Ullger* 2/27/97
Grand Jury

VERDICT

Personal File

Foreman:

Petit Jury

Date:

DOCKET #: 972913-0259

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: February, 1997

THE STATE

vs.

Rodney Elliott

INDICTMENT FOR

2825

CRIMINAL SEXUAL CONDUCT WITH A MINOR

SECOND DEGREE — 16-3-655(2)

Exhibit (G)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS
FOR THE FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,
Plaintiff,

INDICTMENT: 97GS18-23

v.

RODNEY ELLIOTT ,
Defendant.

ORDER

FILED-RECORDED
97 MAR 11 AM 11:43
MARGIE B. CANNON MCKISSICK
CLERK OF COURT
DORCHESTER COUNTY

This matter is before me pursuant to the Defendant's Motion to set Bond. The Defendant is charged pursuant to a direct indictment for CSC with a minor first degree and CSC with a minor second degree. This case was dismissed by the magistrate for Dorchester County. A direct indictment was obtained after this dismissal. After careful consideration of this matter, I find that the Defendant's bond shall be set at a \$15,000.00 personal recognizance bond. Defendant shall be in court to answer roll call until such time as this matter is disposed of beginning April 7, 1997 and further the defendant shall have no contact with the alleged victim.

IT IS SO ORDERED.



JUDGE, FIRST JUDICIAL CIRCUIT

St. George, South Carolina
This 10 day of March, 1997

Exhibit (H)

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
FILED - RECORDED)
IN THE COURT OF GENERAL SESSIONS)
FOR THE FIRST JUDICIAL CIRCUIT)

98 MAR -9 PM 4:34

STATE OF SOUTH CAROLINA)
Plaintiff)
DORCHESTER COUNTY)
CLERK OF COURT)

vs.)

INDICTMENT NO. 97-238

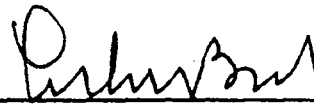
RODNEY ELLIOTT,)
Defendant.)

97-239

This matter is before me pursuant to the Defendant's Motion for the setting of bond. It appears that the Defendant is incarcerated pursuant to Indictments charging him with Criminal Sexual Conduct 1st degree and Criminal Sexual Conduct 2nd degree.

It further appears that a Five Thousand and 00/100 (\$5,000.00) Dollar Surety Bond should assure his presence at Court.

It is therefore Ordered that the Defendant, Rodney Elliott, may be released upon the placing of a surety bond in the amount of Five Thousand and 00/100 (\$5,000.00) Dollars. Further, the Defendant should in no way contact the prosecuting witness and must appear for Court on April 13, 1998 at 8:00 a.m.



Presiding Judge, 1st Judicial Circuit

This 9 day of March, 1998.

Exhibit (I)

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

SENTENCE

GENERAL SESSIONS COURT

THE STATE

CASE NO. 97-25-18-238

VS.

TICKET/WARRANT NO. DT

Redney Elliott

COURT REPORTER: Address

THE DEFENDANT IS PUT TO THE BAR AND ARRAIGNED AND, UPON HIS/HER ARRAIGNMENT, WAIVES PRESENTMENT TO THE GRAND JURY AND PLEADS GUILTY AS CHARGED Guilty Verdict

ATTEST Criminal Area Conduct With a Minor 2d
Signature of Defendant

Dee E. E. E.
The defendant,

Code # 396

is committed to the State Dept. of Corrections/Dorchester County Detention Center for a term of 20 days/months/years and/or to pay a fine of \$ _____; provided the sentence be suspended upon the service of _____ days/months/years and/or payment of \$ _____ plus pay/waive costs and assessment as applicable, the balance suspended with probation for _____ months/years.

Special conditions: _____

Restitution (YES/NO) _____ Total \$ _____

Weekly/Monthly \$ _____

to Clerk for _____

Public Defender Fund \$ _____

Date: July 24, 1998

Richard B. B.
Presiding Judge, First Judicial Circuit

Fine	\$
CC and Hall of Fame	\$
CC Assm. Waiver	\$
\$50.00 or 25% of Fine CF	\$
A and S	\$
I.D.F. 10%	\$ <u>SC</u> <u>100.00</u>
DUI Test, if Applicable	\$
Restitution	\$
Public Defender	\$
Extra Fee	\$
Total Fines and Costs	\$ <u>100.00</u>

INFORMATION ON DEFENDANT

Age: S.S. No.
M F Married Single
Date of birth:
Attorney:

ALL PAYMENTS MUST BE MADE BY CASH, MONEY ORDER OR CASHIER'S CHECK. WE CANNOT ACCEPT PERSONAL CHECKS.

Margie Carn McKissick
MARGIE CARN MCKISSICK

DORCHESTER COUNTY CLERK OF COURT
P.O. BOX 158
ST. GEORGE, SC 29477

Clerk of Court/Deputy Clerk
White copy to Clerk
Canary to Detention Center
Pink to Probation
Goldenrod to Defendant

Exhibit (1) F242543
ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

AFFIDAVIT

Personally appeared before me, a magistrate of this County, one DET. T. M. MARSHALL who, being duly sworn, deposes and says that (name of defendant)

RODNEY ELLIOTT

did within this County and State BETWEEN AUGUST 1995 THROUGH JUNE 1996 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

VIOLATION SECTION 16-3-655, CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND. DEGREE

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

THAT BETWEEN AUGUST 1995 THROUGH JUNE 1996 AT 402 CAMPBELL THICKET RD., RIDGEVILLE, IN THE COUNTY AND STATE AFORESAID, THE DEFENDANT, ONE RODNEY ELLIOTT DID COMMIT THE OFFENSE OF VIOLATION SECTION 16-3-655 OF THE CODE OF LAWS OF SOUTH CAROLINA OF 1976 AS AMENDED, CRIMINAL SEXUAL CONDUCT WITH A MINOR, 2ND. DEGREE, IN THAT HE DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY ENGAGE IN A SEXUAL BATTERY WITH A FEMALE, 11 YEARS OF AGE, ON SEVERAL DIFFERENT OCCASIONS DURING MARCH 1995 THROUGH DECEMBER 1995, BY HAVING SEXUAL INTERCOURSE WITH HER IN HIS BEDROOM AT THE AFOREMENTIONED ADDRESS. THE VICTIM FURTHER STATED THE SUSPECT HAD HER MASTURBATE HIM, AND HE SUBSEQUENTLY EJACULATED ON THE BED. FACTS TO PROVE THE SAME, ARE A STATEMENT MADE BY VICTIM WHILE BEING ASSESSED AT DUKE UNIVERSITY MEDICAL CENTER BY JEANNE NIEMEYER ARNTS, CLINICAL SOCIAL WORKER OF THE CHILD PROTECTION TEAM, IN WHICH SHE DETAILED THE CIRCUMSTANCES SURROUNDING THE AFOREMENTIONED SEXUAL BATTERIES. ALL OF WHICH IS AGAINST THE LAW, PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA. DET. T. M. MARSHALL AND THE 11 YEAR OLD FEMALE VICTIM ARE WITNESSES TO PROVE THE SAME.

T.M. Marshall
AFFIANT

Sworn to and Subscribed before me
this 15 day November 1996
Jerry R. [Signature] (L.S.)
Signature of Judge

Address 212 DEMING WAY
SUMMERVILLE, SC
Phone 832-0300

ARREST WARRANT

F-242543

STATE OF SOUTH CAROLINA

County/ Municipality of DORCHESTER

THE STATE

against

ELLIOTT, RODNEY
Address: 402 CAMPBELL THICKET ROAD
RIDGEVILLE SC 29472-0000

Phone: _____ SSN: _____
M Race: B Height: 5-10 Weight: 150
State: SC DL #: 009457225
DOB: 3/07/65 Agency ORI #: 1A00

Prosecuting Agency: DCSD
Prosecuting Officer: MARSHALL, T.
Offense: CRIMINAL SEXUAL CONDUCT WITH A MINOR
TH A MINOR
Code/Ordinance Sec. 16-3-655 Offense Code: _____

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 RAYE ELLIOTT on 12-31-96

PA Wald
Signature of Constables/Law Enforcement Officer

RETURN WARRANT TO:

Exhibit (5.2)

Form Approved by S.C. Attorney General July 26, 1980 SOCA 518

STATE OF SOUTH CAROLINA
 County/ Municipality of DORCHESTER

AFFIDAVIT

Personally appeared before me the affiant MARSHALL, T., who being duly sworn deposes and says that defendant ELLIOTT, RODNEY did within this county and DORCHESTER 8/01/95 AND 6-1-96 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of _____) in the following particulars: VIOLATION SECTION 16-3-655 OF SC CODE OF LAWS
DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT WITH A MINOR

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:

SEE ATTACHED AFFIDAVIT

ALL OF WHICH IS AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND WILL BE MORE FULLY DESCRIBED IN THE 1976 CODE OF LAWS SUBSCRIBED BEFORE ME ON 12/31/96

Signature of Affiant PA Wald

Affiant's Address _____

Affiant's Telephone _____

STATE OF SOUTH CAROLINA
 County/ Municipality of DORCHESTER

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 ELLIOTT, RODNEY did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of _____) as set forth below:

DESCRIPTION OF OFFENSE:

VIOLATION SECTION 16-3-655 OF SC CODE OF LAWS

Now, therefore, you are empowered CRIMINAL SEXUAL CONDUCT WITH A MINOR to arrest the defendant named above 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.

PA Wald (L.S.)
Signature of Issuing Judge

Judge Code: 665
Judge's Address: 212 DEMINGWAY RD. SUMMERVILLE SC 29483-0000
Judge's Telephone: (803)832-0370

Issuing Court: Magistrate Municipal Circuit

DEFENDANT COPY

EXHIBIT ORIGINAL

W12044

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

AFFIDAVIT

Personally appeared before me, a magistrate of this County, one DET. T. M. MARSHALL who, being duly sworn, deposes and says that (name of defendant)

RODNEY ELLIOTT

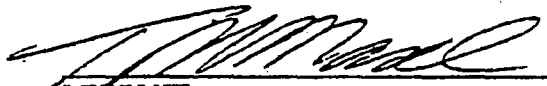
did within this County and State BETWEEN MARCH 1995 THROUGH AUGUST 1995 violate the criminal laws of the State of South Carolina in the following particulars:

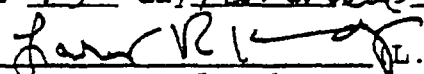
DESCRIPTION OF OFFENSE

VIOLATION SECTION 16-3-655 CRIMINAL SEXUAL CONDUCT WITH A MINOR 1ST. DEGREE

The Affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

THAT BETWEEN MARCH 1995 THROUGH AUGUST 1995 AT 402 CAMPBELL THICKET RD., RIDGEVILLE, IN THE COUNTY AND STATE AFORESAID, THE DEFENDANT, ONE RODNEY ELLIOTT, DID COMMIT THE OFFENSE OF VIOLATION SECTION 16-3-655 OF THE CODE OF LAWS OF SOUTH CAROLINA OF 1976 AS AMENDED, CRIMINAL SEXUAL CONDUCT WITH A MINOR, 1ST. DEGREE, IN THAT HE DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY ENGAGE IN SEXUAL BATTERY A FEMALE, 10 YEARS OF AGE, ON SEVERAL DIFFERENT OCCASIONS DURING MARCH 1995 THROUGH DECEMBER 1995, BY HAVING SEXUAL INTERCOURSE WITH HER IN HIS BEDROOM AT THE AFOREMENTIONED ADDRESS. THE VICTIM FURTHER STATED THE SUSPECT HAD HER MASTURBATE HIM, AND HE SUBSEQUENTLY EJACULATED ON THE BED. FACTS TO PROVE THE SAME, ARE A STATEMENT MADE BY VICTIM WHILE BEING ASSESSED AT DUKE UNIVERSITY MEDICAL CENTER BY JEANNE NIEMEYER ARNTS, CLINICAL SOCIAL WORKER OF THE CHILD PROTECTION TEAM, IN WHICH SHE DETAILED THE CIRCUMSTANCES SURROUNDING THE AFOREMENTIONED SEXUAL BATTERIES. ALL OF WHICH IS AGAINST THE LAW, PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA. DET. T. M. MARSHALL AND THE 10 YEAR OLD FEMALE VICTIM ARE WITNESS TO PROVE THE SAME.


AFFIANT

Sworn to and Subscribed before me
this 15 day November 1996
 (L.S.)
Signature of Judge

Address 212 DEMING WAY
SUMMERVILLE, SC
Phone 832-0300

ARREST WARRANT

F- 242544

STATE OF SOUTH CAROLINA

County/ Municipality of DORCHESTER

THE STATE against

ELLIOTT, RODNEY Address: 402 CAMPBELL THICKET ROAD RIDGEVILLE SC 29472-0000

Phone: SSN: Race: B Height: 5-10 Weight: 150 State: SC DL #: 009457225 DOB: 3/07/65 Agency ORI #: 1800 Prosecuting Agency: DCSD Prosecuting Officer: MARSHALL, T. Offense: CRIMINAL SEXUAL CONDUCT WITH A MINOR Code/Ordinance Sec.: 16-3-655 Offense Code:

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 on 12-1-95

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Exhibit (K.H) AFFIDAVIT

STATE OF SOUTH CAROLINA County/ Municipality of DORCHESTER

Personally appeared before me the affiant MARSHALL, T. ELLIOTT, RODNEY being duly sworn deposes and says that defendant did within this county and state on 3/01/95 AND AUGUST 1995 the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) in the following particulars: VIOLATION SECTION 16-3-655 OF SC CODE OF LAWS DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT WITH A MINOR

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:

SEE ATTACHED AFFIDAVIT

ALL OF WHICH IS AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA AND WILL BE MORE FULLY DESCRIBED IN THE 1976 CODE OF LAWS

Signature of Affiant Affiant's Address Affiant's Telephone

STATE OF SOUTH CAROLINA County/ Municipality of DORCHESTER

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: If appearing from the above affidavit that there are reasonable grounds to believe that the defendant ELLIOTT, RODNEY did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE:

VIOLATION SECTION 16-3-655 OF SC CODE OF LAWS

Now, therefore, you are empowered to arrest the defendant named above 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.

Signature of Issuing Judge Judge's Address

Summerville SC 29483-0000 (803)832-0370

Issuing Court: Magistrate Municipal Circuit

DEFENDANT COPY

MAGISTRATES COURT
for
Dorchester County

Exhibit (L.3)

212 Deming Way, Box 10
Summerville, SC 29483

(803) 832-0370
Fax (803) 832-1370

DATE: Jan 9 1997

TO: Marshall, Lesie and
Mark Gierdecker, PD

RE: State vs Rodney Elliott
Parsons
File
RF

March 95 - Aug 95
(through Dec 1995)

RECORDED
INDEXED
MAR 11 1997
5:55

This is to inform you that a Preliminary Hearing will be held on the date and time indicated below. Failure to appear will place you in contempt of court.

February 5 1997 at 2:00pm

Thank you for your cooperation in this matter.

Sincerely,

Charlene Snowden

Charlene C. Snowden
Magistrate *mgb*

CCS:mgb

- (10yrs.)
1. Elic (DUS; - check mayer)
 2. Accused CSC in Chas. Dismissed
 3. In jail since Oct. last year. *time served.*
 4. address now - no elc. in home
 5. Chas area - all life
Auch 4-5 years.
 6. Married - 4 kids - two w wife
one custody.
 7. \$10,000 - \$5,000

EXHIBIT (23A)

State of South Carolina
COUNTY OF DORCHESTER

THE STATE
VS

ORDER OF
RELEASE

Rodney Elliott
PERSONAL FILE Defendant

TO Keeper of the jail of Dorchester County.
ORDER You are commanded by this court to immediately release from custody the following person, Rodney Elliott

who is charged with the crime of, CSC w/ minor - 2 counts
F-242543 - F-242544

Bonding Co. _____

PROVIDED That you may after notice to this court continue custody of the named person if there are other criminal charges outstanding against this person that by law require custody.

Dated February 3, 1997

BOND Release on Bond DISMISSED AT PRELIMINARY HEARING

JUDGE Judge Charlene C. Sprouden
Court of Magistrate, Dorchester County

SEAL Signature Chas. Hill

Exhibit 3

TOTAL P. 02

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
 State of South Carolina)
 v.)
 RODNEY ELLIOTT)

IN THE COURT OF GENERAL SESSIONS
 THE FIRST JUDICIAL CIRCUIT

WARRANT NO.: F 242543 CSC w/minor
 F 242544 CSC w/minor

Personal File

ORDER OF DISMISSAL

The above styled cases came before the Magistrate for Dorchester County on a Preliminary hearing. The Court having heard testimony from the State's witness entertained motions. Attorney for the Defendant moved to dismiss for lack of probable cause. The Court finds that the state has not presented probable cause for the charges and the above cases are hereby dismissed.

IT IS SO ORDERED:

Charlene Snowden

HONORABLE CHARLENE SNOWDEN, MAGISTRATE
 FOR THE FIRST JUDICIAL CIRCUIT

Sumnerville, South Carolina
 This 3rd day of February, 1997.

DUKE UNIV MEDICAL CENTER

Form 03

CHILD PROTECTION TEAM
PRELIMINARY REPORT OF MEDICAL EXAMINATION

Name: Minor
Duke#: Y89424
DOB:
Ref. Date: 9/25/96
Visit Date: 10/17/96 & 10/22/96

Street: 1465 Cherry Crest Drive
City: Durham
State: NC
ZIP: 27704
Phone: 919-479-7157
Race: Afro-American

County: Durham
Gender: Female

Mother: Vivian Morris
Father:

Caretaker: Mother
Relationship:

Referred By: Pam Pinchback
Address: Post Office Box 810
Durham, NC 27702

Phone: (919) 560-8412

Reason for Referral:

Child has disclosed that she has been molested by her father for the past year.

Interviewer: Jeanne Nicmeyer Anits, CCSW

Examiner: Laura T. Gutman

History on 10/22/96:

Minor is a 12 year old black girl who comes to clinic with her mother, Vivian Morris.
Minor has been in very good general health. Since she came to the care of her mother, in September, 1996, she has not needed medical care, but is scheduled for a routine physical to be done. She has no history of physical trauma.

Minor readily disclosed to Dr. Gutman that she had been sexually injured by her father. She said he did it to her usually twice a week. He put his penis in her privates and it was "hard, hard, and afterward there was yellow and white yucky stuff came out." He started doing this when she was age 10 or 11.

Minor has been aware that there have been bumps around her anus, and they started a few years ago. No one other than her father has messed with her.

Her periods started this year, and the most recent completed on 10/17/96.

She has never had genital bleeding except at periods and is not having symptoms of anal or genital pain or discharge. No dysuria. No constipation.

Physical Exam:

Minor is an alert, very cooperative adolescent child. No trauma symptoms apparent. Child elected to be examined in the presence of her mother, who was calm and appropriately supportive.

HEENT - normal. No mucosal lesions. Teeth normal.

Chest - Heart, lungs normal. Breasts Tanner III.

Abdomen - Soft, nontender, no masses, no organomegaly.

Genital - Tanner III. No discharge, erythema, odor. There are four areas of discrete genital warts situated around the perianal and along the labia. None are seen in the hymen or vagina. The hymen shows estrogenic changes, with hypertrophy of the hymenal margins. The margins are irregular and, in presence of the estrogen effect, more narrow than anticipated. Supine gentle traction, there is a deep notch of the hymen at 4:00 which comes to within 1 mm or less of the vaginal wall. The contralateral hymenal edge is not notched. The posterior hymenal rim is narrower (3mm) than the lateral margins. On knee-chest, the notch is clearly seen, and the narrowed posterior hymenal margin seen.

Anal - Rugae are fine. No erythema, no reflex dilatation. The isolated genital warts are as noted.

Skin - No sign of scars suggestive of beatings or other physical maltreatment.

DUKE UNIVERSITY MEDICAL CENTER

Form
M.03

**CHILD PROTECTION TEAM
PRELIMINARY REPORT OF MEDICAL EXAMINATION**

Name: Minor
Duke#: Y89424
DOB:
Ref. Date: 9/25/96
Visit Date: 10/17/96 & 10/22/96

Impressions:

1. It is the diagnosis of the CPT that it is confirmed that Minor has experienced penetrative genital trauma/child sexual abuse. The named perpetrator is Minor's biological father, Rodney Elliott. The elements of the diagnosis are as follows:
 - a. The anatomic findings of the genital exam are abnormal and confirming of penetrative trauma. This is based on the deep notch which is seen only at 4:00 supine, and is not seen on the contralateral side. In addition, the hymenal rim is very narrow for a child of her Tanner stage.
 - b. The child has a sexually transmitted disease: condyloma accuminatum (genital warts). In children who are older than 1-2 years, the disease is transmitted through sexual contact. In a child of Minor's age, the development of genital warts is confirming evidence of inappropriate sexual contact.
 - c. Minor has provided detailed and confirming disclosure of penetrative sexual abuse by her father. This history was provided to the diagnostic interviewer on 10/17/96 and separately to her physician on 10/24/96. These disclosures included multiple incidents of penile-vaginal penetration at her father's home in Charleston, S.C., apparently between March and June, 1996.
2. It appears that Mrs. Morris acted promptly and effectively to protect Minor from further exposure, and has supported her disclosure.
3. Mrs. Morris states that she is awaiting her Medicaid card. Dr. Gutman recommended that Minor should receive an assessment to mental health needs, and Mrs. Morris stated that she understood and intends to do so. She stated that Ms. Pinchback has spoken to her of this, and will assist her in making the connection.
4. Mrs. Morris stated the police in Charleston, S. C. (Detective Marshall; 803-832-0319) were investigating the case and awaiting the results of the examination. On 10/23/96 Dr. Gutman called Detective Marshall to provide verbal a report.
5. Dr. Gutman advised that Minor should have the genital warts removed. Dr. Soper's office was called and they agreed to be in contact with Mrs. Morris to schedule an appointment. It is tentatively scheduled for 10/29/96.
6. Serologic assays for HIV, syphilis, and hepatitis b were taken on 10/22/96. Results are pending.
7. Dr. Gutman requested that genital and anal cultures for chlamydia and gonorrhea be obtained at the time Minor has her genital warts removed.
8. A comprehensive final medical report detailing the family history and Minor's disclosures will be forwarded.

Our findings and photographs are routinely reviewed by the Team.

Laura T. Gutman
Laura T. Gutman, M.D.

Jacqueline N. Arnts
Jacqueline N. Arnts, CCSW

Distribution:

CPT File
DUMC Medical Record (Red File)
Pam Pinchback, Durham DSS
Detective Marshall, Charleston, S.C.
212 Deming Way
Summerville, SC 29483
Dr. Soper, Duke OB/GYN

Exhibit (m)(c)

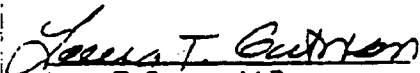
DUKE UNIVERSITY MEDICAL CENTER

Form
M-03CHILD PROTECTION TEAM
FINAL REPORT OF MEDICAL EVALUATION

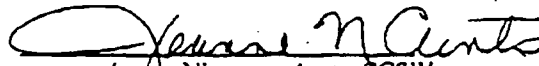
Minor
History Number: Y89424
Date of Birth:
Mo: Vivian Morris
Drive
Durham, NC 27704
Phone:

Plan/Recommendations:

1. Pam Pinchback of the Durham County Department of Social Services is investigating the sexual abuse report and has developed a protection plan for Minor . Detective Marshall in Summersville, SC, is investigating the criminal report.
2. QMinor has been referred to the Trauma Treatment Service at the Community Guidance Clinic for evaluation for therapy. Because of the severity of QMinor 's behavioral symptoms, Ms. Morris has been informed that failure to follow through with the referral to therapy will result in a report to the Department of Social Services for medical neglect. Without therapeutic intervention, Minor will remain at great risk of experiencing the sequelae of sexual trauma, including possible depression, sexual acting out, and anxiety disorders which will impact upon her development and social adjustment.
3. It is recommended that Minor 's siblings in Charleston, SC, be evaluated for sexual abuse because of the risks of being exposed to a named sexual offender. The evaluation should include medical exams to rule out the presence of condyloma.
4. Minor has been referred to Dr. Soper, Duke OB/GYN, for treatment of her condyloma. It is requested that genital and anal cultures be taken for chlamydia and gonorrhea be taken at the time Minor has her genital warts removed.



Laura T. Gutman, M.D.
Director
Child Protection Team



Jeanne Niemeyer Arnts, CCSW
Clinical Social Worker
Child Protection Team

distribution: CPT file
DUMC Med Record (Sensitive file)
Pam Pinchback, Durham Co. DSS
Det. Marshall, 212 Deming Way, Summersville, SC 29483
Mary Sue Chemey, CGC

Exhibit (N.A)

**South Carolina Department of Social Services
CENTRAL REGISTRY INFORMATION FOR UNFOUNDED INVESTIGATIONS**

Date: 11/30/98

Address: Mr. Rodney Elliott
Kirkland Correctional Institution
4434 Broad River Road
Columbia, South Carolina 29210

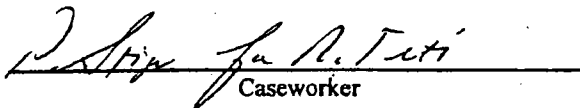
This is to inform you that the child protective services investigation involving you or your children initiated on 8/3/98 was determined unfounded on 9/16/98 and classified as a:

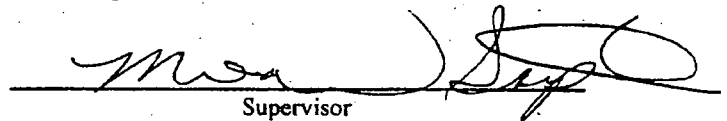
- X **Category I Unfounded Report** - Abuse and neglect was ruled out by the investigation.
Category II Unfounded Report - The evidence produced by the investigation was inconclusive as to whether abuse or neglect occurred.
Category III Unfounded Report - An investigation could not be completed because the department was unable to locate the child or family or for some other compelling reason.

If classified as Category I or II, this means that the investigation has been concluded. Category III cases may be reopened if additional information is received which allows the Department to complete the investigation. Also, as provided by state law, identifying information regarding you and/or the children has been eliminated from the Department's Central Registry of Child Abuse and Neglect. The agency's investigative file will be destroyed no later than one year from the date of the case decision and information will be kept confidential pursuant to S.C. Code Section 20-7-650(I). During one year, the report and related information found in a Category II or III Unfounded Report may be used by the Department or law enforcement agencies in relation to child abuse and neglect investigations or proceedings involving the subject or the same child.

If you have reason to believe that the report was made maliciously or in bad faith, pursuant to Section 20-7-695, you have the right to request in writing that the record be retained by the department for up to two years from the date of the case decision. This written request must be received by the department within thirty days of receipt of the case decision. Should you choose to exercise this right, you have the right to request a copy of the record.

If you have any questions regarding this notice or the completed investigation, please contact the caseworker or supervisor identified below at (843) 719-1087 during normal working hours.


Caseworker


Supervisor

Attachment - Clarification and/or other concerns that have been identified.

Exhibit (N.B)

SOUTH CAROLINA
DEPARTMENT OF SOCIAL SERVICES
DETERMINATION FACT SHEET

CASE NAME: Mr. Rodney Elliott ADDRESS: Kirkland Correctional Institution 4434 Broad River Road Columbia, South Carolina 29210	CASE NUMBER: 13583
--	------------------------------

As of 9/16/98 it is the decision of the Department that the investigation initiated on 8/4/98 has been unfounded for the following forms of maltreatment: Threat of harm of Sexual Abuse as supported by the facts and observations recorded below and in the county investigative file.

FACTS	SUPPORTING DOCUMENTATION OBSERVATIONS
It was reported that Mr. Rodney Elliott had been convicted of CSC with a minor due to his Sexual Abuse of his 14 yr. old biological daughter. Mr. Elliott was currently serving a 20 yr. sentence as a result of this conviction. The concern was that Mr. Elliotts' other two children by another woman had been living with their mother and Mr. Elliott at the time of his arrest and they had not been assessed for possible sexual abuse by Mr. Elliott. Ms. Elliott was found to be protective of her children and cooperated with Berkeley Co. D.S.S. The children (Jessica Elliott: d.o.b. 8/7/92 and Jamal Elliott: d.o.b. 1/30/98) were interviewed for CA/N by Lowcountry Children Center on 9/10/98. No concerns for CA/N were discovered as a result of these interviews. It was confirmed that Mr. Elliott was admitted to SCDC on 7/24/98 and had no access to the children.	-Statements made by Ms. Elliott -Interviews of children by Lowcountry Children's Center -Statements made by SCDC personnell -Statements made by Referral Source -Supervisory Staffings

For indicated investigations check one:

You have been identified as a person responsible for harm to a child.

A child with whom you are involved has been identified as being abused and/or neglected by State statute. You have not been identified as being responsible for the maltreatment. This information is being provided to you solely because of your legal relationship with the child.

A child for whom you are the caretaker has been determined to be abused and/or neglected.

Day Care Facility: the matter will be referred to your employer and the DSS Division of Child Day Care and Regulatory Services for action.

Out of Home Abuse and Neglect: See attached letter for additional information regarding appeal of this decision.

A child has been determined to have been harmed while at your child care facility. The DSS Division of Child Day Care Licensing and Regulatory Services will contact you regarding a corrective action plan and/or any other actions needed to insure the safety of children.

For unfounded investigations, see attached letter.

Worker's Signature <i>[Signature]</i>	Date 12/3/98	Supervisor's Signature <i>[Signature]</i>	Date 12-3-98
--	-----------------	--	-----------------

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

Exhibit (N.C.)

JAMES H. HODGES
Governor



ROBERT M. STEWART
Chief

September 27, 1999

Mr. Rodney Elliott, #251337
Lieber Correctional Inst.
P. O. Box 205
Ridgeville, SC 29472

Dear Mr. Elliott:

We have searched our database under the name Rodney Elliott with negative results. If there are any other names you can provide, we will be glad to search our database again.

If I can be of further assistance or if you have any questions, please feel free to contact me at 803-896-7013.

Sincerely,

personal file
MJ Brown / mcp

Michael J. Brown, Lieutenant
Supervisory Special Agent
FOIA / Subpoena Compliance Coordinator

MJB/mcp#99-1118



EXHIBIT (N.C.-1)

INCIDENT REPORT
SC0180000

DORC COUNTY SHERIFF'S OFFICE
100 Sears St. • St. George, SC 29477 • (803) 563-0259
212 Derring Way • Summerville, SC 29483 • (803) 832-0300
JOHN G. SOUTHERLAND, Sheriff

CASE NUMBER

96.023686

NCIC

NO. ENTD

EVENT	INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc. Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
	1. Criminal Sexual Conduct w/ Minors I/A	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Residence		
	2.	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) *Rd. Ridgewille* ZIP CODE *29472* WEAPON TYPE

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME	DISPATCH DATE/TIME	24 HR. CLOCK	DISP. TIME	LOCATION NO.
04-27-96			06-06-96		092596	1800		1800	1815	2

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) *Morris - Vivian* RELATIONSHIP TO SUBJECT *FS* RESIDENT J S U RACE *B* SEX *F* AGE *30* ETH. *N*

ADDRESS *Durham APT A* CITY *Durham* STATE *NC* ZIP CODE *27704* LOCATION NO.

VICTIM'S NAME (LAST, FIRST, MIDDLE) *Minor* RELATIONSHIP TO SUBJECT *CH* RESIDENT J S U RACE *B* SEX *F* AGE *11* ETH. *N* DAY/TIME PHONE EVENING PHONE *SAME*

HEIGHT *46* WEIGHT *95* HAIR *BLK* EYES *BRN* FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS *1405 CHELSEA DR* CITY *DURHAM* STATE *NC* ZIP CODE *27704* LOCATION NO.

VEHICLE INJURY (VEH. 1) YES NO EXPLAIN - COMPLAINT OF ANY NON-VISIBLE INJURY: YES NO

VICTIM (NO. 1) USING: ALCOHOL YES NO UNK. DRUGS: YES NO UNK. TYPE: ONE-MAN VEN. TWO-MAN VEN. DETECTIVE/PLASMT. OTHER ALONE ASSISTED *J - This Jurisdiction, S - State, O - Out of State, U - Unknown

SUBJECT NO. 1	<input checked="" type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	<input type="checkbox"/> RUNAWAY	<i>ELLIOTT - RODNEY</i>	<i>B</i>	<i>M</i>	<i>30</i>	<i>N</i>	<i>UNK</i>	<i>510</i>	<i>140</i>	<i>BLK</i>	<i>BRN</i>
	<input type="checkbox"/> WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	<input type="checkbox"/> WARRANT	ADDRESS									
	<input type="checkbox"/> ARREST	CITY <i>Ridgewille</i> STATE <i>SC</i> ZIP CODE <i>29472</i> LOCATION NO. <i>2</i>									

SUBJECT (NO. 1) USING: ALCOHOL YES NO UNK. X ARRESTED NEAR OFFENSE SCENE YES NO DATE/TIME OF OFFENSE TOTAL # ARRESTED

COMP STATES THAT BETWEEN THE ABOVE DATES LISTED ABOVE, THE VICTIM WAS SPENDING SPRING BREAK WITH HER FATHER AT THE ABOVE INCIDENT LOCATION. THE COMP LEARNED FROM THE VICTIM THAT DURING THIS PERIOD OF TIME, THE SUBJECT SEXUALLY MOLESTED HER DAUGHTER BY FUNDLING, FORCING THE VICTIM TO HOLD HIS PENIS, AND VAGINAL PENETRATION. COMP WAS PROVIDED WITH A CASE # + RD NOTIFIED CAPT LAPOLLA OF THE INCIDENT.

JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

TYPE (GROUP)						TOTAL VALUE
STOLEN						
DAMAGED						
RECOVERED						
SEIZED						

SUBJECT IDENTIFIED YES NO SUBJECT IDENTIFIED YES NO ACTIVE ADM CLOSED UNFOUNDED ARRESTED UNDER 18 ARRESTED 18 AND OVER EX-CLEAR UNDER 18 EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. OFFENDER DEATH 2. NO PROSECUTION 3. EXTRADITION DENIED 4. VICTIM DECLINES COOPERATION 5. JUVENILE - NO CUSTODY REPORTING OFF YEARS

REPORTING OFFICER *P. HARTWIG* DATE *092596* UNIT NUMBER *62* APPROVING OFFICER *P. HARTWIG* DATE *092596* UNIT NUMBER *62*

Exhibit (N.C.-2)

WINCHESTER COUNTY SHERIFF'S OFFICE INVESTIGATIVE CASE NOTES

SECTION # _____

DATE: _____ PHONE #: _____

11-13-96 09:55

T/O Called ^{Minor} Alston middle School & Spoke to Mrs. Sandu

& ASKED if _____ went to school

went school Aug 8, 95.

got this information from Mrs. of Guidance

T/O on 11-13-96 ^{11:24} Spoke to Mrs. Morris & she

Said ^{Minor} _____ went to Clay Hill School

T/O called Clay Hill School at 11-13-96 11:30

Mrs. Ross - ~~_____~~

Victim went to Clay Hill School from 1-3-96 to 6-10-96

CHECK ONE:

- CONTACT WITH VICTIM ()
- VICTIM WILL NOT RETURN I/O'S PHONE CALLS ()
- VICTIM DECLINES TO PROSECUTE ()
- ADDITIONAL NOTES

I/O'S SIGNATURE _____

EXHIBIT (N.C. - 3)

WORCHESTER COUNTY SHERIFF'S OFFICE
INVESTIGATIVE CASE NOTES

SEARCH # _____

ICTIME: _____ PHONE #: _____

1-2-97 09:42

RES: ELLIOTT, Rodney 3-7-63

Electrician, Cullum Mechanical N. Chor. (Pacific Ave.)

WORK 1yr. H.P. ALLEN N. Chor.

Co. on (D'Rowk)

RES: _____

RES: _____

RES: _____

RES: _____

CHECK ONE:

- CONTACT WITH VICTIM ()
- VICTIM WILL NOT RETURN I/O'S PHONE CALLS ()
- VICTIM DECLINES TO PROSECUTE ()
- SEE ADDITIONAL NOTES

I/O'S SIGNATURE

Exhibit (N.C.-4)

SUPPLEMENTARY REPORT
SC0180000

DORCHESTER COUNTY SHERIFF'S OFFICE
100 Sears St. - St. George, SC 29477 • (803) 563-0259
212 Deming Way • Summerville, SC 29483 • (803) 832-0300
JOHN G. SOUTHERLAND, Sheriff

CASE NUMBER

96-023686

NCIC

NO. EXT.

ORIGINAL REPORT
 MODIFIED ORIGINAL

SUPPLEMENTAL REPORT
 CASE STATUS CHANGE

ADDITIONAL VICTIMS
 ADDITIONAL OFFENDERS

ADDITIONAL STOLEN PROPERTY
 ADDITIONAL RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

on 1-2-97 this I/O went to St. George Jail +
talked to Rodney Elliott. This I/O used Rodney Elliott
his Rights + He stated He wanted a Lawyer.
After this Rodney Elliott was taken to a Bond hearing
+ Judge Stevens set bond at \$80,000.
This case is cleared by Arrest.

ADMINISTRATIVE

ADMINISTRATIVE	SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNPOUNDED		<input type="checkbox"/> ARRESTED UNDER 18 <input checked="" type="checkbox"/> ARRESTED 18 AND OVER		<input type="checkbox"/> EX-CLEAR UNDER 18 <input type="checkbox"/> EX-CLEAR 18 AND OVER		
	REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE - NO CUSTODY										
	REPORTING OFFICER(S) <i>[Signature]</i>			DATE 1-2-97		UNIT NUMBER 91		APPROVING OFFICER			DATE

FOLLOW-UP
INVESTIGATION YES NO

Exhibit (0)
5 pages

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CASE NO. 86-DR-10-0825

RODNEY ELLIOTT
Petitioner,

FILED

VS.

FINAL ORDER

SEP 25 1987

VIVIAN BERNADETTE JOHNSON,
Respondent.

HOWARD A. TAYLOR
CLERK, FAMILY COURT

617 5440 PM

This matter came to be heard before me on September 9, 1987, on a Petition filed by Rodney Elliott for the custody of Christian Lolandra Johnson. The Respondent, duly served, has answered and counterclaimed for custody.

The Petitioner is before the Court, represented by Frampton Durban, Jr., of Neighborhood Legal Assistance Program, Inc.; the Respondent is before the Court represented by Willie Glee of the Charleston County Bar. This matter is properly before the Court for a final determination of custody.

Based on the matters presented at hearing, I make the following findings of fact:

1. That the Petitioner is the natural father, and the Respondent is the natural mother of Christian Lolandra Johnson, a minor child born on August 17, 1984.
2. For the first year of her life, the minor child was in the custody of the Respondent. During this time, the Petitioner contributed some clothing and diapers for the child and did visit with the child, although there is no evidence that



he contributed adequately to the support of the child during this first year.

3. During the month of September, 1985, the Respondent voluntarily relinquished possession of the child to the Petitioner and his mother; the child has been in the custody of the Petitioner and his mother since that time.

4. The Petitioner is a high school graduate presently in training for a career in electrical contracting. I am impressed with his stability and the fact that his life and career goals have been formulated with his child in mind.

5. The Respondent has recently married and obtained new employment, through which she is training for a managerial position. Although the Respondent shows potential for stability, her recent personal and career transitions have created some instability in her present life.

6. I find and conclude that the duly appointed Guardian ad litem for the child, Carol Seltzer, has made a full and complete investigation of the living situations of both parents, including visits to both homes when the child was present, and has recommended that custody remain with the Petitioner.

7. I further find and conclude that neither party has presented to this Court evidence sufficient for me to believe that either parent is unfit to care for this child; it is apparent, however, that the Petitioner is more stable at this time and better capable of caring for the child, both financially and emotionally, provided the Respondent has liberal access to her

child through visitation.

8. Based on the facts as found above, I find and conclude that it would be in the best interests of the minor child for the Petitioner to remain as the custodial parent of this child, subject to liberal visitation rights between the child and the Respondent. I further apprise the Respondent of her right, after a reasonable time, to petition this Court for a modification of custody based on a change of circumstances. It is, therefore:

ORDERED that the Petitioner be, and he hereby is, found and determined to be the natural father of Christian Lolandra Johnson, a minor child born to him and the Respondent on August 17, 1984.

AND IT IS FURTHER ORDERED that the Petitioner be, and he hereby is, granted custody of Christian Lolandra Johnson, subject to the following visitation rights in the Respondent:

- A. The Respondent shall be entitled to visit with her child on alternate weekends, continuing on the schedule established by the Temporary Order issued by this Court on March 31, 1986, beginning at 5:00 p.m. on Friday and continuing until 5:00 p.m. on Sunday.
- B. Notwithstanding any other visitation provision of this Order, the Respondent shall be entitled to visit with the child on alternate Easter holidays, beginning with Easter, 1987, from 5:00 p.m. on the Friday preceding Easter until 5:00 p.m. on Easter Sunday.
- C. Notwithstanding any other provision of this Order, the Respondent shall be entitled to visit with her child on alternate Thanksgiving weekends, beginning with Thanksgiving weekend, 1986, from 5:00 p.m. on Wednesday preceding Thanksgiving until 5:00 p.m. on Sunday following Thanksgiving.
- D. Notwithstanding any other provision of this Order, the parties shall divide the Christmas holidays.

with the child as follows: Over Christmas, 1986, the Petitioner shall have the child in his custody until 1:00 p.m. on Christmas afternoon, and the Respondent shall have visitation with the child from 1:00 p.m. Christmas afternoon until 5:00 p.m. On January 1, 1986, Over Christmas vacation, 1987, the parties shall reverse this timing, with the Respondent visiting with the child from 5:00 p.m. One week prior to Christmas until 1:00 p.m. on Christmas Day, and these periods of time over Christmas holidays shall alternate from year to year.

E. Should the Petitioner need or wish to place the child under the care of a babysitter or day care facility in any situation other than the normal day-to-day routine established for the child, he shall first contact the Respondent and offer her visitation with the child during that period.

F. In all situations where the child is being transported by automobile, the child shall be seated in an appropriate child car seat. Should the Respondent not have such a car seat available, the Petitioner will provide her with one for such times as she has visitation with the child.

AND IT IS FURTHER ORDERED that nothing contained herein shall be held to discourage the parties from agreeing to such additional periods of visitation as may be desirable, so long as such periods of visitation do not disrupt the stability of the child's present lifestyle.

AND IT IS FURTHER ORDERED that the Respondent is not financially able to contribute child support at the present time, and all issues of child support are hereby reserved.

AND IT IS FURTHER ORDERED that the Respondent shall be responsible for paying the sum of Two Hundred (\$200.00) Dollars against the fee charged by the Guardian ad litem herein, to be paid at the rate of no less than Ten (\$10.00) Dollars per week. The Petitioner shall be responsible for the balance due on the

charged by the Guardian ad Litem.

AND IT IS SO ORDERED

I certify that this Order is in compliance with Rule 27(c) of the Rules of Practice for Family Court.

Robert S. Norwool Gasque

ROBERT S. NORWOOL GASQUE
FAMILY COURT JUDGE
NINTH JUDICIAL CIRCUIT

Charleston, South Carolina

25th day of *September*, 1986.

DEFENSE OF INDIGENTS ACT

FORM NO. IV

In the Court of General Sessions

FILED-RECORDED
2001 AUG 14 PM 1:07
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

County of Dorchester

Docket No. 2001CP18-0903

STATE OF SOUTH CAROLINA

vs.

Rodney Elliott
Defendant

ORDER OF APPOINTMENT OF LEGAL
COUNSEL FOR INDIGENT DEFENDANT

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law
THEREFORE, Barry J. Wimberly, Attorney-at-Law, is appointed as counsel
for the defendant. 121 Driewood Dr.
Eutawville, SC 29046

This 14 day of August, 2001

at ST. GEORGE, SOUTH CAROLINA

Cheryl Graham
CLERK OF COURT DORCHESTER COUNTY

DEFENSE OF INDIGENTS ACT

FORM NO. IV REDED

2002 FEB 25 PM 2:56

CLERK OF COURT
In the Court of General Sessions

STATE OF SOUTH CAROLINA

County of Dorchester

Docket No. 2001CP18-903

STATE OF SOUTH CAROLINA

vs.

Rodney Elliott
Defendant

ORDER OF APPOINTMENT OF LEGAL
COUNSEL FOR INDIGENT DEFENDANT

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law
THEREFORE, Vernida Hill Attorney-at-Law, is appointed as counsel
for the defendant. 308 Bluebell Ave.
D'ville, SC 29483

This 25 day of February 2002

at ST. GEORGE, SOUTH CAROLINA

Cheryl Graham
CLERK OF COURT, DORCHESTER COUNTY

JE

STATE OF SOUTH CAROLINA FILED - RECORDED
COUNTY OF DORCHESTER 2011 MAR 25 PM 3:38 IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2001-CP-18-903

Rodney Elliott,
S.C.D.C. #251337,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN AND MOTION TO DISMISS

FILED - RECORDED
2002 APR 26 PM 12:56
CLERK OF COURT
DORCHESTER COUNTY

The Respondent (the State), making its Return to the application for Post-Conviction Relief (PCR) filed July 25, 2001, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the May 1997 term of the Dorchester County Grand Jury for criminal sexual conduct in the first degree and criminal sexual conduct in the second degree [1997-GS-18-239; 1997-GS-18-239]. He was represented by Gene Dukes, Esquire. The Applicant proceeded to a jury trial on July 22-24, 1998. He was found guilty of criminal sexual conduct in the second degree. The Honorable Luke N. Brown sentenced the Applicant to imprisonment for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Elliott, Op. No. 2000-UP-684 (S.C. Ct. App. filed November 15, 2000).

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

II.

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

1. "Lack of jurisdiction over the subject matter and defendant";
2. "Improper venue, insfficiency [*sic*] of process and service; and
3. "Failure to state facts sufficient to constitute [*sic*] a cause of action.

III.

The Application makes wide ranging allegations including unauthorized arrest, violated termination, malicious prosecution, gross negligance [*sic*], State laws, subject matter, affirmative defense, and unconstitutional sentence. The State concedes that subject matter jurisdiction may be raised at any time. The State moves for summary dismissal pursuant to South Carolina Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law on regarding the subject matter jurisdiction claim.

The Applicant has failed to specify any grounds upon which he seeks relief other than various statements regarding his case. The Uniform Post-Conviction Procedure Act (the Act) requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985). In an application for PCR, it is incumbent upon

the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the State would submit that this allegation should be dismissed for failing to meet the requirements of the Act. In any event, the State submits because the allegation is so vague that it is impossible for the State to more specifically respond. Therefore, unless the Applicant makes a clear statement of what he intends to allege, the State requests that this Application be dismissed.

IV.

The Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Further, a claim of "ineffective assistance of counsel" is insufficient to meet the requirements of the PCR statute. Applicant must have informed Respondent of specific claims well prior to the date of the PCR hearing or the State will move to dismiss any vague or general claims.

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 and Motion to Dismiss, the Respondent requests that the Application be summarily dismissed.

CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

B. ALLEN BULLARD, JR.
Assistant Deputy Attorney General

DONALD J. ZELENKA
Chief, Capital & Collateral Litigation

ELIZABETH R. MCMAHON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Columbia, South Carolina
April 24, 2002

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

2001-CP-18-903

Rodney Elliott,)
S.C.D.C. #251337)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina,)

Respondent.)

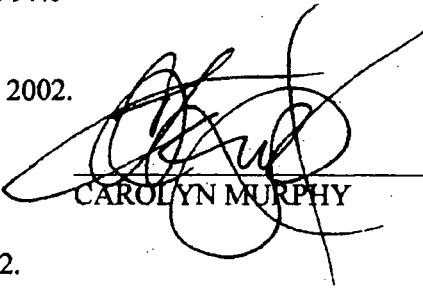
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Carolyn Murphy, who being first duly sworn, states:

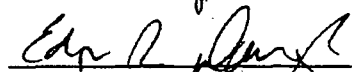
1. That I am an employee of the Office of the Attorney General.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of the Order in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

Barry Wimberly, Esquire
121 Driftwood Drive
Eutawville, SC 29048-9446

DATED this 25th day of April, 2002.


CAROLYN MURPHY

SWORN to before me this
25th day of April, 2002.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: March 28, 2008



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 25, 2002

Honorable Cheryl Graham
Clerk of Court
Dorchester County
101 Ridge Street
St. George, SC 29477

RE: Rodney Elliott, 251337 vs. State of South Carolina
2001-CP-18-903

Dear Ms. Graham:

Enclosed please find the State's Return in the above-referenced matter for filing in your Office.

Sincerely,

A handwritten signature in black ink, appearing to be "Carolyn Murphy", written over a large, loopy flourish.

Carolyn Murphy
Paralegal

/cam

enclosures

cc: Barry Wimberly, Esquire

Handwritten initials and a circled mark.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
 Rodney Elliott,)
 S.C.D.C. #251337,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

2001-CP-18-903

ORDER OF DISMISSAL

FILED - RECORDED
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 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on July 25, 2001. The Respondent made its Return and Motion to Dismiss on April 25, 2002, requesting the Application be summarily dismissed. A hearing was convened at the Dorchester County Courthouse on Monday, October 14, 2002, at which time the Applicant was present in court and represented by Vernida Hill, Esquire. The Respondent was represented by Elizabeth R. McMahon of the South Carolina Attorney General's Office.

I PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. The Applicant was indicted at the May 1997 term of the Dorchester County Grand Jury for criminal sexual conduct in the first degree and criminal sexual conduct in the second degree [1997-GS-18-239; 1997-GS-18-239]. He was represented by Gene Dukes, Esquire. The Applicant proceeded to a jury trial on July 22-24, 1998. He was found guilty of criminal sexual conduct in the second degree. The Honorable Luke N. Brown

sentenced the Applicant to twenty (20) years imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Elliott, Op. No. 2000-UP-684 (S.C. Ct. App. filed November 15, 2000).

II ALLEGATIONS

The Applicant alleged in his PCR Application that he was being held in custody unlawfully for the following reasons:

1. "Lack of jurisdiction over the subject matter and defendant";
2. "Improper venue, insufficiency [*sic*] of process and service; and
3. "Failure to state facts sufficient to constitute [*sic*] a cause of action.

Rodney Elliott, the Applicant, Geraldine Elliott, the Applicant's wife, and Hazel Newell, the Applicant's mother, testified at the PCR hearing. Gene Dukes, Esquire, the Applicant's trial counsel also testified at the PCR hearing.

III APPLICABLE LAW

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRPC.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). For an applicant to be granted PCR because of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that his counsel's ineffective performance prejudiced him. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); Judge v. State, 321 S.C. 554,

471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

"Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

IV SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

At the PCR hearing, the Applicant only presented a claim of ineffective assistance of counsel. The Applicant stated he asked about taking a lie detector test. The Applicant testified that his trial counsel was ineffective for failing to fully investigate his case. The Applicant stated that trial counsel failed to introduce evidence that he was free of sexually transmitted disease, failed to subpoena, Mack Magwood, a male boarder from the Applicant's residence to testify, and failed to

retain experts to examine the victim. The Applicant claimed he never talked to an investigator. The Applicant claimed that trial counsel should have obtained his medical records. The Applicant stated trial counsel should have subpoenaed Betsy Baker and Pam Pinchback to testify at his trial. The Applicant claimed that trial counsel should have met with him more often regarding his defense, trial counsel's trial strategy, and to discuss the medical evidence and witnesses in his case.

Trial counsel testified he was retained to represent the Applicant. Trial counsel presented a defense that the Applicant was not guilty of the charges. Trial counsel did not recall any reason to pursue the Applicant's medical records or have an independent evaluation conducted on the victim. Trial counsel stated he went over the discovery in the Applicant's case with the Applicant.

V FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Dorchester County Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction relief, the State's Return, the appellate court records, including the trial transcript, and the legal arguments of counsel. Pursuant to S.C. Code Ann. § 17-27-80 (1985), this Court makes the following findings of fact based upon all of the evidence presented:

The Court finds the Applicant's allegation that he received ineffective assistance of trial counsel without merit. The Applicant failed to submit any probative evidence that trial counsel rendered ineffective assistance of counsel in any regard. The Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239

S.E.2d 750 (1977); Strickland, 466 U.S. 668; Butler v. State, supra. The Court further finds the Applicant's testimony to the contrary is not credible.

The Applicant did not present any evidence that trial counsel failed to discover that was critical to his case. The Applicant did not present any of the witnesses to this Court that he claimed trial counsel failed to present at his trial. This court finds, further, that the Applicant's allegation that trial counsel did not conduct an adequate pre-trial investigation is without merit. See Moorehead, supra. Additionally, the Applicant failed to show this Court how additional meetings would have resulted in a different outcome at trial. See Johnson, supra.

Upon review of the record, this Court finds that the Applicant failed to show ineffective assistance of counsel and failed to present any evidence of prejudice therefrom. The Post-Conviction Relief Application is denied because the Applicant failed to show any errors or prejudice from the lack of meetings, witnesses or documents: SCDC, medical, or otherwise.

HOLDING

Based on the specific findings above, this Court finds that the Applicant failed to carry his burden of proof to the PCR Court showing ineffective assistance of trial counsel.

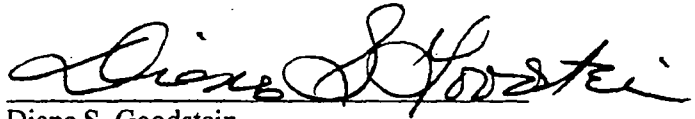
As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds that the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed with prejudice. The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. The Applicant's attention is directed to South Carolina Appellate Court Rule

227 for appropriate procedures on appeal.

IT IS THEREFORE ORDERED THAT:

1. The Post-Conviction relief Application is **DENIED AND DISMISSED WITH PREJUDICE**; and
2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 25 day of April, 2003.



Diane S. Goodstein
Presiding Judge
First Judicial Circuit

St. George, South Carolina.

STATE OF SOUTH CAROLINA)
)
County of DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

RODNEY ELLIOTT #251337)
Full name and prison number (if any) of Applicant)

2007-CP-18-736

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS BE READ CAREFULLY

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

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

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

1. Place of detention HA/F-3/B-2; Allendale Correctional Institution
P. O. Box 1151; Fairfax, S. C. 29827-1151
2. Name and location of Court which imposed sentence Dorchester County Court of General Sessions; 401 Ridge Street; St. George, S. C. 29477
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 97-GS-18-0238

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SHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

(c) N/A

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

(a) July 24, 1998 - Twenty (20) Years

(b) N/A

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere N/A

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

Yes

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

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

i. South Carolina Court of Appeals

ii. Dorchester County Court of Common Pleas/PCR Application

iii. South Carolina Court of Appeals

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

i. Direct Appeal Affirmed

ii. PCR Application Dismissed

iii. Certiorari Denied

(c) the date of each such result:

i. November 15, 2000

ii. May 7, 2003

iii. July 11, 2006

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

i. Unpublished Opinion No. 2000-UP-684/DECIDED 10/4/2000

ii. 2001-CP-18-903

iii. 2001-GS-18-903

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

(a) N/A

(b) _____

(c) _____

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

(a) SEE ADDENDUM NO. 1 PAGES 4-5

(b) SEE ADDENDUM NO. 1 PAGES 4-5

(c) SEE ADDENDUM NO. 1 PAGES 4-5

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

(a) SEE ADDENDUM NO. 2 PAGES 6-7

(b) SEE ADDENDUM NO. 3 PAGES 8-10

(c) SEE ADDENDUM NO. 4 PAGES 11-13

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

(a) any petition in a State Court under South Carolina Law? Yes

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

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

(d) any other petitions, motions or applications in this or any other Court? Yes

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

(a) the specific nature thereof:

i. Application for Post Conviction Relief

ii. Rule 59(e) Motion

iii. Petition for Writ of Certiorari

iv. N/A

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

i. Court of Common Pleas/Dorchester County

ii. Court of Common Pleas/Dorchester County

iii. S. C. Court of Appeals

ADDENDUM 1

The Applicant, in cases unrelated to the conviction attacked in the present application, was sentenced to concurrent terms of imprisonment for ninety (90) days based on his plea of guilty to Driving Under Suspension and ninety (90) days based on his plea of guilty for Failure To Stop on October 7, 1996. He was committed to the South Carolina Department of Corrections (SCDC). Prior to his release, the Applicant was served warrants charging him with Criminal Sexual Conduct With A Minor on December 31, 1996. During a February 3, 1997 preliminary hearing, these charges were dismissed; however, indictments charging the Applicant with CSC With A Minor were prepared around May 1997. Indictment 97-GS-18-0238 alleged that the Applicant committed CSC With A Minor 1st Degree between the dates of March 1995 and August 17, 1995. Indictment 97-GS-18-0239 alleged that the Applicant committed CSC With A Minor 2nd Degree between the dates of August 17, 1995 and June 1996. The alleged victim in these cases was the Applicant's daughter.

The Applicant, represented by Gene Dukes (counsel) was tried during the March 1998 term of Dorchester County General Sessions Court, the Honorable Luke N. Brown presiding. On March 8, 1998, this trial ended in a hung jury and a mistrial was ordered. The Applicant was re-tried during the July 1998 term of Court and the jury returned a verdict of guilty for CSC With A Minor 2nd Degree and a not guilty verdict for CSC With A Minor 1st Degree. Judge Brown sentenced the Applicant to twenty (20) years incarceration.

A timely notice of appeal was filed and on July 13, 2000, Robert Pachak of the Division of Appellate Defense perfected a no-merit brief pursuant to Anders v. California. The Applicant submitted a pro-se brief and the Court of Appeals dismissed the appeal on November 15, 2000 in Opinion Number 2000-UP-684. A Petition For Rehearing was denied on January 15, 2001.

The Applicant filed for Post-Conviction Relief on July 25, 2001 and the case was assigned number 2001-CP-18-0903. The State made its Return on April 24, 2002. The Applicant, represented by Vernida G. Hill, filed an Amended Application For Post-Conviction Relief on September 4, 2002. A hearing was held in the Dorchester County Courthouse, the Honorable Diane S. Goodstein presiding. On April 25, 2003, Judge Goodstein denied relief. Applicant filed A rule 59 (e), SCRPC motion which was denied. A timely notice of appeal was filed and on August 25, 2005, Aileen P. Claire of the Division of Appellate Defense filed a Petition For Writ of Certiorari. The State made its Return to the petition on January 9, 2006, and the South Carolina Supreme Court denied certiorari on July 11, 2006.

In this application, the Applicant alleges that he is being held in custody unlawfully based on the following:

(a) The Applicant alleges that he was denied his Sixth Amendment right to the effective assistance of counsel where counsel failed to investigate and procure evidence that the Applicant did not have any sexually transmitted diseases which would have shown that he was not the perpetrator of the sexual offenses committed.

(b) The Applicant alleges that he should be permitted to raise this allegation in the present application where the evidence is after-discovered and if presented during trial, would have likely resulted in a verdict of not guilty.

(c) The Applicant alleges that he is entitled to raise this allegation in the present application based on an intervening decision by the United States Supreme Court which held that a criminal defendant is denied due process where forensic evidence discovered after trial would show that he is actually innocent of the crime which he is convicted.

ADDENDUM 2

The Applicant alleges that he was denied his Sixth Amendment right to the effective assistance of counsel where counsel failed to investigate and procure evidence that the Applicant did not have any sexually transmitted diseases which would have shown that he was not the perpetrator of the sexual offenses committed.

During trial, it was revealed that the victim, (Minor), the Applicant's daughter, made a complaint that she was sexually assaulted by her father numerous times. (Minor) stated that on two occasions he penetrated her. The evidence at trial showed that (Minor)'s mother and the Applicant shared joint custody whereby (Minor) stayed with the Applicant, his wife and their two young children in South Carolina for periods of time and with her mother in various states at other times. These sexual assaults allegedly occurred between March 1995 and June 1996 while she was staying with the Applicant in Dorchester County. The allegations were made sometime after (Minor) returned to live with her mother in North Carolina in June 1996. Dorchester County law enforcement officials received report of the allegations around September 9, 1996.

(Minor) was examined by Dr. Gutman in North Carolina on October 22, 1996. Dr. Gutman noted that the victim showed signs of sexual activity and had genital warts caused from a sexually transmitted disease. According to Dr. Gutman, the only possible source of these warts would have been through sexual contact with an infected person. Although the State did not produce any evidence that the genital warts were caused by the Applicant, its theory of the case was that (Minor) had no sexual activity with any other person which would have caused the genital warts.

The Applicant denied any sexual abuse of his daughter and testified that if sexual abuse occurred, it would have been done while (Minor) was staying with her mother in another state. The Applicant indicated that (Minor)'s mother lived with various different people and with a boyfriend for some time while (Minor) was staying with her. Counsel did not attempt to present any evidence that the Applicant was not infected with any sexually transmitted disease (STD) despite having Dr. Gutman's report indicating that (Minor) could only have contracted the genital warts through sexual contact. The Applicant did testify that he did not have any STD.

A petitioner alleging he received ineffective assistance of counsel must show that counsel's performance was deficient and that as a result of this deficient performance, the petitioner suffered prejudice. Strickland v. Washington, 466 U.S.

ADDENDUM 3

The Applicant alleges that he should be permitted to raise this claim in the present application where the evidence is after-discovered and, if presented during trial, would have likely resulted in a verdict of not guilty

Following his conviction in July 1998 and dismissal of his appeal in January 2001, the Applicant subsequently filed a PCR action in July 2001. Among the issues raised in this action was an ineffective assistance of counsel claim based on counsel's failure to present evidence that the Applicant was not infected with a sexually transmitted disease. The PCR Court, following an evidentiary hearing, found counsel rendered professionally reasonable representation based on the Applicant's failure to produce the evidence at the PCR hearing. Although the Applicant submitted that his uncontroverted testimony alone was sufficient, the PCR Court found that to be too speculative to warrant relief. The Appellate Court ultimately affirmed this conclusion based on Dempsey v. State, 363 S.C. 365, 610 Se.2d. 812, (2005) (petitioner alleging ineffective counsel based on counsel's failure to present favorable evidence must produce this favorable evidence at the PCR hearing).

The Applicant concedes that the present application and indeed the allegation he now makes is successive and untimely. However, he contends that he should be entitled to a hearing in this action where he has received after-discovered evidence which could not have been discovered through reasonable diligence and this evidence creates a reasonable likelihood that the results of his trial would have been different had the evidence been presented.

Under S.C. Code Ann. §17-27-45(A), (2003), an application for PCR must be filed within one-year of the date of sentencing or within one-year of the date the remittitur is issued from denial of a direct appeal. Green v. State, 353 S.C. 29, 576 Se.2d. 182, (2003). Successive applications are generally disfavored and the applicant bears the burden to show he could not have presented the claim in an earlier PCR action. Aice v. State, 305 S.C. 448, 409 Se.2d. 392, (1991); See S.C. Code Ann. §17-27-90, (2003). The tolling provision in §17-27-45(C), allows for filing of a PCR action within one year following discovery of evidence which, had it been presented, would likely have changed the result of the case, provided that due diligence in discovering the evidence was exercised. Coats v. State, 352 S.C. 500, 575 Se.2d. 557, (2003).

668, 104 S.Ct. 2054, (1984). The reasonableness of counsel's tactical decisions on what evidence to investigate and present in defense is governed by the facts and circumstances surrounding the case, and information supplied by the defendant. Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066; Pauling v. State, 331 S.C. 606, 503 Se.2d. 468, (1998). Prejudice is demonstrated by showing that but for the unreasonable acts or omissions of counsel, there is a reasonable probability that the result of the proceeding would have been different. Strickland, 466 U.S. at 694-695, 104 S.Ct. at 2068; Roberts v. State, 361 S.C. 1, 602 Se.2d. 768, (2004).

The Applicant contends that counsel's performance was deficient where documentary and forensic evidence produced at approximately the same time as the sexual abuse allegations showing the Applicant was free of any STD's was readily available. Counsel had Dr. Gutman's report dated October 22, 1996 which indicated not only that Minor had genital warts but that she received medical treatment for them. Counsel represented the Applicant during his 1996 charges of DUS and Failure To Stop which resulted in his incarceration in the South Carolina Department of Corrections. Because the SCDC screens all inmates for STD's upon entry, evidence showing the Applicant did not have any STD could have been obtained through SCDC records. Therefore, reasonable trial strategy would have been presentation of any evidence showing the Applicant did not have an STD only several months after he allegedly assaulted Minor. The reasonableness of this defense is obvious in light of the State's theory of the case, the availability of the evidence, and the proximity in time between the alleged assault and the testing of the Applicant. Dove v. State, 337 S.C. 298, 523 Se.2d. 459, (1999) (counsel's performance deficient where he failed to obtain and present evidence despite knowledge of its ready availability and the evidence supported the defense presented).

The Applicant contends that he was prejudiced by counsel's failure to present evidence that he did not have any STD at the time of his previous incarceration in the SCDC. The Applicant's first trial ended in a hung jury and he was found not guilty of CSC With A Minor First Degree in the re-trial. The case was essentially a swearing contest between the Applicant and Minor. The only other evidence presented during trial was that of Dr. Gutman who indicated unequivocally that the only possible way Minor could have contracted genital warts was through sexual contact with an infected person. Clearly, evidence that the Applicant did not have any infection with a STD in November 1996 would have reasonably created doubt that the Applicant was the perpetrator of the sexual assault on his daughter.

Following his conviction, the Applicant contacted the South Carolina Law Enforcement Division (SLED) on September 7, 1999 requesting any DNA evidence or forensics testing done in his case. SLED responded that no records existed. On December 12, 2002, the Applicant requested from the SCDC medical records from 1996 until 2002 which would show reports of any results of tests for sexually transmitted diseases (STD's) he had been tested for. The request was forwarded to medical records in Columbia (Health Information Resources, HIR). The Applicant wrote HIR on March 5, 2003 requesting DNA data and any check for venereal diseases done by the SCDC. The March 21, 2003 response was that DNA testing would be in the possession of SLED but a copy of his HIV results was sent with the response.

On February 22, 2006, the Applicant again wrote the institutional medical records requesting any results of his 1996 testing for sexually transmitted diseases. He followed-up with a February 28, 2006 request to HIR for the same information and included his old SCDC number from his 1996 incarceration for Driving Under Suspension and Failure To Stop For A Blue Light. Having not received what he requested, the Applicant wrote several letters and requests in June and July 2006 to classification, the Warden's Office, Dr. Beiner at the Kirkland Reception and Evaluation Center, the SCDC Medical Director, the SCDC General Counsel, and SLED. In these requests and letters, the Applicant specifically asked for information from his 1996 commitment relative to any testing for STD's. The Applicant received a copy of his medical record for his current commitment.

Based on information contained in the Applicant's current medical record for his 1998 conviction, the Applicant learned that SCDC Form M-71 is used to report lab results. He filed a Petition For Writ of Mandamus to the South Carolina Supreme Court requesting copies of any M-71 Forms from the SCDC pertaining to his prior commitment to the SCDC. Specifically, the Applicant asked the Court to order the SCDC to supply him any Form M-71 which would show results of sexually transmitted disease testing done during his 1996 commitment. On November 6, 2006, the Court requested a response from the SCDC General Counsel and on November 16, 2006, the General Counsel, David Tatarsky, responded with a copy of a November 18, 1996 lab result. See Exhibits A-E.

The form received (Exhibit B) shows that on November 18, 1996, the Applicant was tested by Laboratory Corporation of America through the SCDC for gonorrhea DNA probe and that the results were negative. The Applicant contends temporal proximity between his November 18, 1996 test results and alleged she was sexually abused by the Applicant create a subst

could have been the perpetrator. The evidence presented at trial was that Minor contracted the genital warts through sexual contact with an infected person. The negative test results would have been probative evidence to support the defense that any sexual abuse suffered by Minor was committed by someone else.

The Applicant has diligently pursued forensic evidence that he did not have any STD since at least September 1999. His numerous letters to SLED and SCDC officials from 1999 through 2006 demonstrates that he actively pursued the evidence but was thwarted in his efforts. Indeed, throughout the time his previous PCR was pending, he sought the evidence. It was not until he filed a Petition For Writ of Mandamus that the SCDC sent the November 18, 1996 test results. Clearly, the Applicant exercised due diligence in discovering the evidence and should be permitted to present this evidence in the present PCR action. See Williams v. State, 354 S.C. 630, 583 S.e.2d. 52, (2003) (defendant's filing of four prior PCR actions, one of which was successful, was not repetitive nor frivolous so as to subject him to restrictions on future PCR filings).

ADDENDUM 4

The Applicant alleges that he should be permitted to raise this claim in the present application based on an intervening decision by the United States Supreme Court which held that a criminal defendant is denied due process where evidence discovered after trial would show that he is actually innocent of the crime which he is convicted.

During his previous application for PCR, the Applicant raised a claim of ineffectiveness of counsel claim based on counsel's failure to investigate and procure evidence that he was not infected with a STD and therefore, could not have passed any STD to Minor . The Applicant testified at the hearing that he did not have nor have ever had any STD and that Minor would have had to contract the genital warts from another person. The Applicant indicated that he raised the issue of the genital warts coming from a live-in boyfriend that Minor's mother had during times Minor lived with her mother. The PCR Court found the Applicant's testimony alone, without any documentary support was insufficient to support a grant of relief.

As the Applicant has stated, the present application is both successive and out of time per the statute of limitations contained in S.C. Code Ann. §17-27-45(A), (2003). However, the Applicant contends he should be permitted to raise the claim in this application based on retroactive application of the United States Supreme Court (USSC) decision in Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, (2006). Under S.C. Code Ann. §17-27-45(B), (2003), an applicant may raise a claim for relief based on an intervening decision of the USSC which is to be applied retroactively to cases on collateral review provided the action is filed within one (1) year of the decision. Talley v. State, Op. No. 26250 S.Ct. filed January 22, 2007.

In Holmes, the USSC reversed the petitioner's conviction based on the application of a procedural rule which disallowed his evidence of third party guilt. The State's evidence included some DNA evidence linking him to the scene of the murder and his palm print on the inside of the victim's front door. The petitioner was prevented by the trial court from presenting evidence consisting of witness testimony that a third party was in the vicinity of the crime scene when it was committed and that the third party had confessed to committing the crime. The state court examined the strength of the prosecution's case and concluded that petitioner could not draw a reasonable inference of his own innocence due to the overwhelming evidence. This evidentiary standard had been previously established in State v. Talley, 343 S.C. 543, 541 S.e.2d. 541, (2001), where the South Carolina Supreme

which implicates a third party is not admissible if there is strong evidence of the defendant's guilt. The USSC found that such a procedural rule violated due process where the petitioner was not afforded the right to present a defense.

The Applicant raised the Minor third party guilt during trial by eliciting testimony from witnesses that lived with her mother and her mother's boyfriend. Applicant did not present any other evidence to show the exact dates Minor lived with her mother's boyfriend or whether he had a STD which he could have transferred to Minor. Based on the evidence presented during trial, it is unlikely that the Applicant could have shown adequate evidence to demonstrate a reasonable inference of his own innocence under the standard in effect at that time per the South Carolina Supreme Court decision in Gay.

With the evidence the Applicant now possess, he would be able to demonstrate a reasonable probability of his own innocence, a claim he could not have made on his previous PCR which was litigated during the period of time between State v. Gay, and the USSC decision in Holmes. Therefore, the Applicant should be permitted to raise this claim under the tolling provision in §17-27-45(B). Since Holmes was decided on May 1, 2006, the Applicant should have until May 1, 2007 in which to present his claim.

Moreover, the Applicant contends he should be permitted to raise the claim in this application where the evidence would show he was actually innocent of the offense. No actual innocence exception to the limitation period in §17-27-45 or the prohibition on successive applications exists. However, federal courts allow for an actual innocence claim if the petitioner can meet threshold requirements: (1) petitioner must establish that he has new reliable evidence which was not presented during trial; and (2) considering all the evidence on record, it is more likely than not no reasonable juror would have found petitioner's guilt beyond a reasonable doubt. Schlup v. Delo, 513 U.S. 298, 115 S.Ct. 851, (1995); House v. Bell, 547 U.S. 126 S.Ct. 2064, (2006).

In House, petitioner presented DNA evidence which was not available at the time of trial, or at least not employed during trial, that showed semen on the victim's clothing was not his but in fact was her husband's. He also presented evidence that police investigation was substandard and resulted in cross-contamination of evidence. House was allowed to bring his actual innocence claim on federal habeas corpus despite the fact that it was procedurally defaulted in the Tennessee state court and had no state court avenue in which to seek relief.

The Applicant contends that he should be permitted to raise i

innocence in state court in order to effectuate the interests of comity and for preservation of the sovereignty of the state. The state should be allowed to correct its own errors, particularly constitutional errors that implicate the fundamental fairness, prior to the claims being presented to the federal courts. See State v. McKennedy, 348 S.C. 270, 559 Se.2d 850, (2002). As well, the Applicant contends that he should be permitted to raise this claim in this PCR action as such a denial would deny him due process. The clear import of the USSC decision in House was that a convicted person who presents evidence rising to the level of that necessary to meet the actual innocence standard should be permitted a hearing to present the evidence regardless of whether the evidence constitutes after-discovered evidence or whether the State has a mechanism by which the claim can be raised.

[The following text is extremely faint and largely illegible, appearing to be a series of lines or a list of items.]

- iv. N/A
- (c) the disposition thereof:
 - i. Application for Post Conviction Relief dismissed
 - ii. Rule 59(a) Motion - Denied
 - iii. Petition for Writ of Certiorari - Denied
 - iv. N/A
- (d) the date of each such disposition:
 - i. May 7, 2003
 - ii. July 7, 2004
 - iii. July 11, 2006
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. 2001-CP-18-903
 - ii. 2001-CP-18-903
 - iii. 2001-CP-18-903
 - 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 (NOTE: IN HER DISMISSAL OF APPLICANTS PCR, THE HONORABLE DIANNE S. GOODSTEIN STATED IN HER ORDER, "THE APPLICANT ONLY PRESENTED

5. ~~A CLAIM OF FURTHER ASSISTANCE OF COUNSEL AT PAGE 3 (APP. 365).~~
 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) SEE ADDENDUM NO. 5 PAGES 16

(b) SEE ADDENDUM NO. 5 PAGES 16

(c) SEE ADDENDUM NO. 5 PAGES 16

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

(a) your arraignment and plea? N/A

(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? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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

(a) the name and address of each attorney who represented you:

i. Gene Duker - 100 Ridge St. - St. George, SC 29477

ii. Robert Pachak, S.C. Office of Appellate Defense - 1330 Lady St. P.O. Box 11589 - Columbia, SC 29211

iii. Vernida G. Hill - P.O. Box 704 Central Ave. Suite A, Summerville, SC 29483

iv. Aileen Claire - S.C. Office of Appellate Defense - 1330 Lady St. P.O. Box 11589 - Columbia, SC 29211

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

i. Trial

ii. Direct Appeal

iii. Application for Post Conviction Relief

iv. PETITION FOR WRIT OF CERTIORARI

ADDENDUM 5

The allegation raised in 10(a) of this application is a claim that counsel rendered ineffective assistance for failing to investigate and procure evidence that the Applicant was not infected with a STD. This claim was raised in the Applicant's previous PCR action; however, he was unable to provide the required proof to warrant relief.

The allegation raised in 10(b) of this application is a claim that the Applicant should be permitted to raise his ineffective assistance of counsel claim in this PCR action based on the tolling provision contained in S.C. Code Ann. §17-27-45(C), (2003) where he has through due diligence uncovered after-discovered evidence which supports his ineffective assistance of counsel claim and would entitle him to relief.

The allegation raised in 10(c) of this application is a claim that the Applicant should be permitted to raise his ineffective assistance of counsel claim in this PCR action based on the tolling provision contained in S.C. Code Ann. §17-27-45(B), (2003) where the intervening decision of the United States Supreme Court in Holmes v. South Carolina, 547 U.S. 319, 126 S.Ct. 1727, (2006) should apply retroactively and entitles the Applicant an opportunity to present his claim. As well, this allegation should be allowed to proceed based on the actual innocence standard as outlined in House v. Bell, 547 U.S. , 126 S.Ct. 2064, (2006), in order to afford the Applicant fundamental fairness as guaranteed by due process.

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

Grant Applicant an evidentiary hearing; Reverse Applicant's conviction
and remand for new trial.

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

no

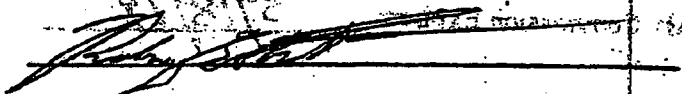
Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Dorchester)

I, Rodney Elliott, 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.



SWORN to and subscribed before me this 24 day of April, 2007

Helen P. Lamm (L.S.)
Notary Public

My Commission Expires: 5/18/14

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

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

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

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this 24 day of April, 2007

[Signature]
Notary Public

My Commission Expires: 5/18/14

CERTIFIED COPY
2007 MAY -1 PM 12:22
CLERK OF COURT
DORCHESTER COUNTY
[Signature]

EXHIBITS

Exhibits A-E

Subjects

Exhibit No. A

Letter from SCDC General Counsel David Tatarsky concerning DNA evidence

Exhibit No. B

Lab Report on DNA evidence

Exhibit No. C

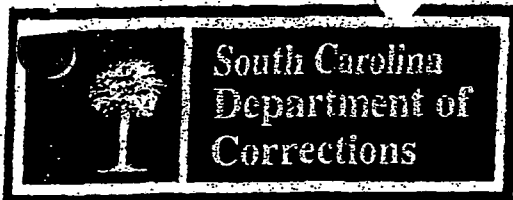
Order to Report SCDC Form 19-45

Exhibit No. D

SCDC/ACI date stamp showing the arrival of the DNA evidence

Exhibit No. E

Appendix pg. 365 Summary of testimony and evidence presented during PCR hearing



MARK SANFORD, Governor
JON OZMINT, Director

November 16, 2006

Brenda F. Shealy, Chief Deputy Clerk
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Rodney Elliott, #251337 v. State

Dear Chief Deputy Clerk Shealy:

Please allow this letter to serve as a response to your correspondence to me dated November 6, 2006. In your correspondence you state as follows: "The Court asks that you please advise in writing on or before November 16, 2006, as to the allegations contained in Mr. Elliott's mandamus." If the Court requires a more formal response, I will be glad to provide one.

Mr. Elliott's Petition alleges that the South Carolina Department of Corrections (SCDC) has failed to provide him with a copy of an "SCDC Form M-71 of June 1996" that he claims will invalidate his conviction for Second Degree Criminal Sexual Conduct with a Minor. In response to your correspondence and Mr. Elliott's allegation, I have personally reviewed his current "hard copy" inmate medical file as well as his current computerized medical file. I found an SCDC Form M-71 dated July 27, 1998 but none for calendar year 1996.

It should be noted that the form requested by Mr. Elliott, if it exists, was completed during his prior term of incarceration with SCDC under a different SCDC inmate number (#235868). I have had SCDC Health Information Resources search for and find the medical file for Mr. Elliott's prior incarceration under SCDC #235868 and have personally reviewed the file. I did not find an "SCDC Form M-71" in this file. I did find one lab report which I have attached to this response. As the SCDC Form M-71 is used to report miscellaneous lab results, out of an abundance of caution, I have produced this document. I cannot respond to Mr. Elliott's claim that SCDC employees admitted the existence of the "SCDC Form M-71 of June 1996" as I have no idea who Mr. Elliott has spoken with and he has not identified anyone by name in his pleadings.

If you have any questions, please do not hesitate to contact me.

Respectfully,


David M. Tatarsky
General Counsel

P.O. Box 21787 - 4444 Broad River Road - Columbia, SC 29221-1787 - Telephone (803) 896-8555

<http://www.state.sc.us/scdc> E-mail: corrections.info@doc.state.sc.us

CC: Rodney Elliott, #251337
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

[Faint, mostly illegible text, possibly a list or document content]

323-102-2006-0

DEPT OF CORRECTIONAL

87

Exhibit N

(COMPLETE) (H)	Age 31/08	Sex M	Control # 50825466226	Patient ID 3765RE	Phys DEVLIN
ELLIOTT, RODNEY	Fasting NIT	Account Number 39804075 LIEBER CORRECTIONAL INST PO BOX 205 HWY 630 RIDGEVILLE, SC 29472-0000 (803) 373-3332			
DOB 3/07/65	Tot Vol 9000				
183116P					

Spec Date 11/18/96 11:30 Received 11/18/96 Reported 11/19/96 16:10 Seq#

TEST	RESULT	OUT OF RANGE	UNITS	LIMITS
STS-RFX+GC-DNA+C/D				
STS		Non-Reactive		Non-Reactive
N. GONORR. DNA PROBE				
NEGATIVE FOR NEISSERIA GONORRHOEA BY DNA PROBE.				

NOTE: TEST VALID FOR FEMALE ENDOCERVICAL AND MALE URETHRAL SPECIMENS ONLY.

White Blood Count		3.6 L	X 10 ⁻³ /uL	4.0- 10.5
Red Blood Count	4.93		X 10 ⁻⁶ /uL	4.10- 5.60
Hemoglobin	14.1		g/dL	12.5- 17.0
Hematocrit	41.7		%	36.0- 50.0
MCV	85		fL	80- 98
MCH	28.7		pg	27.0- 34.0
MCHC	33.9		g/dL	32.5- 35.5
Platelets	216		X 10 ⁻³ /uL	140- 415
Polys	49		%	45- 76
Lymphs	42		%	17- 44
Monocytes	5		%	3- 10
Eos	3		%	0- 4
Basos	1		%	0- 2
Polys (Absolute)	1.8		X 10 ⁻³ /uL	1.8- 7.8
Lymphs (Absolute)	1.5		X 10 ⁻³ /uL	0.7- 4.5
Monocytes (Absolute)	0.2		X 10 ⁻³ /uL	0.1- 1.0
Eos (Absolute Value)	0.1		X 10 ⁻³ /uL	0.0- 0.4
Baso (Absolute)	0.0		X 10 ⁻³ /uL	0.0- 0.2

LAB: BN LABCORP HOLDINGS DIRECTOR: FRANK HANCOCK MD DIR
1447 YORK COURT, BURLINGTON, NC 27215-2230

LAB: CR LABCORP HLDINGS DIRECTOR: EUGENE D RUTLAND, JR MD
8 FARMFIELD AVE, CHARLESTON, SC 29407-0000

LAST PAGE OF REPORT

RECEIVED NOV 20 1996

REPORT

©Laboratory Corporation of America
All Rights Reserved

ELLIOTT, RODNEY

PAT ID: 3765RE

Spec Date 11/18/96

Elliott vs Stare

2007-CP-18-
Exhibit No. 2

Lab Report

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Operations
ORDER TO REPORT

SDC # 251337	Name ELLIOTT, ROONEY	Area F3B2
REPORT TO MAILROOM	AT MIN 11-20-06 1:00	RECEIVED NOV 20 2006 Bring Nothing <input checked="" type="checkbox"/> ACI POSTAL CENTER
Bring All Belongings <input type="checkbox"/>	Bring State Clothing <input type="checkbox"/>	
Date 11-17-06	Signed Hutchinson	
Date 11-17-06	Inmate's Signature Lundy Elliott	
Date 11-19-06	Staff Member's Signature D. Eady	

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)	FIRST JUDICIAL CIRCUIT
)	
)	2007-CP-18-736
Rodney Elliott,)	
S.C.D.C. #251337,)	
)	
Applicant,)	
)	
v.)	RETURN AND MOTION TO DISMISS
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent (the State), making its Return to the application for Post-Conviction Relief (PCR) filed May 1, 2007, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the May 1997 term of the Dorchester County Grand Jury for criminal sexual conduct in the first degree and criminal sexual conduct in the second degree [1997-GS-18-239; 1997-GS-18-239]. He was represented by Gene Dukes, Esquire. The Applicant proceeded to a jury trial on July 22-24, 1998. He was found guilty of criminal sexual conduct in the second degree. The Honorable Luke N. Brown sentenced the Applicant to imprisonment for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Elliott, Op. No. 2000-UP-684 (S.C. Ct. App. filed November 15, 2000).

Applicant subsequently filed an application for post-conviction relief on July 25, 2001. An evidentiary hearing was convened at the Dorchester County Courthouse on October 14, 2002. Judge Goodstein denied and dismissed the application by Order dated April 25, 2003. This Court dismissed a prior appeal without prejudice by Order dated July 1, 2003. On April 27, 2005, Applicant's Rule 59(e) motion was denied. The South Carolina Court of Appeals denied applicant's petition for writ of certiorari by Order dated July 11, 2006.

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

II.

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

1. "The Applicant alleges that he was denied his Sixth Amendment right to the effective assistance of counsel where counsel failed to investigate and procure evidence that the Applicant did not have any sexually transmitted diseases which would have shown that he was not the perpetrator of the sexual offenses committed."
2. "The Applicant alleges that he should be permitted to raise this allegation in the present application where the evidence is after-discovered and if presented during trial, would have likely resulted in a verdict of not guilty."
2. "The Applicant alleges that he is entitled to raise this allegation in the present application based on an intervening decision by the United States Supreme Court which held that a criminal defendant is denied due process where forensic evidence discovered after trial would show that he is actually innocent of the crime which he is convicted."

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on July 24, 1998. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on November 15, 2000. This Application was filed on May 1, 2007 which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Applicant alleges that newly discovered or after discovered evidence exists. A defendant

requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12. 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the Applicant raised this allegation in his previous application for post-conviction relief and on appeal from the denial of his prior application. The Court should summarily dismiss this allegation.

VI.

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

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

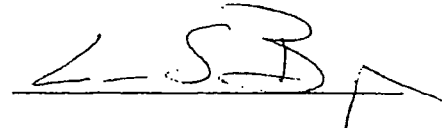
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

LANCE S. BOOZER
Assistant Attorney General

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

By:



Attorneys for the Respondents

Columbia, South Carolina
9/28, 2007

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

)
) IN THE COURT OF COMMON PLEAS

2007-CP-18-736

Rodney Elliott, 251337.

Applicant,

vs

State of South Carolina,

Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)
)
)
)
)
)

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

Joseph W. Ginn, III, Esquire
6 Carriage Lane, Ste. A
Charleston, SC 29407

DATED this 28th day of September, 2007.



Molly A. Flowers, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2007-CP-18-736

Rodney Elliott,
S.C.D.C. #251337,

Applicant,

v.

State of South Carolina,
Respondent.

CONDITIONAL ORDER OF DISMISSAL

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Clerk of Court
DORCHESTER COUNTY

This matter comes before this Court by way of an application for post-conviction relief filed May 1, 2007. Respondent made its return and motion to dismiss on September 28, 2007.

The records before this Court reflect that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the May 1997 term of the Dorchester County Grand Jury for criminal sexual conduct in the first degree and criminal sexual conduct in the second degree [1997-GS-18-239; 1997-GS-18-239]. He was represented by Gene Dukes, Esquire. The Applicant proceeded to a jury trial on July 22-24, 1998. He was found guilty of criminal sexual conduct in the second degree. The Honorable Luke N. Brown sentenced the Applicant to imprisonment for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Elliott, Op. No. 2000-UP-684 (S.C. Ct. App. filed November 15, 2000).

Applicant subsequently filed an application for post-conviction relief on July 25, 2001. An evidentiary hearing was convened at the Dorchester County Courthouse on October 14, 2002. Judge Goodstein denied and dismissed the application by Order dated April 25, 2003. This Court dismissed a prior appeal without prejudice by Order dated July 1, 2003. On April 27, 2005, Applicant's Rule 59(e) motion was denied. The South Carolina Court of Appeals denied applicant's petition for writ of certiorari by Order dated July 11, 2006.

Before this Court are the records of the Dorchester County Clerk of Court regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; Applicant's prior Application for PCR and Respondent's Return to same; and the Order denying and dismissing applicant's first Application for Post Conviction Relief.

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

1. "The Applicant alleges that he was denied his Sixth Amendment right to the effective assistance of counsel where counsel failed to investigate and procure evidence that the Applicant did not have any sexually transmitted diseases which would have shown that he was not the perpetrator of the sexual offenses committed."
2. "The Applicant alleges that he should be permitted to raise this allegation in the present application where the evidence is after-discovered and if presented during trial, would have likely resulted in a verdict of not guilty."
3. "The Applicant alleges that he is entitled to raise this allegation in the present application based on an intervening decision by the United States Supreme Court which held that a criminal defendant is denied due process where forensic evidence discovered after trial would show that he is actually innocent of the crime which he is convicted."

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code §17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction

Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (2003). S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on July 24, 1998. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on November 15, 2000. This Application was filed on May 1, 2007 which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

The Applicant alleges that newly discovered or after discovered evidence exists. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been

discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

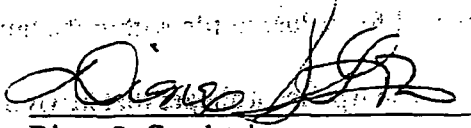
The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the Applicant raised this allegation in his previous application for post-conviction relief and on appeal from the denial of his prior application. The Court must summarily dismiss this allegation.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final.

The Applicant shall file any reasons he may have with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Lance S. Boezer, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 25 day of April, 2008.



Diane S. Goodstein
Chief Administrative Judge
First Judicial Circuit

Sumner
South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)
)
)
)
 Rodney Elliott, #251337,)
)
 Applicant,)
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 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

2007-CP-18-0736

FINAL ORDER

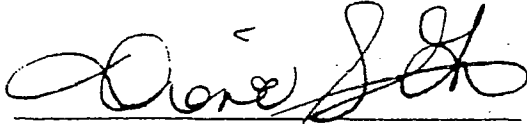
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This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 1, 2007. The Respondent made its Return and Motion to Dismiss on September 28, 2007, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated April 25, 2008, and filed May 16, 2008, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is a proof of service by certified mail on Applicant's appointed counsel dated July 11, 2008.

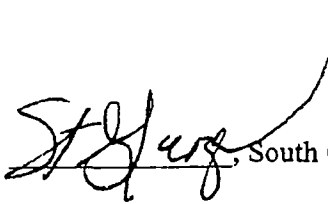
The Applicant made no response to the Conditional Order of Dismissal within the twenty (20) day response period. This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

AND IT IS SO ORDERED this 1 day of October, 2008.



DIANE SCHAFFER GOODSTEIN
Chief Judge for Administrative Purposes
First Judicial Circuit



South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

THE COURT OF COMMON PLEAS COUNTY
FOR THE FIRST JUDICIAL CIRCUIT

Rodney Elliott, #251337,)
Applicant,)
V.)
State of South Carolina,)

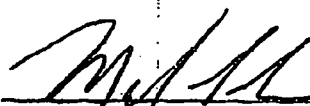
Case No. 2010-CP-18- 0747

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Clara Perkins
CLERK OF COURT
DORCHESTER COUNTY

RULE 59(E) MOTION

The Applicant hereby moves pursuant to Rule 59(e) of the rules of civil procedure for modification of this Court's Judgement of August 26, 2014, which was served on the Applicant by Counsel for the State by letter of September 3, 2014, which is attached. The within Motion is base upon the grounds that:

1. The failure of the Court to Consider the incompetence of Applicant's Counsel for his 2007 Post Conviction Relief Hearing violates his rights to Due Process of Law
2. Contrary to the Courts statement on page 5 of the Order that it "has had the opportunity to review the record in its entirety, it has failed to consider proceeding before the Honorable Diane Goodstein of November 2, 2013.



Mark L. Archer, Attorney for Applicant
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Mount Pleasant SC

9/10, 2014