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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Robert E. Hood, Circuit Court Judge

ERIC MARSH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002325

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
2011-GS-40-01996

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Eric Dwayne Marsh,)
Defendant.)

March 20, 2013
Columbia, South Carolina

B E F O R E :

THE HONORABLE G. THOMAS COOPER, JUDGE.

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

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Official Court Reporter

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INDEX OF WITNESSES

(WHEREUPON, no witnesses were called during these proceedings.)

EXHIBITS

(WHEREUPON, no exhibits were introduced during these proceedings.)

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MARCH 20, 2013

MS. BODMAN: Eric Marsh.

THE CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes.

MS. BODMAN: Standing before you is Eric Marsh. He is here to plead to two counts of CSC with a minor in the second degree. One is from Richland County, the other is from Lexington County, involving the same victim.

He has signed -- my understanding is he has signed a waiver of jurisdiction of Lexington County in order to proceed today with pleading on that charge here.

He is represented by Ted Lupton, of the private bar, for his Richland County charge, and he is represented by Bennett Casto, of the Lexington County Public Defender's Office on the Lexington charge.

We are -- I am standing here for myself, as well as Suzanne Mayes is the prosecutor for the Lexington charge, and we together are recommending a cap of 15 years to run concurrent on our two charges.

1 THE COURT: And the Lexington case has not
2 been indicted?

3 MR. CASTO: That's correct, Your Honor. And
4 he signed the waiver.

5 THE COURT: All right. Mr. Casto, you
6 represent Eric Marsh on the Lexington County case?

7 MR. CASTO: Yes, sir, I do.

8 THE COURT: Have you advised him of his right
9 to have these charges presented to the Grand Jury
10 of Lexington County?

11 MR. CASTO: Yes, sir.

12 THE COURT: Let me do that first. Mr. Marsh,
13 you are charged with criminal sexual conduct with a
14 minor in the second degree in Lexington County, as
15 well as Richland County, but your Lexington County
16 charges have not been submitted to the Grand Jury
17 of Lexington County. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Did your lawyer explain that?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. You can waive that
22 right and proceed here today, or I will send the
23 charges back over to Lexington County for
24 indictment. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you wish to waive your rights
2 and proceed here today?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. And he is indicted in
5 Richland County?

6 MS. BODMAN: Yes, sir.

7 THE COURT: Mr. Marsh, I need to advise you
8 also that you have a right to have these charges,
9 the Lexington County charges, heard in Lexington
10 County. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: It is my understanding that you
13 wish to waive your rights to have your case, your
14 Lexington County case, heard in Lexington County,
15 and you want to hear it here today in Richland
16 County. Is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Which means you are
19 waiving venue and jurisdiction. You may not
20 understand those two terms, but you may. But that
21 allows me to hear your case today instead of
22 sending it back to Lexington. Do you understand
23 that?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. You are charged with

1 the same thing in both counties, that is, criminal
2 sexual conduct with a minor in the second degree.
3 Have you talked to your lawyers about pleading
4 guilty in this case?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. And, Mr. Lupton, you
7 represent Mr. Marsh on the Richland County charges?

8 MR. LUPTON: Yes, Your Honor.

9 THE COURT: Did you advise your client of the
10 charges contained in this indictment and his right
11 to a trial by jury?

12 MR. LUPTON: Yes, Your Honor.

13 THE COURT: How does your client indicate he
14 wishes to plead?

15 MR. LUPTON: Guilty under North Carolina
16 versus Alford, Your Honor.

17 THE COURT: All right. And, Mr. Casto, how
18 does your client choose to plead to the Lexington
19 County charges?

20 MR. CASTO: Guilty, Your Honor.

21 THE COURT: All right. Mr. Marsh, it is my
22 understanding you are pleading guilty to the
23 Lexington County charge and you have somewhat of a
24 problem in pleading guilty to the Richland County
25 charges, so your lawyer tells me you are pleading

1 guilty under what is known as North Carolina versus
2 Alford. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. You understand by
5 entering these pleas that you are giving up your
6 right to remain silent?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You understand by entering these
9 pleas you are giving up your right to a trial by
10 jury?

11 THE DEFENDANT: Yes.

12 THE COURT: If you requested or demanded a
13 trial by jury, the State would give you a trial on
14 both charges. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: At those trials you would have the
17 right to confront and cross-examine all witnesses
18 against you. You would have the right to present
19 any witness and/or evidence in your own defense.
20 You would have the right to testify in your own
21 defense. No one could make you testify at your own
22 trial. If you decide to go to trial and not
23 testify, the judge will tell the jury they could
24 not hold your failure to testify against you. In
25 fact, the jury could not even consider your failure

1 to testify in their deliberations on your guilt or
2 innocence. You would be presumed innocent
3 throughout your trial.

4 The State would have to prove you guilty
5 beyond a reasonable doubt to a jury of 12 people.
6 All 12 people would have to unanimously agree that
7 you were guilty in order for you to be convicted.
8 Even if you were convicted, you would still have
9 the right to appeal that conviction.

10 Do you understand your rights with regard to
11 trial by jury?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Understanding those rights, you
14 still want to enter these pleas?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has anyone promised you anything,
17 held out any hope of reward, threatened you in any
18 manner to make you plead guilty?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Are you satisfied with your
21 lawyers?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I couldn't hear you.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Have they done

1 everything you asked them to do in preparation for
2 this plea?

3 THE DEFENDANT: Yes. Yes, Your Honor.

4 THE COURT: Okay. And they fully discussed
5 the facts of this case with you and have shown you
6 the evidence -- or told you about the evidence that
7 the State would offer if you went to trial? Is
8 that correct?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. Are you satisfied with
11 their advice?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you under the influence of any
14 alcoholic beverages or drugs or prescription
15 medications at this time?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Are you aware of my mental
18 condition that would keep you from understanding
19 what you are doing here today?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: You are entering these pleas
22 freely and voluntarily of your own accord?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Give me a factual
25 basis for the pleas, Solicitor.

1 MS. BODMAN: Thank you, Your Honor.

2 THE COURT: Now, let me tell Mr. Marsh, after
3 she finishes I am going to ask you if those facts
4 are true and correct. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: When she tells me the facts I am
7 going to ask you if that is what happened.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay? All right.

10 MS. BODMAN: Thank you, Your Honor. In
11 September -- on September 27th of 2010, the victim,
12 who was 15 years of age at the time, disclosed to
13 her mother that the Defendant, who was her sister's
14 boyfriend, had been sexually assaulting her for a
15 period of about six months.

16 So the police were called at that time and it
17 was reported to the police.

18 Basically -- and she went to the ARC to be
19 interviewed on October the 20th of 2010 regarding
20 that abuse.

21 At that interview the victim revealed that she
22 had been going and staying at the Defendant's home
23 where her sister lived with him. They were
24 boyfriend and girlfriend. So she would go and stay
25 at that home so that she could spend time with her

1 sister.

2 That at some point between February of 2010
3 and August 15th of 2010 the Defendant started
4 coming in and getting her whenever her sister would
5 fall asleep. He would come in and get her and take
6 her to an attached garage in the home.

7 The first couple of times she described that
8 he essentially would just kiss on her and fondle
9 her, but then it progressed to an incident where he
10 laid her down on a burgundy sheet and penetrated
11 her vaginally with his penis.

12 She consistently described throughout these
13 times that she would be crying and saying, no,
14 please don't do that.

15 And he would say, it is a secret just between
16 the two of them and not to tell anybody.

17 She described that she doesn't know exactly
18 how many times it happened, but it was multiple
19 times. And she did remember that the last time was
20 August the 15th of 2010. And she remembered that
21 because that last time she had told him that she
22 was going to tell, and he got angry at her.

23 So it was on that date, October 20th of 2010,
24 that she disclosed this at the ARC.

25 The investigator at the time was a Jill Beza,

1 of the Irmo Police Department. And so Investigator
2 Beza had started reaching out to the Defendant to
3 see if he could come in and give his side of the
4 story.

5 And they would talk on the phone and
6 essentially he would say, yes, he was going to come
7 in, yes, he was going to come in, and this was all
8 a big lie. That DSS was investigating them and
9 that she was just making this up because DSS was
10 about to take her into custody and take her out of
11 the home.

12 On October 25th of 2010, the victim was
13 standing outside of her home waiting for the bus,
14 and the Defendant drove up and tried to get her
15 into the car.

16 She turned to run back into the house and he
17 caught her by the wrists, grabbed her and said, if
18 you scream I'm going to break your fucking wrist.

19 He pulled her into the car and put her in the
20 car, said, why did you tell, say that I forced
21 myself on you? And hit her twice in the face.

22 He then began driving around. Went to an
23 abandoned house. He called Investigator Beza and
24 said that he needed just a little more time to come
25 in, that his grandmother was coming up with the

1 bail money.

2 Then she indicates that the Defendant forced
3 her to perform oral sex on him. He then had, in
4 the back of the car, had vaginal sex with her
5 again.

6 She said that she was crying. It made him
7 mad. He tried to choke her. He hit her in the
8 face again. Hit her in the stomach. Then got some
9 rope and tape, tied her hands behind her back.

10 At some point he called the sister, the
11 girlfriend, and said some things to the sister.

12 THE COURT: When was this?

13 MS. BODMAN: This is on October 25th of 2010.

14 THE COURT: Okay.

15 MS. BODMAN: So after those -- after the first
16 interview at the ARC --

17 THE COURT: That is the Lexington County case?

18 MS. BODMAN: That is the Lexington County
19 case. That abandoned home, based on the
20 investigation, we determined that to be a location
21 in Lexington County.

22 At some point, you know, she throws up in the
23 car. He drives her around for a while. And then
24 makes her call the investigator. And at first she
25 just gets a voicemail and leaves a message for her,

1 but then calls Investigator Beza back.

2 And he makes her call and say that she made
3 the whole thing up, that the Defendant didn't do
4 anything to her, and that she wanted, you know, to
5 drop the charges, everything to drop.

6 And the investigator was trying to ask her,
7 you know, are you sure? What is happening? And
8 you can hear in her voice, she is very meek and has
9 a sense of being scared in her voice as this is
10 happening.

11 After a while I guess he, you know, drives her
12 around and then at approximately 1:00 o'clock in
13 the afternoon he returns her home.

14 So when she walked into her home, her parents
15 realize, you know, why are you home? You are
16 supposed to be in school.

17 You know, they talk to her for a while and
18 confront her about why in the world weren't you in
19 school?

20 And she eventually tells them what happened
21 and about being grabbed at the bus stop and
22 sexually assaulted.

23 They immediately take her to the emergency
24 room. And she does have a rape kit done at the
25 hospital.

1 In the exam they noticed swelling to her left
2 side of her face that is going to be consistent
3 with him hitting her. And they note several
4 genital abrasions. The pediatric -- the forensic
5 pediatric doctor noted that they were extensive,
6 the vaginal abrasions.

7 So on the next day Investigator Beza finds out
8 about what happened the day before and calls him
9 and he says he is going to turn himself in, but he
10 didn't. So she got a warrant and put it into NCIC.

11 The Defendant is then located November 3rd of
12 2010 in a hospital in Daytona Beach, Florida. Law
13 enforcement in Florida then see that the warrant is
14 in NCIC and hold him and he is extradited back.

15 He was interviewed at Alvin S. Glenn Detention
16 Center by the CPD investigator, because initially
17 we were trying to determine where this abandoned
18 house was, we thought it was in Columbia Police
19 Department, so a Columbia police officer and
20 Investigator Beza went to go interview him, and
21 essentially he admits to a lewd act upon the child,
22 that there was no penetration, but that he did --
23 there was some instance of --

24 THE COURT: On which occasion?

25 MS. BODMAN: It is really unclear, but that he

1 says, yeah, okay, well, I have never penetrated
2 this minor child, but there was an occasion where I
3 rubbed on her with my penis and ejaculated on her.

4 She is interviewed the second time, a second
5 time regarding the second incident at the ARC where
6 those are -- where she revealed the details of the
7 grabbing at the bus stop and tying her up and
8 sexually assaulting her.

9 The results of that rape kit, we got semen on
10 a vaginal swab, a rectal swab, a suspected body
11 fluid swab, and cuttings from her underwear.

12 They all showed the source was one male. A
13 CODIS hit matched the Defendant. We subsequently
14 got his buccal swab and confirmed that that DNA
15 from those swabs is him.

16 THE COURT: Why was he in CODIS?

17 MS. BODMAN: He had some type of conviction
18 out of Connecticut that he was required to -- must
19 have been required to provide. He has got a drug
20 offense in Connecticut, a breach of peace, an
21 unlawful use of a motor vehicle, and a larceny.

22 The victim was here. I think when I started
23 giving the facts she did leave the courtroom. I
24 think this was hard for her to hear. But the
25 victim's mom is here and at the appropriate time

1 would like to address the Court.

2 THE COURT: Mr. Marsh, she has talked about
3 three different incidents, one -- two in -- well,
4 all of them in 2010, one in February, one in
5 August, and one in October. Have you understood
6 what she was saying?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Are those facts true
9 and correct on those dates as to what happened?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: What is not true?

12 THE DEFENDANT: Just about everything.

13 THE COURT REPORTER: I'm sorry, I can't
14 understand him.

15 THE DEFENDANT: I said, just about everything.

16 THE COURT: Just about everything?

17 THE DEFENDANT: Yes.

18 THE COURT: You didn't have any contact with
19 this girl?

20 THE DEFENDANT: Like I admitted before that
21 I -- I never denied on 10/25/2010, I never denied
22 that day not being around her.

23 MR. LUPTON: Your Honor, if I may? My report
24 is that the Richland County charge is under Alford,
25 and so he does acknowledge that as far as

1 substantially -- he disputes some of the
2 allegations.

3 THE COURT: I understand that.

4 MR. LUPTON: I would say that some of the
5 allegations I did not find in the discovery either,
6 but that there would be a substantial basis for the
7 plea.

8 And, Your Honor, my understanding is that he
9 acknowledges that there was sufficient basis for
10 the Lexington plea as well, without admitting to
11 all of the gory details.

12 THE COURT: They are not gory, they are what
13 the State plans to offer. I mean --

14 MR. LUPTON: And I recognize -- I think we all
15 recognize that that is what the State would
16 introduce at trial, Your Honor.

17 THE COURT: That is what this victim would
18 testify.

19 MR. LUPTON: I understand that that would be
20 the State's evidence, Your Honor.

21 The Defendant, not all of that is required to
22 support the plea, and he doesn't admit to all of
23 it, but we are asking to go forward with the plea,
24 admit the substantial basis for the plea. And
25 we'll address mitigation.

1 THE COURT: I'm not worried about mitigation
2 right now.

3 All right, Mr. Marsh, what your lawyer told
4 me, is that true? I mean, is that right?

5 THE DEFENDANT: Say again now?

6 THE COURT: What your lawyer just told me, is
7 that right?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. How about it,
10 Mr. Casto?

11 MR. CASTO: Yes, sir, that is our
12 understanding with regard to, you know, a lot of
13 that, as the good Solicitor stated, is kind of
14 lumped together. With regard to what took place in
15 Lexington County, that is our understanding of, you
16 know, what occurred on that day.

17 THE COURT: Is that correct? What she told me
18 in Lexington County, is that what took place on
19 that day, October 25th?

20 MR. LUPTON: Your Honor, I think he admits
21 that there is some --

22 THE COURT: Let Mr. Casto tell me. He is
23 representing him in the Lexington County case.

24 (Pause.)

25 MR. LUPTON: I apologize, Your Honor.

1 THE COURT: Yes, sir?

2 THE DEFENDANT: I admit to some of the
3 evidence within that case, but I do not admit to
4 everything.

5 THE COURT: You are telling me, I admit to the
6 evidence, but I don't admit to the evidence? You
7 don't admit to everything?

8 THE DEFENDANT: I don't --

9 THE COURT: Did you have a sexual encounter
10 with this woman on October 25th, 2010? That's what
11 you just told me you pled guilty to.

12 THE DEFENDANT: Yes.

13 THE COURT: All right. I find the decision of
14 the Defendant, Eric Marsh, to plead guilty to be
15 freely, voluntarily, intelligently made. He has
16 had the representation of competent counsel in the
17 persons of Mr. Casto and Mr. Lupton, with whom he
18 says he is satisfied. I find a factual basis for
19 the plea. And therefore I will accept his plea.

20 Mr. Marsh, if you disagree with the sentence I
21 give you or the procedure of this plea, you have
22 ten days from today's date in which to file a
23 motion of intent to appeal. Do you understand
24 that?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. Does he have a prior
2 record, other than what you just told me?

3 MS. BODMAN: Nothing other than what I just
4 told you from Connecticut, those offenses in
5 Connecticut.

6 THE COURT: I will be glad to hear from the
7 victim, or the victim's mother.

8 MS. BODMAN: The victim's mother. Her name is
9 Reba Alexander.

10 THE COURT: That podium is fine.
11 Ms. Alexander?

12 MS. ALEXANDER: Yes, sir.

13 THE COURT: You have to speak up so I can hear
14 you, now.

15 MS. ALEXANDER: Yes, sir.

16 THE COURT: Okay. Have you got something you
17 want to tell me?

18 MS. ALEXANDER: Yes.

19 THE COURT: All right.

20 MS. ALEXANDER: I feel that he should get the
21 maximum sentence for hurting my child because he
22 only would have been charged for one incident if he
23 hadn't picked her up from the bus stop. And after
24 that he had the nerve to kidnap her and sought
25 revenge. So he deserves to get the maximum

1 sentence because if he gets out he might try to
2 hurt my baby again.

3 THE COURT: Okay. Thank you, ma'am.

4 MS. BODMAN: And the victim has asked the
5 victim advocate, Juana Wexler, to speak on her
6 behalf.

7 THE COURT: All right.

8 THE VICTIM ADVOCATE: (For the victim)

9 Your Honor, my life changed that day. I
10 became a shell of myself. I went from a happy
11 15-year-old to a scared 18-year-old who doesn't
12 know how to be happy with life. Today I sit in
13 this courtroom nervous and uneven. I want him to
14 pay for the last little childhood I had left. I
15 also want to say I hope God forgives you because I
16 don't know if I ever will. I would like to see him
17 get the maximum sentence of 15 years. Thank you.
18 Reba Hawkins.

19 THE COURT: Anything further?

20 MS. BODMAN: Nothing further.

21 THE COURT: Defense counsel?

22 MR. LUPTON: Your Honor, I guess I will start
23 since I was appointed first. Your Honor --

24 THE COURT: Has he been in jail constantly
25 since November 3rd?

1 MR. LUPTON: Yes, Your Honor. I calculate it
2 out to be 868 days.

3 THE COURT: All right. Go ahead.

4 MR. LUPTON: Your Honor, I was appointed on
5 this case I guess last summer, and I was the third
6 attorney on the case.

7 At that point he was very upset because at
8 that point he felt nothing was being done on his
9 case. There were some issues involved with the DNA
10 kit had not been -- the rape kit had not been
11 tested. He had not been served with the Lexington
12 charges yet. He was very upset and felt that he
13 was being unfairly targeted.

14 He felt that the police, when they eventually
15 took his DNA from the swab, took the swab and DNA
16 test for the Schmerber hearing, that there were
17 some irregularities that he had some complaints
18 about. And he wanted me to address those with the
19 Court, where the test kit was not sealed in his
20 presence, as well as he was upset about the delay
21 in serving the Lexington charges.

22 Your Honor, as far as the Richland case goes,
23 the victim in that case -- and I understand that
24 she has given a statement in court today through
25 the Victim Advocate, but he wanted me to relay to

1 the Court that she has recanted those accusations
2 on multiple occasions both to police and to other
3 people.

4 The recording to the police I have listened
5 to, he has listened to. He says that is her normal
6 voice. The voice that I heard was quiet, but I did
7 not hear fear in the voice. As well as the
8 indication was that he was not present when she
9 made the call.

10 Your Honor, I say this not to aggravate the
11 situation, but he is concerned that the mother has
12 a grudge against him. He tells me that DSS has
13 been investigating the family. There were
14 problems.

15 THE COURT: What is his connection with the
16 family?

17 MR. LUPTON: His girlfriend is the victim's
18 older sister, one of her older sisters.

19 THE COURT: Still is?

20 MR. LUPTON: Your Honor --

21 MOTHER: No.

22 MR. LUPTON: -- I think that because he has
23 been in jail so long they haven't been able to see
24 each other, but they were still together as much as
25 possible. They were writing back and forth

1 substantially into the case.

2 THE COURT: Okay.

3 MR. LUPTON: He would like me to note to the
4 Court that he feels that the evidence if it was
5 shown that DSS had a restriction that Reba was
6 required to be in the mother's home at the times
7 when the allegations occurred.

8 And he has some concerns about the
9 investigation done by police, including the delays
10 in testing of the evidence.

11 With regards to what has been said in the
12 courtroom, he has concerns about the fact that the
13 rape kit -- my reading of the rape kit, there was a
14 second male semen sample, semen profile, that was
15 on the kit, not just one.

16 And the swabs, my understanding is that the
17 swabs have not come back from SLED yet, that those
18 are still being tested.

19 Now, it is possible that the Solicitor has
20 just gotten them back and hasn't had a chance to
21 forward them yet, but as of the last discovery I
22 got, those had not yet come back.

23 I do acknowledge that the CODIS from
24 Connecticut is a match. And so not disputing that.
25 He just -- he has some concerns about that and

1 wanted that addressed in court.

2 Your Honor, his mother is here and would like
3 to speak on his behalf. In addition to his
4 mother -- I apologize, Your Honor, his mother has
5 an oxygen tank, and I think it shifted. Your
6 Honor, also two aunts, Angela Williams and Fanessa
7 Pinckney. And that is Fanessa, F-A-N-E-S-S-A,
8 Pinckney, as well as uncle, Richard Pinckney, are
9 present. And they would also, if possible, like to
10 address the Court.

11 Your Honor, in addition to anything Mr. Casto
12 has to say, I would ask the Court to consider
13 something less than 15 years. I believe that there
14 is some DNA evidence that certainly links him to
15 the Richland County case.

16 THE COURT: Richland?

17 MR. LUPTON: I'm sorry, the Lexington County
18 case. I misspoke. There is no forensic evidence
19 on the Richland County case. It was reported
20 substantially after occurrence. There were people
21 that were in the house when the alleged incidents
22 in Richland County occurred. There was no
23 indication from any of them that there was anything
24 wrong. And, even after, she kept returning to the
25 house.

1 Additionally, he denies any kidnapping or
2 coercion or violence against the victim at any
3 point. And there was some vaginal tearing.
4 However, it was nothing -- it was not -- the
5 pictures did not indicate horrific injury, or
6 anything of that nature. There was some tearing,
7 which would be consistent with intercourse, but not
8 conclusive of anything else.

9 The other --

10 THE COURT: That is nice to know.

11 MR. LUPTON: Your Honor, the other little bit
12 of bruising, the pictures do not show any
13 significant bruising, or anything of that nature,
14 that I saw.

15 Your Honor, the ARC report indicated all sorts
16 of things that could be done to verify her story
17 that were not done.

18 So, Your Honor, understanding the allegations,
19 he is pleading guilty, not to any violent attack,
20 but he is admitting guilt. And I would ask the
21 Court to consider, if not a time served sentence,
22 something in the three to five range.

23 THE COURT: Mr. Casto?

24 MR. CASTO: Thank you very much. May it
25 please the Court? You know, it is -- and I will be

1 brief because I believe that Mr. Lupton has covered
2 much of that. And these cases, like he said, are
3 very much intertwined. It is very much like the
4 Solicitor outlined.

5 I am somewhat late to this. And as the
6 Solicitor outlined, they made the discovery that
7 this one allegation happened in Lexington County.

8 I met Eric back in October of last year. By
9 that time, as the Court heard, he had already been
10 incarcerated for two years.

11 A word or two about, you know, his demeanor.
12 And he has always been very interested, obviously,
13 in his case, as many clients are, actually. But
14 ultimately he is somebody that, you know, sees this
15 new lawyer show up, and he has been very
16 accommodating with me.

17 He is somebody that is very much, yes, sir/no,
18 sir kind of stuff. I met with him on several
19 occasions, and we just sat down and we just really
20 hashed this thing out. And he has always been very
21 respectful to me with regard to the evidence in
22 this case.

23 He does have, you know, a lot of evidence out
24 there. And we really did a great job of wading
25 through it and helping him digest that.

1 He is 37 years of age. And he went to high
2 school up in New Haven, Connecticut.

3 Primarily, Judge, the type of job and work
4 that he has done has basically been in
5 construction, some type of lawn care.

6 He resides in Irmo. Moved in with his --
7 moved here because his mother was already here. As
8 the Court has already heard, she's in very poor
9 health.

10 It is no secret, I serve in Lexington County
11 as a Public Defender over there. And as the Court
12 knows only too well, you know, it is me, you know,
13 standing beside my client. And a lot of bridges
14 with family, and whatnot, have been burned.

15 But his mother has been just a dogged
16 supporter of him. And she has been by my office
17 some and, you know, has brought me messages on
18 behalf of Mr. Marsh. And she is somebody that has
19 really communicated to me that she is
20 wholeheartedly in support of her son. That
21 ultimately, once he serves the sentence -- and he
22 knows, Judge, that he won't walk out of here today,
23 as a matter of candor. We would ask the Court for
24 as much mercy as the Court sees fit to give. But
25 she is still going to be there.

1 We met the other two folks joining him that
2 are also family members as well, Judge, and these
3 are good and decent people. And I think it speaks
4 volumes that they are here in support of him.

5 To clarify, Your Honor, Mr. Marsh takes
6 ownership of the incident in Lexington County.
7 However, he denies that it was the act of, you
8 know, force.

9 We have gone through, you know, that basically
10 age is really the key issue, force or not. And,
11 you know, I have been very candid with him about
12 that in my representation of him.

13 I know that these family members would like to
14 speak to the Court just whenever the Court sees fit
15 to hear from them.

16 THE COURT: All right. I will be glad to hear
17 from them.

18 MS. BUTLER: Good afternoon, Your Honor.

19 THE COURT: Yes, ma'am. I need your name. I
20 need your name.

21 MS. BUTLER: My name is Debra Butler.

22 THE COURT: Ms. Butler?

23 MS. BUTLER: I am Eric's mother. And I'm here
24 in his behalf for him today, because he is my son.
25 Okay? And I love him. Just like any other mother

1 would love their son. I can't say whether he is
2 right, and I can't say whether he is wrong, because
3 I wasn't there. I wasn't in the house. But
4 whatever was did that went on, I wasn't in the
5 presence of it. Only Eric and that young lady
6 knows what went on. And the father up above.

7 And, like I said, teenagers, young kids, they
8 lie. I'm not going to say my son is perfect,
9 because there is nobody in this world that is
10 perfect. If you were perfect, you are in the wrong
11 place.

12 But whatever the case may be, I am still going
13 to love him and I'm going to stand behind him. And
14 I hope everything turns right for both of them,
15 because I will pray for all -- both of them.

16 THE COURT: Thank you, ma'am.

17 How are you, sir?

18 MR. PINCKNEY: Good afternoon, Your Honor. My
19 name is Richard Pinckney. I am the uncle of Eric
20 by marriage. This is my wife Fanessa.

21 THE COURT: How are you, ma'am?

22 MR. PINCKNEY: She is his aunt. And we
23 just -- we have known Eric for quite some time,
24 since he was small. And he worked with me. I have
25 a little small landscaping business that he worked

1 with me with. And --

2 THE COURT: Where was he living? Was he
3 living with you?

4 MR. PINCKNEY: No, he wasn't living with me.
5 He was living with his mother, who was just here.

6 THE COURT: All right.

7 MR. PINCKNEY: Yes.

8 THE COURT: I thought she lived in
9 Connecticut.

10 MR. PINCKNEY: She was living in Connecticut.
11 She moved down here several years ago.

12 THE COURT: All right.

13 MR. PINCKNEY: Yes, sir. And just speaking of
14 Eric's character, he is a hard worker. He worked
15 with me. He is a hard worker. He is honest, you
16 know. And I could rely upon him. He was very
17 dependable.

18 And so some of the things that were mentioned
19 here that was alleged against Eric, it doesn't fit
20 the character that I know of Eric. But, see, I
21 don't -- you know, I only be with him on the work
22 relationship, so. But based on the character that
23 he -- around me while we're working and just in
24 general conversation, it really doesn't fit, so.
25 But, anyway, I would just like to say that on his

1 behalf of Eric. I don't know if I said everything
2 or my wife wants to say something.

3 THE COURT: I will be glad to hear from you.

4 MS. PINCKNEY: I am Fanessa Pinckney. And
5 Eric is my nephew. And on behalf of Eric, I have
6 known Eric since he has been an infant. Eric has
7 stayed in our home from time to time. However, he
8 was at the present time living with his mother.

9 The allegations that I heard against Eric
10 doesn't fit the character that we know of Eric. As
11 teenagers, of course, teenagers get into a lot of
12 things.

13 THE COURT: Ma'am, he is not a teenager.

14 MS. PINCKNEY: Well, at the time -- he wasn't
15 a teenager.

16 THE COURT: He's 36 years old.

17 MS. PINCKNEY: Well, 36 years old. It didn't
18 fit the character that I know of my nephew Eric.

19 THE COURT: I understand.

20 MS. PINCKNEY: But Eric has always been a yes,
21 ma'am/no, sir type of gentleman. And I hope
22 everything works out for the best for him.

23 THE COURT: All right. Thank you very much.

24 MR. LUPTON: And, Your Honor, this is Angela
25 Williams, his other aunt.

1 THE COURT: Hello, Ms. Williams. How are you?

2 MS. WILLIAMS: I'm great. Good afternoon,
3 Your Honor. Eric Marsh is my nephew. And they
4 live right around the corner from me. And, you
5 know, whenever I asked of him to do anything, it
6 was yes, ma'am/no, ma'am, you know. And he always
7 worked and did what he had to do.

8 I met one of their daughters, his girlfriend,
9 and she seemed to be a nice person also, you know.
10 And they didn't seem to have any problems. So I
11 don't know the victim, you know, I don't know what
12 happened, but I wish the best for my nephew.

13 THE COURT: All right. Thank you.

14 MR. LUPTON: Briefly, Your Honor.

15 THE COURT: I will be glad to hear from you,
16 Mr. Marsh, if you want to say anything.

17 THE DEFENDANT: Well, I would like to address
18 the Court by saying that the allegations that are
19 against me, yes, I have plead guilty, and whatever
20 I'm incarcerated for, I apologize for actions,
21 wrong, right, or whatever the case may be.

22 But as far as this incident goes, I will take
23 whatever you give me and take it in stride, because
24 there is no more I can do about it.

25 And I do feel -- I feel sorry that the family

1 feels the way they feel with me. And I apologize
2 for whatever action that they may feel against me.
3 But that is not what I really represent.

4 I ask the Court that they please have leniency
5 with me, because there is a lot of things I still
6 do not understand. But I leave everything in your
7 hands, Judge.

8 THE COURT: Where were you born?

9 THE DEFENDANT: Where was I born? I was born
10 in Richmond.

11 THE COURT: Virginia?

12 THE DEFENDANT: Yes.

13 THE COURT: Anything further?

14 MR. LUPTON: No, Your Honor.

15 THE COURT: Have you lived in this country all
16 of your life?

17 THE DEFENDANT: Most of it, yes.

18 THE COURT: I just detected some accent. I
19 thought you may have spent a little time in Jamaica
20 or something.

21 THE DEFENDANT: I grew up with a lot of them
22 in New Haven.

23 THE COURT: I didn't quite hear him.

24 MR. LUPTON: He said he grew up with a lot of
25 Jamaicans in New Haven, Your Honor.

1 THE COURT: Oh, New Haven.

2 MR. LUPTON: It is a suburb of Jamaica.

3 THE COURT: I understand.

4 MR. LUPTON: Your Honor, we would just ask for
5 the Court's mercy.

6 THE COURT: Ms. Bodman, do you have any
7 dispute with that time served, pretrial time served
8 figure that Mr. Lupton gave me?

9 MS. BODMAN: Oh, I do, Your Honor. I think 15
10 years is a gift.

11 THE COURT: No, no, no, that is not what I
12 asked.

13 MS. BODMAN: I'm sorry. Oh, how many times --
14 how long he has been in?

15 THE COURT: Yes. November 3rd of 2010?

16 MS. BODMAN: Yes, I have no dispute with that.

17 THE COURT: That is 868 days. That is what I
18 asked.

19 MS. BODMAN: Pardon me.

20 THE COURT: That's what I asked. Go ahead.
21 Do you have something else you want to tell me?

22 MS. BODMAN: I apologize, Your Honor, I
23 misunderstood.

24 I understood Mr. Lupton to be asking for some
25 sort of short, very short active sentence.

1 THE COURT: That is his job.

2 MS. BODMAN: Yes. And that is just what I
3 wanted to address, is that all of this evidence is
4 completely consistent with what the victim
5 initially disclosed in her first interview and the
6 second interview, and it is absolutely inconsistent
7 with this, you know, defense that he was saying
8 initially, I never touched her, this is all a big
9 lie, they are out to get me, the mother has a
10 problem with me, you know, this is all a big lie.

11 And so he never has sex with the girl in
12 Richland County, but then after he is accused of it
13 he goes and has sex with her on October 25th. I
14 mean, that second incident that she described as
15 being taken from that bus stop and forced to call
16 the investigator and say it is a lie is 100 percent
17 consistent with that being revenge and retribution
18 on her for telling about the month-long sexual
19 abuse that she would -- that she -- that happened
20 to her.

21 And so, you know, her injuries don't lie. Her
22 swelling to her face doesn't lie. The genital
23 abrasions don't lie. And the semen in the multiple
24 swabs that matches to him do not lie.

25 And I do believe that 15 years is a gift.

1 THE COURT: Anything further?

2 MS. BODMAN: No, Your Honor.

3 MR. LUPTON: Your Honor, briefly, he wanted me
4 to relay to the Court that after these allegations
5 started she has called him, you know, during the
6 time that the allegations are ongoing for Richland.
7 And, Your Honor, there is no physical evidence that
8 is consistent in Richland County. There is no
9 physical evidence at all. In fact, when the search
10 warrant --

11 THE COURT: Well, you know --

12 MR. LUPTON: I understand.

13 THE COURT: I can give him 20 years on the
14 Lexington County case.

15 MR. LUPTON: I understand. We ask for as much
16 mercy as the Court can give.

17 THE COURT: All right, Mr. Marsh, on both
18 charges, the sentence of the Court is that you be
19 committed to the State Department of Corrections
20 for a period of 15 years. I will give you credit
21 for time served from November 3rd of 2010, the 868
22 days. Your name is going to be listed on the
23 sexual offender registry when you get out.

24 Good luck to you, sir.

25 MS. BODMAN: Thank you, Your Honor.

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(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA

County of Richland

2013CP4006380

In the Court of Common Pleas

Eric Duanye Marsh # 354716
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

2013 OCT 18 PM 2:32
JEANE T. W. HOSBROOK
C.C.P. & G.S.
RICHLAND COUNTY
FILED

INSTRUCTIONS — READ CAREFULLY

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

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

If the 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 Broad River Correctional Institution 4460 Broad River Road Columbia SC 29210
2. Name and location of Court which imposed sentence The Circuit Court of the fifth Judicial Circuit 1701 main st Columbia SC
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) E-0207224 (Ind#) 2011-G540-01996-CSC 2nd
 - (b) M-302915 (Ind#) 13-G532-00965-CSC 2nd - Lexington County
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3/20/2013 15 years
 - (b) 3/20/2013 15 years
 - (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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions 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. N-A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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?

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

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

- (a) your arraignment and plea? Theodore Nichols Lupton / Bennett E. Casto
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Robert Michael Dudek
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Theodore N. Lupton: Lupton Law Firm, 140 Gibson Rd, Lexington SC
- ii. Bennett E. Casto: Attorney at Law, 407 1/2 W Main Street Lexington SC
- iii. Robert M. Dudek: Chief Appellate Defender P.O. Box 11433 Columbia SC.

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

- i. Theodore N. Lupton / Bennett E. Casto at Plea
- ii. Robert M. Dudek at Appeal
- iii. _____

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

want retrial or to vacate and set aside judgement of conviction

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

No

County of Richland County

I, Eric Marsh # 354716, 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.

Eric Marsh

SWORN to and subscribed before me this 7th day of October, 2013
Susan H. Drye (L.S.)
Notary Public

RICHLAND COUNTY
FILED
2013 OCT 18 PM 2:38
JEANETTE R. HARRIS
C.C.P. & G.S.

My Commission Expires
March 5, 2018

My Commission Expires: _____

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

I, Eric Marsh # 354716, 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.

Eric Marsh
Applicant

SWORN or affirmed to and subscribed before me this 7th day of October, 2013
Susan H. Drye
Notary Public

My Commission Expires: _____

My Commission Expires: _____

March 5, 2018

October 7 2013

I Eric Marsh ask the clerk of Court to please clock-stamp, file and enter a control number on this application for this post-conviction Relief. As there as please mail me a copy of this application clock-stamp with a file stamp as well as a control number for my own record of time file.

Yours Truly
Eric Marsh

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
Eric D. Marsh, #354716,)	
Applicant,)	2013-CP-40-6380
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

Respondent, making its Return to the Application for post-conviction relief filed October 18, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the May 2011 term of the Richland County Grand Jury for Criminal Sexual Conduct with a Minor in the Second Degree (2011-GS-40-1996). Applicant was represented by Theodore Lupton, Esquire. On March 20, 2012, Applicant appeared before the Honorable J. Ernest Kinard, Jr., where he pled guilty as indicted. Judge Kinard sentenced Applicant to fifteen years imprisonment.

Applicant filed a notice of appeal to the South Carolina Court of Appeals. The South Carolina Court of Appeals dismissed the appeal for Applicant's failure to provide a sufficient basis to proceed forward on his appeal from a guilty plea. The Remittitur was sent on September 17, 2013.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. The transcript from Applicant's

guilty plea proceeding has been ordered and will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel

- a. "Counsel fail to give effective assistance at critical stage of trial proceeding, including protecting my right to due processing of law."

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

III.

Applicant alleges 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 (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 trial 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 (1985).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

February 24, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

ERIC DWAYNE MARSH, #354716)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS


2013-CP-40-6380

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:

Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

DATED this 24th day of February, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Eric Dwayne Marsh,)
 SCDC # 354716,)
 Applicant,)
)
 vs.)
)
)
 State of South Carolina,)
 Respondant.)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-6380

AMENDED APPLICATION
 FOR POST CONVICTION RELIEF

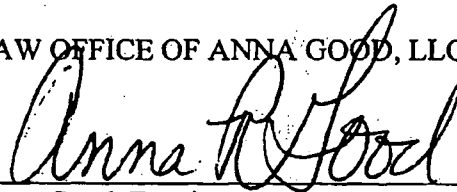
2014 APR 24 9H 47
 JENNIFER L. ...

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows to include in addition to prior grounds stated in the original application for post-conviction relief:

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

- (a) Ineffective assistance of trial counsel – trial counsel failed to properly investigate the case;
- (b) Ineffective assistance of trial counsel—trial counsel misadvised client as to sentencing for the plea; and

LAW OFFICE OF ANNA GOOD, LLC



Anna Good, Esquire
 Attorney for Applicant
 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-429-9107
 803-799-4059 (fax)

Columbia, South Carolina
 This 24th day of April, 2014

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
County of Richland)	2013-CP-40-6380
)	
ERIC MARSH,)	
)	
APPLICANT,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
)	
RESPONDENT,)	

September 2, 2014
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

ANNA GOOD, ESQ.
Attorney for the Applicant

ASHLEIGH WILSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
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> > > < < <

CERTIFICATE OF REPORTER 51

PLAINTIFF'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Handwritten notes	19	

1 THE COURT: All right. We're on the record
2 in 2013-CP-40-6380, Eric Duane Marsh versus the State of
3 South Carolina.

4 Mr. Marsh, good morning.

5 He is present, represented by Ms. Good, and the State
6 is represented by Ashleigh Wilson.

7 Ms. Wilson, why don't you get us started, and then
8 we'll go from there.

9 MS. WILSON: Thank you, Your Honor. Ashleigh Wilson
10 for the State of South Carolina. This is Eric Duane Marsh
11 versus the State.

12 Mr. Marsh was indicted May 2011 for one count of
13 criminal sexual conduct with a minor second degree, and
14 that was indictment number 2011-GS-40-1996. And as a
15 corollary to that, he pled guilty to that March 20, 2013,
16 and along with that, he also pled guilty to a -- almost
17 identical Lexington County conviction.

18 We're here today solely only the Richland County
19 conviction. He was represented during his guilty plea by
20 Mr. Ted Lupton. He was represented on the Lexington plea
21 by a public defender named Bennett Castro.

22 He pled guilty pursuant to North Carolina versus
23 Alford for his Richland County charges, and he just pled
24 without being under Alford for the Lexington County
25 charges.

1 But anyway, he pled before Judge Cooper on
2 March 11th, 2013, and he was sentenced to a 15-year
3 sentence. He filed his application for post conviction
4 relief in October, on October 18th, 2013. It was amended
5 by his counsel on April 24th, 2014.

6 The State filed its return, and in his application,
7 he alleges -- well, in his original application, he
8 alleges ineffective assistance of counsel for counsel's
9 failure to give effective assistance of counsel at
10 critical stages including protecting his due process
11 rights.

12 In his amended application, he alleged counsel was
13 ineffective for failing to properly investigate his case
14 and misadvising him regarding sentencing for his plea.

15 After his plea, Mr. Marsh filed an appeal which was
16 dismissed by the Court on June 5th, 2013, and the
17 remittitur on that was issued September 17th, 2013.

18 In his application, he requests a new trial and the
19 vacation -- vacation to set aside his guilty plea. We
20 would just ask that Ms. Good note for the record the
21 allegations that he is going to proceed on today.

22 THE COURT: Okay.

23 MS. GOOD: And, Your Honor, just for the record, the
24 Lexington appeal, I believe, is still pending, so that's
25 why we are not doing all of them together.

1 THE COURT: Correct.

2 MS. GOOD: At this time, Your Honor, we're going
3 forward on trial counsel misadvised as to sentencing for
4 his plea, and basically all the issues surrounding the
5 advice given to him to make him plea. We are not going
6 forward on the failure to properly investigate the case.

7 THE COURT: Great.

8 MS. GOOD: At this time, we'd call Eric Marsh to the
9 stand.

10 THE COURT: All right. Please come forward.

11 All right. Mr. Marsh, please raise your right hand.

12 ERIC MARSH, after being duly sworn,
13 testified as follows:

14 THE COURT: All right.

15 DIRECT EXAMINATION:

16 BY MS. GOOD:

17 Q All right. Mr. Marsh, you just heard Ms. Wilson say
18 that you pled on March 20, 2013 to CSC with a minor second
19 degree, and you received 15 years, correct?

20 A Yes.

21 Q Okay. And who was your attorney for that plea?

22 A Mr. Theodore Lupton.

23 Q Okay. Prior -- do you know when he was appointed to
24 your case?

25 A June 2012.

1 Q Okay. And about how many meetings do you believe you
2 had with him?

3 A Maybe about five to six.

4 Q Okay. And during any of those meetings, what did he
5 tell you regarding the investigation regarding DNA and the
6 advice he was giving you regarding the DNA?

7 A Well, as far as the DNA went at the meeting, he told
8 me it was lost for two years.

9 Q Okay.

10 A They couldn't find it.

11 Q Okay. And when he say lost, who was it lost by?

12 A Either Irmo or SLED.

13 Q And this was an Irmo PD case?

14 A Yes.

15 Q About a month before court, did you meet with him
16 again regarding the DNA?

17 A Yes.

18 Q Okay. And when was that conversation?

19 A He told me that it hasn't came back yet. There was
20 no results of it.

21 Q Okay. And at that point, did you tell him whether
22 you wanted to plea or go to trial?

23 A I wanted to -- I told him that I still wanted to go
24 to trial.

25 Q Okay. And did he do anything in response to this?

1 A Yeah. He filed a speedy trial.

2 Q Okay. And when was your trial set for?

3 A December of 2012.

4 Q Okay. And in December of 2012, were you transported
5 to the courthouse?

6 A Yes.

7 Q And what did you believe you were being transported
8 there for?

9 A I thought I was going to trial.

10 Q Okay. And prior to being transported there, had you
11 spoken with him?

12 A No.

13 Q To know what you were doing?

14 A No.

15 Q And when you -- when you got to the courthouse,
16 explain to the judge what Mr. Lupton told you while you
17 were there?

18 A Well, I went straight into court. He never spoke to
19 me. When I finally got there, it was set up like trial.
20 I thought it was a trial. When I spoke to him, he said,
21 "No, this is not a trial. This is reprocessing of the DNA
22 evidence."

23 Q Okay. So it had already been processed once, and he
24 had advised you that it was inconclusive, and there were
25 no results?

1 A Yes.

2 Q And so you were here again for another DNA test?

3 A Yes.

4 Q Okay. And did you agree with this?

5 A No.

6 Q All right. And what did you tell him to do as a
7 result of this?

8 A Well, he had acknowledged to me that if I had to
9 retake the DNA, he was going to file motions and whatever
10 paperwork that he needed to exclude various evidence. I
11 found out that the process of the DNA from the first test,
12 when it came back inconclusive, that the DNA went from
13 jurisdiction to jurisdiction, I think about four or five
14 different jurisdictions.

15 Q Okay. Did he argue against the DNA during this
16 motion?

17 A No.

18 Q Okay. Did you get in an argument with him about
19 this?

20 A Yes.

21 Q And what was that argument?

22 A We got in a few arguments. The arguments because he
23 told me that -- prior to this, he said since I had already
24 done the DNA, I wouldn't have to give up any other DNA.

25 If I had to, he would fight against it. When they

1 finally got to grant the DNA, we went in the back room.
2 We had a little disagreement about that, too, because the
3 detective took my DNA the first time.

4 He took it, put it in an open box, put it in his top
5 pocket and began to walk out. I addressed Mr. Lupton
6 about it. He called the detective back, and he retook the
7 second swab again.

8 I asked him was he going to seal it and put my name
9 on it. He put it again in an open box, and he put my name
10 on it. He walked out.

11 I addressed Mr. Lupton about this. He said, "Don't
12 worry about it. When he get to court, we'll address it in
13 the proper way that the detective collected the evidence,
14 but he walked out with both sets of DNA."

15 Q Okay. And that was in December of 2011 or 2012?

16 A 2012, yes.

17 Q When did you first get a plea offer on this case?

18 A Maybe about a week or so.

19 Q Before this?

20 A Before I had to plea.

21 Q Okay. And when you had this meeting with Mr. Lupton
22 to discuss this plea offer, do you remember what you told
23 him about it?

24 A Well, when he first told me he had a plea, I didn't
25 want to plea. I asked him about the DNA.

1 Q Okay.

2 A And when he told me about the DNA hasn't come back, I
3 still wanted to go to trial.

4 Q Okay. Did you meet with him again regarding the plea
5 offer?

6 A Yeah. About -- maybe two days later.

7 Q Okay. And what did your meeting entail? What did he
8 relay to you about the plea?

9 A He told me -- at this, he got me a plea. Since I
10 still wanted to go to trial, he thought it was best that
11 he would talk to the solicitor and get me a plea. He got
12 me a plea of time served on Richland County and three to
13 five on Lexington County.

14 Q Okay. And, you know, there's been mention of this
15 Lexington charge. Was Mr. Castro at this meeting also?

16 A Yes.

17 Q Okay. So you believed, essentially, you were getting
18 three to five years on this charge that you're pleading
19 on?

20 A Yes. He told me it was in my best interest to take
21 this plea, because if I didn't take the plea, the
22 solicitor informed him that I would end up with
23 enhancement of all charges. I would get life without
24 parole, and I would get charged with kidnapping.

25 Q Okay.

1 A First degrees.

2 Q And when you believed that you were getting the three
3 to five years, did you tell him you wanted him to do
4 something about this plea offer to put it in writing?

5 A Yes.

6 Q And what did he tell you about that?

7 A He told me the only way he could do it was a zero to
8 15 cap.

9 Q Okay. And did he tell you you could potentially get
10 15 on it?

11 A No. He told me that I would -- no one never gets the
12 whole thing on a zero to 15, so that's why he is pushing.
13 If I can't get time served, it will be three to five.

14 Q Okay. But he told you no one ever gets the whole
15 thing?

16 A Yes.

17 Q The date of the plea on March 20, 2013, did you meet
18 with Mr. Lupton again?

19 A On 2013?

20 Q The day of your plea, did you meet with him again?

21 A Oh yes.

22 Q Okay. And did he go over the paperwork with you?

23 A Yes.

24 Q Again, what did he tell you at this time regarding
25 what your sentence will be?

1 A I asked him again about the DNA. He said it still
2 hadn't come back yet. I asked him about the sentence and
3 what he promised. He said yeah, that's exactly what we're
4 going in here for.

5 Q Okay. And what did you believe you were getting as a
6 sentence?

7 A If I pled, I was getting no more than three to five.

8 Q Okay. And you believed that was negotiated?

9 A Yes. He told me he had to -- the only way it could
10 be negotiated is a zero to 15.

11 Q Okay.

12 A That's how it had to be negotiated.

13 Q Okay. And I believe, Your Honor -- I don't want to
14 make this a part of the record because you have a copy of
15 the sentencing sheets in the record.

16 I'm going to show you your sentencing sheet for this
17 charge. Do you recognize this?

18 A Yes.

19 Q And do you recognize that on the box there was
20 something marked as negotiated sentence, and the judge
21 changed that?

22 A Well, that's the way it was when you sign it.

23 Q Okay. And it was changed to a recommendation?

24 A Yes.

25 Q And you believed it was negotiated, and there was

1 something on that negotiated when you saw it?

2 A Yes.

3 Q And during the plea, did you begin to get concerned?

4 A Oh yes, very.

5 Q Why did you begin to get concerned?

6 A Because the solicitor started talking about the
7 evidence of DNA and the discovery. I didn't know about
8 the discovery or the DNA evidence.

9 Q At that time, had you seen any DNA evidence?

10 A No.

11 Q Okay. And did you say something to Mr. Lupton about
12 this?

13 A I asked him to address this issue.

14 Q Okay. And this was during the plea you asked him?

15 A During the plea, yes.

16 Q What did he tell you when you showed him concern on
17 that?

18 A He told me don't worry about it. Everything would be
19 all right.

20 Q Okay. Did you actually talk to Mr. Lupton about the
21 DNA evidence before your plea?

22 A Yes.

23 Q What did he tell you about that?

24 A He said it hasn't come back yet, and if it wasn't
25 back yet, they could not use it.

1 Q Okay. Did you ask him to see any papers regarding
2 the DNA before the plea?

3 A I asked him to see paperwork, anything involving or
4 related to DNA, and he said there was none.

5 Q Okay. So you were under the impression he hasn't
6 been given any paperwork regarding the DNA?

7 A Yes.

8 Q And it was your impression from Mr. Lupton that he
9 hadn't heard about the second one, and it wasn't going to
10 be a part of this plea?

11 A Yes.

12 Q Okay. And during the transcript, did he actually --
13 or during the plea, did he actually address the fact that
14 he didn't have the DNA evidence back yet?

15 A Yes.

16 Q But yet, the solicitor discussed it, correct, during
17 the plea?

18 A Yes.

19 Q Okay. Did you say something to him during the plea
20 when she began discussing it?

21 A Yes. I addressed him on it when he didn't say
22 anything.

23 Q And that was the first time you had ever heard about
24 results of the DNA test?

25 A Yes.

1 Q Okay. And after the plea, did you talk to Mr.
2 Lupton?

3 A Yes.

4 Q And what did you have a conversation with him about?

5 A He briefly told me that he used to work in the
6 Solicitor's Office, and Ms. Flint (sic) was his friend.
7 He wasn't going to go against her, and he thought that I
8 knew that I was getting the 15 years.

9 Q Okay. He said he thought you knew you were getting
10 the 15 years?

11 A Yes. He said, "I thought you knew you was getting
12 the 15 years."

13 Q Okay. Did you say anything in response to him about
14 that? Were you aware of --

15 A No. I was --

16 Q What that 15 years meant?

17 A No. I wasn't aware of anything.

18 Q If you had been aware of a DNA test and any paperwork
19 regarding that, would you have changed your plea or maybe
20 gone to trial where you had been able to use that to make
21 a decision for your plea?

22 A Well, mainly what I used to make my decision for the
23 plea is the fact that while we was in court, I tried to
24 back out of the plea because I wanted to go to trial.
25 Like I explained to him, I really didn't want to take a

1 plea for something I didn't do. He turned -- he turned
2 around, and when I addressed him, the solicitor got upset
3 and yelled. "Oh, if you don't take this plea, I'm going
4 to make sure you get life without parole enhancements and
5 the kidnapping."

6 Q All right. In conclusion, had you been aware of all
7 the facts surrounding this case including the DNA that
8 would have been used, it was not a negotiated three to
9 five, would you have accepted the plea offer?

10 A No.

11 Q Okay. In fact, the sentencing sheet you were shown
12 and what your attorney was telling you, you were under the
13 impression it was a negotiated three to five-year
14 sentence?

15 A Yes.

16 Q Okay. Is there anything else you'd like to tell the
17 court that we may have missed or skipped over?

18 A Yes. I would like to read some things that I wrote,
19 if it's okay.

20 Q As long as it relates to the case?

21 A Yes, yes.

22 THE COURT: Have you written all this down?

23 THE WITNESS: Yes.

24 THE COURT: Well, why don't you just mark it as an
25 exhibit?

1 THE WITNESS: That's -- I asked that already.

2 MS. GOOD: We would need to get copies, Your Honor,
3 because that's the only copy of it because he brought it
4 today.. We were going to get the clerk to do so, but I
5 don't believe --

6 THE COURT: Do you have an objection to me marking it
7 as an exhibit, Ms. Wilson?

8 MS. WILSON: I've never seen it.

9 MS. GOOD: That's what I was going to say. We need
10 to get copies because it's a very long...

11 THE COURT: How long is it?

12 THE WITNESS: Seven long pages.

13 THE COURT: All right. Show it to Ms. Wilson.

14 (Pause.)

15 MS. WILSON: No objection from the State, Your Honor.

16 THE COURT: All right. That way it's completely in
17 the record, and you don't have to worry about somebody
18 transcribing it incorrectly. How about that?

19 THE WITNESS: Okay. That will be...

20 THE COURT: Okay. All right. Well, I'm going to
21 make you a copy of it, okay. We'll make a copy of it for
22 everybody.

23 It's marked as Applicant's Exhibit No. 1 and admitted
24 without objection.

25 (WHEREUPON, Applicant's Exhibit No. 1 was marked for

1 identification only.)

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Oh, you're welcome. All right. Go
4 ahead.

5 MS. GOOD: I have no further questions, Your Honor.
6 At this time, answer any questions.

7 THE COURT: Ms. Wilson?

8 MS. WILSON: Thank you, Your Honor.

9 CROSS-EXAMINATION:

10 BY MS. WILSON:

11 Q Good morning, Mr. Marsh.

12 A Good morning.

13 Q Can you -- well, take it one step back. Today you're
14 here, and you file this Post Conviction Relief application
15 on your Richland County charges; is that correct?

16 A Yes.

17 Q And you agree that when you pled guilty, you pled
18 guilty to a Richland County charge and a Lexington County
19 charge; is that right?

20 A Yes.

21 Q And can you recall again for the court how many times
22 you met with Mr. Lupton before you pled guilty?

23 A Maybe about five or six.

24 Q And did you go over the evidence that the State had
25 against you with Mr. Lupton? Did you review any

1 statements from witnesses and that type of thing, any
2 police reports?

3 A Well, I had told Mr. Lupton about the witnesses. He
4 told me that I didn't need it. He told me that there was
5 no need for the witnesses. If I went to trial, then he
6 would get witnesses, but then he told me that if I wanted
7 the witnesses, I had to have my family find the witnesses
8 and get them to do the statement and write statements for
9 them.

10 Q Okay. But what my question is, did you -- did he go
11 over with you the evidence that he received from the State
12 including written witness statements and maybe police
13 reports or anything like that? Did he talk to you about
14 that, go over it with you?

15 A Yes.

16 Q Did he talk to you about maybe some defenses you
17 could present on those Richland County charges if you went
18 to trial?

19 A He never really talked about a Richland County
20 charge. All he kept saying is, "This case is based on DNA
21 evidence." That's it. He never really said anything
22 about the Richland County charges.

23 Q But you agree that he represented you on the Richland
24 County charges?

25 A Yes.

1 Q So your conversations with him were about the
2 Richland County charges; is that correct?

3 A It was about both of them.

4 Q Okay. And you had a separate attorney in your
5 Lexington County charges; is that correct?

6 A Yes. But --

7 Q Okay.

8 A The attorney that was on the Lexington charge said he
9 was going to let Mr. Lupton deal with both of them because
10 he was more familiar with both cases.

11 Q Did you talk to him about the plea offers from the
12 State?

13 A I didn't talk to him until maybe two, two days
14 before.

15 Q Two days before you plead guilty?

16 A Yes.

17 Q Okay.

18 A He had made mention of the plea offer, but I didn't
19 want to talk. We got in a disagreement because I didn't
20 want to hear it. I wanted to go to trial.

21 Q Okay. And you agree that during your guilty plea,
22 Mr. Lupton told the court that there wasn't any forensic
23 evidence to convict you on the Richland County charges.
24 Do you recall that?

25 A Yes.

1 Q Okay. And you agree that the DNA evidence for the
2 Lexington County charges tested, and it came back a match
3 to you; is that correct?

4 A I don't agree to that because I didn't see paperwork
5 stating that. What I was told, the first test was
6 inconclusive. Only the solicitor had the second one. She
7 is the only one that seen it.

8 Q Okay. So --

9 A The results.

10 Q So do you recall during your guilty plea, the State
11 telling the court that there was DNA evidence, your DNA
12 was found in the victim's vagina --

13 A I felt --

14 Q After it was tested?

15 A No.

16 Q You don't recall that?

17 A No.

18 Q Okay.

19 A What I recall was that the DNA swab that was taken
20 from me was a hit in Connecticut from the swabs, and
21 Mr. Lupton also said it was a match. Prior to him saying
22 that, he didn't have the evidence either, so...

23 Q Do you recall on the record during your guilty plea,
24 the solicitor and Mr. Lupton telling the court that the
25 State was recommending a cap of -- a 15-year cap so that

1 the State -- the Court could sentence you between zero to
2 15 years. Do you recall that?

3 A Yes, I remember them saying that.

4 Q Okay. It's your testimony that Mr. Lupton told you
5 that before you pled guilty; is that correct?

6 A No.

7 Q Okay. Well, just a second ago, you said that
8 Mr. Lupton told you that --

9 A It had to be.

10 Q Zero to 15 years?

11 A Cap.

12 Q Is that correct?

13 A Cap, yes.

14 Q Okay.

15 A But he didn't tell me I was going to get 15 years.

16 Q Right. And do you recall Mr. Lupton during your
17 guilty plea asking for time served and a
18 three-to-five-year sentence? Do you recall that?

19 A Yes.

20 Q Okay. And he didn't promise you a particular
21 sentence did he?

22 A He promised me time served on Richland County, three
23 to five on Lexington.

24 Q Okay.

25 A He told me that's what I would get if I took the

1 plea.

2 Q All right. Now, today you're saying that had you
3 known more about the DNA evidence that you would have
4 wanted to go to trial; is that correct?

5 A Yes, among other things.

6 Q Okay. You don't know the outcome of the DNA testing
7 in Richland County, do you?

8 A There is none.

9 Q Okay. So you would have wanted to face life without
10 the possibility of parole and just go to trial on both of
11 those charges?

12 A I would have went to trial because I know I didn't do
13 the crime.

14 MS. WILSON: Okay. Thank you.

15 THE COURT: Redirect?

16 MS. GOOD: Very briefly.

17 REDIRECT EXAMINATION:

18 BY MS. GOOD:

19 Q You stated that you were -- Mr. Lupton told you it
20 would have to be zero to 15, but you also testified
21 earlier that he told you no one gets the maximum, correct?

22 A Yes.

23 Q In fact, he told you you were going to get three to
24 five?

25 A Yes.

1 Q And that's what you thought was negotiated based on
2 the sentence sheet that you had signed?

3 A Yes.

4 MS. GOOD: Okay. No further questions, Your Honor.

5 THE COURT: Recross?

6 MS. WILSON: Briefly.

7 RECCROSS-EXAMINATION:

8 BY MS. WILSON:

9 Q Your Honor, may I approach to see that?

10 THE COURT: Here is your copy.

11 BY MS. WILSON:

12 Q Mr. Marsh, can you read?

13 A Yes.

14 Q Okay. I'm just asking because I don't want you to...

15 Okay. What we're looking at here is your sentencing
16 sheet for your Richland County criminal sexual conduct
17 with a minor second degree. If you'll look on that,
18 nowhere does it say three to five-year sentence, does it?

19 A No.

20 MS. WILSON: Thank you. No further from the State.

21 THE COURT: All right. Thank you, sir. You can step
22 down.

23 Did you get a copy of it, Ms. Wilson?

24 MS. WILSON: No, I didn't.

25 THE COURT: Okay.

1 MS. WILSON: Thank you.

2 THE COURT: Here is a copy for your client.

3 MS. GOOD: Okay. Thank you.

4 THE COURT: All right. Call your next witness.

5 MS. GOOD: The Applicant has no further witnesses,
6 Your Honor.

7 THE COURT: All right.

8 MS. WILSON: Thank you, Your Honor. The State would
9 call Mr. Ted Lupton.

10 THE COURT: All right. Please come forward.

11 THEODORE LUPTON, after being duly
12 sworn, testified as follows:

13 THE COURT: Thank you very much.

14 DIRECT EXAMINATION:

15 BY MS. WILSON:

16 Q Good morning, Mr. Lupton.

17 A Good morning.

18 Q Good. Can you tell -- okay. Can you tell the court
19 how long you've been practicing law?

20 A Right about 19 years, Your Honor.

21 Q How much of the time has been spent practicing
22 criminal law?

23 A The whole time.

24 Q Were you appointed or retained to represent Mr. Marsh
25 and around the time -- when did you start representing

1 him?

2 A I was appointed, and I believe he is correct that it
3 was around June of 2012.

4 Q And do you recall how many times you met with
5 Mr. Marsh and talked with him about his case?

6 A I went back and checked. It was at least 15 times
7 prior to the plea. There is a couple of court hearings
8 where I'm not sure if I actually saw him or if he wasn't
9 brought, but it was at least 15.

10 Q Did you or did someone in your office file Brady or
11 Rule 5 motions on his behalf?

12 A Yes.

13 Q The materials that you received, did you discuss them
14 with Mr. Marsh?

15 A I did.

16 Q Okay. And do you recall what type of information was
17 included in the discovery?

18 A There was police reports, statements from the victim,
19 ARC reports, that is the Assessment Resource Center did
20 the interviews with the victim including medical records
21 as well as there was evidence concerning a semi-related
22 Lexington charge.

23 This didn't all come in at once. It was ongoing
24 discovery. We also received evidence regarding DNA, and
25 among other evidence that we received was an audio

1 recorded statement with the defendant giving an interview
2 after the Lexington County allegations.

3 Summarizing it, basically, the victim gave statements
4 regarding both the Richland County charge and later
5 regarding the Lexington County allegations.

6 There was DNA evidence. In the beginning, there was
7 the DNA had a CODIS hit based on a conviction from
8 Connecticut where he -- his DNA was in CODIS from that.

9 Ultimately, a Schmerber hearing was held which he
10 fought vigorously, but Judge Kinard granted the order, the
11 swabs.

12 THE COURT: Is that the December 2012 hearing?

13 THE WITNESS: I believe it was, Your Honor.

14 THE COURT: Okay.

15 THE WITNESS: The defendant initially would not give
16 DNA. I talked to him about that. He ultimately did do it
17 without having to be fought.

18 He talked about the DNA -- the swab being placed in a
19 box that wasn't sealed. It was only done once. He was
20 correct that it was not sealed, but it was labeled, and it
21 was held in custody by the officer.

22 We did discuss that. I explained to him that that
23 would be evidence that we would bring up at trial if it
24 came to trial trying to attack the DNA, but I have no
25 reason to believe that the officer tampered with the DNA

1 in any way.

2 However, we would raise that as an issue at trial if
3 it came to that. Ultimately, the DNA evidence did come
4 back as a SLED confirmed result. It matched the defendant
5 to the order of one in 30 quadrillion.

6 That result was -- that report was done
7 March 15, 2013. The plea date was March 20th. The
8 solicitor had apparently a copy of that but had forgot to
9 forward it to us.

10 I knew that he had the CODIS hit, and it was only a
11 matter of time. In my experience, there's never occasions
12 in which the CODIS hit is not confirmed by the
13 confirmatory test, so I was accepting that.

14 I did receive that the day of the plea. The
15 solicitor mentioned it during the plea. I questioned that
16 we didn't have it. She ultimately found it and sent it to
17 me. I sent him a copy after the plea.

18 The audiotape was also very troubling because on that
19 tape on three separate locations in the interview, he
20 admitted rubbing his penis on her clitoris and ejaculating
21 on her which very much went against his adamant statements
22 to me before getting that audio that he had never touched
23 her in any kind of sexual way.

24 We, of course, had all that prior to negotiating a
25 plea. All that was discussed with him at length in those

1 15 meetings. Some of which -- and that's just the ones I
2 met with him. His Lexington public defender met with him
3 on occasions that I wasn't present, and we met with him at
4 least one time for a very lengthy meeting together.

5 BY MS. WILSON:

6 Q Now, prior to Mr. Marsh pleading guilty, in your
7 discussions, your various meetings with him, did you talk
8 with him about the elements of the charges that he faced
9 and what the State had to prove to convict him?

10 A We discussed the elements of his Richland charge
11 frequently in general terms. He understood that they
12 would have to prove that he had the sexual intercourse
13 with her while she was under the age of consent, which
14 there is no question she was at the time the allegations
15 were made.

16 Q And you testified a little bit about this already,
17 but did he talk to you about his version of events?

18 A He adamantly denied that he ever touched her in a
19 sexual way.

20 Q And did you talk with him about possible defenses you
21 could present if he proceeded to trial, and if so, what
22 were those?

23 A We discussed at length on multiple occasions
24 defenses. As to the Richland charges without the
25 information from Lexington coming in, I informed him I

1 thought he had a fairly good case.

2 There was delayed reporting. There was no physical
3 evidence, no forensic evidence to substantiate the charge.
4 There was conduct on her part that could arguably be
5 inconsistent with the allegations. No witnesses despite
6 the fact that there were people in the house.

7 It was alleged to have happened in the garage. There
8 were people inside the house but no witnesses. We
9 discussed all those things. However, the biggest problem
10 we had was not the Richland charge but the Lexington
11 charge.

12 One, the Solicitor was making it a package deal tied
13 to the plea on the Lexington charge, but second, the
14 allegations in the Lexington charge just to sum them up
15 were that he kidnapped the victim inside Lexington County,
16 held her throughout the day of the kidnapping, raped her
17 and forced her to make a phone call to the investigator
18 recanting the Richland County charges. That's where the
19 DNA evidence was from. That attack was reported
20 contemporaneously, and the rape examination revealed
21 injuries consistent with sexual assault on the victim and
22 the DNA, his DNA in her vagina.

23 Because of the fact that it was -- the allegation was
24 that the kidnapping and assault were part of an attempt on
25 his part to make her recant, and the fact that she did

1 make a phone call during the time that she was with him --
2 I did extensive research to try to figure out a way to
3 keep it out.

4 I made the legal conclusion that it would almost
5 certainly come in. Even if some of the details could be
6 kept out, the incident itself would almost certainly come
7 in.

8 Q Now, did Mr. Marsh give you any potential witnesses
9 to investigate on his behalf?

10 A He gave me a number of witnesses that he wanted me to
11 talk to. I asked him -- I didn't tell him he had to find
12 them, but I did ask him for contact information.

13 He was able to provide me with some contact
14 information on his witnesses. I made contact. I was able
15 to reach some of them. I was not able to reach all of
16 them.

17 The ones I did reach did not provide anything the
18 least bit helpful. The ones I could not reach based on my
19 investigation of the case, I did not feel were going to be
20 able to provide anything helpful.

21 Q Did you have to do any other investigation in the
22 case other than speaking to those witnesses?

23 A When I did extensive work with getting the
24 information out of the solicitor's office, reviewing that
25 information, coordinating with the Lexington Solicitor's

1 Office to try to get information concerning the Lexington
2 charge.

3 I did a lot of investigation in that sense, but there
4 wasn't much to do in terms of -- the crime scene on the
5 Lexington charge was unknown. It wasn't like I could have
6 gone to the crime scene.

7 Q Do you remember when you started entering into plea
8 negotiations with the State on Mr. Marsh's behalf, and do
9 you know if that happened before you start representing
10 him?

11 A My understanding from what Mr. Marsh told me was that
12 he had -- prior to me being involved in the case received
13 an offer of a common law AB/HAN, and that he had rejected
14 that on the Richland charge.

15 By the time I got into the case, I of course -- as I
16 do in any case I'm appointed on or retained on, I
17 immediately start talking to the solicitor to see what can
18 be done to work it out.

19 Even if it's something I know has to go to trial, I
20 still have an obligation to attempt to resolve it, and I
21 spoke with her from the beginning. It took quite a bit of
22 negotiations just to get her to the -- agree to the cap of
23 15. She initially wasn't interested in that. She was
24 looking at this as an LWOP case.

25 Q And after your negotiations with the State and the

1 State offered a cap of 15, did you talk to Mr. Marsh about
2 that? What were your discussions like about that?

3 A We talked about pleas frequently during the time that
4 we were -- that I was representing him. He was resistant
5 to the idea of pleading to anything that didn't get him
6 out.

7 Ultimately, we got this plea. He was not exactly
8 happy with it, but the Lexington Public Defender and
9 myself talked to him at length, and he ultimately agreed
10 that it was his best chance in this case.

11 We made it clear to him that he was the one who had
12 to accept or reject any plea.

13 Q Now, did you specifically talk to Mr. Marsh about the
14 potential sentence for this charge and the possibility of
15 facing life without parole?

16 A Absolutely. I mean, that was one of the big driving
17 factors in this where we talked about that it was to his
18 benefit to resolve them together, and that the Lexington
19 Solicitor had reviewed the case and had intended to indict
20 a CSC first and a kidnapping, as well as the CSC with a
21 minor.

22 We discussed the LWOP at length, and that was a big
23 part of the factor, a big factor in him deciding to plea,
24 I believe.

25 Q And going into the plea, did you think Mr. Marsh had

1 an understanding that he could be sentenced anywhere
2 between zero and 15 years?

3 A We both made it clear that the cap of 15 was that it
4 could be anywhere from zero to 15. We discussed the plea.
5 The time he wanted was something in the three to five
6 range.

7 We discussed that we would ask for that. I
8 specifically told him that we would be asking for that
9 expecting something more, and I did tell him that he it
10 unlikely he would get the full 15. That usually did not
11 happen, but I specifically said that it could happen.

12 That's been my experience. Generally with a cap,
13 judges will usually sentence a little lower, but sometimes
14 it does happen and it can. I made it clear to him that it
15 could happen.

16 Q Now, did you talk to Mr. Marsh about the consequences
17 of pleading guilty and certain constitutional rights he
18 would be waiving if he pled guilty?

19 A We went over that.

20 Q And did he ever indicate to you he didn't understand
21 something about the proceeding?

22 A He never indicated he didn't understand something.
23 He is -- I found him to be an intelligent individual. He
24 will fixate on things he wants to believe, but that
25 doesn't mean he doesn't have the capability of

1 understanding things.

2 Q Do you believe that ultimately it was Mr. Marsh's
3 decision to plead guilty?

4 A Yes. In fact, during the plea it almost broke down
5 because the judge would not accept an Alford on the
6 Lexington charge because of the DNA evidence.

7 We discussed it, and he made the decision to plead
8 guilty without it being an Alford plea.

9 Q Beg the Court's indulgence.

10 (Pause.)

11 One thing Mr. Marsh talked about during his testimony
12 is that the State made an offer to plea to time served in
13 Richland, and then a three to five-year sentence in
14 Lexington. Do you recall that?

15 A No. That was the -- I think that's what he was
16 wanting the plea to be. We discussed that would be what
17 we would be asking for, but I felt that he clearly
18 understood that the Solicitor wanted him to get as much
19 time as possible.

20 Q And did you affirmatively tell Mr. Marsh that he
21 would get a three to five-year sentence?

22 A No. I told him that's what we would ask for. In
23 fact, like I said, I told him that we would expect
24 something more than that.

25 Q And do you recall -- the sentencing sheet is up there

1 with you. Do you recall when Mr. Marsh signed the plea
2 sheet -- do you recall anything about it being -- the
3 negotiated box being checked inside of the recommendation
4 box?

5 A I remember that it was done as a negotiated.
6 Initially the negotiations were for a negotiated cap.

7 Q Uh-huh.

8 A I don't really recall it, but I have a vague
9 recollection that Judge Cooper may not have been willing
10 to do that.

11 THE COURT: Which Cooper?

12 THE WITNESS: I'm sorry?

13 THE COURT: Judge Cooper?

14 MS. GOOD: G. Thomas.

15 THE COURT: He doesn't do negotiated.

16 THE WITNESS: And that was -- I think that's what
17 happened is that he said he wouldn't take it as a
18 negotiated. However, he tended to follow recommendations.
19 In any event, it was within the recommendation or
20 negotiations.

21 MS. WILSON: Okay. Thank you.

22 THE COURT: Cross?

23 MS. GOOD: Thank you, Your Honor.

24 CROSS-EXAMINATION:

25

1 BY MS. GOOD:

2 Q I'm just going to keep going on the sentencing sheet
3 while I have it. At what point did Judge Cooper change it
4 from negotiation to recommendation because he initialed
5 it, correct?

6 A He initialed it.

7 Q And did Mr. Marsh initial it?

8 A No.

9 Q Do you remember at what point that was changed from
10 negotiated to recommended?

11 A Not specifically. I have a vague recollection, but
12 I'm assuming that it was done once the plea was called and
13 the offer was placed on the record.

14 Q And --

15 A But it would be on the transcript.

16 Q Have you seen a copy of the transcript?

17 A I have.

18 Q And from reading it, do you recall that is nowhere on
19 the transcript?

20 A If you say it isn't, then I believe you.

21 Q Could it have been a sidebar or a bench conference
22 with Judge Cooper regarding this information?

23 A It could have been. It's also possible that we
24 discussed the plea with him prior to calling the plea, and
25 that was when it was done.

1 Q Did you ever discuss with Mr. Marsh that it changed
2 from negotiated to recommended?

3 A I have no specific recollection of that. However,
4 the sentence was within the range.

5 Q And regarding the sentence, I guess you heard
6 Mr. Marsh testify that he believed he was getting three to
7 five years on Lexington and time served on Richland,
8 correct?

9 A I heard that testimony.

10 Q And it's your contention that you never told him
11 that, correct?

12 A I told him, in fact, that we were going to ask for
13 that. I explained to him that that would be what we would
14 ask for. I would expect something more than that.

15 I told him it was unlikely that he would get the
16 maximum; that it was rare, but that it could happen.

17 Q I want to go to the DNA evidence now. I guess first,
18 the right to a trial speedy trial. You filed a right to
19 speedy trial, correct?

20 A I did file a speedy trial motion.

21 Q Okay. And that was granted?

22 A Yes.

23 Q Okay. And when it was granted, was there a
24 particular time period that was put on that and any
25 consequences if the trial did not happen in that time

1 period?

2 A I believe it was 120 days for the speedy trial, but
3 there were no consequences placed on it.

4 Q Okay. So if it -- by the time December came around,
5 had the 120 days run?

6 A No. My -- I believe the 120 days was getting pretty
7 close at the time this plea happened.

8 Q Okay.

9 A But it hasn't happened in December, no.

10 Q Regarding the DNA, you said you had gone over the
11 majority of the discovery with Mr. Marsh, correct?

12 A Yes.

13 Q Okay. And then there was a Schmerber motion, I
14 guess, in December of 2012 where the DNA was taken from
15 him?

16 A Correct.

17 Q And then you stated that on March 15th, 2013, the
18 SLED result came back?

19 A The report was done and dated March 15th.

20 Q And that you received it the day of the plea or
21 after?

22 A What happened was as reflected in the transcript, Ms.
23 Fent starting talking about the DNA. I put on the record
24 that I had no -- had not seen the DNA report.

25 She felt like she had given it to me was my

1 recollection. She went back after the plea was done and
2 did get the report, sent the email with the report
3 attached as a PDF file.

4 Q And then you forwarded that to Mr. Marsh, correct?

5 A I printed it out, and I mailed it to him.

6 Q So it's fair to say that at the time of the plea,
7 Mr. Marsh was not aware of any DNA consequences or results
8 as a result of the test that he gave in the Schmerber
9 hearing?

10 A Neither of us were aware of what the report said, but
11 we had discussed at length the fact that he had a CODIS
12 hit. I've never seen a case where the CODIS hit didn't
13 get confirmed by the SLED test.

14 Q At the time the DNA was mentioned during the plea,
15 did you have a conversation with Mr. Marsh about it? Did
16 he say anything to you about it?

17 A We talk about the DNA extensively. I don't recall
18 anything specific that he had that day that -- in
19 particular. I mean, I know we talked about it a great
20 deal. I'm sure we talked about it again that day.

21 Q Okay. I guess what I'm asking, during the actual
22 plea when the DNA was brought up, did he lean over and say
23 anything to you?

24 A It's very possible.

25 Q All right.

1 A We did talk about that a great deal.

2 Q Okay.

3 A And I did --

4 Q Sorry. You were caught by surprise by the DNA on the
5 record, which is why you said something about not having
6 the results, correct?

7 A Yes. It's very possible that he did say something
8 about that. Like I said, I didn't have the report at that
9 point. I was not aware that the report was finished.

10 Q Okay. You had mentioned on your direct that
11 Mr. Marsh had given you potential witnesses?

12 A Yes.

13 Q Who were those witnesses?

14 A Some friends of his, a worker -- I mean, excuse me,
15 an employer. He wanted me to talk to his girlfriend who
16 was the victim's sister, as well as the victim and I
17 believe the victim's mother.

18 Q Okay.

19 A Basically, he wanted me to talk to the people who
20 were involved, plus some people who he felt were
21 essentially character references.

22 Q And you said you spoke to some of them. Who did you
23 speak to?

24 A I did not speak with the victim or the victim's
25 mother. Beyond that, I don't recall exactly which ones.

1 I know I spoke with his employer and at least one friend,
2 but I don't recall exact names.

3 Q You said some of them could not be reached by phone,
4 correct?

5 A Correct.

6 Q And you said you had been doing criminal law for 19
7 years. You're aware of the process of getting an
8 investigator if you're appointed, a way to go through that
9 through the court, correct?

10 A I'm aware and I've done it in other cases.

11 Q And in this case, he had been adamant he did not
12 touch this girl, and that he wanted a trial, correct?

13 A He -- with regards to both cases, he was adamant
14 about that.

15 Q At that point when you could not reach any witnesses,
16 why did you not get an investigator to reach out to the
17 those other people if it was going to be a trial?

18 MS. WILSON: Your Honor, I'm going to object to this
19 line of questioning because if I recall, at the start of
20 the hearing, the Applicant waived the allegation with
21 regard to counsel's failure to investigate.

22 MS. GOOD: She brought it up on her direct, Your
23 Honor. I had not touched it with Mr. Marsh until she
24 brought it up and asked him what witnesses he had spoken
25 to.

1 THE COURT: I'll allow it.

2 MS. GOOD: Thank you, Your Honor.

3 BY MS. GOOD:

4 Q Why did you not get an investigator?

5 A Because the ones I did talk to were not helpful. The
6 ones that he wanted me to talk to that I was not able to
7 reach, specifically the victim, we had her statement
8 recanting on the Richland County charge.

9 However, the DNA evidence at that point was a CODIS
10 hit awaiting confirmation, but obviously, I knew that the
11 trial wouldn't go forward until the SLED report came back
12 confirming it. Plus, the fact that he was on a recorded
13 interview admitting three times to have had sexual contact
14 with her made her extraordinarily unlikely to be a helpful
15 witness.

16 Even if she recanted again, the physical evidence of
17 the DNA along with the reports that were contemporaneous
18 and that were substantiated by physical injuries
19 consistent with the rape made it unlikely that anything
20 she could say was going to help him.

21 Q But that was on the Lexington charge, correct?

22 A But it would come in in the Richland trial.

23 Q But you are not -- you don't know if it would come in
24 on the Richland trial, correct?

25 A I --

1 Q You had just done some research and believed it could
2 have potentially come in?

3 A I believe it would have come in. I don't see any way
4 it could have stayed out. Without that, I told him
5 already -- she has already recanted the charge. So we've
6 got that with the lack of any physical evidence, the
7 delayed reporting, the actions that are arguably
8 inconsistent.

9 I already told him that I felt like if the Lexington
10 information stayed out of the trail, that we would have a
11 very high probability of winning the Richland County
12 trial, and he was aware of that at the time he made the
13 decision to plead under Alford.

14 MS. GOOD: Beg the Court's indulgence, Your Honor.

15 (Pause.)

16 No further questions, Your Honor.

17 THE COURT: Briefly.

18 MS. WILSON: Thank you, Your Honor. Briefly.

19 REDIRECT EXAMINATION:

20 BY MS. WILSON:

21 Q Mr. Lupton, did you think that the change on the
22 sentencing sheet from a negotiated plea to a
23 recommendation from the State changed Mr. Marsh's
24 understanding of the guilty plea?

25 A I would not have done the plea without explaining to

1 him the difference between negotiated and recommendation.
2 I do not believe it would have changed anything. As I
3 said, the sentence was within the range.

4 Q And you would agree that there was no DNA evidence in
5 the Richland County charges linking Mr. Marsh to the
6 charge, is that correct?

7 A Correct, no forensic evidence at all.

8 Q And did your receipt of this DNA report from the
9 solicitor after the time of the guilty plea affect your
10 advice to Mr. Marsh regarding whether or not he should
11 plead guilty?

12 A It -- had I had that prior to the plea, it would have
13 only made the recommendation stronger, although I knew it
14 was coming.

15 Q And you are aware of the CODIS hit prior to receiving
16 the SLED report; is that correct?

17 A Oh yes.

18 Q And the report just confirmed that was in the CODIS,
19 correct?

20 A Yes.

21 Q And did you feel the need to hire an investigator in
22 this case?

23 A No.

24 MS. WILSON: Thank you, Your Honor.

25 THE COURT: Ms. Good?

1 MS. GOOD: Nothing further.

2 THE COURT: All right. Thank you very much.

3 Call your next witness.

4 MS. WILSON: Nothing further from the State, Your
5 Honor.

6 THE COURT: All right. Anything in closing?

7 MS. GOOD: No, sir.

8 MS. WILSON: Briefly, Your Honor. Oh --

9 MS. GOOD: Yes.

10 MS. WILSON: Go ahead. Sorry.

11 MS. GOOD: I didn't know you meant in closing.

12 THE COURT: Anything in reply is what I meant to say.

13 MS. GOOD: Sorry.

14 THE COURT: I meant to say -- I said the wrong word.

15 MS. GOOD: That's okay.

16 THE COURT: All right. In closing?

17 MS. GOOD: Yes, sir.

18 Briefly with Mr. Marsh, I believe from the testimony
19 that was presented to Your Honor, it was clear that
20 Mr. Marsh did not knowingly enter into this plea for
21 several reasons. The first is that he wasn't
22 intelligently advised about it.

23 He did not have all the information, especially
24 regarding the DNA evidence which was used against him
25 during the plea which could have elevated what his

1 sentence would be.

2 In addition, Your Honor, Mr. Lupton testified that it
3 began as a negotiated. You could see on the sentencing
4 sheet where Mr. -- where Judge Cooper changed it from
5 negotiated to recommendation.

6 There is nowhere on the record reflecting that this
7 was done, and Mr. Lupton indicated that he could not
8 remember if it was a sidebar or if he even discussed this
9 with Mr. Marsh.

10 Therefore, his plea was not voluntary. He was not
11 advised as of the negotiation versus recommendation, as
12 well as having all the information regarding the DNA, Your
13 Honor.

14 THE COURT: All right.

15 MS. WILSON: May it please the Court, Your Honor.
16 The State would just ask that you deny and dismiss this
17 application for post conviction relief.

18 With regard to the voluntariness of Mr. Marsh's
19 guilty plea, he was adequately advised on the report of
20 his constitutional rights and the fact that he waived them
21 and pled guilty.

22 He was advised by the court of his right to remain
23 silent, his right to a trial by jury, his right to
24 confront and cross-examine witnesses and his right to
25 present a defense.

1 He has told the Court that he is guilty; that he
2 hadn't been promised or threatened or anything to plead
3 guilty. He wasn't under the influence and hadn't suffered
4 from any mental health condition during his guilty plea.

5 With regard to Ms. -- Mr. Marsh's allegation about
6 not knowing about the DNA, Your Honor, it's the State's
7 position that he was aware that there had been a hit, and
8 that his attorney told him that it's likely to be
9 confirmed, so he is aware that was out there.

10 Also, Your Honor, the State would just note that the
11 DNA evidence as reflected in the record wasn't used
12 against him for his Richland County charges.

13 Also, Your Honor, the State would just submit that
14 the change from a negotiated plea to a recommendation from
15 the State, it doesn't appear to affect his decision to
16 plead guilty because it was still within the zero to 15
17 year -- with a 15-year cap recommended by the State.

18 Also, Your Honor with regard to the sentencing, the
19 State would just argue that Mr. Lupton provided credible
20 testimony that he talked to Mr. Marsh about the length of
21 sentence he could receive; the fact that the State was
22 offering a 15-year cap; the fact that while he thought it
23 was unlikely he would get the full 15 years, it's possible
24 and that he could ask on Mr. Marsh's behalf a three to
25 five-year sentence.

1 THE COURT: All right.

2 MS. WILSON: Thank you, Your Honor.

3 THE COURT: Okay. I'll let you know within ten days.

4 All right. You can go off the record.

5 (Whereupon, there was an off-the-record discussion).

6 (Whereupon, the proceedings were concluded.)

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yes please, Thank you! To the courts, I wish to show that my Attorney was very deceptive with me in providing me with true information and having me accept facts without proof. I hope to show errors that were made by counsel and other errors of law or facts that occurred. ~~was made~~ Like failing to preserve the issues for direct review and that this failure prejudiced the outcome of my case. His failing to properly preserve the arguments concerning the effect that the evidence could have had on my sentence. Like addressing the mistake's in detail of the state's investigation. But he did not address the court in detail.

③ The courts should have known about the first DNA test done, that was inconclusive. ② The problems with the DNA being lost for two years. ④ The DNA going from one jurisdiction to another, totaling about 4. If I'm not mistaken. ⑤ The misuse of my DNA in collection the second time. And the fact that the allege victim took a bath and waited almost 5 hours before doing this kit, and the allege victim change clothes. The report stated that the clothes or anything else that she wore was never collected.

Mr. Lupton told me that he would make motions to exclude because of the mistake's made. ^(letter dated Feb 2) He said to me, he would make a number of motions to exclude various evidence and testimonys, which none of this was done. Mr. Lupton assured me that, if my case goes to trial or plea, this would be done. (This is all in writing) Now if I understand correctly, a guilty plea Alford or otherwise, is an admission of all the elements of a formal Criminal charge. It cannot be truly Voluntary unless the defendant possesses an understanding of the law in relation to the facts. But if you see page 35 Line 4-6 of my transcript. I asked for leniency with me, because there is a lot of things I still do not understand. I acknowledge that I was not fully

EXHIBIT
Applicant - 1

understanding what was happening. I feel that because of the solicitor and my Attorney's conduct. It made it a prejudiced judgement on the court's behalf, with out true knowledge of the facts. The Courts held that due process requires the prosecution to disclose evidence favorable to an accused upon his request, when such evidence is Material to guilt or punishment. By the solicitor stating she had the DNA test but did not ~~turn~~^{turn} over a copy ~~for~~ before court, is a violation of this. I feel that the evidence of DNA, is the foundation of my conviction. The solicitor withheld this evidence and no one, has seen this evidence but her. The Judge made his decision base on DNA, that only The solicitor has seen. (And I Quote) Mr. Lupton states: I did not get my sentence enhanced, nor did I receive a LWOP sentence as a result of my plea. As for why the Judge would not accept an Alford plea on the Lexington case. (I don't know) But then he states: He simply did not want to accept an Alford plea on a case where there was DNA evidence. (Letter Dated April 1) ~~But~~ But your Honor: Mr. Lupton stated that he acknowledge that the CODIS from Connecticut is a match with me on page (25 Line 23-24) of my transcript. I see this as backing statement for the solicitor that stated this on page (16- Line 12-13) of my transcript. An I Quote: A CODIS hit matched the Defendant. But as we know Mr. Lupton stated Just before ~~this~~^{his} remark, that, He did not have the test results and had not seen the last discovery. But he still went on record that I was a match,

As I have looked back into my letter from Mr. Lepton. Mr. Lepton stated: That my DNA was found, and for his legal opinion is that based on this evidence, a jury will convict me if this goes to trial. And he believe that a jury will find me guilty. He said If this Richland Chy Case were tried without Lexington Allegations, the state would have very little chance of conviction. But there is no legal way to exclude the Lexington Allegations. Thus the DNA evidence is coming in. But your honor this is confusing. How can you make all these claim of motions you will file against the DNA allegation, then claim you can't exclude it, but then claim there was a match, but then state you have seen ~~no~~ ^{no} evidence of this DNA test. Everything I'm speaking of are in my transcript and letters written to me from Mr. Lepton. He also acknowledge, that he got the Lexington case moving so that I would not be facing a second prosecution. But I did. I've learn before my mother pass away, that she spoke with the case work for my Richland ~~App~~ Appeal, and the same one is handling my Lexington Appeal. She stated that I could not have two Appeals for the same case with all the same allegations. So one had to be remitted back to a lower court. With this said, I wish to show ineffective assistance by unreasonably failing to preserve the issues for direct review and that his failure prejudiced the outcome of my case. I wish also to show failing to properly preserve the arguments concerning the effect that the evidence could have had on my sentence. ¹ failing to acknowledge that the solicitor

stated that CODIS was not Nation wide and it was only for Columbia. ² failing to acknowledge that there was a first test done and its outcome. ³ failing to produce chain of custody of DNA evidence on both tests. ⁴ Failing to address the improper collection of all evidence. ⁵ I wish to show counsel was ineffective for improperly advising me. By tell me there was a DNA match when there was no test result's back. ⁶ Telling me if I plea, I would receive no more than 3-5 years. Informing me that he would address all Issue in detail and file motion against the improper evidence process, as well as telling me that I would have both charge's done together and only one sentence. ⁷ my Counsel failed to adequately investigate the facts and circumstances surrounding my case. This failure to conduct such and ~~was~~ investigation, deprived the state's Judge of Critical information relevant to an accurate assessment of my guilt or innocence. ⁸ Even failing to have all information given to me about my test done, prior to trial and or plea was pre-judicial on all counts. From solicitor to Attorney. ⁹ I hope to show that my plea was involuntary because my principal motivation was fear of upgrading of charges and additional charge's added, for a charge that only carried 20 years. And also a LWOP. With this, my decision to plea was not Voluntary, but was the product of threat and or force, ^{And} with a promise of No more than 3-5 if, ^I plea to avoid these enhancements. So I moved forward and took the plea. I did not possess a clear understanding of the law in relation to the facts, And I relied on my counsel, and was ~~was~~ deceive.

With in my case there is no admission to allegation with in my Richland city case. In fact I denied all allegations. The courts acknowledge that I had problems in pleading to Richland City charges. I even made this known on page 17 of my transcript (Line) your ^{Honor} I asked Mr. Kepton, Do he believe that my sentence was appropriate for each case he asked? I know it was more than what we had hope for, but yes, He thinks my sentence was reasonable under the circumstance. Had the case gone to trial I would have been convicted of at least one. But I was convicted of two. He even admitted that there was no evidence on Richland city case. But because of human nature, I will get convicted. No matter what. I then address Mr. Kepton about me takes the plea. And his ^{Answer} ~~answer~~ was: you did not get your sentence enhanced nor, did I receive an LUMP sentence as a result of the plea. so his advice was correct. And he know it was more than what we had hope for. your Honor. I wish to acknowledge that when the courts asked did I understand what was said. I said yes. And when they asked if the facts where true and correct on the date's as to what happen. I said no. when asked what was not true, I said Just about everything. It's pointed out with my transcript that me or my Attorneys, did not have this discovery that the state used. The failure to learn of the evidence at the time of my plea, was not due to my lack of diligence. But of my Attorneys. This evidence was material to the issues involved. And once the DNA evidence came in. My Attorneys

should have address all issue involving the DNA. Mr. Lupton said he pointed out to the Judge that the DNA had not come back or at least have not been turned over to us. This is when the solicitor backed off. But your honor, the damage had already been done. His statement was the only defence on the allegation of DNA. When I tried to address this issue myself on page 17 - line 20-22. Mr. Lupton jumped in and stoped me, saying that I was under Alford and he acknowledge that as far as substantially = I disputes some of the allegations. Then he admitted that some of the allegations, he did not find in the discovery either. ~~He~~ If he stoped me from telling the truth at the evidence, how would the courts know the difference between the two cases and the truth. It's like saying the DNA was for Richland City as well as Lexington city. The Judge did not take the Alford plea for Lexington. This gave me the right to speak on this case. But like I said, I was intentionally interrupted by my attorney and was refuse in letting the state know the truth. And also, I've never denied not being around the college victim on 10/25/2010. But I was told that the facts was that I admitted being around the ^{allege} victim. This was a crime in it's self. This is what I was told by my Lexington Attorney. So because the two cases was lump together, as it was put. I'm doing two sentence's for the same thing under two different warrants. Richland City stated that part of the crime was committed in Lexington City. And it was acknowledge that Richland City discovered that it was a Lexington charges. This is stated on page 28 - line 6-7, by Mr. Costo. But within my transcripts, the solicitor stated

that I admitted ^{to} a leud act. when the courts address this comment on which case was she talking about, the solicitor state's, it is really unclear on which case, she was Identifying your honor, she took evidence for one case and Intertwined it with the other case, like what mr. casto stated. And made it sound like, I admitted to ^{the} Richland Cty case and there was DNA on the hexington case. And either of my attorneys address this issue. So your honor, I ask that you take in consideration of all the evidence that was not brought to the attention of the pleading Judge, and the lack of improper investigation and letting the solicitor make allegation with out ~~ab~~ making objections because she was unclear on her statement to which case was which. Even the courts was unsure. This is on page 15 - line 21-25 in my transcript. This is why the discussion today is DNA. And the fact that my Attorneys repersentidy me on these cases is ineffective for not preserving the arguments concerning the effect that the evidence could have had on my sentence, as well as my other issue's. And note one of my counsels address any real ~~Issue's~~ Issue's, that ~~could~~ ^{could} have change the outcome of my case's. ~~with this, I ask that the court make a sound decision. Thank you.~~ And there was alot of Issue that could have. with this, I ask that the court make's a sound decision. Thankyou.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Eric Dwayne Marsh, #345716,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-6380

ORDER OF DISMISSAL

RICHLAND COUNTY
 CLERK OF COURT
 2014 OCT 20 PM 4:08
 2014 OCT 20 PM 4:08
 RICHLAND COUNTY
 CLERK OF COURT

Presiding Judge:	The Honorable Robert E. Hood
Applicant's Attorney:	Anna R. Good, Esquire
Respondent's Attorney:	Ashleigh R. Wilson, Esquire
Plea Counsel:	Theodore N. Lupton, Esquire
Date of Hearing:	September 2, 2014
Court Reporter:	Karen Ambroziak

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 18, 2013 and amended April 24, 2014. The Respondent made its Return on February 24, 2014. An evidentiary hearing into the matter was convened on September 2, 2014 at the Richland County Courthouse. The Applicant was present at the hearing and represented by Anna R. Good, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Theodore (Ted) Lupton, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Richland County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, Respondent's Return thereto, the Applicant's appellate records, and the Applicant's Exhibit 1¹.

¹ Applicant's Exhibit 1 is a *pro se* handwritten document drafted by the Applicant and presented to the Court.

SCANNED

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the May 2011 term of the Richland County Grand Jury for criminal sexual conduct with a minor- second degree (2011-GS-40-1996)². Theodore (Ted) Lupton, Esquire, represented the Applicant. On March 20, 2013, the Applicant pled guilty pursuant to North Carolina v. Alford³: The Honorable G. Thomas Cooper sentenced the Applicant to confinement for fifteen (15) years.

The Applicant filed a Notice of Appeal. His appeal was dismissed by the Court of Appeals for failure to provide a sufficient explanation as required by SCACR Rule 203(d)(1)(B)(iv)⁴. The Remittitur was issued on September 17, 2013.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. "Counsel failed to give effective assistance at a critical stage of the trial proceeding including protection of my right to due process of law."

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

² The Applicant was indicted for a second count of criminal sexual conduct with a minor- second degree (2013-GS-32-0965) in Lexington County. He was represented on the Lexington County charges by Bennett Casto, Esquire. The Applicant also pled guilty to his Lexington County charge on March 20, 2013. In this application for post-conviction relief filed in Richland County, the Applicant is solely challenging his Richland County conviction.

³ North Carolina v. Alford, 400 U.S. 25 (1970).

⁴ SCACR 203(d)(1)(B)(iv) states: "If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed."

1. Ineffective assistance of counsel.
 - a. "Trial counsel failed to properly investigate the case."
 - b. "Trial counsel misadvised client as to sentencing for the plea."

At the hearing, the Applicant proceeded solely on the claim of ineffective assistance of counsel for misadvising the Applicant regarding the sentence he could receive after pleading guilty. Therefore, this Court deems abandoned any other claims raised by the Applicant's applications.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-3-20 (2003).

Summary of the Testimony

The Applicant was present and testified he was represented by Ted Lupton. The Applicant testified he met with Lupton five or six times prior to his guilty plea. He testified he reviewed his discovery with counsel and told counsel about potential witnesses. The Applicant testified he did not discuss possible defenses with counsel.

The Applicant testified he discussed the DNA evidence with counsel and was told the DNA evidence had been lost for two years. He testified he was also told that the DNA evidence had been transferred from one jurisdiction to another and that the evidence had not been tested. The Applicant testified he told counsel there was also a problem with the DNA collection. The Applicant testified his attorney never argued against the DNA evidence, but he recalled

telling the Court during his guilty plea that there was no forensic evidence linking him to the Richland County incident. The Applicant testified he never saw the DNA evidence.

The Applicant testified counsel filed a motion for speedy trial on his behalf. He testified his trial was set for December 2012. The Applicant testified he wanted to go to trial, but counsel got him a plea offer from the State. He testified counsel told him it was in his best interest to plead guilty because if he went to trial he could get life without parole. The Applicant testified trial counsel told him the State would ask for a cap of fifteen years. He testified counsel told him he was facing a sentence from zero to fifteen years, but that he would not get the maximum sentence. The Applicant testified counsel told him he would get a sentence in the three to five year range. The Applicant testified he would not have pled guilty if he had known he could get a sentence greater than three to five years.

Ted Lupton, Esquire, was present and testified he was appointed to represent the Applicant in June 2012. Counsel testified he has been practicing criminal law for the past nineteen years. Counsel testified he met with the Applicant at least fifteen times prior to the Applicant's guilty plea. He testified he filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the discovery materials he received with the Applicant. Counsel testified he received in the discovery materials police reports, the victim's statements and interviews, the victim's medical records, evidence regarding the Applicant's Lexington County charge, and an audio recording of the Applicant confessing to the Lexington County allegations.

Counsel testified he and the Applicant frequently discussed the elements of the charges the Applicant was facing and what the State was required to prove. He testified they discussed the Applicant's version of the facts and possible defenses multiple times. Counsel testified the Applicant had a good case without the related Lexington charge, but he felt the Lexington charge

would come in at the Applicant's Richland County trial since the Lexington County assault resulted in the victim recanting her statement about the Richland assault. He testified there was no DNA evidence linking the Applicant to the Richland County assault.

Counsel testified he contacted potential witnesses given to him by the Applicant. He testified he was able to reach some of the witness and unable to reach others. He testified the witnesses he was able to speak with were not helpful to the Applicant's defense. Counsel testified while investigating the Applicant's case he also reviewed the solicitor's file on both the Richland and Lexington County charges.

Counsel testified the DNA evidence taken from the victim after the Lexington County assault initially matched the Applicant's DNA sample from his prior Connecticut conviction found in CODIS. He testified they had a Schmerber hearing and fought against the Applicant giving a DNA sample to confirm the CODIS hit. Counsel testified the Applicant gave a DNA sample. Counsel testified there was no evidence that the officer who collected the sample tampered with the DNA evidence, but he told the Applicant that they could attack the DNA evidence at trial. Counsel testified the DNA testing confirmed the CODIS hit and matched the Applicant to the DNA evidence in the Lexington assault. Counsel testified the solicitor did not forward a copy of the DNA testing results until the guilty plea, however, he knew the CODIS hit would likely be confirmed by the DNA testing. Counsel testified the DNA results linked the Applicant to the Lexington assault. Counsel testified receipt of the DNA evidence during the guilty plea did not affect his advice to the Applicant about pleading guilty. He testified if anything, the DNA results confirming the CODIS hit made his recommendation to the Applicant to plead guilty stronger.

Counsel testified he and the Applicant discussed pleading guilty frequently and the

Applicant was initially resistant to a guilty plea. Counsel testified the Applicant was originally offered and rejected a plea to common law assault and battery of a high and aggravated nature. Counsel testified he talked to the Applicant about the potential sentence he was facing and the possibility that he could face life without parole if he proceeded to trial. He testified the Applicant was never offered a plea to time served.

Counsel testified it took a lot of negotiation with the solicitor to obtain the negotiated plea to a cap of fifteen years. He testified he communicated the plea offer to the Applicant and made it clear to the Applicant that if he pled guilty his sentence would be capped at fifteen years. He testified he and the Applicant discussed the Applicant wanting a sentence in the range of three to five years. Counsel testified he told the Applicant he would ask for a sentence in the range of three to five years, but to expect something more. He testified he told the Applicant that the State would ask for a sentence greater than three to five years. He testified he told the Applicant that usually people do not get the full fifteen year sentence, but that he could get a fifteen year sentence.

Counsel testified he informed the Applicant of his constitutional rights. He testified he explained to the Applicant the difference between a negotiated sentence and a recommendation from the State. Counsel testified the Applicant was initially pleading to a negotiated cap of fifteen years. He testified Judge Cooper did not accept negotiations, but would follow recommendations from the State. He testified the Applicant was sentenced within the State's fifteen year recommendation. Counsel testified the change of the Applicant's plea from a negotiated sentence to a recommendation from the State did not affect the Applicant's understanding of his guilty plea. He testified the Applicant never indicated he did not understand the things they discussed prior to his guilty plea.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would

not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof.

This Court also finds the Applicant's guilty plea was entered freely and voluntarily. The record reflects the Applicant was advised of the following by the Court during his guilty plea: his right to a jury trial (T. 7:8-15), his right to remain silent (T. 7:4-7), his right to confront his accusers (T. 7:16-8:12), and his right to appeal (T. 8:8-9, 20:20-25). The Applicant told the Court he had not been promised anything or threatened to get him to plead guilty. (T. 8:16-19). The Applicant also told the Court he was not under the influence of drugs or alcohol and he did not suffer from any mental illnesses. (T. 9:13-16, 20:17-20). The Applicant also told the Court he

was satisfied with counsel's representation and that counsel had done everything he asked. (T. 8:20-22, 9:1-3, 9:10-12). This Court finds and the record reflects the Applicant pled guilty with a full understanding of the consequences of pleading guilty.

As an initial matter, this Court finds counsel provided credible testimony at the evidentiary hearing. This Court finds the Applicant did not provide credible testimony at the evidentiary hearing. Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are 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. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective for misadvising the Applicant regarding the potential sentence he would receive if he pled guilty. The Applicant claims counsel told him if he pled guilty he would receive a sentence in the range of three to five years. This Court finds this allegation is wholly without merit. This Court finds counsel properly advised the Applicant of the potential sentence he could receive if he pled guilty. This Court finds credible counsel's testimony that he advised the Applicant that if he pled guilty the State would recommend a cap of fifteen years. This Court also finds credible counsel's testimony that he advised the Applicant he could receive the full fifteen year sentence.

This Court finds to be not credible the Applicant's testimony that counsel told him he would receive a sentence in the three to five year range. This Court finds counsel provided

credible testimony that the Applicant wanted a sentence in the range of three to five years. Counsel testified he told the Applicant that he would request a sentence in the three to five year range, but that he would likely receive a higher sentence. The record reflects counsel indeed asked the Court for a sentence of time served or a sentence in the range of three to five years at the Applicant's guilty plea. (T. 26:11-18, 27:18-22). This Court finds the Applicant's wishful thinking with regard to the sentence that he would receive after pleading guilty did not equal a misapprehension by the Applicant concerning the possible range of sentence the Applicant could receive. See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

Considering this Applicant was represented on his two charges by two public defender, this Court finds it is very unlikely that the Applicant was not made aware of the potential sentence he was facing and the substance of the State's plea offer. This Court finds further the change of the Applicant's plea from a negotiated plea to recommendation by the State did not affect the voluntariness of the Applicant's guilty plea. This Court finds this change did not result in any prejudice to the Applicant since he ultimately was sentenced within the range of the original negotiated sentence offered by the State. This Court finds the Applicant has failed to carry his burden of proving counsel misadvised the Applicant regarding the potential sentence he would receive if he pled guilty. This Court finds counsel's performance was not deficient and did not result in any prejudice to the Applicant.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need

not address prejudice. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6 day of October, 2014

Re Hood

The Honorable Robert E. Hood
Presiding Judge
5th Judicial Circuit

Columbia, South Carolina.

WITNESSES

(S) JILL BEZA - Irmo Police Department

D. HAZE

DOCKET NO. 2011GS4001996

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MAY TERM 2011

92

ARREST WARRANT NUMBER

10207224

THE STATE

VS.

Eric Dewayne Marsh

ACTION OF GRAND JURY

TRUE BILL

Maria H. Gardner

Foreperson of Grand Jury MAY 13 2011

Date:

VERDICT

After being fully advised as to my legal rights, I hereby waive present to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

CERTIFIED TRUE COPY OF ORIGINAL FILED
Jeanette W. McBride
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for
CRIMINAL SEXUAL CONDUCT WITH A
MINOR SECOND DEGREE (AGE14-16)

SC Code: 16-03-0655(B)(2)

CDR Code: 0397

Foreperson of Petit Jury

Date:

