

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marion County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

MAY 14 2015

S.C. Supreme Court

MATTHEW GERALD

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000376

APPENDIX

ROBERT M. PACHAK
Appellate Defender

ALAN WILSON
Attorney General

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

CLAY MITCHELL
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

TRIAL TRANSCRIPT (August 22, 2011) 1

APPLICATION FOR POST-CONVICTION RELIEF24

RETURN (December 10, 2013).....31

POST-CONVICTION RELIEF HEARING TRANSCRIPT (October 8, 2014).....36

ORDER OF DISMISSAL (December 19, 2014).....59

INDICTMENTS67

STATE OF SOUTH CAROLINA)
COUNTY OF MARION) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
11-GS-33-129

v.)
MATTHEW GERALD,)
DEFENDANT.)

August 22, 2011
Marion, South Carolina

BEFORE :

THE HONORABLE MICHAEL G. NETTLES, JUDGE

APPEARANCES:

JOHN C. JEPERTINGER, ESQ.
Assistant Solicitor

HENRY M. ANDERSON, JR., ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

RECEIVED
AUG 23 2011

INDEX

	Page
Qualifying of defendant	5
Facts of the case	6
Remarks by Mr. Anderson	16
Remarks by the defendant	20
Sentence of the court	21

(There were no exhibits submitted.)

1 MR. JEPERTINGER: If it would please the
2 Court, Your Honor, standing in front of you is
3 Matthew Gerald on 2011-GS-33-0129.

4 THE CLERK OF COURT: Place your left hand
5 here and raise your right hand please, sir.

6 WHEREUPON,

7 **MATTHEW GERALD,**
8 having been duly sworn by the Clerk of Court,
9 testified as follows:

10 MR. JEPERTINGER: Your Honor, in the
11 indictment Mr. Gerald is charged with criminal
12 sexual conduct in the first degree and kidnapping
13 and lewd act. He's pleading guilty to criminal
14 sexual conduct in the first degree and kidnapping.
15 The State is dismissing the lewd act. I have the
16 victim's mother, Ms. Jacqueline Lewis, and the
17 victim's uncle, Mr. Steve Lewis.

18 THE BROTHER: Brother.

19 MR. JEPERTINGER: Brother, excuse me, here
20 in the courtroom. The victim is a minor and at
21 school today. This case was slated to go to trial
22 tomorrow morning on all three charges of course, and
23 we worked this out.

24 THE COURT: All right, very good.
25 Mr. Anderson, you represent Mr. Gerald?

1 MR. ANDERSON: Yes, sir.

2 THE COURT: Have you explained to him the
3 offense of criminal sexual conduct first degree, the
4 fact that he could receive up to 30 years for this;
5 kidnapping, the fact he could receive up to 30 years
6 on this particular offense; the fact that both of
7 these are most serious offenses subject to the two
8 and three strike rule; both of them are violent
9 offenses which adversely affect his custody status,
10 and the fact that he'll serve this day for day.
11 Does he understand all of those ramifications of
12 this plea?

13 MR.. ANDERSON: Yes, sir.

14 THE COURT: Does he also understand that
15 he will be subjected to the sex offender registry
16 which will have life time implications?

17 MR. ANDERSON: Yes, sir, Your Honor.

18 THE COURT: Does he also understand that
19 when and if he completes this time of incarceration
20 that he could be subjected to the sexually violent
21 predator's act?

22 MR. ANDERSON: Yes, sir.

23 THE COURT: He understands all that and
24 the civil nature of it and how that can result in
25 civil confinement?

1 MR. ANDERSON: Yes, sir.

2 THE COURT: And how does he wish to plead?

3 MR. ANDERSON: Judge, while we -- if I can
4 just interrupt you for a second. Your Honor, I also
5 told him that my understanding is based on the
6 recentness of this offense he's also going to be
7 subject to that GPS monitor as a result of Jessie's
8 law. Also, Your Honor, I advised him that I thought
9 when he was released, if he's released, that he
10 would have that two years of community supervision
11 as well.

12 THE COURT: Right.

13 MR. ANDERSON: Your Honor, he does
14 understand all that. He and I have spoken about it
15 several times.

16 THE COURT: Does he understand the
17 elements of each of these offenses, potential
18 offenses and his constitutional rights?

19 MR. ANDERSON: Yes, sir.

20 THE COURT: All right. Is that true,
21 Mr. Gerald?

22 MR. ANDERSON: Yes, sir.

23 THE COURT: Mr. Gerald, are you under the
24 influence of any drugs or alcohol here today?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you experiencing any kind
2 of physical or mental problem that could prevent you
3 from understanding what's going on here today?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. I want you to pay
6 very close attention to Mr. Jepertinger summarize
7 the facts that bring us here today.

8 MR. JEPERTINGER: Your Honor, back on the
9 date in question in this case, October 26th, 2010,
10 Your Honor, the young juvenile in the case whose
11 name I won't state for the record except to say it
12 was a young, young man, was -- came home from
13 school, had gone to some friend's house, went to his
14 grandmother's house and decided to go to the Dollar
15 General in Mullins.

16 THE COURT: How old is this young fellow?

17 MR. JEPERTINGER: He was 13 at the time.
18 He's 14 now, Your Honor.

19 THE COURT: Very good.

20 MR. JEPERTINGER: He decided to go to the
21 Dollar General. He purchased oatmeal cookies there.
22 And this is the Dollar General right by the city
23 limits of Mullins, Your Honor. He walked -- he was
24 walking back through a path going down one of the
25 streets there, turned to go down another street.

1 His house was in the near vicinity. Over on the
2 intersection of Pyle Court and Nelson, he saw a man
3 that he had known as Bank (ph). He spoke to Bank
4 twice, once in 2009, and he also saw him he thinks
5 in earlier in 2010 talking to another man in the
6 neighborhood. But this was a smaller community
7 there, and he was known as Bank to the victim in
8 this case.

9 At that point the victim states that
10 Gerald said to him, what you doing out here this
11 time of night, you ain't got no business being out
12 here this time of the night, I'm going to teach you
13 a lesson what it's like being out at this time of
14 night. He grabbed the 13 year old from the
15 intersection of Pyle Court and Nelson. The young
16 man said, I tried to run but I couldn't. So at that
17 point he started to drag this 13 year old to an
18 abandoned house that was on Pyle Court. This house
19 had a screen door on it that really wasn't operable
20 and no inner door; it was abandoned. It has since
21 been raised to the ground by the owners. He went
22 through the doorway and then he began choking him;
23 and he said, I swear to God I might kill you, then
24 I'm might kill your momma. He started choking him.
25 The victim started crying out, help me, lord. At

1 that point he made him take his clothes off and in
2 between the choking he started beating him. And we
3 have some photographs. I'm not gonna show you all
4 of the photographs but show you some of the
5 photographs that he had. And then at first the kid
6 was reluctant to do it. He said, take your damn
7 clothes off. The kid asked why do I need to take my
8 clothes off. And he said because I want you to. At
9 that point, the kid being scared he took his clothes
10 off; he was still calling for help. He tried to run
11 off fast but this man blocked his retreat. At that
12 point he tried to kiss the young man on his lips and
13 eventually forced himself and did kiss the young man
14 on his lips. He started hitting him about the eyes,
15 and at that point this defendant performed oral sex
16 on the young man. The young man, Your Honor -- and
17 I'll cut to this point -- had this gone forward to
18 trial, Doctor Kathy Saunders of the CareHouse took a
19 swab from the young man's penis. They sent that
20 swab to SLED for analysis and the analysis showed
21 that this gentleman's DNA was on the young man's
22 penis. Very high -- one in 34 trillion or some
23 astronomical number like that.

24 At that point the kid kept yelling out for
25 help, help. At that point we find out that Thomas

1 Davis, the next door neighbor to this abandoned
2 house, he tells me he was watching the gubernatorial
3 debates at the time, stepped out and heard a kid
4 yelling for help. He walked up to the fence
5 separating the two houses and kind of stuck his ear
6 in a little closer to the house to see if what he
7 was hearing was correct. He heard the kid calling
8 for help in a deeper voice. Now at first he didn't
9 want to get involved, but he decided something is
10 going on so he walked into the house. Now this
11 house is completely pitch dark; it's night time by
12 now. And he flicks on a lighter, and at that point
13 he sees this man doing oral copulation on the kid
14 and he recognized Bank because Bank lived on Pyle
15 Court and he knew him. And he says, what you doing
16 to that boy. And the kid is screaming for help.
17 Thomas Davis said, I took a stick and hit it across
18 that man and it did nothing. At that point I knew I
19 needed help. And Thomas Davis was a former MP who
20 served in Iraq so he went outside, saw his father
21 and told him call 9-1-1. I don't think the father
22 wanted to go in and mess with Bank himself. So at
23 that point Thomas Davis ran to the juvenile's
24 uncle's house, which is also in the neighborhood,
25 and got him.

1 The kid said during this whole time he's
2 getting abused, part of the abuse that's going on is
3 he's getting bitten all over his body. Some of the
4 photographs that would have been introduced at trial
5 would have shown how he was bitten on his abdomen
6 area, on his back area. And about that time, Your
7 Honor, not to be too graphic but, this man we feel
8 was about ready to penetrate him from behind because
9 he had licked his butt according to the victim. And
10 he had him across, he had him across the bed, but at
11 that point both Thomas Davis and the uncle of the
12 young man come into the house.

13 Now the uncle, I can tell you, when he saw
14 what was happening to his nephew went berserk; and
15 he started to beat this, beat this man and got him
16 out of -- got him off his nephew. His nephew runs
17 naked to the uncle -- the uncle's wife's van because
18 she followed up in a van. And eventually after he
19 got done attacking or defending his nephew by
20 attacking the defendant, the defendant makes some
21 sort of crazy statement like, you guys are gonna get
22 in trouble for beating me, and he runs out of -- out
23 of that house naked up to his house further down
24 Pyle Court. By that time the police get there.

25 One of the officers that get there from

1 the Sheriff's Department is Sergeant Bobby Crawford
2 who goes and talks to the defendant, and the
3 defendant immediately without any coaxing said, I
4 didn't do anything to that boy. He didn't know what
5 that officer was there for, but he blurted that out.
6 They took the kid over to the CareHouse eventually.
7 First they took him to the hospital here. They did
8 a CT scan on him because based on the beating he
9 took on his face the doctors wanted to make sure
10 that there were no facial fractures. And when they
11 were sure there were no facial fractures they
12 released that patient to the CareHouse for the
13 photographs that you see and for the analysis.

14 Your Honor, I have to tell you — and I've
15 been doing this for over 20 years — this is one of
16 the most horrific cases that I've had to deal with
17 personally as a prosecutor. It's been hard. It's
18 been hard for his mom. It's been hard for this kid.
19 The kid is still in therapy to deal with this, but
20 this is -- this is nightmarish. This is something
21 that you often read in papers. It happens up in New
22 York, Chicago, somewhere else other than Marion
23 County, Your Honor. But this violence happened
24 here, and I feel so strongly about this case. I
25 know -- I asked the sheriff to stand with us today

1 because I know the Sheriff's Office feels strongly
2 about this. This is, this is about as bad as you
3 get. I'm afraid, Your Honor, and I don't know what
4 would have happened had Thomas Davis not seen what
5 occurred. I just shutter to think what would have
6 happened had this kid not been rescued at that time.
7 It's a horrible offense, Your Honor, and that's
8 about it, Judge.

9 Now he does have a record, Your Honor.
10 Let me go through that. Beg the Court's indulgence
11 one second. He had looks like a burglary third
12 degree in 1999, a forgery looks like at the same
13 time and avoiding payment for telecommunications.
14 He had a fraudulent check, four counts. He had a
15 aggravated assault and battery in 2002. And if I'm
16 not mistaken that was of some sort of sexual nature
17 that was also pled down to that accounting and
18 received five years for that. He had a driving
19 under suspension and a public disorderly conduct.
20 He had an attempted burglary in 2009. That's what I
21 see, Judge.

22 THE COURT: All right. Mr. Gerald, are
23 those facts true and accurate?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you, in fact, guilty of

1 criminal sexual conduct first degree?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you guilty of kidnapping?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You stand before me pleading
6 guilty, but you don't have to plead guilty to
7 anything. You could exercise your right to a jury
8 trial. In that process the jury would determine
9 whether or not the State could actually prove you
10 guilty beyond a reasonable doubt. I would charge
11 the jury as a matter of law that you're presumed to
12 be innocent. No one could require that you take the
13 witness stand; however, if you wanted to you could.
14 You could subpoena witnesses on your own behalf. In
15 addition to that, you and your lawyer could
16 cross-examine the State's witnesses. You have an
17 opportunity to eyeball them and confront them as
18 they testified against you. You realize by pleading
19 guilty you're giving up all these rights?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You still wish to plead
22 guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you indeed guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Plea negotiations from the
2 State?

3 MR. JEPERTINGER: I'm recommending
4 consecutive sentences on these charges, Your Honor.

5 THE COURT: Very good. Is that your
6 understanding Mr. Anderson?

7 THE DEFENSE: Your Honor, I understand
8 that's what he's recommending, but of course,
9 we're — it's not a negotiated sentence, and we
10 would certainly ask for the Court to consider other
11 things.

12 THE COURT: Very good. Is that your
13 understanding, Mr. Gerald?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Mr. Gerald, are
16 you satisfied with your lawyer?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has he done everything that
19 you've asked him to do?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is there anything that you've
22 asked him to do that he has not?

23 THE DEFENDANT: He did everything.

24 THE COURT: You understood all your
25 conversations with him?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand the elements of
3 each of these offenses, potential offenses, and all
4 the collateral consequences of this plea?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Do you need any
7 additional time to confer with him?

8 THE DEFENDANT: No.

9 THE COURT: You need to answer up so I can
10 hear you.

11 THE DEFENDANT: No, sir.

12 THE COURT: Very good. Has anyone
13 promised you anything, threatened you, pressured
14 you, mistreated you in any way, shape, or form in an
15 effort to get you to plead guilty here today?

16 THE DEFENDANT: No, sir.

17 THE COURT: It's been your decision to
18 plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you indeed guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You understood all my
23 questions?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have your answers been

1 truthful?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that you
4 have ten days to appeal any decision I might render
5 here today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Based on your testimony I find
8 there's a substantial factual basis for your plea,
9 that your decision was freely and voluntarily
10 entered into knowingly and intelligently with the
11 consent of competent counsel with whom you say
12 you're satisfied. I'll accept your plea and be glad
13 to hear from you and your lawyer with regard to
14 mitigation.

15 Mr. Anderson.

16 MR. ANDERSON: Judge, please the Court,
17 Matthew is 39, Your Honor. He'll be 40 later this
18 year, will be 40 in November. Judge, he has been
19 locked up since the day of this offense so, Your
20 Honor, I've got him down as 361 days he's been
21 incarcerated. I certainly ask you to give him
22 credit for that. Your Honor, as you heard from
23 Mr. Jepertinger, he does have somewhat of a prior
24 record, Your Honor. As Mr. Jepertinger indicated,
25 burglary third in '99, that ABHAN in 2002. Your

1 Honor, then a DUS in 2006 and the attempted burglary
2 in 2009 that he received probation for. Your Honor,
3 I think this is a violation, or a potential
4 violation of his probation based on him pleading
5 here today.

6 Judge, I talked with Matthew a couple of
7 times, Your Honor. He has always been very polite
8 to deal with, Your Honor. Judge, he's called
9 Ms. Sloan in our office a couple of times; and he's
10 asked Ms. Sloan, hey, will you send me copy of this
11 statute or will you send me a copy of that statute.
12 Your Honor, never acted out on the phone with Ms.
13 Sloan, has never given her any type of hard time or
14 anything like that. Judge, he and I have talked
15 about this case and he said that day he went to the
16 store for his mom. It was a very nice day, pretty
17 day, kind of like today, Your Honor. Then he went
18 by and saw his nephew. While he was at his nephew's
19 house he said they start drinking. Your Honor, I
20 don't know if there was something in the alcohol or
21 what; but he started drinking heavily, Your Honor,
22 and then of course, this incident happened sometime
23 later in the day.

24 Judge, when I talked to Matthew -- I
25 understand he had the ABHAN back in 2002, Your

1 Honor; but it just seems unlikely that when a man is
2 38, almost 39 years old, somehow or another this
3 thought gets into his mind and he decides to commit
4 this offense. Your Honor, he's not trying to excuse
5 his conduct, not trying to get out of anything. I
6 would point out to the Court that, you know, the
7 State indicated to us back in February they were
8 going to call this case and Matthew and I'd been
9 talking about a guilty plea ever since then. He did
10 not want to go to trial, did not want to put his
11 family through it; but more importantly, Your Honor,
12 he didn't want to put the young man through it,
13 didn't want to put the young man's family through
14 it. Matthew and I both talked about it. Certainly
15 that family has been through enough. So Your Honor,
16 he's doing everything that he can to keep it from
17 being any worse. He's indicated to me for a while
18 now that he wanted to plead guilty. We were just
19 trying to negotiate, you know, the best that we
20 could do with the State.

21 Judge, he is extremely remorseful for
22 this. I know that doesn't excuse his conduct, but
23 he is extremely sorry for it. Judge, I talked with
24 Agent Collins, the probation officer here. Your
25 Honor, he will be subject to, of course, as you've

1 already mentioned, doing this more or less day for
2 day. Your Honor, he will also have to register as a
3 sex offender the rest of his life, Your Honor. In
4 addition to that he's going to have to wear that GPS
5 monitor for the rest of his life. He -- of course,
6 that has a lot of restrictions on it as well.
7 Judge, he, as you pointed out, may be subject to the
8 sexually violent predator act. But Your Honor,
9 there are a lot of things that the State has passed,
10 legislature has passed, to try and protect society
11 from anything like this happening again. He is
12 subject to all of those. But Judge, he just admits
13 his conduct, is sorry for his conduct, and we would
14 just ask you to be as lenient as possible.

15 MR. JEPERTINGER: Your Honor, one thing I
16 do need to point out. I think, and I've read the
17 statute too in terms of the GPS. I think the
18 qualifying offense here would be the kidnapping.
19 Strangely enough, I don't think it applies to the
20 CSC first, but I would ask you to make a finding of
21 that fact that he would be required to wear GPS
22 monitoring on the case.

23 THE COURT: Anything further?

24 MR. JEPERTINGER: I don't know if the
25 sheriff or the victim's family want to say anything.

1 THE COURT: Sheriff?

2 THE SHERIFF: No, sir.

3 MR. ANDERSON: Your Honor, my client would
4 like to say something to the Court.

5 THE COURT: I'll be glad to hear from you.
6 Yes, sir, Mr. Gerald.

7 THE DEFENDANT: I would like to say to the
8 family I'm very sorry for the pain and suffering I
9 caused y'all and your son.

10 PROBATION OFFICER: He's currently on
11 probation. Do you want to go ahead and address that
12 matter now?

13 THE COURT: Yes, if you're prepared to do
14 that.

15 PROBATION OFFICER: I am, Your Honor.

16 THE COURT: Yes, sir, be glad to hear from
17 you.

18 PROBATION OFFICER: As noted earlier he is
19 currently under supervision for probation matters.
20 He was sentenced on November the 9th of 2009 by
21 Judge Seals for indictment number 09-GS-33-356 and
22 also 357 for burglary nonviolent. He received a
23 sentence of five years and that was suspended to 18
24 months and 18 months probation. A warrant was
25 issued for his arrest back on, looks like October of

1 2010, October 6th, 2010, and the cause was for the
2 failing to report as instructed by his agent and
3 that's why -- and also now that he's got these new
4 charges here would also be a violation as well, Your
5 Honor.

6 THE COURT: Mr. Gerald, you've heard the
7 allegation you hadn't done what you're supposed to
8 on probation. Do you agree with those allegations?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Based on that I do indeed find
11 there is a substantial and willful violation. With
12 regards to the probation violation I'm gonna revoke
13 361 days and terminate probation in all respects.

14 Anything further, Mr. Anderson?

15 MR. ANDERSON: No, sir, Your Honor.

16 THE COURT: All right. Mr. Gerald, on
17 indictment 2011-GS-33-0129, criminal sexual conduct
18 first degree, the sentence of the Court is you be
19 committed to State Department of Corrections for a
20 period of 23 years. Sentences run consecutive with
21 the other sentence rendered here today and credit
22 for 361 days and sex offender registry. With regard
23 to indictment 2011-GS-21-0129 kidnapping, the
24 sentence of the Court is you be committed to the
25 State Department of Corrections for a period of 8

1 years, sentence to run consecutive, credit for 361
2 days, lifetime GPS. Good luck to you.

3

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

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

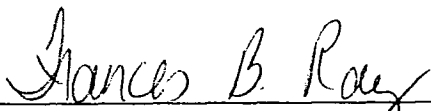
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 3rdh day of September, 2013.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA)

County of Marion)

286815

Matthew Gerald)

Full name and prison number (if any) of Applicant)

vs.)

State of South Carolina)

Name of Respondent S.C.)

IN THE COURT OF COMMON PLEAS

2012-CP-33-438

APPLICATION FOR

POST-CONVICTION RELIEF

BOOK _____ PAGE _____ FILED

2012 JUN 27 P 4:15

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber House
2. Name and location of Court which imposed sentence Marion County Court
3. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) ~~_____~~ ~~_____~~ ~~_____~~ 2011-AS-33-0/29
 - (b) _____
 - (c) _____

CERTIFIED COPY OF THE ORIGINAL FILED IN THIS OFFICE

BOOK _____ PAGE _____

Sherry R. Rhodes

CLERK OF COURT, MARION COUNTY, SOUTH CAROLINA

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

- (a) Aug 22 2011
- (b) 23 years
- (c) 8 years

5. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓
- (b) after a plea of not guilty no
- (c) after a plea of nolo contendere _____

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

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

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

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

- (a) Ineffective Assistance
- (b) Ineffective Assistance

(c) _____

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

(a) Ineffective Assistance

(b) Ineffective Assistance

(c) _____

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

(a) Failed to advise

(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? NO

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

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

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

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. NO

ii. _____

iii. _____

iv. _____

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

i. NO

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. no
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. no
- ii. _____
- iii. _____
- iv. _____

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

- i. no
- ii. _____
- iii. _____
- iv. _____

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 (13) identify:

(a) which grounds have been presented:

- i. no
- ii. _____
- iii. _____

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

- i. no
- 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) Failed to Advise
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? ✓
- (b) your trial, if any? NO
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgement of conviction or the imposition of sentence? NO
- (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. Hack Anderson Jr.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea Sentence
 - ii. _____
 - iii. _____

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

Correction of Sentence

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

no

STATE OF SOUTH CAROLINA)
County of Marion)

VERIFICATION

I, Matthew Gerald, 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.

Matthew Gerald

SWORN to and subscribed before me this _____ day of _____.

Notary Public (L.S.)

My Commission Expires: _____

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

I, Matthew Seal, 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.

Matthew Seal
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of June, 2012

Sylvia Jones
Notary Public

My Commission Expires: 1/29/2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION)	FOR THE TWELFTH JUDICIAL CIRCUIT
Matthew Gerald, #286815,)	Case No. 2012-CP-33-0438
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the Application Post-Conviction Relief filed June 27, 2013¹, Respondent would show this Court:

I.

Applicant is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment from the Marion County Clerk of Court. In May 2011, the Marion County Grand Jury indicted Applicant for kidnapping, first degree criminal sexual conduct, and lewd act on a minor (2011-GS-33-0129). Henry M. Anderson, Jr., Esquire, represented Applicant. On August 22, 2011, Applicant pled guilty to kidnapping and first degree criminal sexual conduct. In exchange for the plea, the State dismissed the lewd act indictment. The Honorable Michael G. Nettles sentenced Applicant to consecutive terms of eight (8) years imprisonment for kidnapping and twenty-three (23) years imprisonment for criminal sexual conduct. Applicant did not appeal his plea or sentence.

Attached to this Return and incorporated herein are the records of the Marion County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South

¹ Respondent received the Application from the Marion Clerk of Court on June 20, 2013.

Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective assistance"
 - a. "Failed to advise"

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

III.

Respondent contends Applicant cannot meet his burden of proving plea counsel ineffective. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at

687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove that plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

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

IV.

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

V.

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

Respectfully submitted,


ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
Bar No. 100777

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

By: 
Attorneys for Respondent

December 10 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)
)
)
)
)
 MATTHEW GERALD, #286815)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

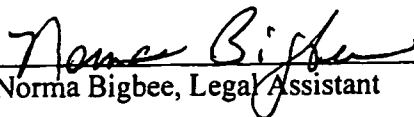
2012-CP-33-0438

AFFIDAVIT OF SERVICE BY MAIL

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

Tristan M. Shaffer, Esquire
Barnwell St.
Columbia, SC 29201

DATED this 10th day of December, 2013.


 Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION)	CASE NO. 2012-CP-33-00438
)	
MATTHEW GERALD,)	
)	
Plaintiff,)	
)	
-vs-)	TRANSCRIPT OF RECORD
)	
)	
STATE OF SOUTH CAROLINA,)	
)	
Defendant.)	
)	

October 8, 2014
Florence, South Carolina

B E F O R E:

THE HONORABLE EDGAR W. DICKSON, Judge

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

TRISTAN M. SHAFFER, Esquire
Attorney for the Plaintiff

CROOM HUNTER, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Matthew Gerald	
Direct Examination by Mr. Shaffer.....	5
Cross-Examination by Mr. Hunter.....	10
Redirect Examination by Mr. Shaffer.....	15
Henry M. Anderson, Jr.	
Direct Examination by Mr. Hunter.....	16
Cross-Examination by Mr. Shaffer.....	20
Court Reporter Certification.....	22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
------------	--------------------	------------	------------

(No Exhibits Presented)

1 OCTOBER 8, 2014

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 11:13 a.m.)

5 THE COURT: Yes, sir?

6 MR. HUNTER: May it please the Court. This is Matthew
7 Gerald versus the State of South Carolina, Docket Number 2012-
8 CP-33-0438. Mr. Gerald is currently incarcerated in SCDC
9 pursuant to orders from the Marion County Clerk of Court in
10 May 2011 -- May 2011.

11 The Marion County grand jury indicted Mr. Gerald for
12 kidnapping, first degree criminal sexual conduct, and lewd act
13 on a minor. He was represented by Mr. Henry Anderson.

14 On August 22nd, 2011, Mr. Gerald pled guilty to kidnapping
15 and first degree criminal sexual conduct. In exchange for the
16 plea, the State dismissed the lewd act.

17 The Honorable Michael G. Nettles sentenced Mr. Gerald to
18 consecutive terms of eight years' imprisonment for kidnapping
19 and 23 years' imprisonment for criminal sexual conduct.

20 He did not appeal his plea or his sentence, and he filed
21 this application for post-conviction relief on June 27th, 2013,
22 and he is represented here today by Mr. Shaffer.

23 THE COURT: Mr. Shaffer?

24 MR. SHAFFER: Yes, Your Honor. I believe the applicant
25 would call Matthew Gerald to the stand.

MATTHEW GERALD - DIRECT BY MR. SHAFFER

1 THE COURT: All right. Mr. Gerald, please come on up,
2 please, sir.

3 THE CLERK: Please step up to the Bible. Place your left
4 hand on the Bible and raise your right hand as much as
5 possible. Do you swear or affirm to tell the truth, the whole
6 truth, and nothing but the truth, so help you God?

7 THE PLAINTIFF: Yes.

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

10 THE PLAINTIFF: Matthew Gerald.

11 THE COURT: All right. Mr. Shaffer, he's your witness.

12 MR. SHAFFER: Thank you, Your Honor.

13 MATTHEW GERALD, being first duly sworn,
14 testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. SHAFFER:

17 Q: Mr. Gerald, how old -- how old are you?

18 A: 42.

19 Q: Okay. Where do you currently reside? Where are you
20 currently housed at?

21 A: Lieber Institution.

22 Q: Okay. How -- how long of a sentence are you doing?

23 A: Twenty-three on one and eight on the other one
24 consecutive -- running consecutive.

25 Q: Okay. And if you could, you were represented by Mr.

MATTHEW GERALD - DIRECT BY MR. SHAFFER

1 Anderson; is that correct?

2 A: Yes.

3 Q: Okay. When did you first meet Mr. Anderson?

4 A: In '11 -- 2011.

5 Q: About how long after you got arrested?

6 A: About a couple of months before I got -- after I got
7 arrested? It was in 2011. I got -- I got arrested in 2010.

8 Q: Okay. And you met him in 2011?

9 A: Yeah.

10 Q: Tell us about the first time you met Mr. Anderson?

11 A: Him and the solicitor had a meeting at the jail and they
12 wanted us to -- well, he wanted us to plea or go to a trial
13 and I asked him about -- you know, talking about a plea and --
14 you know, but he was, like, it was up to the judge. He kept
15 saying everything was up to the judge. But you want me to
16 plea, but what I'm pleading to? No question being asked about
17 what I was going to plead to or they were going to run it
18 concurrent or run it together or not if I plead.

19 Q: Okay. And then you met with -- when was the next time
20 you met with Mr. Anderson?

21 A: The last time I met with him, it was, like, a week before
22 I went to court.

23 Q: Okay. And did you discuss the allegations and the
24 evidence they had against you?

25 A: No, not really.

MATTHEW GERALD - DIRECT BY MR. SHAFFER

- 1 Q: Okay. Did you -- what did y'all talk about then?
- 2 A: That I would go ahead and plea. He just won a case in
3 Florence and it's a good thing in front of Judge Nettles that
4 I go before him.
- 5 Q: Okay. What kind of a plea offer did you understand it to
6 be?
- 7 A: I didn't understand the plea offer because there wasn't
8 no plea offer. It wasn't nothing on the -- I said I would
9 plea to twenty-something, but he kept saying it was up to the
10 judge.
- 11 Q: Okay. Did you understand how much -- how much time you
12 could possibly get on all the charges?
- 13 A: Yes.
- 14 Q: Okay.
- 15 A: Yes.
- 16 Q: Did you understand that they could run them consecutive?
17 You know the difference between consecutive and concurrent;
18 right?
- 19 A: Right. Together or separate.
- 20 Q: Okay. Do you -- do you understand that they have the
21 ability to run them separate or one after the other?
- 22 A: I didn't understand that.
- 23 Q: You didn't understand that?
- 24 A: No.
- 25 Q: At the time you -- did you think that they would run them

MATTHEW GERALD - DIRECT BY MR. SHAFFER

1 together?

2 A: Yes.

3 Q: Okay. Did he tell you anything about the -- any
4 arguments that the State would make if you pled?

5 A: No.

6 Q: Okay. All right. On the day of your plea, do you recall
7 the State asking for it to be run separate? The -- the time
8 for both of the offenses?

9 A: Repeat that?

10 Q: Did you -- do you recall the State making an argument for
11 it to be run consecutive?

12 A: No.

13 Q: Okay. You don't recall them saying that?

14 A: No.

15 Q: Okay. Did you think that it was going to be run
16 concurrent at that time?

17 A: Run together.

18 Q: Okay.

19 A: Yes.

20 Q: Had you known that they were going to run them
21 consecutive -- had you known that at the time, would you have
22 pled guilty?

23 A: Consecutive? Running them separately?

24 Q: Yeah.

25 A: I would have thought about it. I wouldn't have jumped to

MATTHEW GERALD - DIRECT BY MR. SHAFFER

1 plead.

2 Q: You wouldn't have pled that day?

3 A: No.

4 Q: Okay. But you might have pled sometime in the future?

5 A: Right. Yes.

6 Q: But you certainly wouldn't have pled that day?

7 A: Right.

8 Q: What do you want the Court to do here today?

9 A: I would like to -- I mean for my knowledge and learning
10 now after the -- after the sentencing that -- that they could
11 have ran it together during the plea -- they usually run it
12 together -- and that's the only thing I would like is they run
13 -- just run it together instead of separately.

14 Q: Okay. Did you think that day that they were going to run
15 them together?

16 A: I didn't know I was going to get it like that. No, I
17 didn't.

18 Q: What do you mean you didn't know you were going to get it
19 like that?

20 A: I thought it was just going to be one -- just one
21 sentence. Just one sentence.

22 Q: Okay. Now, is there anything else that you would like to
23 say to me about your plea and whether or not you --

24 A: That I didn't understand about the open plea thing. I
25 didn't understand nothing about the open plea thing. He

MATTHEW GERALD - DIRECT BY MR. SHAFFER

1 didn't even mention no plea. He just says go ahead and plea.
2 It's up to the judge. I didn't understand none of that.
3 Q: Okay. You didn't understand what an open plea meant?
4 A: Right.
5 Q: Okay. Since going to SCDC, you've learned what that
6 meant?
7 A: Right.
8 Q: Is that right?
9 A: Mm-hmm.
10 Q: Now, in the past you have pled guilty to things; right?
11 A: Right.
12 Q: Had you ever had anyone run consecutive time on you
13 previously?
14 A: No. Everything was run together.
15 Q: Okay. You thought if -- if you pled guilty, they would
16 run together?
17 A: Pretty much.
18 Q: Okay.
19 MR. SHAFFER: No further questions.
20 THE COURT: Anything on cross-examination?
21 MR. HUNTER: Yes, Your Honor.
22 THE COURT: Okay.
23 CROSS-EXAMINATION
24 BY MR. HUNTER:
25 Q: So, Mr. Gerald, you're not denying the fact that you're

MATTHEW GERALD - CROSS BY MR. HUNTER

1 guilty of these charges today; is that correct?

2 A: Right.

3 Q: Okay. And Mr. Shaffer briefly mentioned that you do have
4 some priors. That's correct, isn't it?

5 A: Priors on?

6 Q: Some prior convictions. You've pled guilty before this
7 charge to other charges?

8 A: Yeah. Burglary and stuff like that.

9 Q: Okay. In fact, you've got a prior conviction for
10 burglary third degree; is that right?

11 A: Yes.

12 Q: Okay. And forgery?

13 A: Yes.

14 Q: Fraudulent check?

15 A: Yes.

16 MR. SHAFFER: Objection. Relevance.

17 A: That was in -- that was in the 90s.

18 THE COURT: I understand -- and --

19 MR. HUNTER: He brought up on direct that he had pled
20 prior to other charges, Your Honor.

21 THE COURT: Okay. I'll let him go into it. I'll note
22 your objection on the record. Go ahead, Mr. Hunter.

23 MR. HUNTER: Okay.

24 BY MR. HUNTER:

25 Q: And, Mr. Gerald, just real quickly, you also have

MATTHEW GERALD - CROSS BY MR. HUNTER

1 convictions for assault and battery of a high and aggravated
2 nature, driving under suspension, and attempted burglary as
3 well; isn't that correct?

4 A: Mm-hmm.

5 Q: Okay. And you pled guilty to all of those charges?

6 A: Yes.

7 Q: Okay. So this wasn't your first time in front of the
8 Court?

9 A: No.

10 Q: Okay. Let's see. Now, do you recall -- you -- I think
11 you testified that you don't remember the judge telling you
12 that the solicitor was seeking consecutive sentences in this
13 plea?

14 A: No. I don't remember that at all.

15 Q: Okay. Well, would you agree that if it's in the
16 transcript of the plea, then the judge did go over that with
17 you?

18 A: I didn't hear it.

19 Q: Okay.

20 MR. HUNTER: And, Your Honor, that's on page 14.

21 THE COURT: Page 14? Okay.

22 MR. HUNTER: Okay.

23 BY MR. HUNTER:

24 Q: Do you recall the plea judge asking if you were satisfied
25 with Mr. Anderson's work on this case?

MATTHEW GERALD - CROSS BY MR. HUNTER

1 A: Yes.

2 Q: Okay. And you told him that you were?

3 A: Yes.

4 Q: Okay. Do you remember telling the judge that Mr. -- Mr.
5 Anderson did everything he could do on this case?

6 A: Yeah.

7 Q: Okay.

8 A: As he presented to me, he did everything.

9 Q: Okay. Now, I believe you said that Mr. Anderson didn't
10 go over the -- the elements of the crimes you were charged
11 with; is that correct?

12 A: What you mean the elements?

13 Q: The -- the different things the State would need to prove
14 in order to convict you of this -- of the crime.

15 A: No. We didn't really go over all that.

16 Q: Okay. Well, do you recall on page 15 --

17 MR. HUNTER: It's on page 15, Your Honor.

18 Q: Do you recall telling the plea judge that you understood
19 the elements of each offense that you were pleading guilty to?

20 A: That's normal routine saying.

21 Q: Okay. So you were just going along with it?

22 A: Right.

23 Q: Okay. So you were just saying what you thought you
24 needed to say --

25 A: Right.

MATTHEW GERALD - CROSS BY MR. HUNTER

1 Q: -- to get the plea over with?

2 A: Right.

3 Q: Even if it wasn't true?

4 A: Right.

5 Q: Okay. So you weren't being honest with the judge?

6 A: That's the normal routine.

7 Q: Okay.

8 THE COURT: I'm sorry.

9 MR. HUNTER: We need to know you're being honest with the
10 judge.

11 THE COURT: I just want -- I just want some
12 clarification. The normal routine is not to be honest with
13 the judge?

14 THE PLAINTIFF: No. It's the normal routine to just say
15 yeah, we been -- he been working properly and he did
16 everything. It's not what it seems.

17 THE COURT: I understand. I just wanted to get that
18 straight. Thank you, sir.

19 THE PLAINTIFF: Thank you.

20 THE COURT: I appreciate it. Go ahead. I'm sorry, Mr.
21 Hunter. I didn't mean to interrupt.

22 MR. HUNTER: No. That's fine, Your Honor.

23 THE COURT: I appreciate your candor there.

24 THE PLAINTIFF: Mm-hmm.

25 THE COURT: Go ahead.

MATTHEW GERALD - CROSS BY MR. HUNTER

1 MR. HUNTER: Okay.

2 BY MR. HUNTER:

3 Q: Do you recall the judge telling you that there -- or
4 asking you if anyone had promised you anything in exchange for
5 your sentence?

6 A: Yes.

7 Q: Okay. And you told him no one had promised you anything?

8 A: Nobody promised because nobody didn't offer nothing.

9 Q: Okay.

10 MR. HUNTER: Your Honor, I don't have any further
11 questions.

12 THE COURT: All right. Mr. Shaffer? Anything on --

13 MR. SHAFFER: Yes.

14 THE COURT: -- redirect?

15 REDIRECT EXAMINATION

16 BY MR. SHAFFER:

17 Q: Although it wasn't your first time in court, was it the
18 first time you received consecutive time like this?

19 A: Right.

20 Q: Okay. And were you aware of that prior to going to court
21 that day?

22 A: I truly wasn't aware of that.

23 Q: Okay.

24 MR. SHAFFER: No further questions.

25 THE COURT: Anything on recross?

26

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 MR. HUNTER: No, Your Honor.

2 THE COURT: All right. Thank you, Mr. Gerald.

3 THE PLAINTIFF: Mm-hmm.

4 MR. SHAFFER: The applicant rests.

5 THE COURT: Yes, sir?

6 MR. SHAFFER: The applicant rests.

7 THE COURT: Oh, okay. All right.

8 MR. HUNTER: The State would call Mr. Anderson.

9 THE COURT: All right. Mr. Anderson?

10 THE CLERK: Do you swear or affirm that the testimony

11 that you are about to give is the truth, the whole truth, and

12 nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Have a seat and state your name for the

15 record.

16 THE WITNESS: Henry Morris Anderson Jr.

17 THE COURT: All right. Your witness.

18 HENRY M. ANDERSON JR., being first duly

19 sworn, testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. HUNTER:

22 Q: Mr. Anderson, how long have you been practicing law?

23 A: Almost 23 years.

24 Q: Okay. And what percentage of your practice would you say

25 is devoted to criminal defense?

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 A: Probably 95 percent.

2 Q: Okay. Were you appointed or retained on this case?

3 A: I was working with the Public Defender's Office in
4 Marion. I do some contract work for them.

5 Q: Okay. Did you file all the appropriate Rule 5 and Brady
6 motions in this case?

7 A: Yes, sir.

8 Q: Did you receive all the discovery from the solicitor?

9 A: Yes, sir.

10 Q: Okay. Did you review that with Mr. Gerald?

11 A: Yes, sir.

12 Q: After reviewing that with Mr. Gerald, did you discuss his
13 version of the facts in this case?

14 A: Yes, sir.

15 Q: Did he ever deny that he was guilty in this case?

16 A: No, sir.

17 Q: Would you kind of describe the evidence the State had
18 against Mr. Gerald in this matter?

19 A: If you'd have thrown in a fat man and a tree, you would
20 have had Christmas. They had DNA. They had an eyewitness.
21 They had a very credible person that actually heard what was
22 going on and broke it up or stopped it from happening. The
23 young man, of course, was interviewed at the -- I think the
24 Care House, which is where they take physically and sexually
25 abused people in this area, and he was interviewed there.

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 Q: So you would characterize -- or would you characterize
2 the evidence against Mr. Gerald as overwhelming?

3 A: Yes, sir.

4 Q: Do you recall -- I might have already asked you this. Do
5 you recall how many times you met with him?

6 A: I know I met with him three times. It may have been
7 more. I've got notes from three different -- or three
8 separate meetings with him.

9 Q: Now, did the State come to Mr. Gerald with any -- with
10 any plea offers in this case?

11 A: Yes, sir.

12 Q: Okay. Could you go through that with us?

13 A: Mr. Gerald was being prosecuted by someone named John
14 Jupertinger, and John sometimes gets fixated on a case. We
15 like to call it the Jupertinger vendetta. But he called me in
16 January of 2011 and said that he was going to try this case
17 the first term after the defendant's docket appearance. He
18 said do not ask for anything on these charges. His only
19 recommendation would be consecutive. Then when he actually
20 gave me the discovery, his recommendation was plead to
21 everything and he would recommend a consecutive sentence.

22 Q: Now, was this plea -- that being said, was this a
23 negotiated plea or was it an open plea?

24 A: It was an open plea. I told Mr. Jupertinger that we
25 would entertain a plea, but we weren't going to agree to

HENRY M. ANDERSON JR. - DIRECT BY MR. HUNTER

1 anything consecutive.

2 Q: Okay. And in your conversations with -- with Mr. Gerald,
3 did he always appear to understand what was going on?

4 A: Yes, sir.

5 Q: Okay. You didn't have any trouble discussing the case
6 with him?

7 A: No, sir.

8 Q: Okay. And whose decision was it to plead guilty?

9 A: It was Mr. Gerald's.

10 Q: Okay.

11 MR. HUNTER: I beg the Court's indulgence.

12 THE COURT: Take your time.

13 BY MR. HUNTER:

14 Q: Did -- did Mr. Gerald have any possible defenses he could
15 have raised at trial?

16 A: Not that I'm aware of.

17 Q: Okay. And prior to his plea, did you review his
18 constitutional rights with him that he was waiving by pleading
19 guilty?

20 A: Yes, sir.

21 Q: Okay.

22 MR. HUNTER: Your Honor, I don't have any further
23 questions.

24 THE COURT: Mr. Shaffer?

25 MR. HUNTER: Thank you, Mr. Anderson.

HENRY M. ANDERSON JR. - CROSS BY MR. SHAFFER

CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SHAFFER:

Q: Mr. Anderson, did you -- did you explain to him the difference between consecutive and concurrent terms?

A: Yes, sir.

Q: How did you explain that?

A: I told him the State wanted his sentences to be stacked on each other. Obviously, if we entered a plea, we would ask that it run together.

Q: Okay. Do you think he understood that?

A: I think he did.

Q: Okay. Was he able to verbalize what they were trying to do to him to you?

A: Yes, sir.

Q: Okay.

MR. SHAFFER: No further questions.

THE COURT: Anything on redirect?

MR. HUNTER: No, Your Honor.

THE COURT: All right. You may step down. Thank you, sir. All right. Any other witnesses from the State?

MR. HUNTER: No, Your Honor.

THE COURT: Okay. All right. Tell me what I -- what I -- anything -- Mr. Shaffer, anything?

MR. SHAFFER: Nothing, Your Honor.

THE COURT: Okay. What I'd like to do is just let me

1 read over the -- the plea, and then I'll get back to y'all
2 with my decision. Okay?

3 MR. SHAFFER: Thank you, Your Honor.

4 MR. HUNTER: Thank you.

5 THE COURT: Thank y'all.

6 (Whereupon, the proceedings end at 11:30 a.m.)

7

8 --- END REQUESTED TRANSCRIPT ---

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF FLORENCE)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 21 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for the Twelfth Judicial Circuit, held in Florence, South Carolina, on the 8th day of October, 2014.

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

s/ Krystal J. Smith

Court Reporter

Florence, South Carolina

March 14, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)
)
 MATTHEW GERALD, #286815)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

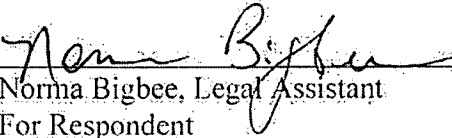
IN THE COURT OF COMMON PLEAS
 2012-CP-33-0438

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 filed copy of the Order of Dismissal, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tristan Michael Shaffer, Esquire
Oleander Drive
Myrtle Beach, SC 29577

DATED this 27th day of January, 2015.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF MARION)
)
 Matthew Gerald, #286815,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

Case No. 2012-CP-33-0438

ORDER OF DISMISSAL

This matter comes before this Court by way of a post-conviction relief (PCR) application filed on June 27, 2012. Respondent made its return on December 10, 2013.¹ An evidentiary hearing into the matter was convened on October 8, 2014, at the Florence County Courthouse. Applicant was present at the hearing and was represented by Tristan M. Shaffer, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections pursuant to orders of commitment from the Marion County Clerk of Court. In May 2011, the Marion County Grand Jury indicted Applicant for kidnapping, first degree criminal sexual conduct, and lewd act on a minor (2011-GS-33-0129). Henry M. Anderson, Jr., Esquire, represented Applicant. On August 22, 2011, Applicant pled guilty to kidnapping and first degree criminal sexual conduct. In exchange for the plea, the State dismissed the lewd act indictment. The Honorable Michael G. Nettles sentenced Applicant to consecutive terms of eight (8) years

2015 JAN -9 AM 11:40
 2006

¹ Respondent did not receive the Application from the Marion County Clerk of Court until June 20, 2013.

imprisonment for kidnapping and twenty-three (23) years imprisonment for criminal sexual conduct. Applicant did not appeal his plea or sentences.

ALLEGATIONS

At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
 - a. Failure to thoroughly advise Applicant of the consequences of pleading guilty, specifically counsel's failure to advise Applicant that his sentences could be run consecutively.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. This Court also heard testimony from trial counsel, Henry M. Anderson, Esquire (Counsel). This Court also had before it a copy of the trial transcript, the Marion County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Henry M. Anderson, Esquire (Counsel). Applicant testified he is currently incarcerated at Lieber Correctional. Applicant testified he pled guilty and received consecutive sentences of eight (8) years and twenty three (23) years imprisonment. Applicant testified Counsel first met with him a couple of months after his arrest. Applicant testified Counsel told him if he pled guilty, his sentence would be up to the judge. Applicant testified Counsel did not discuss the State's allegations, or the elements of the crimes with which he was charged. Applicant testified Counsel told him Judge Nettles was a good judge before whom to enter his plea. Applicant testified Counsel kept telling him his sentence would be up to the judge. Applicant testified he did not

understand that his sentences could be run consecutively. Applicant testified he thought his sentences would be run together. Applicant testified he does not recall the solicitor asking for consecutive sentences. Applicant testified he would possibly have still pled guilty if he knew the sentences would be consecutive, but he would not have pled that day. Applicant testified he wants to serve his sentences concurrently. Applicant testified he did not understand what an open plea entailed.

On cross-examination, Applicant testified he had prior convictions for attempted burglary, burglary third degree, forgery, passing fraudulent checks, ABHAN, and driving under suspension. Applicant testified those convictions were all the result of negotiated pleas. Applicant testified the State dismissed a Lewd Act charge in conjunction with this plea. Applicant testified he is guilty of the crimes to which he pled guilty. Applicant testified the facts the solicitor told the plea judge were true. Applicant testified he told the plea judge he understood he was waiving his rights to a jury trial and to challenge the evidence against him. Applicant testified he told the plea judge that he understood the solicitor was seeking consecutive sentences. Applicant testified he told the plea judge he was satisfied with Counsel's performance. Applicant testified he told the plea judge he understood all of his conversations with Counsel. Applicant testified he told the plea judge he understood the elements of the offenses with which he was charged, as well as the collateral consequences. Applicant testified he told the plea judge he did not need any more time to consult with Counsel. Applicant testified he told the plea judge he understood all of the judge's questions. Applicant testified he was not truthful when he answered the plea judge's questions regarding concurrent versus consecutive sentences. Applicant testified it was standard practice to lie to the judge at a guilty plea.

Following Applicant's testimony, Henry M. Anderson, Esquire (Counsel) testified.

Counsel testified he took this case as a contract public defender with the Twelfth Circuit Public Defender's Office. Counsel testified he obtained full discovery from the State and went over the charges with Applicant. Counsel testified he explained the elements of the charges Applicant was facing. Counsel testified the evidence against Applicant was overwhelming. Counsel testified Applicant dragged the victim, a young boy, into an abandoned house, where he beat and sexually assaulted the victim. Counsel testified a neighbor heard the victim's screams and ran into the house where he witnessed the assault. Counsel testified Applicant ran from the house, but he was apprehended shortly thereafter and positively identified as the perpetrator. Counsel testified he met with Applicant at least three (3) times. Counsel testified he did not need to meet with Applicant more than that. Counsel testified he was prepared. Counsel testified the solicitor would not consider any plea offers in Applicant's case. Counsel testified the solicitor informed him he planned to try the case at the first term of general sessions possible. Counsel testified the solicitor told him not bother asking for any deals. Counsel testified the solicitor took a special interest in Applicant's case and told Counsel he would seek consecutive sentences. Counsel testified he explained to Applicant that his plea would be open. Counsel testified he explained the ramifications of an open plea, as well as the constitutional rights Applicant waived by entering a guilty plea. Counsel testified he told Applicant the solicitor was seeking consecutive sentences. Counsel testified he explained the difference between concurrent and consecutive sentences to Applicant. Counsel testified he had no concerns about Applicant's ability to understand their conversations. Counsel testified Applicant made the decision to plead guilty.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant an adequate number of times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court further finds that Counsel thoroughly investigated and prepared Applicant's case. Here, Applicant argues he did not understand what a consecutive sentence was, nor was he aware the State was recommending such a sentence. However, the Record reflects both the State's recommendation of a consecutive sentence, as well as Applicant's response that he understood the consequences of his guilty plea, including the possible sentence he faced with an open plea. Further, plea counsel testified at Applicant's PCR hearing that the State was very clear in what their recommendation would be, and that he conveyed this recommendation, as well as explained what it meant to Applicant. There is no evidence that Counsel's performance departed from what is reasonable under professional norms. Applicant testified at his plea that he fully understood the charges and the possible consequences and was satisfied with the services of his attorney. Further, even if this Court were to find there was error on plea counsel's part, given the seriousness of the charges and the overwhelming evidence against Applicant, it is highly unlikely the result of the proceedings would have been any different. It is also highly unlikely Applicant would have insisted on trial, because a plea was certainly in his best interests. Finally, this Court finds Counsel's representation of Applicant and handling of this case were well within the standards required for effective representation.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has failed to make any showing that, but for Counsel's alleged deficiencies, the result of Applicant's case would have been any

different.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present ~~any credible~~ ^{any credible} ~~sufficient~~ evidence regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19th day of December, 2014.



EDGAR W. DICKSON
Presiding Judge
Twelfth Judicial Circuit

Orangetown, South Carolina

WITNESSES

CHARLIE WATSON Marlon County Sheriff

DOCKET NO. 2011-GS-33-0129

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE

vs.

MATTHEW GERALD

JOHN C JEPERTINGER

ARREST WARRANT NUMBER

M395623 M395624 2011GS330129

ACTION OF GRAND JURY

True Bill

Indictment for

CRIMINAL SEXUAL CONDUCT, 1ST

DEGREE;

KIDNAPPING;

LEWD ACT ON A MINOR

John V. Bell
Foreperson of Grand Jury
Date: 05-05-11

VERDICT

*- vol process Lewd Act
upon person of 6 months
to CSC 1st and
to 3rd kidnapping
8/12/11*

Foreperson of Petit Jury

Date:

FILED
BOOK PAGE
2011 MAY - 4 3 49

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT, 1ST DEGREE
KIDNAPPING
LEWD ACT ON A MINOR

At a Court of General Sessions, convened on MAY 5, 2011 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT, 1ST DEGREE

That Matthew Gerald did in Marion on or about October 26, 2010 did committ, or attempt to committ, a sexual battery in and upon ^{Minor} by kidnapping him, beating hin and biting him about the torso, and perfor...ing oral sex on him, in violation of Section 16-03-0652 of the Code of Laws of South Carolina (1976), as amended.

COUNT TWO- KIDNAPPING

That Matthew Gerald did in Marion County on or about October 26, 2010 did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one MDG , by any means whatsoever, without authority of law and by the use of force, by seizing him and carrying him away to an abandoned house where he beat him repeatedly, bit him about the torso and performed oral sex on him, while also trying to anally penetrate him, in violation of Section 16-03-0910 of the Code of Laws of South Carolina(1976), as amended.

COUNT THREE - LEWD ACT ON A MINOR

That Matthew Gerald, being over fourteen years of age did in Marion County on or about October 26, 2010, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: ^{Mino} , DOB: , with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: performing oral sex on the juvenile victim, spitting in his anus, and touching him with the intent to perform anal intercourse on him, in violation of Section 16-15-0140, S. C. Code of Laws, 1976, as amended.

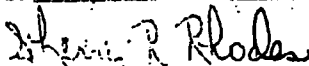
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

A CERTIFIED COPY OF THE ORIGINAL FILED IN THIS OFFICE

BOOK _____ PAGE _____



CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA