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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Clarendon County

William Jeffrey Young, Circuit Court Judge

JEREMY SWEATT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002624

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CLARENDON) COURT OF GENERAL SESSIONS
No. 2007 GS 14 0363; 0364

3

4 STATE OF SOUTH CAROLINA)

5)

6 versus)

TRANSCRIPT OF RECORD

7)

8 JEREMY SWEAT)

9 Defendant)

10

Manning, South Carolina
March 10, 2008

11

12 B E F O R E :

13 HONORABLE GEORGE C. JAMES, JR., Judge

14

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

15

For the State:

AMY LAND, Esq.
Assistant Solicitor

16

17 For the Defendant:

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24

25

1 (The within matter came before the Court on March
2 10, 2008)

3 SOLICITOR: Your Honor, this is Jeremy Sweat. He is
4 pleading guilty under two indictments.

5 Under Indictment Number 2007 GS 14 363, he is plead-
6 ing guilty kidnapping and criminal sexual conduct in the
7 first degree.

8 Under Indictment Number 2007 GS 14 364, he is plead-
9 ing guilty to assault and battery with intent to kill,
10 kidnapping and criminal sexual conduct in the first
11 degree.

12 There is a recommended cap of forty years.

13 He is represented by Harry Devoe.

14 (Defendant was then sworn for purposes of the guilty
15 pleas)

16 THE COURT: All right. Mr. Devoe, do you represent
17 Jeremy Shea Sweat?

18 MR. DEVOE: I do, Your Honor.

19 THE COURT: All right, sir. He is indicted in two
20 indictments. In 2007 GS 14 364, criminal sexual conduct,
21 first. Is that correct?

22 SOLICITOR: That's correct.

23 THE COURT: Assault and battery with intent to kill,
24 kidnapping.

25 Ms. Land, how about the victim in that case?

1 SOLICITOR: Your Honor, . . .

2 THE COURT: Her name is still not to be published?

3 SOLICITOR: The victim in that case of assault and
4 battery with intent to kill is . . .

5 THE COURT: Is that victim present, or does she
6 wish to speak?

7 SOLICITOR: She doesn't wish to speak, Judge.

8 THE COURT: All right. How about Indictment 2007
9 GS 14 363, kidnapping and criminal sexual conduct in the
10 first degree? The victim is Jacquelyn Rhodes, and Ms.
11 Rhodes is present?

12 SOLICITOR: That's right, Judge.

13 THE COURT: All right. Mr. Devoe, have you ex-
14 plained to Mr. Sweat the charges contained in these
15 indictments and the possible punishment, as well his
16 constitutional rights, including his right to a jury
17 trial?

18 MR. DEVOE: I have, Judge.

19 THE COURT: And in your opinion does he understand
20 the charges, the possible punishment, and his rights?

21 MR. SWEAT: He does, Your Honor.

22 THE COURT: Of course, his right to a jury trial?

23 MR. SWEAT: He does, Your Honor, and he was eval-
24 uated.

25 THE COURT: All right. I'll get to that in just a

1 second.

2 He wishes to plead guilty to these five charges?

3 MR. DEVOE: He does.

4 THE COURT: To your knowledge of the facts and
5 circumstances, is it likely that a jury would find
6 Mr. Sweat guilty on these charges beyond a reasonable
7 doubt?

8 MR. DEVOE: I do.

9 THE COURT: Overall, do you agree with his decis-
10 ion to plead guilty to these charges?

11 MR. DEVOE: Overall, yes.

12 THE COURT: Has he been ordered to be evaluated
13 or ordered to undergo an evaluation to determine his
14 competency to stand trial?

15 MR. DEVOE: He was, Your Honor.

16 THE COURT: All right. Tell me about that.

17 MR. DEVOE: He was ordered to undergo an evalua-
18 tion, and the evaluation was done on January 28 or
19 2007.

20 SOLICITOR: January 24th.

21 MR. DEVOE: That's right. January 24.

22 THE COURT: And what were the results of the
23 evaluation?

24 MR. DEVOE: The results were that, Your Honor,
25 as to my client there is insufficient evidence to

1 a reasonable degree of medical certainty to suggest a
2 mental illness, disease or defect, or that he lacked
3 the capacity to conform his conduct to the requirements
4 of the law at the time of the alleged offenses.

5 THE COURT: All right.

6 MR. DEVOE: I will hand this up to Your Honor if
7 you don't have it.

8 THE COURT: I have it. This is a document four and
9 a half pages in length, signed by Michael Cross, M.D.?

10 MR. DEVOE: That's correct, Your Honor.

11 THE COURT: We'll make this Court's Exhibit 1.

12 (Evaluation report marked Court's Exhibit 1)

13 THE COURT: Ms. Land, did Mr. Devoe correctly
14 state the results of the evaluation?

15 SOLICITOR: He did, Your Honor.

16 THE COURT: All right. Sir, you are Jeremy
17 Shea Sweat?

18 DEFENDANT: Yes, Your Honor.

19 THE COURT: Mr. Sweat, I want you to listen very
20 carefully to me. It is necessary for me to make sure
21 that your answers are made freely, voluntarily and are
22 intelligently made to the questions I will be asking
23 you.

24 MR. SWEAT: Yes, sir.

25 THE COURT: If you do not understand my questions,

1 do not hesitate to tell me.

2 If you need to speak to your lawyer at any time
3 during the course of this, just let me know and I will
4 let you do that.

5 MR. SWEAT: Yes, sir.

6 THE COURT: All right, sir. If your lawyer or
7 Ms. Land say something about this case that you do not
8 understand, let me know that. Okay?

9 MR. SWEAT: Okay.

10 THE COURT: All right, sir. How old are you?

11 MR. SWEAT: I'm twenty-six.

12 THE COURT: And how far did you go in school?

13 MR. SWEAT: Seventh.

14 THE COURT: Were you born and raised here in
15 Clarendon County?

16 MR. SWEAT: No, sir.

17 THE COURT: Where are you from?

18 MR. SWEAT: I'm from Louisiana.

19 THE COURT: All right. How long prior to 2005,
20 2006, did you come here?

21 MR. SWEAT: I got here in '05, New Year's Eve.

22 THE COURT: Prior to New Year's Eve of
23 2005, did you live in Louisiana?

24 MR. SWEAT: Yes, sir.

25 THE COURT: What kind of work did you do?

1 MR. SWEAT: Painting, sir.

2 THE COURT: Painting?

3 MR. SWEAT: Yes, sir.

4 THE COURT: All right, sir. Have you ever been
5 treated for alcoholism or alcohol abuse?

6 MR. SWEAT: No, sir.

7 THE COURT: Have you ever been treated for mental
8 illness?

9 MR. SWEAT: Yes, sir.

10 THE COURT: Tell me about that.

11 MR. SWEAT: I've been -- for suicide, sir.

12 THE COURT: When did that happen?

13 MR. SWEAT: Oh, . . .

14 THE COURT: You attempted suicide?

15 MR. SWEAT: Yes, sir.

16 THE COURT: When did that happen?

17 MR. SWEAT: When I was fourteen, sir.

18 THE COURT: So about twelve years ago?

19 MR. SWEAT: Right. Somewhere about then.

20 THE COURT: And was that when you were in Louis-
21 iana?

22 MR. SWEAT: Yes, sir.

23 THE COURT: Did you talk to the evaluator in
24 Columbia about that?

25 MR. SWEAT: What caused it.

1 THE COURT: And did you take medication for that
2 problem?

3 MR. SWEAT: Yes, sir. I took Prozac and Depacote.

4 THE COURT: After the Prozac and Depacote from
5 the time you were fourteen, did you take anything else
6 up to the time you were arrested on these charges?

7 MR. SWEAT: No, sir.

8 THE COURT: Do you take medication now?

9 MR. SWEAT: I'm on no medication right now, sir.

10 THE COURT: Do you need medication now?

11 MR. SWEAT: No, sir.

12 THE COURT: Have you received any treatment for
13 drug abuse?

14 MR. SWEAT: No, sir.

15 THE COURT: You already said, I believe, that you
16 have received no treatment for alcohol abuse. Is
17 that right?

18 MR. SWEAT: Yes, sir.

19 THE COURT: Have you had any medication of any
20 kind in the last twenty-four hours?

21 MR. SWEAT: No, sir.

22 THE COURT: Have you had any drugs, illegal drugs,
23 or alcohol in the last twenty-four hours?

24 MR. SWEAT: No, sir.

25 THE COURT: Mr. Sweat, do you have any type of

1 condition that keep you from understanding what you
2 are doing here today?

3 MR. SWEAT: No, sir.

4 THE COURT: Have you been able to understand
5 all of my questions so far?

6 MR. SWEAT: So far, yes, sir.

7 THE COURT: All right. You heard your lawyer
8 tell me you understand the charges against you in these
9 two indictments. Is he correct?

10 MR. SWEAT: He's correct, sir.

11 THE COURT: All right. This Indictment Number 2007
12 GS 14 364 alleges in count one that on or about July
13 3, 2006, that you did unlawfully seize, confine, abduct,
14 carry away, along with your Codefendant, this person.

15 Do you understand that charge?

16 MR. SWEAT: Yes, sir.

17 THE COURT: Do you understand that carries up to
18 thirty years in prison?

19 MR. SWEAT: I do know that, sir.

20 THE COURT: All right, and count two on the In-
21 dictment alleges that on that same date that you did in
22 Clarendon County -- you and your Codefendant did en-
23 gage in or attempt to engage in a sexual battery upon
24 that individual by aggravated force and aggravated coercion
25 upon her.

1 That you assaulted her and while she was a victim
2 of kidnapping.

3 Do you understand that charge?

4 MR. SWEAT: Sort of, sir.

5 THE COURT: All right. Mr. Devoe?

6 (Brief pause while the Defendant conferred with
7 his counsel off the record)

8 MR. SWEAT: Is that intent to kill that you're
9 talking about?

10 THE COURT: I haven't got to that one yet.

11 (Mr. Devoe speaking with Defendant off the re-
12 cord)

13 THE COURT: Do you understand that charge, Mr.
14 Sweat?

15 MR. SWEAT: Yes, sir, I do now.

16 THE COURT: You spoke to your lawyer about that
17 and he clarified it for you?

18 MR. SWEAT: Yes, sir.

19 THE COURT: And that is criminal sexual conduct.
20 Do you understand that charge?

21 MR. SWEAT: Yes.

22 THE COURT: Do you understand that carries up to
23 thirty years in prison?

24 MR. SWEAT: Yes, sir, I do.

25 THE COURT: And the next count says that on that

1 same date, July 3, 2006, you and your Codefendant did
2 with malice aforethought commit an assault and bat-
3 tery upon this person with intent to kill her.

4 Do you understand that charge?

5 MR. SWEAT: Yes, sir.

6 THE COURT: You understand that charge?

7 MR. SWEAT: Yes, sir.

8 THE COURT: Do you understand that carries up to
9 twenty years in prison?

10 MR. SWEAT: Yes, sir.

11 THE COURT: All right, sir. On the Indictment
12 that is numbered 2007 GS 14 363, count one says that
13 on or about June 20, 2006, you and a Codefendant did seize,
14 confine, abduct and carry away by use of force Jacquelyn
15 Rhodes.

16 Do you understand that charge?

17 MR. SWEAT: Yes, sir.

18 THE COURT: And that carries up to thirty years in
19 prison? You understand that?

20 MR. SWEAT: Yes, sir, I do.

21 THE COURT: Count two of that indictment is for
22 criminal sexual conduct in the first degree, that on that
23 same date you did with a Codefendant did engage in or
24 attempt to commit a sexual battery upon Jacquelyn Rhodes
25 by aggravated force or coercion upon her; that you did

1 assault her with attempt to commit sexual battery upon
2 her while she was the victim of a kidnapping.

3 Do you understand that charge?

4 MR. SWEAT: Yes, sir.

5 (Defendant speaking with his attorney off the re-
6 cord)

7 MR. SWEAT: Yes, sir, I understand.

8 THE COURT: Do you understand that carries up to
9 thirty years in prison?

10 MR. SWEAT: I know that.

11 THE COURT: Now, Ms. Land, looking at the sentencing
12 sheet . .

13 (Colloquy between the Court and Solicitor off the
14 record)

15 MS. LAND: That was a mistake.

16 THE COURT: Now, Mr. Sweat, the law characterizes
17 certain offenses in certain ways, and these five of-
18 fenses are what are called most serious offenses.

19 Having said that, do you understand that if in the
20 future you are ever convicted of a crime that is char-
21 acterized as a most serious offense that you will be
22 facing a mandatory life in prison without the possibility
23 of parole?

24 MR. SWEAT: Yes, sir, I understand that.

25 THE COURT: You do understand that?

1 MR. SWEAT: Yes, sir.

2 THE COURT: Now, Mr. Sweat, there is a recommenda-
3 tion of a sentencing cap of forty years. Do you under-
4 stand that?

5 MR. SWEAT: Yes, sir, I do.

6 THE COURT: And that is the extent of it?

7 SOLICITOR: Yes, sir.

8 MR. DEVOE: That's correct.

9 THE COURT: Do you understand, Mr. Sweat, that I
10 do not have to abide by that recommendation?

11 MR. SWEAT: Yes, sir, I understand that.

12 THE COURT: And do you understand that I could sen-
13 tence you to a hundred and forty years in prison?

14 MR. SWEAT: Yes, sir.

15 THE COURT: And do you understand that by pleading
16 guilty to these indictments you are giving up several im-
17 portant constitutional rights?

18 MR. SWEAT: Yes, sir.

19 THE COURT: I'm going to go through some of these
20 right now, and if you don't understand any of them make
21 sure you stop me.

22 MR. SWEAT: Yes, sir.

23 THE COURT: First of all, you give up your consti-
24 tutional right to remain silent. You give up your right
25 to say nothing at all.

1 Do you understand that?

2 MR. SWEAT: Yes, sir, I realize that.

3 THE COURT: Up until now, you could be made to say
4 nothing. Nobody could make you take the witness stand
5 and nobody could compel you to say what may or may not
6 have happened.

7 Do you understand that?

8 MR. SWEAT: Yes, sir, I realize that.

9 THE COURT: You know you are giving up your right
10 to remain silent?

11 MR. SWEAT: Yes, sir.

12 THE COURT: You know that you give up your right to
13 remain silent?

14 MR. SWEAT: Yes, sir.

15 THE COURT: Second, you are giving up your right
16 to a jury trial, where the State would be required to
17 prove to a jury your guilt beyond a reasonable doubt.
18 Do you understand that?

19 MR. SWEAT: Yes, sir.

20 THE COURT: If you had a jury trial, the jury would
21 have to be convinced of your guilt beyond a reasonable
22 doubt before you could be convicted.

23 Do you understand?

24 MR. SWEAT: Yes, sir. I understand that.

25 THE COURT: You would not have to put up a defense

1 if you had a jury trial. Do you understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: If you plead guilty, you have to give
4 up that right to a jury trial. Do you understand?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you want to give up that right?

7 DEFENDANT: Yes, sir, I do.

8 THE COURT: You have to give up your right to con-
9 front and be confronted by witnesses that may be called
10 against you by the State, and that means if you plead
11 guilty you must give up that right to confront and hear
12 what witnesses have to say.

13 You have to give up your right to have your lawyer
14 question and cross examine them.

15 Do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: You also have to give up your right
18 to subpoena and call witnesses. Do you understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you want to give up your right to
21 confront witnesses and to call your own witnesses?

22 DEFENDANT: Yes, sir.

23 THE COURT: Mr. Devoe, do you agree that your client
24 understands these rights and freely gives them up?

25 MR. DEVOE: I believe he does, Your Honor. I have

1 gone over them with him enough times to make sure he un-
2 derstands his rights.

3 THE COURT: Now, Mr. Sweat, you understand that
4 once you give up those rights and plead guilty that you
5 cannot get a jury trial?

6 DEFENDANT: I realize that.

7 THE COURT: All right, sir. Do you need to talk
8 to your attorney?

9 DEFENDANT: Yes, sir.

10 (Brief pause while Defendant speaks with his counsel)

11 THE COURT: When you plead guilty to these charges,
12 you give up any defenses you may have to the charges.

13 Do you understand?

14 DEFENDANT: Yes, sir.

15 THE COURT: If you made a statement to law enforce-
16 ment after your arrest, do you understand that by plead-
17 ing guilty you give up your right to contest the volun-
18 tariness of any such statements?

19 DEFENDANT: Yes, sir. I realize that.

20 THE COURT: Now, let's go over these one at a time.
21 Indictment 363, understanding the charge of kidnapping,
22 do you plead guilty or not guilty?

23 DEFENDANT: Guilty, Your Honor.

24 THE COURT: That same indictment, criminal sexual
25 conduct in the first degree, understanding that charge,

1 how do you wish to plead, guilty or not guilty?

2 DEFENDANT: Guilty, Your Honor.

3 THE COURT: Count three on that same indictment,
4 assault and battery with intent to kill, understanding
5 that charge how do you wish to plead, guilty or not
6 guilty?

7 DEFENDANT: Guilty, Your Honor.

8 SOLICITOR: I believe that indictment was 364 --
9 they were backwards.

10 THE COURT: That indictment, Mr. Sweat, was 364.
11 The sentencing sheet has 363. Do you understand that
12 and enter guilty pleas to those three counts of that
13 indictment, 364?

14 DEFENDANT: Yes, sir.

15 THE COURT: And you still plead guilty to those
16 three charges?

17 DEFENDANT: Yes, Your Honor.

18 THE COURT: Now, on the Indictment that is indeed
19 364 . .

20 SOLICITOR: The Indictment 364 has Ms. Rahime, and
21 it just has the additional charge of assault with intent
22 to kill -- assault and battery with intent to kill.

23 So if the assault with intent to kill says 363, I
24 need to change that because it's 364.

25 THE COURT: All right, you need to do that. On the

1 Indictment that ends in . .

2 SOLICITOR: Could I see them? Ms. Rhodes is 363.

3 THE COURT: So change the sentencing sheets.

4 SOLICITOR: Two for kidnapping, two for criminal
5 sexual conduct.

6 THE COURT: All right. Mr. Sweat, I apologize
7 for the confusion on my part.

8 The Indictment that ends with 363 concerning Ms.
9 Rhodes, do you plead guilty or not guilty to kidnap-
10 ping?

11 DEFENDANT: I plead guilty, Your Honor.

12 THE COURT: And are you guilty?

13 DEFENDANT: Yes, Your Honor.

14 THE COURT: And for criminal sexual conduct regard-
15 ing Ms. Rhodes, do you plead guilty or not guilty?

16 DEFENDANT: Guilty, Your Honor.

17 THE COURT: Just to make sure the record is clear
18 on this, Indictment 364 concerns Ms. Rahime, and
19 these are the offenses of July 3, 2006. As to kidnapping,
20 are you guilty or not guilty?

21 DEFENDANT: Guilty, Your Honor.

22 THE COURT: And as to criminal sexual conduct, do
23 you plead guilty or not guilty?

24 DEFENDANT: Guilty, Your Honor.

25 THE COURT: And assault and battery with intent to

1 kill, are you guilty or not guilty?

2 DEFENDANT: Guilty.

3 THE COURT: And are you in fact guilty of all of
4 these crimes?

5 DEFENDANT: Yes, Your Honor.

6 THE COURT: The Solicitor is now going to review
7 the facts or along with law enforcement, and perhaps the
8 victims may wish to speak.

9 I will ask you to confirm what they have said when
10 they finish. Do you understand that?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: First I need to ask whether anybody has
13 promised you anything to induce you to enter these pleas
14 of guilty?

15 DEFENDANT: No, Your Honor.

16 THE COURT: Has anybody threatened you or in any
17 way coerced your plea?

18 DEFENDANT: No, sir.

19 THE COURT: Has anyone in any way tried to intimi-
20 date you or force you to plead guilty?

21 DEFENDANT: No, sir.

22 THE COURT: Have you had enough time to make up your
23 mind?

24 DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Have you talked to Mr. Devoe as long

1 as you needed and as often as you want to?

2 DEFENDANT: Yes, sir.

3 THE COURT: Have you understood all of your talks
4 with him?

5 DEFENDANT: Yes, sir.

6 THE COURT: Is there anything else you want him
7 to do that he has not done for you in these cases?

8 DEFENDANT: No, Your Honor.

9 THE COURT: As you stand here today, are you com-
10 pletely satisfied with his services?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: All right, sir. Do you have any com-
13 plaints about the police or the Solicitor's Office?

14 DEFENDANT: No, sir.

15 THE COURT: All right. After talking with your
16 lawyer, was your decision to enter these guilty pleas
17 based on your own free will?

18 DEFENDANT: Yes, Your Honor.

19 THE COURT: All right, sir. Have you understood all
20 of my questions?

21 DEFENDANT: Yes, sir.

22 THE COURT: Is there anything else you want me to
23 do for you?

24 DEFENDANT: No, sir.

25 THE COURT: All right. Mr. Sweat, you understand

1 you have the right to appeal these guilty pleas or the
2 sentence that I give you?

3 DEFENDANT: Yes, sir.

4 THE COURT: And you have ten days from today's
5 date to do that or until March 20, 2008. Do you un-
6 derstand?

7 DEFENDANT: Yes, sir.

8 THE COURT: All right. Ms. Land, have I clarified
9 the indictment numbers?

10 SOLICITOR: Yes, sir, you did.

11 THE COURT: Go ahead, Ms. Land, or do you wish to
12 have law enforcement tell me about it?

13 SOLICITOR: The first incident, June 20, 2006, the
14 victim in that case is Jacquelyn Rhodes, who is seated
15 back in the Courtroom.

16 She was in Davis Station in the early morning hours
17 of June 20th and Jeremy Sweat with a Codefendant picked
18 her up.

19 I believe that they had intentions when they picked
20 her up and knew exactly what they were going to do. At
21 that time they took her to Jeremy's house, which is in
22 the Eagle Point area.

23 He had a little trailer that sits right on that
24 turn and they took Ms. Rhodes back there. At some point
25 they began to drink and party, and they began to rape

1 her. He gave an interview to law enforcement to Thomas
2 Burgess and Lynn Hamm, and Thomas asked, well, you all
3 raped her too, didn't you, and Jeremy said, we started
4 to and then we let her go.

5 Your Honor, that is when things got extremely vio-
6 lent and extremely harmful to Ms. Rhodes. Thomas says
7 in the interview, tell me what happened, and he said,
8 Jeremy said, yeah, I did torture her.

9 What did you do to her? I took that broomstick and
10 stuck it in her pussy. I poured bleach on her.

11 What did you pour bleach on her for? To torture
12 her.

13 Where did you do that at? At the house.

14 What room? The bathroom.

15 THE COURT: That's the Defendant speaking?

16 SOLICITOR: Yes, this Defendant speaking.

17 At that point, Ms. Rhodes left, ran out of the
18 house. They chased her and she just screamed as loud as
19 she could. At that point they let her go.

20 She heard things to the effect of, she's not worth
21 it; let her go. And I think they believed they had
22 found somebody that nobody would care if she was raped
23 or harmed or what happened.

24 She did go to law enforcement, Your Honor, and they
25 did everything they could with information she was able

1 to give them.

2 They looked for the trailer and couldn't find one. They
3 couldn't figure out where she was talking about, and she
4 wasn't able to show them.

5 But they followed every lead that they had and found
6 nothing.

7 Shortly thereafter, on July 3, 2006, Ms. Rahime, a
8 fifteen year old girl, got a call from some of her friends
9 who asked her to meet them out. She said, no, I shouldn't
10 do that. Finally, they persuaded her, and she said she
11 doesn't know why she went because she never had snuck out
12 before.

13 She knew it wasn't the thing to do, and she is a very
14 good girl. She makes very good grades and does what
15 she's supposed to do.

16 The friends who called her left their phone with a
17 Codefendant of Mr. Sweat, and Mr. Sweat was in the car.
18 Those friends had at some point during the night met up
19 with Jeremy Sweat and a Defendant.

20 They left the telephone in the car with the Code-
21 fendant and Mr. Sweat. The Codefendant used that phone to
22 look back, scroll back, and find Ms. Rahime's number
23 and call her and say, come on, meet us out, we'll come
24 pick you up and we'll back you back to your house.

25 She said okay, and she agreed at that point. They

1 rode up -- she did not realize that Mr. Sweat was in the
2 back seat. Justin Evans, the Codefendant, met her and
3 she told him hello, and he told her he was going to take
4 her to her friends.

5 She had no reason to believe that a whole group of
6 friends who would not have done her any harm weren't, you
7 know, at this trailer waiting for her or weren't where
8 they were supposed to be.

9 But they were not. They took her -- Jeremy Sweat
10 and the Codefendant took her back to the trailer of Mr.
11 Sweat and the incident where Ms. Rhodes was raped.

12 They drug her back there and at some point Mr.
13 Sweat . .

14 THE COURT: Hold on a minute.

15 (Brief pause in the proceeding)

16 SOLICITOR: Your Honor, it doesn't matter what kind of
17 person you are or what kind of past you have, that kind
18 of violence and that kind of -- what they did to her was
19 very hurtful and obviously it had some very serious effects
20 on her.

21 THE COURT: Mr. Sweat, you heard Ms. Land. Is that
22 account correct of what you did?

23 (Brief pause)

24 DEFENDANT: Yes, sir.

25 THE COURT: Did you pour bleach on her?

1 DEFENDANT: No, sir, Your Honor.

2 THE COURT: Go ahead, Ms. Land.

3 SOLICITOR: Your Honor, as I was saying, Mr. Sweat
4 was in the backseat of the car, and Jamilla got in..

5 At some point, Jeremy woke up and sat up and she
6 realized another person was in the back of the car, and
7 she knew him.

8 She has friends who lived right behind Mr. Sweat,
9 and she had gone over there before and had seen him in
10 the yard. He drove a car in the ditch in front of that
11 home and he got out.

12 So she recognized him from seeing him and being at
13 the Websters. She said, I know you; you're the guy that
14 wrecked your truck in front of the house, and he said,
15 yes, and started to laugh, and I think at that she even
16 became more comfortable because she
17 thought she knew who these people were.

18 They took her to Jeremy Sweat's trailer and she came
19 in and her friends were not there. She asked him where
20 her friends were, and they said, they'll be right here;
21 they just went -- they'll be right here, and when Jeremy
22 came up behind her and put her in a headlock she said
23 all she could do was scream for the other Defendant be-
24 cause she believed at that time that he would help her.

25 Obviously, they were in it together. They pulled

1 her into an empty bedroom and they took off her pants..
2 At that time, the Codefendant left the room and Jeremy was
3 the first one who raped her.

4 He raped her. He forced her to perform oral sex.
5 He forced her to get on top of him during the sex act,
6 and did very degrading things and said very degrading
7 things to her during this time that he was doing this.

8 THE COURT: Mr. Sweat, is all of that correct?

9 DEFENDANT: No, sir.

10 THE COURT: I'll let her go on further, and be pre-
11 pared to tell me just what you did.

12 All right, Ms. Land.

13 SOLICITOR: Your Honor, Jamilla says there was no
14 alcohol and no drugs present at all. None were used,
15 none were discussed.

16 At that point, he ejaculated on her stomach. They
17 both ejaculated on her stomach. They told her to get
18 in the shower, and she said, if you will just take me on
19 home I will never tell anybody that this happened, and
20 they said, we will take you home but you are to get in the
21 shower first.

22 So they put her in the shower and she said she tried
23 very hard to preserve anything that may be there for evi-
24 dence because when she got home she was going to tell.
25 That was the first thing she was going to do.

1 She said, I'm finished with my shower, and they
2 said absolutely you're not, and they made her scrub longer.
3 At that point, she -- Jeremy came to the shower and had
4 a knife and stabbed her right here in her neck and con-
5 tinued to stab her many times.

6 She said at one point he walked out and came back
7 and stabbed her some more.

8 She said that as she laid there bleeding -- fin-
9 ally she just collapsed to the ground and was bleeding.

10 THE COURT: Where was she?

11 SOLICITOR: In the shower. If they thought she
12 was dead, they would leave her alone. She said it was a
13 very unusual feeling.

14 That body felt very heavy. She said there was blood
15 everywhere. She had never seen such a sight in her life
16 and she could not describe the blood and feeling that she
17 had.

18 She said as she lay there in that state that they dis-
19 cussed they would dispose of her body, and she heard
20 Mr. Sweat say he had never killed anybody in my house
21 before.

22 They discussed cutting her up and feeding her to
23 the aligators. They discussed getting trash bags and
24 putting her in trash bags.

25 At some point, she realized that she couldn't hear

1 them any more and she couldn't hear -- there had been ,
2 a dog outside barking and you couldn't hear that any
3 more.

4 She reasoned from that that they had left. She
5 said at that point she knew it was her only chance,
6 and she tried to get out of the window that was lo-
7 cated in the bathroom and was not able to.

8 She went out the door and said she just ran for her
9 life over to the Websters, her friends who lived di-
10 rectly behind Mr. Sweat.

11 Mr. and Mrs. Webster met with me and said that
12 there was blood all the way down their home where she
13 was trying to get their attention, trying to get someone
14 to let her in.

15 At this point -- she left her house at about two
16 thirty or three. At this point, it was about four in
17 the morning.

18 They did not know what in the world was going on or
19 who this was banging on their door. They had a twelve
20 year old son who was asleep in the living room. They
21 told him to get back and Mr. Webster opened the door
22 and she ran past him and ran to the area where Mrs.
23 Webster was standing and hit the wall and crouched down
24 in a fetal position.

25 She still had no clothes on and blood was everywhere

1 at the Websters. Mrs. Webster was an EMS so she was
2 very familiar with medical situations. She said you've
3 never seen so much blood.

4 They got a towel and cleaned her up and called nine
5 one one.

6 She was taken and cared for at the emergency room.
7 She had nine stab-type wounds and eight needed stitches.
8 She had many, many other scratches and less serious
9 wounds that were inflicted from the knife.

10 THE COURT: How many did you say?

11 SOLICITOR: Nine stab wounds.

12 THE COURT: All right.

13 SOLICITOR: Everywhere from her neck down her back.
14 I believe one was in her stomach.

15 Although she did not have to stay in the hospital
16 for a long amount of time, had one of them been an inch
17 over -- had the one in her neck been an inch over, she
18 probably would have lost her life.

19 Your Honor, in my meeting with Ms. Rahime the thing
20 I notice now is she has overcome this. I think she
21 has done a wonderful job. I think she is doing great
22 today.

23 She survived this horrible situation, but there are
24 things about this event that have and will continue for
25 the rest of her live to creep into her life.

1 The last time I met with her she said, you know,
2 she was shopping for a prom dress and it was really
3 hard to find one where you couldn't see my scars.

4 THE COURT: How old is she now?

5 SOLICITOR: She was fifteen at the time.

6 She does not wish to speak today. Her family is
7 here. Her mother is in the room and her grandmother
8 and grandfather. Then the Websters, who are from the
9 house where she ran when she was able to get away.

10 Ms. Dorothy Pinckney, the grandmother, does wish
11 to speak on behalf of the entire family.

12 THE COURT: Tell me in regard to the Rhodes situa-
13 tion, Mr. Burgess took a statement from Mr.
14 Sweat?

15 SOLICITOR: That's correct. Mr. Burgess and In-
16 vestigator Hamill both.

17 THE COURT: In the statement by Mr. Sweat, did he
18 admit to using a broomstick?

19 SOLICITOR: He did, Your Honor. I have it right
20 here transcribed. It says, what did you do to her? I
21 took that broomstick and stuck it in . .

22 THE COURT: What did you do, Mr. Sweat?

23 DEFENDANT: I did have sex with her.

24 THE COURT: Against her will?

25 DEFENDANT: No, sir.

1 THE COURT: Then how can I accept your plea to
2 criminal sexual conduct in the first degree when you say
3 it was consensual?

4 DEFENDANT: I'd like to speak with my lawyer a second.

5 THE COURT: All right.

6 (Brief pause while Defendant spoke to his counsel)

7 SOLICITOR: Your Honor, there were several inter-
8 views. This is the one that was transcribed.

9 THE COURT: All right. I'm going to have to admit
10 that. Well, let's take a short break at this time.

11 (Whereupon, the Court took a brief recess and the
12 matter then resumed)

13 THE COURT: Mr. Sweat, of course, we broke for about
14 fifteen or twenty minutes, and I want to make sure you
15 know that you have not done anything wrong by asking
16 to speak with your lawyer. Do you understand that?

17 DEFENDANT: Yes, sir.

18 THE COURT: All right. When last on the record, I
19 was discussing the facts of these two cases with you.

20 Now, with regard to Ms. Rhodes, do you know which
21 one Ms. Rhodes was?

22 DEFENDANT: The one that just walked out.

23 THE COURT: The one who walked out a few minutes
24 ago?

25 DEFENDANT: Yes, sir.

1 THE COURT: According to the indictment, 363, with
2 regard to the kidnapping count, what happened?

3 DEFENDANT: We went by and picked her up and got
4 back to the house, and we did have sex with her.

5 THE COURT: All right. Did you hold her there in
6 that house against her will?

7 DEFENDANT: Yes, sir, she was tied up.

8 THE COURT: And how was she tied up?

9 DEFENDANT: With rope, Your Honor.

10 THE COURT: And who participated in that?

11 DEFENDANT: Me and him, Your Honor.

12 THE COURT: And is that satisfactory to the State,
13 Ms. Land?

14 SOLICITOR: It is, Judge.

15 THE COURT: On the count of criminal sexual conduct,
16 first degree, which has been referred to here by Ms. Land
17 as rape, did you participate in sexual intercourse with Ms.
18 Rhodes against her will?

19 DEFENDANT: Yes, Your Honor.

20 THE COURT: All right, and in addition to that, was
21 some object used to insert her?

22 DEFENDANT: She was threatened, Your Honor.

23 THE COURT: She was threatened?

24 DEFENDANT: Right.

25 THE COURT: All right, and did you and Mr. Evans

1 have sexual intercourse with her against her will?

2 DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Is that satisfactory, Ms.
4 Land?

5 SOLICITOR: It is, Judge.

6 THE COURT: And then you untied her?

7 DEFENDANT: Yes, sir.

8 THE COURT: And let her go?

9 DEFENDANT: Yes, sir.

10 SOLICITOR: Your Honor, she was able to get the
11 ropes loose and that is when she was able to leave.

12 THE COURT: Mr. Sweat, in Indictment 364 the victim
13 was Ms. Rahime?

14 DEFENDANT: Yes, sir.

15 THE COURT: In that case, on that occasion, did you
16 and Mr. Evans hold Ms. Rahime in that place, your trailer,
17 against her will?

18 DEFENDANT: Yes, Your Honor.

19 THE COURT: All right, and was she tied up?

20 DEFENDANT: Yes, she was.

21 THE COURT: And did you participate in that?

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: On that same date, did you have sexual
24 intercourse with Ms. Rahime against her will?

25 DEFENDANT: Yes, Your Honor.

1 THE COURT: Is that satisfactory to the State?

2 SOLICITOR: Yes, sir.

3 THE COURT: Now, on the assault and battery with
4 intent to kill, do you admit that Ms. Rahime was stabbed?

5 DEFENDANT: I admit that, Your Honor.

6 THE COURT: Did you do that?

7 DEFENDANT: I did it, Your Honor.

8 THE COURT: Nine times?

9 DEFENDANT: Yes, Your Honor.

10 THE COURT: What did you use?

11 DEFENDANT: A pocket knife, Your Honor.

12 THE COURT: A pocket knife. What did you do with
13 the knife after you used it?

14 DEFENDANT: Let it stay in my pocket, Your Honor.

15 THE COURT: Now, did you all leave Ms. Rahime in that
16 bathroom?

17 DEFENDANT: Yes, Your Honor.

18 THE COURT: And did you leave?

19 DEFENDANT: Yes, sir, we both did, Your Honor.

20 THE COURT: Where did you go?

21 DEFENDANT: The Codefendant went back to his house
22 and I went looking for him.

23 THE COURT: Is all that satisfactory to the
24 State?

25 SOLICITOR: It is, Judge.

1 THE COURT: Now, Mr. Sweat, do you understand that
2 the amount of time I sentence you to will be time you assume
3 you will have to serve in its entirety?

4 Did you explain that?

5 MR. DEVOE: Yes, sir.

6 THE COURT: Do you understand?

7 DEFENDANT: Yes.

8 THE COURT: I have nothing to do with when you might
9 be released?

10 DEFENDANT: I know that, Your Honor.

11 THE COURT: In other words, any time on parole or
12 early release is not up to me. Do you understand?

13 DEFENDANT: I know that, Your Honor.

14 THE COURT: Ms. Land, I'd like to hear from the
15 victim's family, either Ms. Rahime, Ms. Rhodes, or from
16 both.

17 Do it in whatever order you choose to present them
18 to me.

19 SOLICITOR: This is the victim coming up, Jamilla Rahime.
20 In the beginning, she said she did not want to speak, but
21 after hearing him she has decided she does want to, so
22 I am going to let her go first.

23 THE COURT: Your name is Jamilla Rahime?

24 MS. RAHIME: Yes.

25 THE COURT: You have the right to speak and I am happy

1 to hear from you. No one will cross examine you. No
2 one will question you, but any statements you make I will
3 ask you to direct those to me. I will appreciate that.
4 Okay?

5 (Whereupon, the victim spoke to the Court and her
6 statement was not audible on tape)

7 THE COURT: Anything else? You can stay up here or
8 have a seat, whichever you would like to do.

9 SOLICITOR: Your Honor, her grandmother is
10 Dorothy Pinckney and she would like to speak to you as
11 well.

12 (Whereupon, Dorothy Pinckney spoke to the Court
13 and her statement was not audible on tape)

14 SOLICITOR: Your Honor, Annette Webster, the neigh-
15 bor of Mr. Sweat, and the person Jamilla came running to
16 that night after she was raped and attacked, would like
17 to say a few words.

18 (Statement of Annette Webster not audible on the
19 tape)

20 SOLICITOR: Your Honor, no one in law enforcement
21 wishes to speak. For a while in our community, this was
22 talked about as a hate crime, and that put a great deal
23 of pressure on us as a community between blacks and
24 whites, and it was a very scary time.

25 I think during the time it happened, as Ms. Webster

1 said, everybody felt so helpless. When I would speak to
2 these people as they would come in my office from time
3 to time, I just felt like I didn't protect her, like it
4 was my job to protect her, make sure she didn't leave
5 the house.

6 As you know as a parent and I know as a parent, we
7 can't control everything our children do. I know Jamille
8 felt helpless during the time it was going on, and, as
9 she said, it will affect her for the rest of her life.
10 I think she is a good person and has been raised with
11 good values, and she has said she will make sure that
12 positive things come out of it.

13 For that, I'm proud of her and I'm thankful. I
14 don't know Ms. Rhodes will fare as well. I think this
15 is another thing that has gone horribly wrong in her
16 life. She probably will never recover from that event,
17 as she really doesn't have the support and counseling
18 and things Ms. Rahime has.

19 We would ask on behalf of the State that you sen-
20 tence him at least up to the forty cap.

21 THE COURT: I just want to make sure for the record
22 that the officers make sure that Ms. Rhodes' rights are
23 protected and that the rights of the other victim, Ms.
24 Rahime, are protected as well.

25 Ms. Rhodes, would you like to be heard in the

1 matter of Mr. Sweat's guilty plea?

2 (Ms. Rhodes speaking to the Court, not audible on
3 tape)

4 THE COURT: Thank you very much. I appreciate
5 your being here in Court. You can leave if you would
6 like, or you can remain.

7 For the record, Mr. Sweat has entered his guilty
8 pleas voluntarily, knowingly and intelligently.

9 He has had the advice of an attorney with whom he
10 says he is satisfied.

11 Based on the report and the evaluation, I am in-
12 clined to believe that Mr. Sweat is aware of the
13 nature of these proceedings, and he has been able to
14 assist his attorney in his case.

15 I will accept all five of his pleas, and I will
16 be glad to hear from you and Mr. Sweat, Mr. Devoe.

17 MR. DEVOE: Thank you, Your Honor. This is a very
18 difficult time for everybody in this Courtroom.

19 Mr. Sweat comes from Louisiana as he said. He fin-
20 ished the sixth grade. I think he had a difficult
21 growing-up period, and I think the report you have in
22 front of you talks about that.

23 Some of his teachers in the classroom took him to
24 an institution in Louisiana to try to address his psy-
25 chological problems. He was in an inpatient clinic as

1 well in Louisiana. He was diagnosed with having a major
2 depressive disorder, recurrent, with severe psychotic
3 features.

4 That goes on through his whole life basically. In
5 spite of that, the mental health evaluation states that he
6 has a low level of not intelligence but learning, and he
7 worked not only as a house painter but he worked in a
8 power plant before he came to South Carolina.

9 He also worked with his father in Tennessee doing
10 that and was going to go on to his father who is now in
11 Florida. He was going to go all over the country paint-
12 ing, which shows with his limited ability he tried hard
13 and was able to support himself.

14 He has had psychological trauma as well from alco-
15 hol, and he did take drugs with a fair amount of alco-
16 hol up to the dates in question.

17 So the background is that he was a struggling young
18 adult, trying to get along and support himself, in spite
19 of the many problems he grew up with.

20 Obviously, he was not able to solve his problems
21 or we wouldn't be here today. The whole situation is
22 tragic for certainly the victims but also to Jeremy and
23 his family who are sitting at the table behind me. They
24 live in Louisiana. His mother and stepfather are here,
25 and his sister is here also.

1 This is a good family, a hard-working family, a very
2 concerned family. They have been to visit Jeremy in
3 the correctional institution many times over the last
4 twenty months he has been there. That place is like a
5 hell-hole. I hate to use that word, but that's exactly
6 what it is.

7 I have been there to see him several times, and I
8 have had other clients there also. It is a very depress-
9 ing place, a depressing situation, with nothing to en-
10 tertain, nothing to stimulate; was placed in solitary for
11 a long time. Not even access to a pencil or piece of
12 paper to write a letter.

13 To me, it is hard for me to be there, even knowing
14 I'm going to be able to leave.

15 Unlike the Codefendant, he has been there for
16 twenty months, and that is almost like -- he's being
17 treated like he was already convicted, like a violent
18 -- like already convicted of a violent crime.

19 THE COURT: Why is he there?

20 MR. DEVOE: They took him out of Clarendon County
21 on an Order to separate him from the Codefendant.

22 They were both in the jail and he was the one at one
23 point who was more verbally abusive. They took him off
24 on a sixty day Order and kept him. I signed that Order,
25 agreeing to that, but I never saw any other Order for sixty
days or sixty days or right on down the line, extending that.

1 I made a motion for a speedy trial because I wanted
2 to get him out of that situation. That was in September.
3 So we finally came here today to resolve this matter one
4 way or the other, and that is exactly what's going on
5 today.

6 That also took six months after I filed a speedy
7 trial motion.

8 I might -- the family coming from Louisiana --
9 that is a long, long drive to South Carolina, about
10 twenty hour trip or fifteen hour trip.

11 The parents did that a lot and they called me a lot
12 about this case.

13 On the reports given by the forensic interviewer,
14 . . .

15 THE COURT: The report of the interview with your
16 client?

17 MR. DEVOE: No, I'm talking about the forensic
18 examiner for the State. His name is Williams, and he is
19 called a forensic interviewer.

20 This is dated in July of 2006, and he says one
21 thing about it -- this is more or less quoting what the
22 victim said -- Justin would give all the orders and
23 Jeremy would carry them out, carry out Justin's orders,
24 so he was Justin's henchman.

25 This says Jeremy is the only one that seemed to be

1 bothered by what they had done to her. She said when
2 she was in the shower, Justin ordered Jeremy to stab her,
3 which is exactly what Jeremy did. He followed that or-
4 der of Justin.

5 There is some indication that he stabbed her but
6 not as deeply as Justin ordered, so as not to harm her
7 beyond repair, and that may be one reason she survived
8 and is alive today.

9 That may be diminimus but I think it is important
10 to rethink that Jeremy is the follower and not the
11 leader.

12 Jeremy is older than Justin by three years, but
13 psychologically, mentally he is much younger than his
14 Codefendant.

15 The Codefendant set this whole thing up with his
16 other friends who left their cel phone with Justin to
17 call her back, so they could lure her to where this
18 whole crime took place.

19 I'm a little suspicious of the others and what
20 they were doing, why they would act that way, but the
21 fact is that Justin or Jeremy did not steal the phone
22 that they ultimately called back on.

23 Your Honor, this is a sad case as I said for
24 everybody. I know it's been said that it will affect
25 these girls for the rest of their lives, but in fact

1 Jeremy will come out of jail much older than he is
2 today.

3 I hope that he will be wiser and in good health,
4 to understand what's going on around him.

5 I would ask Your Honor to -- I know there is an
6 offer of forty as a cap on the situation, but I would ask
7 Your Honor to consider a lesser cap, somewhere in the
8 twenty to thirty year range.

9 He will still be pretty old when he gets out but
10 he will have a chance at that point maybe to make a life
11 for himself and support himself and not have to go on public
12 support for the rest of his life.

13 I know the family would want to say some words to
14 you. They came in on Saturday night. We met Sunday
15 afternoon at the jail. They spent a couple of hours
16 there.

17 I'm sure they'll keep on visiting Jeremy as they
18 have been doing already.

19 (Members of Defendant's family speaking to the
20 Court)

21 MR. SWEAT: I'd like to tell the Judge that I am very
22 sorry. I wish none of it had happened. It has been hard
23 on me too.

24 Like I said, I regret that it happened. I regret
25 ever meeting Justin.

1 THE COURT: Anything else, Mr. Devoe?

2 MR. DEVOE: I don't think so, Your Honor. Just
3 the issue of him having a hard time growing up, and
4 the fact that he tried to overcome that.

5 Between Justin's leadership and the drinking, he
6 got into this sad situation, in my opinion. I know Jeremy
7 meant it when he apologized to the victim and their
8 families.

9 THE COURT: Anything else, Ms. Land?

10 SOLICITOR: No, sir.

11 THE COURT: Mr. Sweat, it has been indicated that
12 the other Defendant was the leader in this whole thing.
13 From the other proceedings in this case, I have heard
14 otherwise.

15 SOLICITOR: Your Honor, everybody has a different
16 idea about that. Law enforcement seems to believe Mr.
17 Sweat was the aggressor; that he truly has the evil
18 mind of the two; that these ideas were his; that he
19 carried them out when Justin was kind of there and par-
20 ticipating.

21 Jamilla is the only one that was truly there and
22 she believes the other way. She thinks that although
23 Jeremy did these acts; that he raped and stabbed her,
24 that he was he was the one who put her in the initial
25 headlock -- she believes that he was being controlled

1 by the other Defendant.

2 I think the bottom line is that they were both
3 there and they both acted together . .

4 MR. DEVOE: There is no question that Justin was
5 driving the truck they were in, and Jeremy was passed
6 out in the back seat.

7 THE COURT: No matter what the offense is or who
8 the Defendant is, passing a sentence in any case is a
9 hard thing to do, the hardest thing I have to do as a
10 Judge.

11 I have listened over the last two hours, and I
12 would like to feel in passing this sentence that you do
13 feel some remorse.

14 I am taking into account the fact that Ms. Land
15 for the State has requested forty years, although that
16 is not something I'm obligated to follow.

17 Having said that, on the Indictment that ends in
18 the numbers 364, on the count of kidnapping, the sen-
19 tence of the Court is that you be confined to the State
20 Department of Corrections for a term of thirty years.

21 Consecutive to that on the count of criminal sex-
22 ual conduct in the first degree, thirty years.

23 Consecutive to that, assault and battery with in-
24 tent to kill, ~~twenty~~ years.

25 On the Indictment that ends in 363, on the count

1 of kidnapping, the sentence of the Court is that you
2 be committed to the State Department of Corrections for
3 a term of thirty years.

4 On the count of criminal sexual conduct in the first
5 degree, thirty years. The latter two to be served con-
6 currently.

7 It gives me no pleasure at all to hand down these
8 sentences. I think the circumstances of this crime are
9 such that I am compelled to not follow the State's re-
10 commendation. In this case, I cannot in good conscience
11 do that.

12 It will bring no comfort to the families that I
13 give you this sentence. Their suffering will go on.
14 Maybe the punishment will be some sort of consolation
15 for the victims.

16 You will receive credit for the time you have al-
17 ready served.

18 Anything else, Ms. Land?

19 MS. LAND: No, sir.

20 MR. DEVOE: Your Honor, I would ask you that since
21 you did not consent to the recommended cap that you va-
22 cate in this case this guilty plea and allow Mr. Sweat
23 to go to trial.

24 THE COURT: That motion at this time is denied at
25 this time. If you want to make that motion formally

1 within the appropriate time, you may do so.

2 Thank you.

3 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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2 CERTIFICATE

3 I, HARRIET P. BENNETT, Official Court Reporter for
4 South Carolina Court Administration, do hereby certify
5 that the within Transcript was prepared from the re-
6 cords of Melissa Singletary to the best of my ability,
7 having been heard in the Court of General Sessions for
8 Clarendon County on March 10, 2008.

9 FURTHER, I certify that I am neither of kin nor
10 counsel to any party to this action, nor do I have any
11 interest in the matter.

12 May 24, 2010

13 *Harriet P. Bennett*
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STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

State of South Carolina,
Plaintiff,)

vs.)

Jeremy Sweat,
Defendant.)IN THE COURT OF GENERAL SESSIONS
OF THE
THIRD JUDICIAL CIRCUIT

2007-GS-14-0363

2007-GS-14-0364

NOTICE OF MOTION
and
MOTION FOR RECONSIDERATION

TO: C. Kelly Jackson, Solicitor, Third Judicial Circuit

YOU WILL PLEASE TAKE NOTICE that the Defendant, Jeremy Sweat, by and through his undersigned counsel will move the Honorable George C. James, Jr., Circuit Judge of the General Sessions Court of Clarendon County, for a hearing, as soon as such matter can be heard, to reconsider the sentences he imposed on March 10, 2008.

This Motion is predicated upon the fact that the sentences imposed were too excessive considering the nature and amount of Defendant's involvement in these crimes, his early cooperation with law enforcement and his readiness to plea and to testify against his co-defendant, Dustin Evans.

Additionally, this Motion is based upon the presiding judge imposing the maximum sentence available to him on the 2007-GS-14-0364 charge even though said judge acknowledged that the Defendant did feel remorse.

Further, the Defendant had indicated early acceptance of responsibility, had pled to the charges as soon as it was possible to do so, had endured a pre guilty plea incarceration in the SMU unit at Lee Correctional Institution commencing Friday morning the 14th of July, 2006 just one day after his counsel was belatedly appointed, until three days before the subject plea.

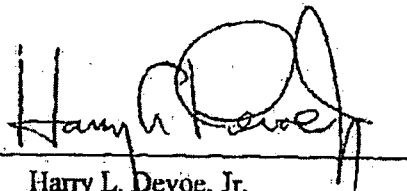
In addition, the victim had earlier stated to VLI Williams, the Forensic Interviewer for

SLED, "that she almost felt sorry for Jeremy because Dustin would give all the orders and Jeremy would carry them out as though he were Dustin's "henchman". Jamila said that Jeremy was the only one of the two who seemed to be bothered by what they had done to her. She said that when she was in the shower, it was Dustin who ordered Jeremy to stab her."

Although the presiding judge was informed by Amy A. Land, the Assistant Solicitor who handled this case for the State, which was concurred by Defendant's attorney, that there was a forty (40) year cap offered and accepted in these cases, the judge, although he stated that he was not bound by this cap, which was the principle reason that Defendant pled at this time, not only did not accept this "deal", but, subsequently, did not allow Defendant to withdraw his plea, but maxed the sentence as he doubled the offered "deal".

For the above stated reasons, counsel for Defendant would respectfully request that the presiding judge reconsider his sentence and reduce said sentence to the offered forty (40) year cap.

Respectfully submitted,



Harry L. Devoe, Jr.
7411 Black Road
New Zion, South Carolina 29211
803) 473-2026
(803) 473-2028 FAX

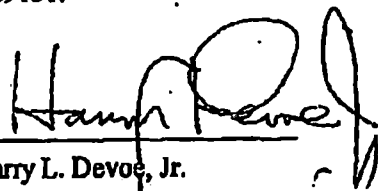
March 19, 2008
New Zion, South Carolina

CERTIFICATE OF SERVICE

I certify that I served respondent, State of South Carolina, with a copy of this Notice of Motion and Motion For Reconsideration by depositing it in the United States mail, postage prepaid, addressed to counsel of record for respondent, Amy A. Land, Assistant Solicitor, Clarendon County Courthouse, Manning, SC 29102.

I further certify that I provided a copy of this Notice and Motion for Reconsideration to the Honorable George C. James, Jr., Circuit Court Judge, by United States mail on this day at his address of record, P.O. Box 1716, Sumter, SC 29151.

March 19, 2008
New Zion, South Carolina


Harry L. Devoe, Jr.
7411 Black River Road
New Zion, SC 29211
(803) 473-2026
(803) 473 2028 FAX

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF CLARENDON	)	THIRD JUDICIAL CIRCUIT
	)	07-GS-14-0363
State of South Carolina,	)	07-GS-14-0364
	)	
Plaintiff,	)	
	)	
vs	)	ORDER
	)	
Jeremy Sweat,	)	
	)	
Defendant,	)	

2018 OCT - 6 PM 2:28

 BRILAH G. ROBERTS
 CLERK OF COURT
 CLARENDON COUNTY, SC

The defendant entered a plea of guilty to Criminal Sexual Conduct, 1st degree (2 counts), Kidnapping (2 counts), and Assault and Battery with Intent to Kill (1 count). He admitted during his plea that he had directly participated in the kidnapping and rape of two Clarendon County females and that he had stabbed one of the victims nine times with a pocket knife.

The State recommended a cap of 40 years. The court repeatedly asked the defendant if he understood that the court could disregard the recommendation and sentence him to consecutive terms of imprisonment totaling 140 years. The defendant said he understood. The court then sentenced the defendant to 30 years for 1 rape, a consecutive 30 years for 1 kidnapping, a consecutive 20 years for A.B.I.K., and 30 years for the other rape, and 30 years for the other kidnapping, both of the latter to run concurrently with the consecutive terms totaling 80 years.

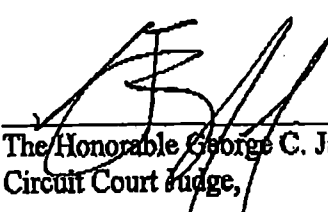
Thereafter, the defendant's co-defendant, Dustin Evans, pled to the same offenses. Evans and the State presented a negotiated plea deal to the court, calling for a total sentence of 47 years.

By motion dated March 19, 2008, the defendant requests the court to reconsider the 80 year sentence and reduce it to the 40 years recommended by the State. The court convened a hearing and heard arguments of counsel and heard from the defendant as well. The defendant amended his March 19 motion to include a ground based on what the defendant argues is an unwarranted disparity between the sentences given to the defendant and to Mr. Evans.

The court has considered the arguments of counsel and the statements of the defendant and concludes there is no cause for reducing the defendant's sentence.

Therefore, the motion is denied.

AND IT IS SO ORDERED.


The Honorable George C. James, Jr.
Circuit Court Judge,

Sumter, South Carolina

October _____, 2008

The South Carolina Court of Appeals

The State,

Respondent

v.

Jeremy Shay Sweat,

Appellant.

The Honorable George C. James, Jr.
Clarendon County
Trial Court Case No. 2007-GS-14-00363
2007-GS-14-00364

ORDER of DISMISSAL

Appellant appeals his guilty plea and conviction imposed by Judge George C. James. Rule 203 (d)(B)(iv), SCACR, requires "a written explanation showing that there is an issue(s) which can be reviewed on appeal....including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." The Appellant failed to show how any issue was preserved for our review. Therefore, due to Appellant's failure to establish any preserved issues for appellate review and failure to comply with the Court's letter dated April 24, 2009, the appeal is dismissed.

AND IT IS SO ORDERED.

KAYE G. HEARN, CHIEF JUDGE

BY 
Clerk

Columbia, South Carolina
6/10/2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Harry Leslie Devoe, Jr., Esquire
Amy Anders Land, Esquire
Assistant Deputy Attorney General Sally W. Elliot

The South Carolina Court of Appeals

The State.

Respondent

v.

Jeremy Shay Sweat,

Appellant.

The Honorable George C. James, Jr.
Clarendon County
Trial Court Case No. 2007-GS-14-00363
2007-GS-14-00364

REMITTITUR

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated June 10, 2009,

IT IS SO ORDERED that the above appeal be and hereby is dismissed.

KAYE G. HEARN, CHIEF JUDGE

BY V. Claire Allen, Deputy
Clerk

Columbia, South Carolina

7/6/2009

Original to: The Honorable Beulah Roberts

cc: Chief Appellate Defender Joseph L. Savitz, III
Harry Leslie Devoe, Jr., Esquire
Amy Anders Land, Esquire
Assistant Deputy Attorney General Sally W. Elliot
The Honorable Beulah G. Roberts

STATE OF SOUTH CAROLINA

County of

CLARENDON2010-~~04~~14-00076
In the Court of Common PleasJEREMY S. SWEAT #32699

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

vs.

CLAREDON COUNTY

Name of Respondent.

STATE OF SOUTH CAROLINACERTIFIED TRUE COPY
OF ORIGINAL FILED IN THE OFFICE
DATE 2/10/10
B. S. Roberts
CLERK OF COURT
CLARENDON COUNTY, SCAPPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS — READ CAREFULLY**

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

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

If the 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 MCCORMICK C.I. F-1-A-R-264, 386 REDEMPTION WAY, MCCORMICK S.C. 29855
2. Name and location of Court which imposed sentence CLAREDON COUNTY GENERAL SESSIONS
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2-COUNTS-KIDNAPPING 2007-65-14-0363
 - (b) 1-ABWDW 2007-65-14-0364
 - (c) 2-CSC
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MARCH -2008
 - (b) 80 YEARS TOTAL
 - (c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

FILED RECONSIDERATION

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

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

i. CLAREDON COUNTY CIRCUIT COURT

ii. _____

iii. _____

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

i. _____

ii. DO NOT KNOW

iii. _____

(c) the date of each such result:

i. _____

ii. DO NOT KNOW

iii. _____

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

i. HAVE RECEIVED NO FINAL ORDER AS OF FEB, 8, 2010

ii. _____

iii. _____

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

(a) ATTORNEY FAILED TO FILE FOR A DIRECT APPEAL, FILED

(b) FOR RECONSIDERATION

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF COUNSEL - CONFLICT OF INTEREST

(b) INVOLUNTARY GUILTY PLEA - INVOLUNTARY CONFESSION

(c) DISPARITY IN SENTENCING OF CO-DEFENDANT 8TH AMENDMENT VIOLATION

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

(a) SEE ATTACHMENTS

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

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

(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. _____

ii. N/A

iii. _____

iv. _____

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

i. _____

ii. N/A

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. N/A

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. N/A

iii. _____

iv. _____

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

i. _____

ii. N/A

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?

YES

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. SENTENCE EXCESSIVE CRUEL AND UNUSUAL PUNISHMENT
- ii. _____
- iii. _____

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

- i. RECONSIDERATION
- 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) THAT FAMILY TRIED TO HIRE ATTORNEY FEB. 09 AND ATTORNEY
- (b) ABSCONDED WITH MONEY TO FILE FOR APPEAL AND PCR - IN
- (c) FEB. 09 ATTORNEY'S NAME DENTON

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? NO
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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. HARRY DEVOE, JR., CLARENDON COUNTY PUBLIC DEFENDER
SUMTER S.C. BLACK RIVER RD.
- ii. _____
- iii. _____

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

- i. GUILITY PLEA
- ii. RECONSIDERATION HEARING
- iii. _____

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

TO VACATE MY SENTENCES AND RELIEVE A TRIAL.

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

NO

STATE OF SOUTH CAROLINA

County of MCCORMICK

VERIFICATION

I, JEREMY S. SWEAT, being duly sworn, depose and say that I have subscribed to the foregoing application; that I know the contents thereof includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attached to the application; and that the matters and allegations therein set forth are true.

J. SWEAT

SWORN to and subscribed before me this 08
day of February, 192010.

J. C. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

I, JEREMY S. SWEAT, hereby apply to proceed in this action without prepayment of fees or costs or security therefor. In support of my application 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.

Jeremy Sweat
Applicant

SWORN or affirmed to and subscribed before me this

08 day of February, 192010.

J. C. Franklin
Notary Public

My Commission Expires 12-16-2019.

I. SUPPLEMENTAL - INEFFECTIVE COUNSEL

61

COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY FILE FOR A DIRECT APPEAL AFTER HIS MOTION FOR RECONSIDERATION WAS DENIED. APPLICANT CONTENDS THAT HE PLED GUILTY ON MARCH 2008 AND SUBSEQUENTLY TAKEN TO HIS HEARING FOR RECONSIDERATION ON OR ABOUT SEPT. 2008. COUNSEL FAILED TO FILE FOR A NOTICE OF DIRECT APPEAL.

COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE NOTICE OF DIRECT APPEAL AFTER CLIENT TO HIM TO DO SO. SEE LOZADA V. DEEDS, 964 F.2d 956, 958-59 (9TH CIR. 1992); COUNSEL'S FAILURE TO NOTIFY DEFENDANT OF DECISION NOT TO FILE NOTICE OF APPEAL CONSTITUTED DENIAL OF ASSISTANCE OF COUNSEL BECAUSE DECISION MADE WITHOUT DEFENDANT'S CONSENT. ALSO SEE MARTIN V. U.S., 81 F.3d 1083-84 (11TH CIR. 1996).

II.

COUNSEL WAS INEFFECTIVE FOR FAILING TO MAKE A MOTION TO DISMISS CHARGES AFTER ONE VICTIM RECALTED HER TESTIMONY AND DID NOT WANT TO TESTIFY.

COUNSEL THEN HAD HIS CLIENT PLEAD GUILTY TO THE CHARGE AFTER LEARNING THIS INFORMATION. HAD COUNSEL MOVED TO DISMISS CHARGES ON LACK OF EVIDENCE APPLICANT WOULD HAVE NOT PLEAD GUILTY. COUNSEL'S UNEXPLAINABLE ACTION CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. TAYLOR V. STARNES, 650 F.2d 38 (4TH CIR. 1989)

III.

COUNSEL WAS INEFFECTIVE FOR FAILING TO SUPPRESS THE VICTIMS STATEMENTS AND CO-DEFENDANTS STATEMENTS TO CHALLENGE THEIR CREDIBILITY AT A PRELIMINARY HEARING. COUNSEL FAILED TO INFORM THE DEFENDANT HE COULD CHALLENGE THEIR STATEMENTS BECAUSE ALL OF THEM HAD A PRIOR CRIMINAL HISTORY FOR PROSTITUTION AND OTHER CRIMES.

Counsel was ineffective for failing to advise the Defendant his prior record could only be used for impeachment for the previous ten years and his juvenile records could not be used if he chose to testify in his behalf.

V.

Counsel was ineffective for failing to advise Defendant he could testify to having consensual sex and no rape occurred because the women were prostitutes. Defendant could have challenged their credibility because the victims had prior records of prostitution, also his co-defendant knew the victim which was 15 years old and knew that they had previous relations. Defendant had a defense that the sex was consensual based on trivial sex for drugs. No other evidence was produced except statements that could have been challenged. One victim refused the rape kit test and the other rape test was inconclusive and showed no trauma.

Applicant contends that counsel misinformed him and did not explain any defenses or explain the challenges of credibility. See Baglar v. Estelle, 94 F.3d 1321, 1333 (9th Cir., cert. denied, 117 S.Ct. 1323) (1997). Ineffective assistance of counsel in rape case failed to follow-up on exculpatory report on semen, because such report may have created reasonable doubt in the minds of jurors. Also see Beggs v. Morton, 100 F.3d 1089, 1096-1102 (3d Cir. 1996) counsel's strategy in rape case not to use victims prior inconsistent statements and testimony ineffective assistance because wholly unreasonable. Also see Hughes v. Kaul, 95 F.3d 1052, 1057 (11th Cir.

(2)

1996). Counsel's failure to timely file a meritorious motion constituted ineffective assistance and not a

reasonable trial strategy.

(counsel was ineffective and showed a conflict of interest when he refused to give his client a copy of the

rule 5 discovery and refused to let him read the statements made against him, see U.S. v. Horvath

993 F.2d 191, 195 (9th Cir. 1993) same Banks v. Reynolds,

54 F.3d 1508, 1515-16 (10th Cir. 1995); ineffective ass-

istance when appellate counsel failed to raise issues

of conflict of interest and prosecutors failure to

provide exculpatory Brady material to defendant because

claims were clearly meritorious and defendant was

prejudiced by counsel's error. also see U.S. v. Huse,

70 F.3d 618 (2d Cir. 1995), guilty plea advice ineffective

due assistance when counsel failed to inform him that

charges against him were barred when defendant

would not have pleaded guilty but for counsel's error, see

Risher v. U.S., 932 F.2d 982, 983-84 (5th Cir. 1993). also

see Williams v. Washburn, 59 F.3d 673, 675-83 (7th Cir.

1995), counsel ineffective for failure to read letter

written by victim of sexual assault detailing incident

or to interview witnesses to bolster defendant's credit-

ability. also see Mason v. Harris, 97 F.3d 887, 894 (7th

Cir. 1996) ineffective assistance when counsel failed

to raise obvious and significant issues without legi-

itimate strategic purpose. Appellant bases his claims

under Casper v. Sullivan, 446 U.S. 335 (1980) that counsel

was actively representing conflicting interests in

violation of his sixth amendment rights, see Id.

64. V. Stully, 58 F.3d 38, 41 (2d Cir. 1995) and (2) THAT THE
CONFLICT HAD AN ADVERSE EFFECT ON SPECIFIC INSTANCES
OF COUNSEL'S PERFORMANCE. Cyler, 446 U.S. AT 348, WHEN
A DEFENDANT ALLEGES THAT HIS GUILTY PLEA RESULTED FROM
DEFENSE COUNSEL'S CONFLICT OF INTEREST, THE DEFENDANT
MUST SHOW A REASONABLE PROBABILITY THAT HE WOULD HAVE
INSISTED ON A TRIAL BUT FOR THE EFFECT OF THE CONFLICT
OF INTEREST OF HIS COUNSEL'S ADVICE. SEE STOIA V. U.S., 22
F.3d 766, 769 (7TH CIR. 1994), CONFLICT OF INTEREST AFFECTED
PERFORMANCE WHEN EVIDENCE THAT COUNSEL WITH PRESUMED
CONFLICT OF INTEREST DEVELOPED QUESTIONABLE DEFENSE
STRATEGY, FAILED TO FILE MOTION, AND FAILED AT TRIAL
MOTION TO APPEAR AT TRIAL. APPLICANT COUNSEL'S
ACTIONS IN ITSELF SHOW A CONFLICT - OF INTEREST AND
COUNSEL KNEW BY A MEDICAL EVALUATION OF COMPETENCY
DEFENDANT HAD THE MIND OF A 3RD GRADER OR 8 YEAR OLD
CHILD. COUNSEL'S ACTIONS OF FAILURE TO FILE A MOTION
FOR DIRECT APPEAL SHOWS ABANDONMENT. SEE GRIFFIN
V. U.S., 105 F.3d 1217, 1219 (7TH CIR. 1997), ALSO SEE
U.S. V. MARTOS, 905 F.2d 30 (2ND CIR. 1990), TRIAL COUNSEL'S
WILLINGNESS TO ACCEPT GOVERNMENT VERSION OF FACTS AND
FAILED TO FILE ANY MOTIONS BECAUSE HE RELIED ON GOVERNMENT
VERSION OF FACTS, COUNSEL'S REPRESENTATION IN SERIOUS
QUESTION OF INADEQUACY. SEE ALSO, RICHARDSON V. STATE 355
S.E.2d 59 (6.A. APP. 1988). SEE HAUKMAN V. PROBERT, 661 F.2d
116 (18TH CIR. 1981), TRIAL COUNSEL'S FAILURE TO INTERVIEW
WITNESSES, TO ADEQUATELY ADVISE DEFENDANT OF ELEMENTS OF
OFFENSE, POTENTIAL DEFENSES, TO INITIATE PLEA NEGOTIATIONS
BEFORE ADVISING DEFENDANT TO PLEAD GUILTY (CONSTITUTE DEFEN-
ECTIVE ASSISTANCE OF COUNSEL.

II. INVOLUNTARY GUILTY PLEA

65

APPLICANT CONTENDS THAT HE PLEA WAS NOT KNOWINGLY AND VOLUNTARILY AND INTELLIGENTLY MADE BECAUSE OF MISTAKES OF COUNSEL.

COUNSEL FAILED TO ADVISE APPLICANT OF THE DEFENSE OF CONSENT, DID NOT TELL HIM HE COULD CHALLENGE THE STATEMENTS OF THE VICTIM AND HIS CO-DEFENDANT BASED ON THE FACT THEIR TESTIMONY COULD BE IMPEACHED BECAUSE THEY ALL HAD PRIOR RECORDS. ALSO COUNSEL MISADVISED HIM AND HAD HIM PLEAD GUILTY TO A CHARGE WHEN THE VICTIM RECANTED HER TESTIMONY IN COURT AND DID NOT WANT TO TESTIFY, COUNSEL SHOULD HAVE WITHDRAWN THE GUILTY PLEA.

COUNSEL MISADVISED APPLICANT AND COERCED HIM TO PLEAD GUILTY AND INDUCED HIS PLEA BY TELLING HIM HE WOULD RECEIVE 45 YEARS GET 10% OFF WITH CREDIT FOR TIME SERVED AND HE WOULD ONLY DO 20 YEARS. COUNSEL KNEW HIS CLIENT HAD BEEN TO A COMPETENCY EVALUATION AND IT WAS SHOWN HE HAD ONLY A 3RD GRADE INTELLIGENCE OR THAT OF AN 8 YEAR OLD. COUNSEL INTENTIONALLY MISLED HIS CLIENT INTO BELIEVING HIM TO THE AMOUNT OF TIME HE WOULD ACTUALLY RECEIVE. COUNSEL DID NOT DISCUSS ANY DEFENSES WITH HIM, REFUSED TO GIVE HIM RULE 5 DISCOVERY, READ THE STATEMENTS AGAINST HIM, OR SEE ANY OF THE ALLEGED EVIDENCE AGAINST HIM. COUNSEL COMPLETELY TOOK CONTROL OF APPLICANT'S CASE AND TOLD HIM IF HE DID NOT PLEA HE WOULD GET LIFE. APPLICANT BELIEVED COUNSEL AND RECEIVED 80 YEARS TOTAL. APPLICANT'S PLEA WAS INVOLUNTARY BECAUSE HE DID NOT UNDERSTAND TRIAL PROCEDURE, RULES, TESTIMONY, CHALLENGE TO STATEMENTS, THAT HE COULD TESTIFY AND ONLY THE PREVIOUS 10

66 YEARS COULD BE USED FOR IMPEACHMENT IF HE TESTIFIED IN HIS OWN DEFENSE. APPLICANT ONLY HAD TWO PRIOR CONVICTIONS ON HIS ENTIRE RECORD AND WOULD HAVE TESTIFIED IN A TRIAL TO DEFEND HIMSELF. APPLICANT STATED HE HAD CONSENSUAL SEX WITH THE GIRLS FOR DRUGS AND THEY WERE KNOWN PROSTITUTES. USING THEIR PRIOR HISTORIES WOULD HAVE SHOWN REASONABLE DOUBT. FURTHER, COUNSEL KNEW THE APPLICANT ONLY HAD THE INTELLIGENCE OF AN 8 YEAR OLD CHILD TESTING AT A 3RD GRADE LEVEL. HE KNEW HIS CLIENT WOULD NOT UNDERSTAND THE RELEVANCE OF THESE ISSUES AND HAD HIM PLEA TO A PROMISE OF 45 YEARS IN WHICH HE DID NOT RECEIVE. FURTHER, APPLICANT DID NOT KNOW HIS CO-DEFENDANT WAS PROMISED 45 YEARS ALSO FOR HIS TESTIMONY AGAINST HIM. THIS COULD HAVE BEEN USED AS A MOTIVE IN TRIAL.

APPLICANT CONTENDS HE WAS COMPLETELY DEPENDENT OF COUNSEL'S ADVICE AND TRUSTED HIM TO FULLY ADVISE HIM AND DEFEND HIM TO THE BEST OF HIS ABILITY. HAD DEFENDANT KNEW COUNSEL FAILED TO PROPERLY ADVISE HIM AND TO CHALLENGE THE EVIDENCE HE WOULD HAVE DEMANDED TRIAL. SEE GIEN V. TATE, 71 F.3d 1204, 1211 (6TH CIR. 1995) COUNSEL INEFFECTIVE WHEN FAILED TO INTRODUCE EVIDENCE OF DEFENDANT'S RETARDATION AND BRAIN DAMAGE. ALSO SEE HALL V. WASHINGTON, 106 F.3d 742, 749 (7TH CIR.) 118 S.Ct. 264 (1997), COUNSEL INEFFECTIVE WHEN FAILED TO ENGAGE IN REASONABLE INVESTIGATION, MAKE LOGICAL ARGUMENTS, CONTACT DEFENDANT. ALSO SEE PRITCHARD V. LOCKHART, 980 F.2d 352, 354 (8TH CIR. 1993); AND ANTWINE V. DELO, 54 F.3d 1357, 1365, 1368 (8TH CIR. 1995).

DEFENDANT WOULD NOT HAVE PLEADED GUILTY IF NOT INDUCED BY THE PROMISE COUNSEL MADE HE WOULD GET 45 YEARS AND ONLY

DO 20 YEARS. AND HE WOULD NOT HAVE PLEADED GUILTY IF HE ⁶⁷ KNEW HE WOULD STILL RECEIVE AN EXCESSIVE SENTENCE. COUNSEL MISREPRESENTED THE FACTS AND INDUCED HIM TO PLEA GUILTY. APPLICANT'S PLEA WAS NOT VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE BY COUNSEL'S INDUCEMENT AND WITHHOLDING INFORMATION FROM HIS CLIENT. SEE TOWER V. PHILLIPS, 979 F.2d 807 (11TH CIR. 1992); U.S. V. ESPINOZA, 866 F.2d 1067 (9TH CIR. 1988) TRIAL COUNSEL'S PROMISE HE WOULD RECEIVE A SPECIFIC SENTENCE WHICH WAS TO INDUCE GUILTY PLEA, CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL. ALSO SEE OSTRANDER V. GREEN, 46 F.3d 347 (4TH CIR. 1995) DEFENSE COUNSEL INDUCED GUILTY PLEA BASED ON "MATERIAL MISADVICE. ALSO SEE HERNADEZ - HERNANDEZ V. U.S., 904 F.2d 758 (1ST CIR. 1990).

TRIAL COUNSEL WAS INEFFECTIVE BY CONCEDEING DEFENDANT'S GUILT AND DID NOTHING TO SUPPORT HIS CLIENT TO DEFEND HIM AND HIS CLIENT CLAIMED HE WAS INNOCENT ON ONLY HAD CONSENSUAL SEX WITH PROSTITUTES AND DID NOT PAY THEM SO THEY GOT MAD AND FILED FALSE CHARGES. HAD COUNSEL CHALLENGED THIS DEFENDANT WOULD HAVE DEMANDED TRIAL. SEE U.S. V. SWANSON 943 F.2d 1070 (9TH CIR. 1991) TRIAL COUNSEL CONCEDED THAT THERE WAS NO REASONABLE DOUBT CONCERNING ONLY FACTUAL ISSUES IN DISPUTE AND SUCH CONDUCT FAILED TO HOLD GOVERNMENT TO ITS BURDEN OF PROOF OF PERSUADING A JURY THE PETITIONER IS GUILTY. THE PETITIONER WAS DEPRIVED OF A FAIR TRIAL.

APPLICANT CONTENDS THAT HIS CONFESSIONS WERE MADE INVOLUNTARILY AND THAT HE DID NOT KNOW HE COULD BE GIVEN COUNSEL BEFORE HE WAS INTERROGATED. COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST A JACKSON V.

(7)

Denial, Hearing to challenge the voluntariness of his confessions. Further, Applicant would have testified he was only there watching his co-defendant who was the one who actually perpetrated the actual crimes, that he was only watching and did not commit the actual kidnapping, assault and battery or did not commit rape, this case was circumstantial and his confession was involuntary because Defendant could not comprehend his actual rights.

TIME LIMITS

Applicant contends his PCR is timely because he has never received a final order of dismissal from his motion for reconsideration in Sept. 08. Further, counsel was ineffective for failing to file for a direct appeal to stay his time for final a PCR. Applicant's family paid an attorney and he absconded with the money and did not file his PCR and his family is currently trying to find this attorney last name Denton who was hired in Feb. 09. Applicant was abandoned by both attorneys and now proceeds on his own to file his PCR. To this date he has not received the final order dismissing his motion for reconsideration. Therefore, his PCR is timely as for both counsel errors. Further, Applicant requests a white v. state, or Austin v. state, review for his claim of cruel and unusual punishment, and disproportionate sentence for his guilty plea for mercy. 317-25-130. Based on the foregoing reasons Applicant requests and evidentiary hearing and seeks to vacate his guilty pleas and demands trial.

DATE: 2-8-10

(8)

Respectfully submitted,
 X ~~Stevens S. Sweat~~ +
 JEREMY S. SWEAT, #326917
 McLennan C.T., Texas

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Jeremy Sweat, #326997.

Applicant.

v.

State of South Carolina.

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-14-0076

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 10, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the October 2007 term of the Clarendon County Grand Jury for (1) Kidnapping and (2) Criminal Sexual Conduct (First Degree) (2007-GS-14-0363). The Applicant was also indicted for (1) Kidnapping, (2) Criminal Sexual Conduct, and (3) Assault and Battery with Intent to Kill ("ABWIK") (2007-GS-14-0364). He was represented by Harry Devoe, Esquire. On March 10, 2008, the Applicant entered a guilty plea before the Honorable George C. James, Jr. Applicant was sentenced to concurrent terms of thirty (30) years each for Criminal Sexual Conduct (First Degree) and Kidnapping (2007-GS-14-0363). He was also sentenced to thirty (30) years for Kidnapping, to twenty (20) years for ABWIK, and to thirty (30) years for Criminal Sexual Conduct (2007-GS-14-

0364). The sentences for 2007-GS-14-0364 were to be served concurrently with those for 2007-GS-14-0363 but consecutively to each other.

A notice of appeal was filed. The appeal was dismissed on June 19, 2009, for failure to establish any preserved issues for review.

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

II.

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

1. "Ineffective assistance of counsel – conflict of interest."
2. "Involuntary guilty plea – Involuntary confession."
3. "Disparity in sentencing of co-defendant 8th Amendment violation."

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

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's

conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests

an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

V.

Applicant's assertion regarding disparate sentencing should be summarily dismissed.

An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, the Court should summarily dismiss this application for post-conviction relief.

VI.

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

VII.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
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Aug 23, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

JEREMY SWEAT, #326997

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-14-0076

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:

Jeremy Sweat, #303633
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

DATED this 23rd day of August, 2010.


Lauren Meara, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS

JEREMY S. SWEAT, #326997)
Applicant,)
v.)
THE STATE OF SOUTH CAROLINA)
Respondent.)

2010-CP-14-0076

AMENDED APPLICATION
FOR POST-CONVICTON RELIEF

The Post-Conviction Relief Application previously filed on February 10, 2010 under docket number 2010-CP-14-0076 is hereby amended as follows:

Generally, that the Applicant received ineffective assistance of counsel prior to, during and after entry of his guilty pleas in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution. The Applicant further generally alleges that his pleas of guilty were not voluntary and intelligently entered, and, therefore, that the judgments and sentences against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel. Specifically:

1. Defense Counsel was ineffective for failing to move to compel discovery when it was not timely produced and for failing to sufficiently review the discovery with the Applicant prior to the entry of the guilty pleas;
2. Defense Counsel was ineffective for allowing the Court to go forward on the Applicant's guilty pleas and failing to present adequate arguments and authority in support of his motion to withdraw those pleas, where the Applicant expressed to the Court and defense counsel, his confusion over the charges being pled to;
3. Defense Counsel was ineffective for failing to obtain and review the audiotapes of the statements to law enforcement, attributed to the Applicant, that were damaging to the Applicant's case;
4. Defense Counsel was ineffective for failing to inform the Applicant of the

DATE 3/2/10
Paul B. Roberts
OF COURT
CLAY SC

procedures available to him at trial by which he could challenge the admissibility of his statements to law enforcement; the fact that even if the statements were admitted the jury would have to make a predicate finding that the statements were voluntarily made and that any unfavorable ruling of the lower court concerning those statements could be reviewed by a higher court on appeal.

5. Defense Counsel was ineffective for offering information to the court, prior to the Applicant's sentencing, that the Applicant had been removed from the county jail for verbally abusive behavior.

The Applicant has no further amendments at this time. Copies of these amendments have been served on opposing counsel and Defense Counsel for the Applicant.

Respectfully submitted,



Christina Dixon Parnall
Attorney and Counselor at Law

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

ATTORNEY FOR APPLICANT.

This 20 day of March, 2012.
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS

JEREMY S. SWEAT, #326997)
Applicant,)
v.)
THE STATE OF SOUTH CAROLINA)
Respondent.)

2010-CP-14-0076

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one true and correct copy of the Amended Application for Post-Conviction Relief in the above-entitled case has been served upon opposing counsel, Mary Williams, Assistant Attorney General, by facsimile to (803) 734-4113, this the 20th day of March, 2012.

Christina Dixon Parnall
Christina Dixon Parnall
Attorney for the Applicant

SWORN TO BEFORE me this 20th day
of March, 2012.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 3/12/2013

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/21/12

Berish S. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

COURT OF COMMON PLEAS

JEREMY SWEAT,)

PLAINTIFF,)

v.)

STATE OF SOUTH CAROLINA,)

DEFENDANT.)

TRANSCRIPT OF WITNESS TESTIMONY
C/A #: 2010-CP-14-00076

CLARENDON COUNTY COURTHOUSE
March 22, 2012

BEFORE:

HONORABLE W. JEFFREY YOUNG, PRESIDING JUDGE.

APPEARANCES:

Assistant Attorney General Mary Williams
Attorney for the State of South Carolina

Christina D. Parnall, Esquire
Attorney for Jeremy Sweat

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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HEARING

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1 Ms. Williams: May it please the Court? Just as a
2 procedural history, this is Mr. Jeremy Sweat and he was
3 charged with two counts of CSC, First Degree. Two counts of
4 Kidnaping. One count of Assault and Battery With Intent to
5 Kill. Those arose out of two separate incidents. He pled
6 guilty on March the 10th, 2008 and was represented by Mr.
7 Devoe. Judge James sentenced him to a aggregated term, I
8 believe of eighty years. There was a recommendation of a cap
9 of forty. There was an appeal and that was remitted in March
10 2009 and his application was filed in February of 2010. He's
11 represented today by Ms. Parnall. I believe she and Mr. Sweat
12 submitted an amended application which we have both talked
13 about, so that would be the allegations for the applicant to
14 proceed on today.

15 The Court: Alright, are you ready to proceed?

16 Ms. Parnall: Yes, Your Honor.

17 The Court: You may call your first witness.

18 Ms. Parnall: Your Honor, I do have an extra copy of
19 this amended application.

20 The Court: Okay.

21 Ms. Parnall: May I approach, Your Honor.

22 The Court: You may.

23 Ms.. Parnall: If it would please the Court?

24 The Court: Yes.

25 Ms. Parnall: Basically, we were able to narrow this

HEARING

4

1 down to five specific allegations. First one being that
2 defense counsel was ineffective in failing to move to
3 compel discovery and to timely produce and failing to
4 sufficiently review the discovery with the applicant
5 prior to entering his guilty plea. The second one being
6 that defense council was ineffective for allowing the
7 Court to move forward on those guilty pleas, failing to
8 present adequate arguments and ignoring his motion to
9 withdraw his guilty plea when the applicant clearly
10 expressed his confusion over those charges being pled
11 to. Third allegation being that defense counsel was
12 ineffective in failing to obtain and review audio tapes
13 of statements to law enforcement that were attributed to
14 the applicant. The fourth one being that defense counsel
15 was ineffective for failing to inform the applicant of
16 procedures that were available to him at trial for which
17 they could challenge the admissibility of those
18 statements and the fact that even if those statements
19 were admitted by the Court, that the jury would still
20 have to make a credible finding that the statements were
21 voluntary and willingly entered and also that he would
22 have the opportunity to have any ruling of the lower
23 court regarding those statements on appeal. The last one
24 being that defense counsel was ineffective for offering
25 information to the Court concerning the applicant's

HEARING

5

1 removal into SCDC custody prior to trial and that the
2 information was offered prior to sentencing and that it
3 was damaging to the applicant.

4 The Court: Alright, you may call your first witness.

5 Ms. Parnall: Thank you Your Honor. My first witness
6 will be Judge Land.

7 Bailiff: Place your left hand on the Bible please.
8 Raise your right hand and state your name.

9 Ms. Land: Amy Land.

10 Bailiff: Do you solemnly swear or affirm the testimony
11 you give this court today will be the truth, the whole truth
12 and nothing but the truth, so help you God?

13 Ms. Land: So help me God.

14 Bailiff: Thank you. Please state your full name and
15 spell your last for the record.

16 Ms. Land: Amy Anders Land, L-A-N-D.

17 DIRECT EXAMINATION OF MS. LAND BY MS. PARNALL:

18 Q: Judge Land I first off just want to thank you on
19 behalf of myself and the applicant for being here
20 today. I just have a few brief questions for you.

21 A: Sure.

22 Q: Do you have any recollection of statements that
23 were attributed to the applicant between him and
24 law enforcement that occurred on July 5th of 2006?

25 A: I am aware of a statement that he gave law

HEARING

6

1 enforcement.

2 Q: Okay and are you aware which law enforcement
3 officers collected that?

4 A: I believe it was Lynn Hamm and Thomas Burgess.

5 Q: Okay, and were those statements video taped, audio
6 taped?

7 A: I believe they were audio taped. I don't recall if
8 they were video taped or not.

9 Q: Okay, would those audio tapes had been produced to
10 Mr. Devoe?

11 A: They were.

12 Q: Okay and do you know when they would have been
13 produced to Mr. Devoe?

14 A: They were produced to Mr. Devoe January 31st,
15 2008.

16 Q: Okay and as regards to the rest of the discovery
17 file, do you know when that was turned over to Mr.
18 Devoe?

19 A: I, I know that it was all given to him on March
20 the 5th of 2008, however that probably was not the
21 first time he was given items or had seen
22 anything. I have an open file policy and always
23 have so he had access to all of this information
24 from the time he was assigned the case.

25 Q: I appreciate that. Do you, can you state with any

HEARING

7

1 certainty that he did review or was actually able
2 to view that?

3 A: I cannot.

4 Q: Okay.

5 A: Prior to March 5, 2008? I cannot.

6 Q: Okay and what is the document that you are getting
7 the March 5, 2008 date off of?

8 A: It's a, I don't know what its formal name is; we
9 just call it a Rule 5, Return Sheet and it's just
10 a letter that we type to the attorney indicating
11 what was given to him and what date it was given
12 to him.

13 Q: And does that Rule 5 list a number of discovery
14 items?

15 A: It does.

16 Ms. Parnall: Okay and do you mind if I approach Your
17 Honor?

18 The Court: You may.

19 Ms. Parnall: Thank you. Your Honor if I may introduced
20 this as an applicant's exhibit, I understand that this is an
21 original and you obviously.

22 The Court: A copy will suffice.

23 (Applicant's Exhibit Number 1 was marked- Rule 5)

24 Ms. Parnall: Sure.

25 Q: There was an unofficial transcript that was

HEARING

8

1 pertaining to this July 5th interview between law
2 enforcement and allegedly the applicant, correct?

3 A: That's correct.

4 Q: Okay, and was that also produced to Mr. Devoe?

5 A: It was.

6 Q: And was this transcript being referenced by you
7 during the plea proceeding?

8 A: I'm sorry, what?

9 Q: Did you reference this transcript during the plea
10 proceeding or some items from the transcript?

11 A: I don't know if I did or not.

12 Q: If the record reflected that there was some
13 references made to specific statements that were
14 attributed to the applicant during the plea
15 proceeding would you agree with that?

16 A: Sure, if that's what the record reflects.

17 Q: And additionally, was there some kind of index
18 document or table of contents document that might
19 have been received by the Solicitor's office when
20 law enforcement turned over the evidence initially
21 in this case? Did they produce any kind of index
22 or document that shows what they are turning over
23 to you and when you receive it?

24 A: They have an inventory sheet, an evidence
25 inventory sheet. SLED was also involved in this

HEARING

1 case and they handed in a report.

2 Q: Okay, do you happen to have, you know, I know you
3 may not be able to put your finger on it right
4 now, but do you happen to have that?

5 A: I'm sure that it's somewhere in here.

6 Ms. Parnall: Your Honor, may we beg the Court's
7 indulgence for just a moment?

8 The Court: Sure.

9 Q: Do you have, I have a document here and it appears
10 to be something that was received by the
11 Solicitor's office in September of 2006. Do you
12 recollect receiving, around that time, some manner
13 of evidence?

14 A: I'd have to see what it is.

15 Q: Of course.

16 Ms. Parnall: May I approach, Your Honor?

17 The Court: You may.

18 Q: Does that document list a number of items that
19 appear to be evidence, such as, excuse me, waiver
20 forms, a reference to some interviews, I believe,
21 some physical evidence?

22 A: It does. I, I mean it's stamped in by the
23 Solicitor's office, so it must have come there.
24 I've never seen anything like this. I don't know
25 who, who composed this document or where it came

HEARING

10

1 from. This is an evidence inventory sheet from the
2 Sheriff's office.

3 Q: Okay, but that is the stamp that the Solicitor's
4 office would have used to mark something as being
5 received?

6 A: Anything that comes in the office, they mark it as
7 received and put a date on it so that we know when
8 we received it. I don't see any indication on this
9 sheet where this came from, however so I can't
10 testify as to where it came from.

11 Q: Okay and what does the date on it stamped reflect
12 that it was received?

13 A: September 27th of 2006.

14 Ms. Parnall: Thank you.

15 Ms. Williams: If it's not anything that she recognizes,
16 it's not something that she has in her file, it's not
17 anything that anybody can say who created it, so I think it's
18 not relevant or not a valid document

19 The Court: I tend to agree. If she doesn't recognize
20 it. Has it been stamped to say Solicitor's office?

21 Ms. Land: It does. The only thing that it looks like,
22 if you give me one second I'll look through the investigative
23 file. No, it doesn't appear that it came from SLED either. I
24 have no idea what that is.

25 Q: Okay. Your Honor if I may approach?

HEARING

11

1 The Court: You may.

2 Q: When were you first informed that the applicant
3 would be accepting the plea recommendation of
4 forty years?

5 A: I was told that on March 3rd, 2008.

6 Q: Now this plea took place on March 11, 2008, is
7 that correct?

8 A: Correct. Do, do you want me to tell you where I
9 got that date?

10 Q: Yes.

11 A: Okay, there is a fax that I sent Mr. Devoe, it's a
12 letter from me dated March 4, 2008. Dear Harry, as
13 we discussed on March 3, 2008, I am ceasing
14 preparation on the trial of the above referenced
15 defendant because you advised me that Mr. Sweat is
16 pleading guilty. At your request I am bringing Mr.
17 Sweat over on Monday, March 10, 2008.

18 Ms. Parnall: May I approach the witness Your Honor and
19 get a copy of that?

20 The Court: Sure.

21 Q: Thank you. If it would please the Court, I would
22 like to enter this as the applicant's exhibit,
23 second exhibit.

24 Ms. Williams: That's without objection.

25 The Court: Without objection.

HEARING

12

1 (Applicant's Exhibit Number 2 was marked - Fax letter
2 dated 3-4-2008)

3 Q: When did you first offer the forty year
4 recommendation to the applicant's attorney?

5 A: That I couldn't tell you. I can tell you that it
6 was an old case, one that I had been trying to
7 move along. I do have in my file, give me one
8 second to find it. From February 29th of 2008, I
9 have a letter that I wrote the attorneys: Please
10 find attached a preliminary trial docket for March
11 10th and March 17th terms of General Sessions court.
12 Attached is that court schedule, which has Dustin
13 Evans and Jeremy Sweat being tried the first week
14 for the case involving a fifteen year old, or
15 fourteen year old girl and then the second week
16 involving the older woman. I don't know if that
17 was offered at that time, but I do know that at
18 that time it was a, it was planned as a trial and
19 that's why I believe that all the evidence was
20 turned over prior to the March 3rd Rule 5 sheet
21 that indicates that it was turned over on that
22 date. I don't think I would have anticipated
23 trying the case on February the 29th when they
24 hadn't received all the Rule 5 yet. But as for
25 when the forty year old, forty year cap was

HEARING

13

1 offered, I'm not, I'm not sure. I do have an
2 indicating that in exchange for guilty pleas on
3 all counts in both cases I am willing to offer a
4 forty year cap. I don't know if that's the first
5 time it's mentioned or not.

6 Q: But there is a possibility that on March 3rd could
7 have been when it was actually first put in
8 writing?

9 A: It, it could have been.

10 Q: Do you recall ever sitting down with the
11 applicant's attorney to review physical evidence
12 in this case?

13 A: I, I, yes, I do. I could not tell you the dates
14 and I couldn't tell you if it was after or before
15 March the 3rd.

16 Q: But it would have been at some point prior to him
17 actually notifying you on March 4th that he was
18 interested in accepting your plea recommendation
19 offer?

20 A: I believe he notified me on March 3rd that he was
21 going to accept the plea recommendation, but yes I
22 would assume so. In fact, I recall meeting at the
23 Sheriff's office one day in their big conference
24 room to go over the evidence that they had.

25 Ms. Parnall: Thank you Your Honor. I have no further

HEARING

14

1 questions for this witness.

2 The Court: Ms. Williams?

3 CROSS EXAMINATION OF MS. LAND BY MS. WILLIAMS:

4 Q: Ms. Land, briefly, can you characterize the
5 statement that the applicant gave? Was it
6 incriminating?

7 A: It was. He implicated himself as well as the co-
8 Defendant.

9 Q: And in your review of the file, were there Miranda
10 Warnings, was, were you prepared to have law
11 enforcement testify in a Jackson v. Deno hearing?

12 A: I was. There were Miranda warnings and he did
13 indicate that he understood those and wished to
14 speak understanding those rights.

15 Q: And I have another letter where, it looks like you
16 provided discovery, it's dated March 3rd, I'm going
17 to see if you recognize this one. I know you have
18 a March 5th one in your file as well.

19 Ms. Williams: If I may approach?

20 The Court: You may.

21 A: That's correct. That's March 3rd.

22 Q: So you provided it, it looks like a couple of
23 times right before trial and you believe that the
24 evidence was discussed even at some point prior
25 even to that?

HEARING

15

1 A: Absolutely and, and we, sometimes we get things in
2 piece mill. We'll get a document in December and
3 send it on and get a document in February. I can't
4 say what I sent when, but I do believe that he saw
5 all this prior to this date, this was just the
6 final attempt to say this is all the evidence,
7 let's get this thing worked out.

8 Ms. Williams: Alright, I think that's all the questions
9 I have for Ms. Land at this time.

10 The Court: Any re-direct?

11 Ms. Parnall: Yes, very briefly, thank you Your Honor.

12 Ms. Williams: I'm sorry, I meant to make that an exhibit
13 as well.

14 The Court: Any objection?

15 Ms. Parnall: I don't.

16 The Court: Okay.

17 Ms. Parnall: As long as I might look at it.

18 Ms. Williams: Yeah, and we'll make copies of all these
19 for both of us.

20 Ms. Land: I believe on the third page of that it, it
21 says March 3, 2007. I think that's a typo and I firmly
22 believe it's 2008.

23 Ms. Williams: Okay.

24 (State's Exhibit Number One was marked - letter)

25 Q: I have one additional question about the document

HEARING

16

1 just referenced; I know that one is dated March 3rd
2 of 2008 and there is, as you just stated, there is
3 a certificate of service that is dated March 3rd,
4 2007?

5 A: Correct.

6 Q: But you do believe that this was dated on which
7 date?

8 A: I believe it was 2008.

9 Ms. Parnall: Okay, that's all Your Honor.

10 The Court: You may step down. Any objection to Ms. Land
11 going on to Magistrate's court?

12 Ms. Land: I, I think she wants me to stay?

13 Ms. Williams: Well, just for a little bit. If it
14 becomes apparent then I'll let her go.

15 The Court: Okay.

16 Ms. Williams: And I'm sorry to do that, but.

17 The Court: Okay, Ms. Parnall you may call your next
18 witness.

19 Ms. Parnall: I do, thank you Your Honor. I would call
20 Harry Devoe to the stand.

21 The Court: Alright Mr. Devoe.

22 Bailiff: Mr. Devoe place your left hand on the Bible
23 and raise your right hand. State your name please.

24 Mr. Devoe: Harry Leslie Devoe, Jr.

25 Bailiff: Do you solemnly swear or affirm the testimony

HEARING

17

1 you give this court today will be the truth, the whole and
2 nothing but the truth, so help you God?

3 Mr. Devoe: I do.

4 Bailiff: Thank you. State your full name and spell your
5 last for the record.

6 Mr. Devoe: Harry Leslie Devoe, Jr. D-E-V-O-E.

7 DIRECT EXAMINATION OF MR. DEVOE BY MS. PARNALL:

8 Q: Mr. Devoe I appreciate you being here today and
9 making your file available to me.

10 A: Please speak up for me. I have a hearing problem.

11 Q: I will, thank you for letting me know. Can you
12 tell me how you were involved in this case?

13 A: I was, I was appointed to the case in July 11th,
14 2007. I was a part-time public defender and I was
15 appointed to Jeremy Sweat and the other public
16 defender Scott Robinson was appointed to Dustin
17 Evans.

18 Q: Do you recall the date that Mr. Sweat was
19 arrested?

20 A: Not for sure. He was several days before that.
21 Maybe three or four days before I was appointed.

22 Q: If the record and the arrest warrants reflect that
23 it was on July 3, 2006, would you agree with that
24 date?

25 A: Yes.

HEARING

18

1 Q: And on what date did Mr. Sweat end up entering his
2 guilty pleas?

3 A: March 10, 2008.

4 Q: And when do you recall receiving the first
5 discovery in this matter?

6 A: The first discovery?

7 Q: Yes.

8 A: I think I received a, a letter from the Solicitor,
9 Ann Prescott, who worked for the solicitor's
10 office, either eight or seven. Let me double
11 check.

12 Q: If ...

13 A: January 5, 2007.

14 Q: I'll give you a moment when you're done, maybe to
15 see if maybe you can put your finger on that
16 document. But do you recall what you received with
17 that letter? That January letter?

18 A: It was January 5, 2007. I said I got videos in the
19 transmittal letter.

20 Q: Okay.

21 A: That was it.

22 Q: And did you watch those videos?

23 A: No, I don't seem to recall viewing the videos. I
24 don't think I watched the videos.

25 Q: But you do recall reading a letter that referenced

HEARING

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1 video tapes.

2 A: I have the letter.

3 Q: You just don't recall actually reviewing those
4 video tapes?

5 A: That's correct.

6 Q: Was there anything else that accompanied the
7 letter, other than video tapes any ...

8 A: No.

9 Q: Any, any, was there any victim's statements, any
10 forensic reports? Transcripts of interviews?

11 A: No, just the videos themselves.

12 Q: Thank you. And so, at what point in time were you
13 able to actually review the bulk of the discovery
14 evidence other than ...

15 A: I got little more discovery from Ann Prescott.

16 Q: And that was on what date?

17 A: Ann Prescott, she actually works in this building
18 at the solicitor's office. About the middle of
19 January. Not any statements. No statements.

20 Q: I'm sorry, so you, you're saying that in the
21 middle of January at the same time you received
22 the initial letter with the video tapes you
23 received something else?

24 A: It was a different letter, with a different date,
25 ten days later.

HEARING

20

1 Q: And do you recall what might have accompanied that
2 letter?

3 A: I don't, no.

4 Q: Did you receive a ...

5 A: Which item I don't recall for sure and you saw my
6 files for three hours this Thursday and you saw
7 what was in there if you went through them.

8 Q: Okay. Do you recall receiving a large amount of
9 discovery at some point prior to the trial,
10 nearer?

11 A: I got most of my discovery March 3, 2008, which is
12 days before the trial was scheduled to start.

13 Q: And can you recall any of the specific items that
14 were in the discover that you received on March 3,
15 2008?

16 A: The whole file right here. I got on March 3rd a
17 list of witnesses, a whole pile right here. A
18 list of witnesses. There was a supplemental
19 report, there was a crime scene, summary and the
20 SLED lab report.

21 Q: Thank you. Do you feel like ten days was
22 sufficient time for you to review and process the
23 forensic report, the victims, all of the other
24 evidence that you've just now listed?

25 A: The State is required to give me the information

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21

1 ten days before a trial and I have the choice of
2 spending time looking at that or not taking the
3 time.

4 Q: And so you feel like you were sufficiently
5 prepared to go forward with the trial?

6 A: I felt sufficiently prepared to go to trial. In
7 the meantime, Ms. Land made an offer to my client
8 and to the other client of a cap of forty years. I
9 think she testified she made it on March 5th.
10 Unfortunately, my client was at Lee Correctional,
11 he had been there since July 14, 2007, so I had to
12 go there to see him which I had short of time to
13 do that. I think they brought him our four days
14 before the trial. So, I didn't get a chance to
15 talk to him.

16 Q: I believe that this record will reflect that Ms.
17 Land stated that she first, she was first received
18 the information that your client was going to
19 accept this plea on March 3rd of 2008.

20 A: That's impossible, I couldn't do that. March 3rd
21 he was at Lee Correctional. I had no contact.
22 You have to call a day ahead of time.

23 Q: So when do you believe that you communicated to
24 Ms. Land that your client would be pleading
25 guilty?

HEARING

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1 A: I think I must have told Ms. Land that I would
2 like to think the plea over but I didn't know for
3 sure face to face with him as well as his parents.
4 His parents came up from Louisiana to meet with me
5 face to face, a open room with no windows or
6 nothing between us.

7 Q: And I don't want to belabor this, I just want to
8 make sure I'm clear here; do you know
9 approximately when you might have just tentatively
10 told Ms. Land that you were considering entering a
11 plea as opposed to proceeding to trial?

12 A: I wouldn't have told her before I met with the
13 parents and Jeremy that day before the trial got
14 started. That was a Sunday.

15 Q: You met with Jeremy Sunday before the Tuesday's
16 scheduled trial?

17 A: Unless I could talk face to face with him as well
18 as his parents. His parents came up from
19 Louisiana. We met in Lee County on that Sunday
20 afternoon before trial at the jail. I had a
21 special room to meet with him face to face, a open
22 room with no windows or nothing between us.

23 Q: Okay, so you don't believe you would have
24 communicated to her the possibility that you were
25 going to take a plea offer before you actually met

HEARING

23

- 1 with your client?
- 2 A: Oh, I said I would talk to him, that's all I can
- 3 say.
- 4 Q: Okay.
- 5 A: That's all I could say.
- 6 Q: And on what date were you able to review discovery
- 7 with Mr. Sweat?
- 8 A: Well, not until he came back from Lee Correction.
- 9 He was there for four days before we started, so
- 10 if we started on a Tuesday, I guess they brought
- 11 him Friday or Saturday.
- 12 Q: Would that have been the first time that you were
- 13 ever actually able to sit down with him and review
- 14 that discovery?
- 15 A: The discovery, yes. I had discovery, the
- 16 indictment and warrants.
- 17 Q: I understand, and were you able to actually review
- 18 that with him at that time? Was he able to see
- 19 those documents and ask any questions that he had
- 20 concerning them?
- 21 A: His mother did but Jeremy, I explained it to him,
- 22 what the plus and minuses were.
- 23 Q: I'm sorry, I didn't, I didn't catch that.
- 24 A: What the plus and minuses were in taking the plea.
- 25 Q: So you may have explored the discovery more

HEARING

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1 comprehensively with his mother than with Jeremy
2 himself?

3 A: We were all in the same room.

4 Q: And do you feel that Jeremy was able to satisfy
5 the questions he had regarding what the discovery
6 contained?

7 A: I'm sorry, I didn't hear that.

8 Q: Do you feel that Mr. Sweat was able to satisfy any
9 questions that he had regarding the evidence that
10 the State had against him?

11 A: I don't think he had any question about the actual
12 facts of the case.

13 Q: Thank you. Do you recall that during the plea
14 proceedings that there was a pause of
15 approximately twenty minutes or so?

16 A: I don't recall, I know I read it in here.

17 Q: At some point during the plea proceedings, do you
18 recall the applicant actually asking if he could
19 speak to you privately?

20 A: I said I read that in the transcript. I don't
21 remember that specifically, no.

22 Q: Oh.

23 A: I'm sure he had questions. I had to explain to
24 him what was going on.

25 Q: And, so do you recall specifically what he had

HEARING

25

1 said and why the judge had been concerned at that
2 moment in proceeding with a guilty proceeding?

3 A: I don't know off hand.

4 Ms. Parnall: Your Honor if I might just have a moment to
5 grab ...

6 The Court: You may.

7 Q: I'd just like the record to reflect that on page
8 thirty one of the guilty plea proceeding, at line
9 one, that the court then inquires as to how he's
10 going to accept a plea to criminal sexual conduct.
11 Do you recall that Mr. Devoe? Page thirty one.

12 A: I see where you're talking about. Is this for the
13 young girl or the older woman?

14 Q: It appears to be with the older victim. And would
15 you agree that the transcript does reference just
16 before that back on page thirty, lines 22,
17 beginning with there is a conversation with the
18 Court is inquiring of Mr. Sweat whether or not he
19 had sex with that victim against her will?

20 A: I don't have a line 30 in mine. You said what
21 line?

22 Q: Page thirty, starting with line twenty two.

23 A: Twenty two?

24 Q: Yes. Can you read that for just a moment to
25 freshen your memory?

HEARING

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1 A: What was your question? Did you have sex with her
2 against her will and he said no sir. The next
3 page, how can I accept your plea for CSC in the 1st
4 degree ...

5 Q: So ...

6 A: And there was a brief pause.

7 Q: Thank you and during that brief recess, do you
8 recall the content of the conversation that you
9 had with Mr. Sweat?

10 A: No I don't, but I know that in retrospect sex with
11 the older woman was probably consensual given the
12 drugs were what she wanted at that time. I except
13 they did bad things to her. They poured peroxide
14 in her body. A broom stick was used.

15 Q: Mr. Devoe, you're referring to what the State has
16 put forward in their evidence?

17 A: Yeah and what Mr. Sweat said in his testimony.

18 Q: In the transcript that Ms. Land was referencing.
19 Thank you. So, just prior to this recess, Mr.
20 Sweat has expressed that he believes the sex was
21 consensual. Is that correct?

22 A: Yeah.

23 Q: And that's something that he had expressed to you
24 as well, communicated to you?

25 A: I don't know if he expressed it to me in those

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1 words before. What he told me was pretty much
2 what law

3 Q: And based on the facts of the case and things he
4 had communicated to you ...

5 A: Pardon me.

6 Q: Sorry, based on the facts of the case, and the
7 things that he had communicated to you, you were
8 under the understanding that this was actually
9 consensual?

10 A: It was consensual in the fact that he picked her
11 up. She was a person people knew what she did.

12 Q: Mr. Devoe, did it occur to you at that point that
13 you might should pause or stop those guilty plea
14 proceedings when your client was claiming in open
15 court that he believed that the sex was
16 consensual, that he had not actually committed a
17 CSC first?

18 A: The problem is that, beyond that, there is no
19 question that he did her with a broom stick in her
20 privates. So, no, so that overcome it being
21 consensual.

22 Q: And, and I just want to make sure that we're being
23 very clear here that once again, you were
24 referencing things, you were referencing, your
25 understanding from the State's evidence that they

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1 presented. You're understanding the state's case
2 against Mr. Sweat.

3 A: No, you're misrepresenting what I said; I said
4 that the statement to the statement to the State
5 and also ...

6 Ms. Parnall: Your Honor, if I might approach for just
7 a moment.

8 Q: Mr. Devoe, from what the plea proceeding transcript
9 actually reflects, we only have this short comment from Mr.
10 Sweat when he says that he did not have sex with her against
11 her will. Is that correct?

12 A: Are you on page 30 again?

13 Q: Yes I am.

14 A: That's correct.

15 Q: Okay and so at that point, based on what he was
16 saying, you were under the understanding that he
17 was claiming consent to the offense? Would that,
18 would it be accurate to say that at that point you
19 were under the understanding he was claiming
20 consent as a defense?

21 A: The Judge asked a question and he gave an answer
22 saying ...

23 Q: I'll ...

24 A: On the same page the Court is saying did he then
25 use a broom stick and the Solicitor said he did

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- 1 ...
- 2 Q: The Solicitor said he did.
- 3 A: Yes and the Court said what did you do Mr. Sweat.
- 4 And he said, I didn't have sex with her.
- 5 Q: Did Mister ...
- 6 A: I did not go on and ask him any further about the
- 7 broom stick.
- 8 Q: Did Mr. Sweat make a comment regarding that
- 9 broomstick?
- 10 A: I just said he didn't do that.
- 11 Q: Thank you. I just wanted to make sure that's clear
- 12 for the record. You then proceeded to make a
- 13 motion to withdraw Mr. Sweat's guilty plea. Is
- 14 that correct?
- 15 A: I did.
- 16 Q: Okay and ...
- 17 A: That was done after the judge issued the sentence.
- 18 Q: On what argument or grounds did you offer in
- 19 support of your motion to withdraw those pleas?
- 20 A: Well I thought the sentencing was pretty extreme
- 21 under the circumstances and of course the judge
- 22 denied my motion to withdraw the plea.
- 23 Q: Would you flip to page forty six of the guilty
- 24 plea proceeding transcript for me? And would you
- 25 be kind enough to just read lines twenty through

HEARING

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1 twenty three, where you make your motion to
2 withdraw those pleas?

3 A: I said on line twenty, Your Honor I would ask you
4 that since you did not accept the plea recommended
5 cap to vacate this guilty plea.

6 Q: Okay and at that time were you aware of a case,
7 *State v. Riddle*? It was a 1982 case that stated
8 that the fact that a judge does not choose to
9 abide by sentencing recommendations, is not a
10 valid reason to allow a defendant to withdraw a
11 guilty plea?

12 A: Well, my answer is I tried that and beyond that I
13 filed a Motion for Reconsideration.

14 Q: If Mr. Sweat had pursued a direct appeal ...

15 A: Pardon?

16 Q: If Mr. Sweat had decided to pursue a direct appeal
17 after this case, with the motion to withdraw the
18 guilty plea being the main issue, what argument
19 would he have preserved to offer the Court?

20 A: I, I filed a notice of appeal, before those days
21 it is up to the appellant defense to decide what
22 grounds would be that I could appeal. Of course,
23 the appeal was

24 Q: Would you agree though, that the only argument
25 that was preserved on the record in support of

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1 that motion to withdraw was the argument that he
2 did not consent to the recommended cap?

3 A: Well the judge could only argue, the transcript
4 says he doesn't have to take the cap.

5 Q: But if Mr. Sweat had decided to pursue an appeal,
6 he would not have had any other preserved
7 arguments to offer in challenging that ruling on
8 the motion to withdraw plea, correct? Other than
9 the one you offered?

10 A: I don't ...

11 Q: I'm sorry?

12 A: I'll have to research that more.

13 Ms. Parnall: Your Honor if I might have just a moment?

14 The Court: You may.

15 Ms. Parnall: Thank you

16 The Court: Why don't we take a ten minute recess.

17 Ms. Parnall: Thank you very much.

18 (Court Break)

19 The Court: Alright Ms. Parnall.

20 Ms. Parnall: Thank you Your Honor. May it please the
21 Court? Mr. Devoe, were there not other occasions during this
22 plea proceeding in which Mr. Sweat also indicated that he did
23 not agree with the facts as stated? Were there not in fact
24 multiple ...

25 A: Let me know where.

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1 Q: I'd be happy to. If you flip to page twenty four
2 of the plea proceeding transcript. Line twenty
3 five. If you would just read line twenty five and
4 the first line of the next page.

5 A: Did you pour bleach on her? He said no sir Your
6 Honor.

7 Q: Okay. And once again, if you will flip to page ...

8 A: I understand somebody poured bleach on her.

9 Q: And that section of the plea proceeding would
10 reflect the fact that the defendant was
11 disagreeing at this point with the State's facts?

12 A: That one point, yes.

13 Q: Okay and if we flip to page twenty six of the
14 transcript, it would appear that the Solicitor is
15 wrapping up the facts. Can you tell me which
16 particular victim she was describing, which attack
17 and which encounter she was describing there as
18 she was wrapping up on page twenty six?

19 A: Repeat yourself.

20 Q: Let me rephrase that Your Honor. At, at line
21 eight, would you read for me line eight to line
22 nine on page twenty six?

23 A: Mr. Sweat, is all that correct? He replied no sir.

24 Q: Okay and what is proceeding that question?

25 A: Proceeding?

HEARING

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1 Q: Yes, if you'll take just a moment and review the
2 paragraph or two before that question.

3 A: I think the Solicitor's saying he raped her, he
4 forced her to perform oral sex, he forced --- on
5 her during the sex. He did degrading things to
6 her at the time he was doing this.

7 Q: Thank you and so at this point in time, he was
8 also expressing that he did not agree with
9 portions of the State's facts as presented?

10 A: That's correct.

11 Q: Thank you. So, during this twenty minute, brief
12 recess when you spoke to Mr. Sweat, what happened
13 to change his mind from not agreeing to wanting to
14 proceed with this guilty plea?

15 A: I don't recall saying a twenty minute recess. It
16 was a recess. I didn't know where it states
17 twenty minutes.

18 Q: Okay, if you're correct then I stand corrected. I
19 apologize. But during this recess, when you spoke
20 to him, do you recall what may have changed his
21 mind?

22 A: I don't know for sure. We talked about what he
23 was charged with. We talked about the fact that
24 the hand of one is the hand of all. They both
25 were together. If they both kidnaped, if they

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1 both did things to them.

2 Q: Did you advise Mr. Sweat during this conversation
3 that he would be best suited to proceed and
4 entered the guilty plea?

5 A: Probably.

6 Q: And what would you have given him as reasoning for
7 that?

8 A: Pardon?

9 Q: Can you just tell me briefly, generally what was
10 your reasoning for that?

11 A: Because I thought at that point that morning that
12 he would be better plea off pleading because of
13 the facts of the case. There was a cap of forty
14 years. Obviously, I didn't think the Jude was
15 going to be going over that cap for eighty years.

16 Q: Thank you. Did you get to discuss with the
17 applicant the fact that there were statements that
18 were attributed to him that were obviously
19 damaging statements that he made to law
20 enforcement? That he was alleged to have made?

21 A: I think there were statements made to law
22 enforcement. I didn't have all the statements.

23 Q: Because you hadn't reviewed them all?

24 A: I did get discovery ten days before the trial. We
25 went over everything I had during that period of

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1 time.

2 Q: Were you concerned when you received a letter that
3 was referencing some video tapes and you did not,
4 in fact, receive those video tapes?

5 A: I don't have any knowledge of the video tapes
6 other than the fact when reviewing my file I saw I
7 had video tapes in 2008.

8 Q: Okay, but did you have discussions with the
9 applicant about these statements that are being
10 made by him?

11 A: I read the transcripts of interviews with
12 Detective Burgess and Lyn Hamm.

13 Q: Okay, so this was discussed with the applicant?
14 This was discussed with the applicant?

15 A: Yes.

16 Q: Okay and at that point in time did he express to
17 you any concern he had about these statements?

18 A: Not really, no.

19 Q: And in fact, the unofficial transcript that you
20 were just referencing, was that not something that
21 was also referenced during the plea proceedings?

22 A: What transcripts?

23 Q: This transcript of an interview between him and
24 Investigators Hamm and Burgess. That transcript
25 was brought in to the plea proceeding?

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1 A: I don't think it was brought in the plea
2 procedures, I think Ms. Land more less quoted from
3 it.

4 Q: If the record reflected that after Ms. Land did
5 reference a quote from that transcript, that the
6 Court said, okay I will need to take that, enter
7 that now. Would you agree with that? That the
8 Court may have actually taken a copy up?

9 A: Repeat the question again.

10 Q: Do you have any recollection of the Court actually
11 taking a copy of that unofficial transcript and
12 entering it into the record?

13 A: No, I don't.

14 Q: When you discussed these damaging statements with
15 the applicant, at that point in time, did you
16 advise the applicant that if you did go to trial
17 he would have the right to request a Jackson v.
18 Denno hearing to challenge them?

19 A: I don't think we discussed that, no. We didn't
20 get to that point.

21 Q: When you say you didn't get to that point, do you
22 mean ...

23 A: Because he didn't want to go to trial.

24 Q: The applicant did not want to go to trial? And
25 this was on what date that you discussed these

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1 statements with him?

2 A: It was probably Sunday.

3 Q: Okay, it was the meeting that you were referencing

4 ...

5 A: Just before that. I think it was the 3rd of March.

6 Q: Okay, so did you also discuss with the applicant
7 the fact that the jury themselves would also have
8 to make a finding that his statements were
9 voluntary, knowingly entered before they could
10 ever consider them as evidence against him?

11 A: Well Jackson v. Denno, the Judge makes the
12 decision on whether they come in and the jury will
13 make the final decision on whether they are good
14 statements are not.

15 Q: Is it not correct though, that this is basically a
16 bifurcated process ...

17 A: Yes.

18 Q: ... and that not only did you say yes?

19 A: Yes it is.

20 Q: Okay. So did you ever discuss that with the
21 applicant that there were these two ...

22 A: I probably didn't.

23 Q: And what about the, did you ever discuss with the
24 applicant the fact that if those statements were
25 admitted against him at trial, he would also have

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1 a right to an appeal?

2 A: I don't think we discussed this, no.

3 Q: Okay. Do you think that ...

4 A: Let me say this, we were preparing to go to trial
5 until Ms. Land made an offer that seemed to be
6 under the circumstances not a bad offer.

7 Q: Was Ms. Land's offer not conveyed right around the
8 same time that you're saying you received the bulk
9 of the discovery?

10 A: Ms. Land's offer was made on March 3rd. I didn't
11 see my client until that Sunday.

12 Q: Okay.

13 A: Because we had trials going on and I just couldn't
14 get out to Lee Correctional to talk to him. I
15 talked to his parents about it though. They came
16 there at Lee March 3rd at the jailhouse.

17 Q: Do you think there was any chance that your
18 inability to thoroughly review those statements
19 and all the other discovery in advance might have
20 affected the applicant's confidence in your
21 ability to defend him at trial?

22 A: I don't know.

23 Q: And your client was removed to SCDC custody prior
24 to the plea proceeding. Is that correct?

25 A: That's correct.

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- 1 Q: Do you recall around the time when that occurred?
- 2 A: July 12th.
- 3 Q: July 12th of?
- 4 A: 2007.
- 5 Q: I believe that it's 2006. Would you ...
- 6 A: ... wait a second, I have it.
- 7 Q: Shortly after his arrest. Would you agree with
- 8 that?
- 9 A: It was 2006.
- 10 Q: Okay, so July 12, 2006?
- 11 A: I signed ... the director of jail signed that
- 12 paper, for security purposes to state custody at
- 13 Lee Correction.
- 14 Q: And that was pursuant ... I'm sorry.
- 15 A: He signed the form July 12th. Ms. Land signed
- 16 consent on July 11th, but I signed it July 12th with
- 17 the understanding I had the chance to talk to my
- 18 client before they took him off.
- 19 Q: And did you get that opportunity?
- 20 A: About the same day after I signed it, he was
- 21 within an hour, he was moved.
- 22 Q: So you did not get that opportunity to see him
- 23 before he was removed?
- 24 A: That's right.
- 25 Q: And how far away is Lee from where you were

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1 located.

2 A: It was forty miles. It takes, to see him in prison
3 you have to call a day ahead of time, it's a
4 situation.

5 Q: And this affidavit that you were referencing, that
6 was, it was signed by Director Sheldon Hughes, is
7 that correct?

8 A: Yes..

9 Q: Okay and that was an item that was in your file
10 that I, in fact ...

11 A: You have a copy of it.

12 Q: I have a copy of it.

13 A: I sent you a copy last Thursday.

14 Q: Thank you.

15 Ms. Parnall: Your Honor, if Mary ...

16 Ms. Williams: I don't have any objection Judge. It's not
17 offered for the truth of the matter, so I don't' have any
18 problem with it. It's something Harry gave her.

19 The Court: Without objection.

20 Ms. Parnall: I'd like to enter this affidavit as the
21 applicant's exhibit. I believe it's exhibit number three.

22 The Court: The applicant's statement?

23 Ms. Parnall: No, no, exhibit.

24 The Court: Oh.

25 Ms. Parnall: Exhibit, I'm sorry Your Honor.

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1 The Court: Who is it the affidavit of?

2 Ms. Parnall: Director Sheldon Hughes of the Detention
3 Center of Clarendon County.

4 (Applicant's Exhibit Number Three was marked)

5 Q: And you have a copy of that in front of you right
6 now Mr. Devoe?

7 A: I do.

8 Q: Thank you. And this was pursuant to a safe keeper
9 petition. Is that correct?

10 A: I think it speaks for itself.

11 Q: Okay, and the primary reason that's asserted in
12 here, that Mr. Sweat is being removed is what?

13 A: What?

14 Q: Can you tell the Court what the primary reason was
15 ...

16 A: I think there were three primary reasons. One was
17 a racial problem at the jail, because number two,
18 I think he was mouthing off at the jail to
19 everybody plus Dustin Evans. Three, also his co-
20 Defendant.

21 Q: I'm sorry I didn't hear the third reason you gave.

22 A: His co-defendant they couldn't keep them in the
23 same, same cell over at the jail. There's only
24 one area that they had. Mr. Sweat was making some
25 threats and Dustin Evans --- they decided he was

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1 going to go because he's not from Clarendon County
2 and it was easier to move him then to move Mr.
3 Evans.

4 Q: And from where did you receive the information
5 that Mr. Sweat had made threats while in jail?

6 A: From who?

7 Q: Yes.

8 A: From the correctional officers.

9 Q: Okay, is that contained in this affidavit
10 anywhere?

11 A: I didn't prepare the affidavit. They prepared it.
12 It was passed on to the solicitor a I signed it.

13 Q: Correct, but is there any reference in this
14 affidavit to either Mr. Sweat mouthing off or to
15 him making threats?

16 A: There's some reference to it in the affidavit.

17 Q: Okay and can you point those out for me?

18 A: It says Jeremy Sweat is a serious threat to the
19 good order and security within the institution.
20 His alleged charges and the tremendous amount of
21 publicity surrounding same is creating serious
22 concern for his safety within the facility. The
23 population is comprised of seventy-five percent

24 ...

25 Ms. Parnall: Your Honor ..

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1 The Court: What's your objection?

2 Ms. Parnall: Oh I don't have an objection, I was just,
3 I'm sorry. I don't mean to interrupt you. I was just going
4 to say I didn't need you to read it. I was just specifically
5 asking you to point out for me ...

6 A: Well what do you want me to do? You said the
7 reading of it.

8 Q: Right.

9 A: Which is in evidence.

10 Q: I apologize. I was just hoping you could point out
11 for me where in here you got the references that
12 you just brought up regarding Mr. Sweat mouthing
13 off and regarding him making threats. The only
14 reference I see in here is the fact that he was a
15 serious threat to good order of security within the
16 institution.

17 A: It says the word is out in the inmate population,
18 it's a challenge to keep the inmate safe.

19 Q: Right, but no references to him actually making
20 threats?

21 A: It says Jeremy Sweat is considered the greater
22 threat of the two defendants.

23 Q: Okay and what's the next sentence?

24 A: It has been identified as being indirectly related
25 with a number of race base groups to include KKK.

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1 Q: So would that not be the reason that he was
2 considered the greater threat or risk?

3 A: There are a bunch of reasons in here.

4 Q: Okay, I'll move forward quickly on this then. Was
5 there not a comment made to the Court during the
6 guilty plea proceeding prior to the sentencing
7 where you stated to the judge that your client had
8 been removed into SCDC custody?

9 A: What?

10 Q: Did you state to the judge prior to sentencing that
11 your client had been removed to SCDC custody?

12 A: Yes, I said that.

13 Q: Okay and at what point in time didn't the Court
14 inquire of you why he was removed?

15 A: Huh?

16 Q: At that point in time, did the Court inquire of you
17 why Mr. Sweat had been removed?

18 A: If it says it in the transcript, that's correct.

19 Q: Okay and what answer did you provide?

20 A: What page are you on?

21 Q: Page forty, if you start at line nineteen.
22 Actually, lines nineteen through twenty three on
23 page forty.

24 A: I said they took him out of Clarendon County in
25 order to separate him from his co-Defendant.

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- 1 Q: And then immediately thereafter, the next sentence?
- 2 A: At one point, he was more verbally abusive, which
- 3 I was actually told that by his correctional
- 4 officer.
- 5 Q: And did you feel that you needed to state this or
- 6 repeat this comment that you had heard from a
- 7 correctional officer to the judge prior to
- 8 sentencing?
- 9 A: Say that again.
- 10 Q: What was your purpose or your strategy in repeating
- 11 a comment that you heard from a correctional
- 12 officer that he had been verbally abusive to the
- 13 judge prior to sentencing?
- 14 A: I'm not sure, when did I say that. I said that on
- 15 page forty?
- 16 Q: Yes, where you state where he was the one who was
- 17 more verbally abusive.
- 18 A: I was telling the judge that I guess that he had
- 19 been at Lee Correctional since he had been telling
- 20 the Judge of the conditions at Lee County.
- 21 Q: I understand. Would there not have been maybe
- 22 better information to provide the judge in response
- 23 to that question, other than repeating something
- 24 you had heard from a correctional officer that your
- 25 client had been verbally abusive? I'm sorry, yes,

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1 verbally abusive?

2 A: There's always better ways to say something. I'm
3 not sure what you're talking about.

4 Q: Do you believe that to some degree, that statement
5 might have conflicted with your portrayal of the
6 client?

7 A: My portrayal of my client is betrayed by the fact
8 that the Judge had the evaluation that was done by
9 William S. Hall. Had had a family that visited him
10 a lot at Lee Correctional. He had a supportive
11 family.

12 Q: Did you not present argument to the judge at this
13 point in time that your client was basically, to
14 some degree, manipulated by his co defendant, that
15 he was following orders of his co defendant?

16 A: I think I might have said that. I also might have
17 said he actually was the one the younger female
18 said showed some remorse.

19 Q: Yeah, and can you elaborate on that for a moment?
20 Can you elaborate on that just briefly?

21 A: She said that in the evaluation on the statements
22 said that she thought Jeremy was the one who had
23 remorse unlike Dustin Evans was controlling Jeremy.

24 Q: And did you, you tried to incorporate that into
25 your argument didn't you? In order to get the judge

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1 to sympathize.

2 A: I did.

3 Q: Yes and did you not make an argument that to some
4 degree, even though the co defendant was older,
5 that Mr. Sweat was following orders or following
6 the instructions of his co defendant?

7 A: Mr. Sweat was 6'2 and Mr. Evans was 5'9.

8 Q: So do you not think that stating that your client
9 was verbally abusive to his co defendant might have
10 conflicted with the fact that you were, at the same
11 time, trying to portray him as being, to some
12 degree, a (coughing happening) underling of his co
13 defendant?

14 A: I don't think, I don't think I said he was verbally
15 abusive. It was said by the jail he was verbally
16 abusive.

17 Q: But you repeated it on page forty of the plea
18 proceeding, did you not? Lines twenty two through
19 twenty three.

20 A: Well, I think at one point at the jail he was
21 verbally abusive to Mr. Evans. I said it because
22 what they were telling me.

23 Q: Your Honor I have no further questions for Mr.
24 Devoe.

25 The Court: Thank you.

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1 Ms. Parnall: If you'll be kind enough to answer Ms.
2 Williams' questions.

3 The Court: Ms. Williams do you have any questions
4 for Mr. Devoe?

5 CROSS EXAMINATION OF MR. DEVOE BY MS. WILLIAMS:

6 Q: Mr. Devoe can you tell me just briefly about your
7 legal experience? You've been a Public Defender for
8 quite a while.

9 A: Say that again?

10 Q: Can you tell me about your legal experience? You've
11 been a Public Defender for quite a while?

12 A: I became a public defender in South Carolina some
13 time in 1995.

14 Q: And you've been an attorney for some years more
15 than that?

16 A: I've been an attorney since 1963.

17 Q: And you informed the Court that you had reviewed
18 the charges, the possible punishment and Mr.
19 Sweat's Constitutional rights. Was that true that
20 you had done that?

21 A: Yes, I did.

22 Q: And you had Mr. Sweat evaluated, a mental health
23 evaluation?

24 A: I did.

25 Q: So you've met with him fairly early on during this

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1 representation?

2 A: I met with him I think the following week.

3 Q: So you actually went to be and met with him there
4 too?

5 A: I did.

6 Q: Okay.

7 A: About four or five times over a period of time. I
8 also went to the evaluation with him.

9 Q: And you spoke to his parents on the phone and
10 things like that?

11 A: I spoke to his parents. They came to South
12 Carolina several times. They met me at the jail
13 Sunday before the trial. We were there for two or
14 three hours.

15 Q: And with regards to information that Mr. Sweat was
16 verbally abusive, you revealed that in response to
17 a question that the Court asked you. Is that
18 correct?

19 A: Correct.

20 Q: You're an officer of the court?

21 A: Yes.

22 Q: And he does, there was no happy reason he was
23 removed, is that correct?

24 A: It was a very unhappy reason.

25 Q: And in review of discover, the victims were present

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1 that day. Did you expect the victims would testify
2 at trial?

3 A: No I didn't.

4 Q: You didn't know whether they would testify or not?

5 A: I didn't know. And the younger girl, I think she
6 testified, but the older girl, the older woman who
7 lived down the street had been at the jail because
8 she is mentally unbalanced and she was allowed to
9 vent the way, out of control almost against Mr.
10 Sweat.

11 Q: But she was present at the guilty plea and spoke?

12 A: Unfortunately the transcript, a lot of the
13 statement made during that sentencing hearing were
14 unavailable or not readable.

15 Q: That's, they weren't transcribed. Were those
16 statements that were made by the victims, were they
17 incriminating of your client?

18 A: Sure.

19 Q: Okay. And you have a statement that was transcribed
20 and it says that it was the taped interview of Mr.
21 Sweat. Your Honor may I approach Mr. Devoe?

22 The Court: You may.

23 Q: It's dated July 5, 2006. Was that a transcript that
24 you had access to in your file?

25 A: I did.

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1 Q: And would you have reviewed that prior to advising
2 Mr. Sweat to plead guilty?

3 A: I did.

4 Q: And at the beginning of that transcript, is there
5 advice of Miranda Rights right at the beginning of
6 page one?

7 A: I don't see it.

8 Q: Right at the very top of the page.

9 A: Yes, it's the very beginning.

10 Q: Verbally given. Alright and in that statement,
11 regardless of any statement your client later made
12 to you, in that statement he admits to using a
13 broom on one of the victims. Is that correct?

14 A: Yes it is.

15 Q: And he admits to stabbing and having sex with
16 Jamilia as well in that statement?

17 A: Yes.

18 Q: Okay. I would like to introduce that, not as the
19 truth of anything in it just as what Mr. Devoe
20 reviewed and provided advice to his client.

21 The Court: Any objection?

22 Ms. Parnall: Your Honor I object in that right now it's
23 a document unauthenticated in any form. We don't know who
24 transcribed it or where it came from.

25 The Court: She's just offering it to show that Mr. Devoe

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1 had this to look at. That's all.

2 Ms. Parnall: If it's just to ...

3 The Court: Not what's in there.

4 Ms. Williams: It's what provided to him in discovery. I
5 mean he's identified it as that.

6 The Court: A very good portion of that is also in the
7 trial transcript and that's something you could say you
8 looked at. So you made the allegation he didn't look at the
9 video tape, but he did read the transcript. So that's in ...

10 Ms. Parnall: Okay.

11 Q: You mention some defenses. You discussed hand of
12 one, hand of all. Is that something you discussed
13 with your client as well?

14 A: Yes.

15 Q: Were there any other, was there any plausible
16 defense given the victim testimony, your client's
17 statement, was there anything that you felt would
18 be successful at trial?

19 A: We could only be successful at trial was the fact
20 that Mr. Sweat at the direction of Mr. Evans used
21 the knife on the younger girl and that he was not
22 trying to rape her but that he was doing this at
23 the direction and control of Mr. Evans. And, in
24 fact, he hurt her and hurt her badly. He let her
25 pretend she was dead so he could get Mr. Evans out

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1 of there. Had that not happened, she might have
2 been killed.

3 Q: And in your recollection, Mr. Sweat was not
4 terribly interested in a trial? This was, he was
5 interested in pursuing a plea agreement. Is that
6 your recollection?

7 A: He seemed to agree. I mean the facts of the case
8 were damning.

9 Q: And he had admitted some of those facts to you as
10 well as ...

11 A: Yes.

12 Q: ... during your consultation with him? I don't have
13 any further questions.

14 The Court: Re-direct?

15 Ms. Parnall: Just a few Your Honor.

16 RE-DIRECT EXAMINATION OF MR. DEVOE BY MS. PARNALL:

17 Q: You stated that you had visited with the applicant
18 four or five ...

19 A: I can't hear you.

20 Q: I'm sorry.

21 The Court: You can move closer if you want.

22 Q: How many times ...

23 The Court: You can stand by the microphone.

24 Q: Thank you. How many times do you recall actually
25 meeting with the applicant prior to his plea?

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1 A: You know, I don't know, because we don't charge by
2 the hour. We charge by the job. We do the best we
3 can. I counsel my clients many times. I go to Lee
4 Correction four or five times.

5 Q: Four or five times? Okay Ms. Williams had
6 referenced hand of one is hand of all, and at that
7 point said that you had discussed that and other
8 defenses with your client. Hand of one and hand of
9 all is not a defense. Is that correct? When you
10 referenced that, you weren't referencing a defense?

11 A: What's the question now?

12 Q: Did you discuss fully with your client all the
13 defenses that the facts would have suggested that
14 he might have had available to him on the crimes
15 charged?

16 A: I did.

17 Q: Okay. Did you discuss with him the possibility of
18 a defense of others?

19 A: What?

20 Q: As it regards the ...

21 A: Others?

22 Q: Yes, as in regards... you were just stating that
23 there had been statements made to the effect that
24 Mr. Sweat had possibly stabbed the victim in a way
25 to save her life? Isn't that what you were just

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1 telling Ms. Williams?

2 A: I think I told the judge at one point that the big
3 problem is that he had a knife and he stabbed her.
4 I mean nine stab wounds that were visible, anyone
5 of those could have been life threatening. He
6 just missed a artery about one inch in the neck.

7 Q: I apologize. Your client is someone who has been
8 demonstrated to have a lower than average education
9 level, comprehensive level. Is that correct?

10 A: Correct.

11 Q: Did you discuss with your client any possibility of
12 raising a defense that he was actually defending
13 the victim by acting in the manner that he did?

14 A: Had it gone to trial that is what I would have
15 tried to do, but it didn't get to trial.

16 Q: Okay. Thank you. In regards to your position as
17 officer of the court, you have a duty to tell the
18 Court, to be truthful to the Court is that correct?
19 Candor to the tribunal?

20 A: Yes.

21 Q: Okay. So is it not true that in the documents that
22 you have in your file that regard this petition for
23 his removal, that those documents do not reflect
24 Mr. Sweat being verbally abusive?

25 A: I think the documents show that while he was in

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1 jail he talked to inmates.

2 Q: Could you have referenced those documents as a
3 manner to answer the Court's question as to why he
4 was removed?

5 A: I don't, I don't think the judge asked for any long
6 details of why he was removed.

7 Q: And that was something you had heard from a
8 correctional officer?

9 A: I heard it from the officers at the Clarendon
10 County jail, that's correct.

11 Q: Thank you. No further questions Your Honor.

12 The Court: Alright thank you Mr. Devoe. You may step
13 down.

14 Mr. Devoe: Thank you.

15 The Court: You may call your next witness.

16 Ms. Parnall: Thank you. I would call Jeremy Sweat to the
17 stand next.

18 Bailiff: Right here sir. Place your left hand on the
19 Bible and raise your right hand. State your name please.

20 Mr. Sweat: Jeremy Sweat.

21 Bailiff: Do you solemnly swear or affirm the testimony
22 you give the court today will be the truth, the whole truth
23 and nothing but the truth, so help you God?

24 Mr. Sweat: Yes I do.

25 Bailiff: Thank you. Come this way and watch your step.

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1 State your full name and spell your last name for the record.

2 Mr. Sweat: Jeremy Sweat.

3 DIRECT EXAMINATION OF MR. SWEAT BY MS. PARNALL:

4 Q: Thank you Mr. Sweat. Your attorney for this matter
5 was?

6 A: Christine.

7 Q: Thank you and who was your attorney for this, for
8 these guilty pleas?

9 A: Harry Devoe.

10 Q: And do you recall were you appointed an attorney
11 for these guilty pleas?

12 A: No ma'am. I think at the time, my parents came in
13 from Louisiana.

14 Q: Do you recall how many times you were able to
15 actually meet with your attorney before that day in
16 court when you entered your pleas?

17 A: About two times.

18 Q: Two times. And approximately when would that first
19 visit have occurred?

20 A: First visit occurred in the county jail.

21 Q: And was that just before you got removed?

22 A: Yes ma'am.

23 Q: And when did that second visit occur?

24 A: Lee County.

25 Q: And do you recall how long a period between that

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1 and your plea proceeding?

2 A: It probably about fifteen minutes maybe, twenty.

3 Q: So it was immediately prior to your plea
4 proceeding that you met with him?

5 A: Yes ma'am.

6 Q: Did he ever meet with you at Lee other than that
7 date?

8 A: No ma'am.

9 Q: Okay. Did you ever get a chance to review the
10 discovery in your case with your attorney, Mr.
11 Devoe?

12 A: I did not. He put it in my face and said this is
13 your motion then he took off with it.

14 Q: Okay, so approximately how long did he have that
15 discovery there for you to look at?

16 A: Maybe two seconds.

17 Q: Okay so you didn't get to actually, individually
18 go through those pages?

19 A: No ma'am, I didn't.

20 Q: Did you want to?

21 A: Yes ma'am, I did.

22 Q: And did you ever ask your attorney to allow you
23 to see or review your discovery?

24 A: Yes ma'am I did.

25 Q: Approximately how many times do you think you

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1 asked him?

2 A: I know I asked him once in person. I wrote him a
3 couple of times and all the time I got a, I got a
4 excuse. They won't give me a copy machine, the
5 copy machine is broke.

6 Q: On that day when Mr. Devoe did come and bring the
7 discovery, when you did not get to review it,
8 what was your feelings about whether or not you
9 wanted to plea or go to trial?

10 A: I didn't feel he probably did his job.

11 Q: I'm sorry, can you repeat that?

12 A: I didn't feel he was doing his job. I didn't
13 feel he'd, you know, represent me, you know ...

14 Q: Were you confident that he, himself had reviewed
15 the discovery?

16 A: No ma'am, not really. I feel he, I feel he
17 didn't do, him and Amy Land worked together to
18 get me convicted.

19 Q: What did Mr. Devoe say to you about what your
20 chances would be at trial?

21 A: He said if I went to trial I'd get a life
22 sentence, if I pled, but he wouldn't give me no
23 other kind of sentence. He basically make it
24 sound like I'd be going to the house if I pled.

25 Q: So did you, when did you decide that you wanted

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1 to plead guilty?

2 A: Whenever Mr. Devoe told me if I went to trial I'd
3 get a life sentence.

4 Q: Okay. At some point during the plea proceeding,
5 did you ask the Court if you could have a chance
6 to talk to your attorney?

7 A: When I plead not guilty to the charges, my
8 attorney spoke up and said could he talk to me.
9 That's the time that he told me that if I didn't
10 plea if I went to trial I'd get a life sentence.

11 Q: And what you're referencing here, is that the
12 period where the Court asked you specific
13 questions and you answered no sir?

14 A: Yes ma'am.

15 Q: Okay. So at that point in time, you wanted to
16 speak to your attorney?

17 A: Yes ma'am.

18 Q: Do you recall that conversation that you had with
19 him?

20 A: Not really, no. Only way I can remember is
21 pleading not guilty and that's whenever he pulled
22 me to the side and told me if I didn't take this
23 plea that I could get a life sentence.

24 Q: So during that conversation, he encouraged you
25 that you needed to continue with the plea?

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- 1 A: Yes ma'am, he did.
- 2 Q: At this point in time, knowing what you now know,
- 3 would you prefer to have gone to trial?
- 4 A: Yes ma'am.
- 5 Q: And you would have gone to trial?
- 6 A: Yes ma'am, I would have.
- 7 Q: Were you at all uncomfortable going forward with
- 8 a guilty plea proceeding?
- 9 A: Very.
- 10 Q: Can you please elaborate on why?
- 11 A: Well, I felt Harry wouldn't represent me and
- 12 stand up on my behalf. Like I said, I kind of
- 13 felt like him and Amy Land worked together to get
- 14 me convicted.
- 15 Q: Do you feel like you had a comprehension then of
- 16 what the charges were against you and
- 17 specifically which facts created which elements,
- 18 established which elements in those crimes?
- 19 A: No ma'am.
- 20 Q: Did you understand when you started disagreeing
- 21 with some of the facts stated why that caused a
- 22 problem for the Court to continue with your
- 23 guilty pleas?
- 24 A: No ma'am.
- 25 Q: Did Mr. Devoe ever discuss with you the

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1 statements that were attributed to you, the
2 statements we've been referring to that were made
3 on July 5, 2006?

4 A: No ma'am.

5 Q: Did he ever discuss any statements that you
6 allegedly made with you?

7 A: He said, he tried to say he'd read over but he
8 actually didn't.

9 Q: I'm sorry?

10 A: He tried to say he read over them, what I faced
11 and all that and he didn't. Only thing he really
12 did say is if you go to trial you'll get a life
13 sentence and like I said, he made me feel like if
14 I plead I could go to the house.

15 Q: Do you recall a comment that was made by your
16 attorney during the plea proceeding where he
17 stated that you had been more verbally abusive?

18 A: No ma'am.

19 Q: Okay, do you know why you were actually removed
20 to SCDC custody?

21 A: He tried, he's trying to say, he told me that due
22 to the fact that a CO was mistreating me in
23 county jail that he going to have me put in Lee
24 County.

25 Q: Okay, so at this point in time, knowing what you

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1 now know and, let me start over. Have you now
2 had a chance to review some of the discovery that
3 you had not gotten to review with Mr. Devoe?

4 A: Since you been representing me, yes ma'am.

5 Q: Okay, after reviewing more discovery, would you
6 now feel comfortable and would you want to go to
7 trial?

8 A: Yes ma'am.

9 Q: Have I explained to you how the PCR process
10 works?

11 A: Yes ma'am, you have.

12 Q: And have I explained to you that if you win a PCR
13 that what you basically get is another
14 opportunity where either the State's going to re-
15 try you or whether they might try and negotiate a
16 plea with you?

17 A: Yes ma'am, you have.

18 Q: Okay, so you understand that there's a
19 possibility that you can be tried again, even if
20 you win a PCR?

21 A: Yes ma'am.

22 Q: And that most likely you would be?

23 A: Yes ma'am.

24 Q: And you would be sentenced again?

25 A: Yes ma'am.

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1 Q: And knowing that, you still want to go through
2 with this PCR, you still want your chance at a
3 trial?

4 A: Yes ma'am.

5 Q: Are you satisfied with my performance here today?
6 Is there anything ...

7 A: I'm very ...

8 Q: You are. Is there anything that you need to raise
9 to the Court that I have not raised for you?

10 A: No ma'am.

11 Q: I appreciate it Mr. Sweat. I don't have any more
12 questions for you, but I'm going to turn you over
13 to Ms. Williams if you'll just be kind enough to
14 speak clearly and answer any of her questions.

15 A: Okay.

16 Q: Thank you.

17 The Court: Ms. Williams?

18 CROSS EXAMINATION OF MR. SWEAT BY MS. WILLIAMS:

19 Q: Do you have any idea what dates Mr. Devoe met
20 with you?

21 A: No ma'am, I don't.

22 Q: Would July of 2006, July 27 of 2006 possibly?

23 A: It was somewhere in there. I got locked up July
24 3rd. I think it was and he came to see me the
25 following month.

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- 1 Q: Okay, and during this plea, Judge James told you
2 that if you didn't understand his questions, you
3 could just let him know, right?
- 4 A: Yes ma'am.
- 5 Q: And after you guys had reviewed your evaluation
6 and your prior mental health treatment, you told
7 him you understood everything at that point
8 right?
- 9 A: Yes ma'am.
- 10 Q: And you told him that you understood the charges
11 and your potential sentence?
- 12 A: There was no potential sentence. Like I said, he
13 basically told me if I didn't plea that I would
14 get a life sentence if I went to trial.
- 15 Q: Well, Judge James informed you that he could
16 sentence you up to 140 years right?
- 17 A: Right.
- 18 Q: And he said that he did not have to abide by the
19 forty years recommendation, correct?
- 20 A: He did.
- 21 Q: And you understood that in giving up your jury
22 trial, you were giving up the right to challenge
23 those statements that you made right?
- 24 A: He did.
- 25 Q: Okay and you told him that nobody had threatened

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1 you with anything or promised you anything?

2 A: He did.

3 Q: You said you'd had plenty of time to make up your
4 mind and you'd spoken to Mr. Devoe as long and as
5 often as you wanted to?

6 A: I did.

7 Q: But that's not true?

8 A: No ma'am.

9 Q: Okay, and that there was nothing more you wanted
10 Mr. Devoe to do?

11 A: Yes ma'am.

12 Q: But that's not true either?

13 A: No ma'am.

14 Q: Okay and you were under oath that day, just like
15 you are today, right?

16 A: Yes ma'am.

17 Q: And then during this plea you do actually admit
18 that you tied one of these victims up with a rope
19 and held her against her will? On page thirty
20 two.

21 A: You talking about my plea?

22 Q: Uh-huh, during the plea.

23 A: Yes, I did.

24 Q: And you admitted to having sexual intercourse
25 with the younger victim, that you had stabbed her

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1 nine times as well?

2 A: I did.

3 Q: But that wasn't true or?

4 A: I did, I did stab her, but if I wouldn't have did
5 what I did, my co defendant would have killed
6 her. See, after, after she was stabbed, my co
7 defendant told me to check her pulse and I told
8 my co defendant she was dead, but I knew she
9 wasn't.

10 Q: Alright at which meeting with Mr. Devoe did you
11 ask him face to face for your discovery?

12 A: Which what?

13 Q: You said you asked Mr. Devoe one time, face to
14 face for your discover. Which meeting was that?

15 A: Lee county.

16 Q: When was that?

17 A: About the second time I got to speak with him and
18 the last time.

19 Q: And that was just a couple of days before your
20 plea?

21 A: Yes ma'am.

22 Q: And you don't know whether he reviewed the
23 discovery or not. You're just saying you don't
24 think he did?

25 A: Right.

HEARING

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- 1 Q: Okay, and when did he tell you that you were
2 going to get life? Was this before your plea or
3 during it?
- 4 A: Before.
- 5 Q: Okay.
- 6 A: And when I pled not guilty he also told me that
7 if I'm going to accept this plea that I got to
8 plead guilty to something, so I told him I plead
9 guilty to all charges.
- 10 Q: So what did you talk to Mr. Devoe about for that
11 fifteen or twenty minutes?
- 12 A: The fifteen or twenty minutes he had to, you
13 talking about during the break?
- 14 Q: No, you said you met with him prior to your plea,
15 you've only talked to him for maybe fifteen or
16 twenty minutes?
- 17 A: Oh, that, that's when he brought the motion to
18 me.
- 19 Q: Okay, so he showed you that for about two seconds
20 right?
- 21 A: Right.
- 22 Q: What else did he talk to you about?
- 23 A: He talked to me a little bit about the plea. He
24 told me what I told you just now and that's,
25 that's the time that I agreed to the plea.

HEARING

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1 Q: Alright so what else? That took the whole time?

2 A: That's about it.

3 Q: Okay. And he did file a motion for
4 reconsideration of your sentence, is that right?

5 A: That's right.

6 Q: And y'all argued that you had cooperated and you
7 were ready to testify against your co defendant?

8 A: That's right.

9 Q: Okay, I think that's all I have. Thank you.

10 The Court: Any re-direct?

11 Ms. Parnall: Very briefly Your Honor.

12 RE-DIRECT EXAMINATION OF MR. SWEAT BY MS. PARNALL:

13 Q: Mr. Sweat, you're not a lawyer, someone very
14 familiar with legal concepts are you?

15 A: No ma'am, I ain't.

16 Q: Okay, and do you, in fact, have some difficulty
17 when we're discussing various crimes, elements,
18 offenses, things like that ...

19 A: Yes ma'am, I am.

20 Q: You have some difficulty comprehending those?

21 A: Yes.

22 Q: And do I help you by trying to explain things a
23 couple times in different ways and breaking them
24 down?

25 A: Yes ma'am, you do.

HEARING

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1 Q: Would it have assisted you if Mr. Devoe had spent
2 a little more time and broken down some of these
3 concepts for you so you could understand?

4 A: It would have helped me a lot.

5 Q: Did you ... do you recall writing a letter to Mr.
6 Devoe around August of 2007 where you asked him
7 if he'd bring your motion 5 discovery and if he
8 would send copies of that to your mother?

9 A: Yes I do.

10 Q: Okay and were there other occasions when you had
11 written letters to Mr. Devoe?

12 A: Yes ma'am, several.

13 Q: Asking him ...

14 A: Asking him for motion.

15 Q: And did you ask him for the discovery?

16 A: I did and every time I got some kind of excuse.
17 My printer's broke, they won't give me a copy.
18 Like I said, last thing you showed me the motion.
19 I got about a two second glance at it and he
20 yanked it up and put it back in his brief case
21 and that's it.

22 Q: Thank you Mr. Sweat. That's all I have Your
23 Honor.

24 The Court: Any re-cross?

25 Ms. Williams: Nothing further Your Honor.

HEARING

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1 The Court: Thank you Ms. Williams.

2 Ms. Parnall: Your Honor I'm going to call one more
3 witness and that is Karen Corley, the applicant's mother.

4 The Court: Alright.

5 Bailiff: Place your left hand on the Bible and raise
6 your right hand. State your name please.

7 Ms. Corley: Karen Corley.

8 Bailiff: Do you solemnly swear or affirm the
9 testimony you give this court will be the
10 truth, the whole truth and nothing but the
11 truth so help you God?

12 Ms. Corley: I do.

13 Bailiff: Thank you. State your full name and spell
14 your last for the record.

15 Ms. Corley: Karen Corley, C-O-R-L-E-Y.

16 DIRECT EXAMINATION OF MS. CORLEY BY MS. PARNALL:

17 Q: Ms. Corley, just for the record, how are you
18 related to the applicant?

19 A: His mother.

20 Q: And at any point in time, prior to your son
21 entering his guilty pleas, did you get the chance
22 to meet with Mr. Devoe?

23 A: Correct on the, I was notified in Louisiana on
24 the fourth of July about the arrest. Me and my
25 husband at the time, who's deceased now, came to

HEARING

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1 South Carolina on the 14th of July, where we
2 waited and met Mr. Devoe that day.

3 Q: So that would be July 14, 2006?

4 A: Right, right after the arrest.

5 Q: And what were you told when you met with Mr.
6 Devoe that day?

7 A: Well, at that time he wasn't aware, he knew of
8 the case from the papers and all, but he wasn't
9 aware that he was going to be handling it.
10 Myself and my husband knew there were only two
11 court appointed attorneys in that town. We met
12 with one because Mr. Devoe was at lunch and we
13 didn't have any names. But any way, he was
14 representing the co defendant so we waited til he
15 got back and met him at the courthouse when he
16 came in.

17 Q: You met Mr. Devoe?

18 A: And told him, he wasn't aware at that time that
19 he was actually going to have this case, but he
20 said that he assumed he was that he had not been
21 notified officially.

22 Q: Did you ever get another chance to speak with him
23 before the plea proceeding?

24 A: Yeah, we spoke a lot of times on line and my
25 husband handled a lot of the conversation for

HEARING

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1 probably two or three times before we came back.

2 Q: You did get the opportunity to speak with him on
3 the phone?

4 A: Right.

5 Q: And were you comfortable with Mr. Devoe's
6 performance in preparing a defense for your son's
7 case?

8 A: Well, it was all, of course, it was very
9 traumatic the whole situation. The more I talked
10 to him, a lot of our conversation was like a
11 personal conversation, but, you know, who we knew
12 in Louisiana and I just wanted to get my son's
13 situation handled and I, I didn't know, you know
14 I had heard a lot about, you know court
15 appointed, the time that they spend, you know, I,
16 I didn't feel like he was pushing as hard as I
17 was. Of course I'm the mother, you know, nobody's
18 going to be pushing as hard as, or fast enough
19 for him, but, no, I wasn't really satisfied.

20 Q: Was he able to provide you with answers to the
21 questions that you had about where things were
22 proceeding, when they were proceeding, what the
23 State's evidence was against your son?

24 A: Well, most of it was he would have to find out,
25 you know my questions that he couldn't answer

HEARING

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1 which were some of them, quiet a few, of course,
2 my husband asked him questions also. And he
3 would be back in touch with us, which most of the
4 time it took us, once we got back to Louisiana,
5 we wouldn't hear. So we would have to be trying
6 to call him to get our questions answered.

7 Q: If you could just provide me then, a brief
8 summary the reason why you were not comfortable
9 with him continuing with your son's defense. What
10 made you nervous about his representation of your
11 son?

12 A: This seriousness, maybe, of it. You know, it was
13 just real, again to me it was very traumatic, me
14 being, you know, Jeremy's mother, but he just
15 didn't seem like it was real serious with it. And
16 then whenever he started talking about the pleas
17 of guilty and when I had talked to Jeremy,
18 knowing that not all of it, now you know, there
19 was wrongdoings on Jeremy's case, you know, of
20 course, but him admitting guilt to everything,
21 whenever it wasn't that way, you know, I started
22 having big doubts.

23 Q: Did you think that if he had been retained he
24 might have been able to spend more time on this
25 case to prepare it? Is that what I'm gathering

HEARING

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1 from what you've said?

2 A: I think so. Yeah, it was such a rush, rush thing,
3 you know. This serious of a case, I feel, needed
4 more time.

5 Q: Did you ever consider retaining or paying for an
6 attorney?

7 A: It, yes I did. You know, because I felt like they
8 would probably, you know, put more into it than
9 what we were getting from Mr. Devoe, but due to
10 our financial situation, at the time, we just
11 couldn't really afford it.

12 Q: Okay, Ms. Sweat that's all the questions I have.
13 If Ms. Williams has any questions for you, if you
14 would, please answer them.

15 The Court: Ms. Williams.

16 Ms. Williams: No questions for this witness Your
17 Honor.

18 The Court: Thank you, you may step down. Anything
19 further? Ms. Williams anything?

20 Ms. Williams: I'd like to call Mr. Devoe just very
21 briefly.

22 The Court: Alright.

23 Ms. Williams: Just very briefly. Two or three
24 questions.

25 Bailiff: Sir you're still under oath.

HEARING

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1 The Court: Alright Ms. Williams.

2 DIRECT EXAMINATION OF MR. DEVOE BY MS. WILLIAMS:

3 Q: Mr. Devoe, you've had an opportunity to review
4 some hand written notes you had in your file?

5 A: I have.

6 Q: And in those notes, do you have some dates that
7 you met with the applicant?

8 A: I have several. The first, I did meet with him
9 until July 12th, the same day I got appointed
10 briefly, to get his mother's name, his father's
11 name, his stepfather's name and their phone
12 numbers, plus his sisters name. I said I would
13 be back to talk with him after I finished court.
14 That's when he signed the Affidavit. He was
15 taken away so I didn't have a chance to talk to
16 him again that day. I went to Lee Correctional
17 on July 27th to talk to him and ask him some
18 questions about the whole situation to see if he
19 had to do with the KKK. That he had worked for
20 a while. He had attempted to commit suicide at
21 one point in his life. Then I've got dates
22 written down here where I filed a motion for a
23 speedy trial. On August 8th, 2006, I also asked
24 questions about the statements. Those were some
25 notes that I had. I also asked questions about

HEARING

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1 the victims, the older victim. Things about her.
2 I think I was pretty accurate the first two or
3 three months.

4 Q: And after the, the plea, did you also file a
5 motion for reconsideration?

6 A: I did.

7 Q: And is this a copy of that motion? May I approach
8 Your Honor?

9 The Court: You may.

10 A: Yes. It's dated March 19, 2008, which is a week
11 after he plead guilty.

12 Q: I would just like to place that into evidence as
13 well Your Honor.

14 (State's Exhibit Number 2 was marked)

15 The Court: Any objection?

16 Ms. Parnall: I don't Your Honor.

17 The Court: Without objection.

18 Ms. Williams: And that's all I have. Thank you.

19 The Court: Do you have any cross?

20 Ms. Parnall: Just a little bit Your Honor.

21 CROSS EXAMINATION OF MR. DEVOE BY MS. PARNALL:

22 Q: Mr. Devoe, my understanding of the notes that you
23 were just reading from, is that they demonstrate
24 to you that you met with the applicant on July 27
25 of what year?

HEARING

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1 A: 2006.

2 Q: 2006. So they demonstrate you met with him or
3 you believe that they demonstrate you met with
4 him on July 27, 2006?

5 A: I have 7-27-06 at Lee Correctional facility.

6 Q: Okay, and were there any other dates that you
7 have written down that you definitively met with
8 the applicant?

9 A: No, but if you want to check the records at Lee,
10 they keep records of the visitation.

11 Q: Okay, thank you Mr. Devoe, I have nothing
12 further.

13 The Court: Any re-direct?

14 Ms. Williams: Nothing further, Your Honor.

15 The Court: Thank you Mr. Devoe.

16 Ms. Williams: That's the State's case Your Honor.

17 The Court: Thank you. Any reply testimony?

18 Ms. Parnall: No, Your Honor. Okay, I'll take the
19 matter under advisement.

20 Ms. Parnall: Would you like those briefs?

21 The Court: I don't need them. Thank you.

22 Ms. Parnall: Thank you Your Honor.
23
24
25

CERTIFICATE

This is to certify that the transcript in the matter of Jeremy Sweat vs. The State of South Carolina, consisting of Seventy-eight (78) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this ^{2nd} ~~10th~~ day of ~~July~~, 2013.

Melissa R. Singletary

Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

CCNY

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 07-GS-14-0363

V.

Defendant

**RULE 5 DISCLOSURE AND
MOTION FOR RECIPROCAL
DISCOVERY AND DISCLOSURE
OF EVIDENCE**

In response to your request for Disclosure under Rule 5, the State provides the following:

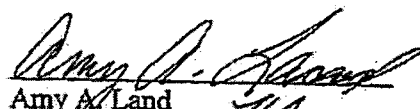
1. Copy of Clarendon County Sheriff's Office Evidence Inventory Sheet (2)
2. Copy of Clarendon County Sheriff's Office Case Check Sheet
3. Copy of Case Notes
4. Copy of Victim's Information Sheet
5. Copy of Photo Line-Up
6. Copy of Warrants
7. Copy of Search Warrants
8. Copy of Evaluations of Criminal Responsibility and Capacity to Conform
9. Copy of Incident Report

Having complied with the defendant's request, the State hereby requests the information subject to disclosure under Rule 5(b)(1)(A)&(B).

The State hereby requests information subject to Rule 5(e)(1) Notice of Alibi:

Rule 5(f) Notice of Insanity Defense or Plea of Guilty but Mentally Ill; and any intent of the defendant to rely upon the defenses of necessity or self-defense.

This Motion is pursuant to Circuit Rule 5, upon compliance by the prosecution with the defendant's previous Motion for Discovery and Disclosure based upon the same circuit court rule. The duty to make said disclosure is a continuing duty up to and during trial.


Amy A. Land
Assistant Solicitor
Third Judicial Circuit

Manning, South Carolina

March 5, 2008

Transmission Report

Date/Time
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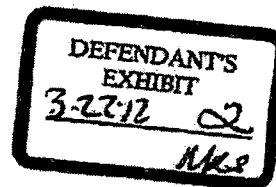
The State of South Carolina



C. Kelly Jackson
Solicitor

SOLICITOR
Clarendon County Courthouse
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Post Office Drawer 10
Manning, South Carolina 29102

Phone: (803)435-4211
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March 4, 2008

Harry L. Devoe, Jr., Attorney
7411 Black River Road
New Zion, SC 29111

Re: Jeremy Sweat
2007-GS-14-0363 and 2007-GS-14-0364

Dear Harry:

As we discussed on March 3, 2008, I am ceasing preparation on the trial of the above
indicated defendant, because you advised me that Mr. Sweat is pleading guilty.

At your request, I am bringing Mr. Sweat over on Monday, March 10, 2008.

Sincerely,

Amy A. Land
Amy A. Land
Assistant Solicitor

AAL:lp

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Notes :

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BC: Broadcast Send
CP: Completed
IS: Host Scan
IP: Host Fax

RE: Resend
MP: Multi-Poll
RM: Receive to Memory
HP: Host Print
MR: Host Receive

PD: Polling by Remote
PS: Polling a Remote
DR: Document Removed
FO: Forced Output
FM: Forward Mailbox Doc.

MS: Receive to Mailbox
PI: Power Interruption
TM: Terminated by user
WT: Waiting Transfer
WS: Waiting Send

The State of South Carolina



C. Kelly Jackson
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March 4, 2008

Harry L. Devoe, Jr., Attorney
7411 Black River Road
New Zion, SC 29111

Re: Jeremy Sweat
2007-GS-14-0363 and 2007-GS-14-0364

Dear Harry:

As we discussed on March 3, 2008, I am ceasing preparation on the trial of the above referenced defendant, because you advised me that Mr. Sweat is pleading guilty.

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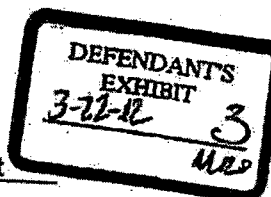
Sincerely,

Amy A. Land
Amy A. Land *ap*
Assistant Solicitor

AAL:ap

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

AFFIDAVIT
RE: The State of South Carolina
vs. Jeremy Sweat



PERSONALLY APPEARED before me, Shelton L. Hughes, Jr., who upon oath deposes and says that he is the Director of Detention of the aforementioned County; and in that capacity he is acquainted with a pretrial detainee named Jeremy Sweat, who is presently being held in custody on a charge of: 2 cts CSC 1st Degree, ABWITK, 2 cts Kidnapping

Affiant believes that Jeremy Sweat is a serious threat to the good order and security within the institution; inasmuch as his alleged charges and the tremendous amount of publicity surrounding same has created a serious concern for his continued safety within the facility. Our pre-trial male population is comprised 75%-90% minorities on any given day. This subject and a co-defendant are alleged to have committed identical alleged offenses based on the race of the alleged victims, who were black. I cannot place either subject in general population and have adequate space and separation to house only one of them in long-term administrative segregation. Jeremy Sweat is considered the greater threat/risk of the two defendants. He has been identified as being directly affiliated with a number of race-based hate groups, to include the Ku Klux Klan. One of the alleged victims is an adolescent black female. The "word" is out amongst the inmate population and it has become increasingly challenging to keep this subject safe from harm while ensuring he retains his basic rights and privileges. He has been denied bond and it's reasonable to assume that he will be in custody for a lengthy period of time before his case is brought before the Court. The subject has no ties to the community and is a significant flight-risk and he is prone to commit extreme acts of violence, making him a true threat to staff and other prisoners as well. His continued presence is creating grave concerns regarding the ability of security staff to effectively manage him while maintaining his civil rights and meeting minimum standards. It is therefore felt that it would be in the best interest of Clarendon County and the State of South Carolina for Jeremy Sweat to be housed in "Safekeeping" at the South Carolina Department of Corrections until his trial, pursuant to section 24-3-80, Code of Laws of South Carolina.

Affiant further deposes that he is informed and believes that the said Jeremy Sweat is physically fit and is neither mentally ill nor mentally retarded.

Shelton L. Hughes, Jr.
Shelton L. Hughes, Jr., Detention Director
Clarendon County, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

Jeremy Shay Sweat, 326997,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2010-CP-14-0076

MEMORANDUM IN SUPPORT
OF PCR APPLICATIONCERTIFIED TRUE COPY
ORIGINAL FILED IN THIS OFFICE

DATE

4/25/12

Boulton B. Roberts

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THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed February 10, 2010. The State made its Return on August 23, 2010. An amended Application for Post-Conviction Relief was filed on March 21, 2012. An evidentiary hearing was convened in this case on March 22, 2012. The Applicant was present and was represented by Attorney Christina Dixon Parnall. The Respondent was represented by Mary S. Williams, Assistant Attorney General. The hearing was held before the Honorable W. Jeffrey Young, presiding circuit court judge.

I. PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to an order of commitment of the Clarendon County Clerk of Court. He was indicted by the Clarendon County Grand Jury during the October 2007 term for one count of Kidnapping and one count of Criminal Sexual Conduct (First Degree) (2007-GS-14-0363). The Applicant was also indicted for one count of Kidnapping, one count of Criminal Sexual Conduct (First Degree), and one count of Assault and Battery with Intent to Kill (2007-GS-14-0364). On March 10, 2008 the Applicant proceeded to enter guilty pleas to all counts in front of the Honorable

George C. James, Jr. He was represented by Attorney Harry L. Devoe, and the State was represented by former Assistant Solicitor, and current Judge, Amy Land. The Applicant was sentenced to concurrent thirty (30) year terms each for Kidnapping and Criminal Sexual Conduct (First Degree) (2007-GS-14-0363). He also received thirty (30) years for Kidnapping, twenty (20) years for Assault and Battery With Intent to Kill, and to thirty (30) years for Criminal Sexual Conduct (2007-GS-14-0364). The sentences on Indictment 2007-GS-14-0364 were to be served consecutively with one another and all were to be served concurrently with the sentences on Indictment 2007-GS-14-0364. The Applicant's aggregate sentence was imprisonment for eighty (80) years.

A timely Notice of Appeal was filed on the Applicant's behalf.¹

II. ALLEGATIONS RAISED

In his *pro se* Application for Post-Conviction Relief, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel-conflict of interest."
2. "Involuntary guilty plea-Involuntary confession."
3. "Disparity in sentencing of co-defendant. 8th Amendment violation."

The Applicant's amended Application for Post-Conviction Relief alleges, generally, that he received ineffective assistance of counsel prior to, during and after the entry of his guilty pleas in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution. It further generally alleges that his pleas of guilty were not voluntary and intelligently entered, and, therefore, that the judgments and sentences against the Applicant were entered in violation of his

¹ The South Carolina Court of Appeals dismissed the Applicant's appeal on June 6, 2009 for failure to comply with Rule 203(d)(B)(iv), SCACR, requiring a written explanation demonstrating an issue for appellate review.

rights to due process of law and effective assistance of counsel. The amended Application specifically alleges that:

1. Defense Counsel was ineffective for failing to move to compel discovery when it was not timely produced and for failing to sufficiently review the discovery with the Applicant prior to the entry of his guilty pleas;
2. Defense Counsel was ineffective for allowing the Court to go forward on the Applicant's guilty pleas and failing to present adequate arguments and authority in support of his motion to withdraw those pleas, where the Applicant expressed to the Court and Defense Counsel, his confusion over the charges being pled to;
3. Defense Counsel was ineffective for failing to obtain and review the audiotapes of the statements to law enforcement, attributed to the Applicant, that were damaging to the Applicant's case;
4. Defense Counsel was ineffective for failing to inform the Applicant of the procedures available to him at trial by which he could challenge the admissibility of his statements to law enforcement, that fact that even if the statements were admitted the jury would have to make a predicate finding that the statements were voluntarily made and that any unfavorable ruling of the lower court concerning those statements could be reviewed by a higher court on appeal; and
5. Defense Counsel was ineffective for offering information to the court, prior to the Applicant's sentencing, that the Applicant had been removed from the county jail for verbally abusive behavior.

III. FACTUAL BACKGROUND

On June 20, 2006, an adult female victim was allegedly picked up by the co-defendant, Dustin Evans, and the Applicant and transported by vehicle back to the home of the Applicant, where she claims to have been raped. The victim stated that she ran from the Applicant's home and was not pursued. On July 3, 2006 a minor female victim was allegedly picked up by Evans, in a vehicle that also contained the Applicant. She claims to have been driven to the Applicant's

home and subsequently raped by both parties and stabbed by the Applicant. The minor victim managed to escape to a neighbor's home and the incident was reported to authorities.

Defense counsel testified that he notified the Solicitor, prior to the scheduled trial date, that the Applicant would be entering guilty pleas to all charges. He further testified that he encouraged the Applicant to plead guilty, as he felt that this was the best option. The Applicant tendered a guilty plea in exchange for a recommended sentencing cap of forty (40) years. Former Assistant Solicitor, Judge Amy Land, testified that she was informed by defense counsel that the Applicant would plead guilty on or around the date when she extended the plea offer of a recommended cap.

During the guilty plea proceeding, the Applicant expressed, on more than one occasion, his disagreement with the facts as recited by the Solicitor. Some of the more specific facts referenced by the Solicitor in the plea proceeding were taken from an alleged interview between the Applicant and law enforcement. Plea Tr. at 22, ll. 1-4; 30, ll. 12-21. The Applicant not only disagreed with some of these specifics but he also stated, on the record, that sex with one of the victims was consensual. Plea Tr. at 24, l. 21-25, l. 1; 26, ll. 8-11; 30, ll. 22-25. When the Court cautioned the Applicant that his disavowal of the facts was threatening the acceptance of his guilty pleas, the Applicant asked to speak with his attorney. Plea Tr. at 31, ll. 1-5. After a brief recess, the Applicant proceeded on with his guilty pleas and admitted to a simplified version of the facts. When asked in general terms if he committed certain actions satisfying the necessary elements, the Applicant answered in the affirmative. Plea Tr. at 32, l. 5-p. 34, l. 25. The Applicant's guilty pleas were accepted, and the Court sentenced the Applicant to an aggregate sentence of eighty (80) years, disregarding the sentencing recommendation.

Prior to sentencing, the Court allowed defense counsel to make some statements on the Applicant's behalf. Defense counsel informed the judge of his client's lengthy pre-trial detention in a South Carolina Department of Corrections facility. When the Court questioned defense counsel as to the reason for the Applicant's pre-trial detention in a state facility, as opposed to a local detention center, defense counsel reported that his client needed to be separated from his co-defendant and that the Applicant was the more verbally aggressive one. Plea Tr. at 40. Defense counsel went on to present his theory of the case; that the Applicant was a follower, manipulated by a controlling co-defendant. Plea Tr. at 41-42.

IV. STANDARD OF REVIEW

The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Bell v. State, 321 S.C. 238, 239, 467 S.E.2d 926, 927 (1996) (overruled in part on other grounds); Rule 71.1(e), SCRCP. This Application for Post-Conviction Relief generally raises numerous specific allegations of ineffective assistance of counsel. The Sixth Amendment guarantees every criminal defendant the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984). In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that trial counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Id.

In the context of a guilty plea, the operative question becomes whether a defendant, but for counsel's errors and omissions, would have exercised his right to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Further, the applicant must show that there is a reasonable probability that he

would have insisted on proceeding to trial on the matter instead of pleading guilty. Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006). A guilty plea, along with the resulting waiver of fundamental constitutional rights, is valid only if made voluntarily, knowingly, and intelligently. Boykin v. Alabama, 395 U.S. 238, 242-43 (1969) ("For, as we have said, a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality").

V. DISCUSSION

Ineffectiveness of defense counsel in failing to move to compel discovery and failing to review the discovery with the Applicant prior to the pleas

At the evidentiary hearing, defense counsel testified that he received a letter from the Solicitor around January of 2007 that referenced video or audiotapes, allegedly containing statements of the Applicant. Defense counsel's testimony was that he did not recall receiving the tapes referenced in that letter. He further stated that he did not receive the bulk of discovery in the case until March 3, 2008 or ten (10) days prior to the scheduled trial date.² Defense counsel did not recall making any efforts to try and obtain discovery prior to this date. When asked why he did not make efforts to obtain the discovery sooner; defense counsel stated that the Solicitor's office was only required to produce discovery within that ten (10) day timeframe.

Documents produced by the former Solicitor, Judge Amy Land, corroborate defense counsel's assertions that he received numerous discovery items only days before the pleas were entered. In fact, the document accompanying the solicitor's production of multiple items of discovery is dated March 5, 2008, only five (5) days prior to the scheduled trial date of March

² March 3, 2008 is not ten days prior to the scheduled start of trial. The Applicant's guilty pleas were entered on March 10, 2008. Defense counsel's testimony is unclear as to whether he received the bulk of discovery ten (10) days prior, or even later, as the Solicitor's testimony and Applicant's Exhibit Number 1 would suggest.

11, 2008. Applicant's Ex. No. 1. Former Solicitor Land consulted her file to determine that defense counsel had communicated the Applicant's willingness to enter a plea before March 4th of 2008. Applicant's Ex. No. 2. She recalled formally conveying the plea offer to the Applicant by letter on March 3, 2008.

At the PCR hearing, defense counsel acknowledged that he probably did not review the contents of the discovery with the Applicant and pointed out the Applicant's difficulties in comprehending, by way of an explanation. The Applicant testified that he wanted defense counsel to go through the discovery with him, and testified that he sent multiple letters to defense counsel during the course of his representation, requesting a review of the discovery motion materials. The Applicant testified that he had recently reviewed some of the contents of discovery with PCR counsel. He further testified that he would not have agreed to plead guilty if he had then, the understanding that he now has, of these materials.

In State v. Hazel a conviction based on a guilty plea was reversed by the Supreme Court of South Carolina, where the Appellant demonstrated that she was not affirmatively advised that the charge which she was pleading to carried a mandatory term of life imprisonment. State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). The Appellant merely understood that the charge which she was pleading to "could" result in a life sentence. Id. at 394, 603. The Hazel court sought reference to Boykin v. Alabama, in reaching its holding. Id., See Boykin v. Alabama, 395 U.S. 238 (1969)). As previously discussed, *infra*, the Boykin Court determined that *ignorance and incomprehension* were two factors, among others, that could signal the unconstitutionality of the guilty plea and the attendant waiver of the right to go to trial. Boykin, 395 U.S. at 242-43.

Both the Applicant and his defense counsel testified, at the evidentiary hearing, that the Applicant had a lowered level of comprehension. It was also apparent from the testimony of the

Applicant and defense counsel at the PCR hearing, that the Applicant never had the opportunity to review the State's evidence against him, as a means of making an independent decision to plead guilty. It would appear from the testimony that defense counsel took it upon himself to make that decision and urged the Applicant to plead guilty, immediately after receiving the bulk of the evidence.³ The circumstances surrounding the untimely discovery make it questionable that defense counsel, himself, could even have thoroughly reviewed the State's evidence. The Applicant's comments during the plea proceeding indicated that he disagreed with certain facts and suggest that he did not comprehend that his testimony regarding certain defenses (such as consent) would threaten the acceptance of his pleas. As a result of defense counsel's unwillingness to compel discovery at an earlier date and his failure to review discovery with the Applicant, once it was received, the Applicant was encouraged to enter a guilty plea; to charges and corresponding facts that he did not adequately comprehend. The Applicant has testified that, with his current knowledge of the State's case, he would not have waived his right to a trial.

Ineffectiveness of counsel in encouraging the Applicant to proceed with his guilty pleas and in failing to offer valid argument in support of his motion to withdraw

When the Court expressed its concern over taking the Applicant's guilty pleas, where the Applicant disagreed with the factual basis, the Applicant requested time to speak with his attorney. In the evidentiary hearing, PCR counsel for the Applicant inquired as to the conversation between defense counsel and the Applicant at this point in time. Defense counsel admitted that he had encouraged the Applicant to continue with his pleas during this brief recess.

PCR counsel for the Applicant also examined defense counsel on the argument he offered at the plea proceedings, in support of his motion to withdraw the pleas. Defense counsel

³ As will be discussed further, *infra*, defense counsel claims that he does not recall receiving or reviewing the tapes allegedly containing damaging statements by the Applicant to law enforcement.

acknowledged that the only argument he offered was concerning the Court's refusal to follow the sentencing recommendation. When confronted with the fact that this argument has already been deemed ineffectual by the Supreme Court of South Carolina,⁴ defense counsel claimed that this was the only available argument he could offer.

In 1982, the Supreme Court of South Carolina held that "when the State fulfills its agreement to recommend a specific sentence, the fact that the judge does not accept the recommendation does not affect the validity of the plea. State v. Riddle, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). The Court in Riddle followed up by asserting that the judge was under no duty to accept the sentencing recommendation. Id. While defense counsel's chosen argument was invalid, there was another, valid, argument that would have supported the Applicant's motion to withdraw his guilty pleas.

In 2009, a defense attorney was found deficient for failing to move to withdraw his client's guilty pleas where the client had initially expressed his desire for a trial and decided to plead guilty when informed by his attorney that he would likely be convicted. Rolen v. Smith, 384 S.C. 409, 683 S.E.2d 471 (2009). The client made multiple assurances of his innocence during the plea hearing after the acceptance of his pleas but prior to the judge's sentencing. Id. at 413, 474. Even without determining whether the motion to withdraw was likely to have been granted, the Court found that the defendant was prejudiced by the failure to make a motion that could have provided an issue for appellate review. Id. at 413-14, 474.

A 1941 case from the Supreme Court of South Carolina reveals additional insight into the analysis typically performed when considering a motion to withdraw guilty pleas. The majority of the Court declined to permit the appellant to withdraw his pleas in that case, opining that "the record fails to establish that the appellant was misled, deceived or taken by surprise in entering

⁴ State v. Riddle, 278 S.C. 148; 292 S.E.2d 795 (1982)

his plea of guilty; that there is nothing to show that the appellant was lacking in intelligence, or that he was overreached in any way..." State v. Hardee, 197 S.C. 145, 14 S.E.2d 698, 700 (1941).

Defense counsel was ineffective for encouraging his client to enter guilty pleas when the Applicant began to disagree with the Court's assertions of the facts, claiming certain defenses and disagreeing with the State's presentation of the case. These protestations of innocence should not have been ignored by defense counsel, where the Applicant had not reviewed the discovery and it is unclear if the discovery in this case was even adequately reviewed by defense counsel. Nevertheless, defense counsel encouraged his client to enter guilty pleas, assisted by the Solicitor's agreement to accept generalized assertions of fact. Even if the Applicant had been given the opportunity to review his discovery; his comments at the plea proceeding demonstrated that he still had difficulty comprehending the significance of the proceedings. The Applicant was prejudiced by this ineffectiveness in that he desired a trial and believed he had certain defenses to the crimes charged.

Assuming, *arguendo*, that counsel was not entirely ineffective for encouraging the client to continue with his guilty pleas, defense counsel was still ineffective for failing to offer valid argument in support of his motion to withdraw those pleas. Defense counsel informed the Court that the Applicant wanted to withdraw his pleas on the basis that the Court ignored the sentencing recommendation. Even if the Applicant had pursued a direct appeal, this issue was rendered worthless by the invalidity of its supporting argument. Defense counsel could have offered to the Court, in argument, the fact that his client had repeatedly disagreed with the facts, that his client had an apparent difficulty in comprehension. Using a case such as Boykin, defense counsel should have argued that his client's decision to plead guilty was not voluntary or

knowing. Defense counsel could have admitted his own error in encouraging a client to plead guilty to charges, where he was clearly confused by the proceeding and suffering from some level of incomprehension. The Applicant was, once again, prejudiced in that he was not able to exercise his desired right to a trial, and further, in that he did not have any valid argument preserved for appellate review.

Ineffectiveness of counsel concerning the audiotapes of statements attributed to the Applicant

At the evidentiary hearing, defense counsel testified that he recalled receiving a discovery document referencing audio or videotapes from the Solicitor purportedly containing one or more statements by the Applicant to law enforcement. Defense counsel testified that he did not recall receiving or reviewing those tapes and that the tapes were not currently contained in his file.

Defense counsel further testified that he did not review with the Applicant the manner in which the admission of a purported statement could be challenged at trial. Continuing, he affirmed that he did not inform the Applicant of the predicate finding the jury would have to make that any statement was voluntarily given, nor the fact that an unfavorable ruling by the trial court could be challenged on appeal to a higher court. The Applicant testified that he was aware that damaging statements to law enforcement had been attributed to him. The Applicant testified that with his current understanding of the manner in which these statements could be challenged, he would exercise his right to trial.

An opinion out of this State's Court of Appeals, State v. Miller, explains that the process for determining, at the trial court level, whether a statement is admissible is "bifurcated." State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 449 (2007). Initially, the Court holds a Jackson v. Denno⁵ hearing where the State must demonstrate, by preponderance of the evidence, that the statement was voluntarily made. Even if the judge rules against the defendant and admits the

⁵ 378 U.S. 368 (1964).

statement, it must be subsequently determined by the jury that the voluntariness of the statement has been demonstrated beyond a reasonable doubt. Clearly, even if the judge and jury find the statement to be voluntary and the defendant is convicted, he is still entitled to challenge the admission of that statement on direct appeal.

Ineffectiveness of counsel in offering prejudicial information about the Applicant just prior to the Applicant's sentencing

After the guilty pleas were accepted, in a clear attempt to obtain some leniency from the sentencing judge, defense counsel referenced the fact that his client had been locked up in a state correctional facility since shortly after his arrest. The Court inquired of defense counsel the reason for his client's removal to state correctional custody, and defense counsel stated, "They took him out of Clarendon County on an Order to separate him from the Codefendant. They were both in the jail and he was the one at one point who was more verbally abusive." Plea Tr. at 40, ll. 20-23. On pages 41-42 of the plea proceeding transcript, defense counsel continues by describing his client as a "henchman" of the codefendant; a follower with reduced mental capacity. Plea Tr. at 41-42. A document obtained from defense counsel's file and entered as Applicant's Exhibit Number 3, is an affidavit from the Director of the Clarendon County Detention Center concerning the Applicant's removal. Defense counsel reviewed this document while on the stand, and affirmed that it did not make reference to his client being "verbally abusive". Defense counsel read into the record the majority of this affidavit, which indicated that the Detention Center was concerned about the safety of the Applicant; and that the primarily black inmate population was seen as posing a great threat to his safety where he had been identified as having an affiliation with a racially motivated hate group. The affidavit additionally references the fact that the Applicant, unlike his codefendant, did not have any ties to the local

community. The affidavit does not reference any altercations between the Applicant and his codefendant and does not label the Applicant as being verbally abusive. In fact, it states that the Applicant was being removed pursuant to a "Safekeeper" provision found at section 24-3-80 of the S.C. Code of Law. Defense counsel conceded that he had been supplied the prejudicial information⁶ by a guard at a correctional facility, and testified that he repeated it to the judge because he believed it to be true.

If defense counsel's motivation in responding to the Court's question had been candor, he would have replied that the Defendant was removed pursuant to a "Safekeeper" provision of the South Carolina Law, and cited any of the information contained in the afore-mentioned affidavit or any other documentation filed pursuant to the Applicant's removal. Defense counsel could have summarized the contents of the affidavit by replying that it became difficult for the county detention center to protect the Applicant, and that his presence there was seen as a greater "threat/risk" for the afore-mentioned reasons. Defense counsel's choice to repeat unverified and damaging information about his client, allegedly from a correctional officer, was ineffective at best. The information damaged the Applicant's plea for leniency, prior to his sentencing, and conflicted with defense counsel's own theory of the case, offered immediately thereafter. Defense counsel had accurate and far less damaging information that he could have offered in response to the Court's question. Even assuming that defense counsel believed that the unverified information from a correctional officer, rather than the affidavit signed by the detention director, was the real reason for the Applicant's removal, he should have avoided the topic altogether. Counsel's error in handling this topic constituted ineffectiveness and the Applicant was prejudiced immediately prior to his sentencing, where the judge, significantly, ignored the sentencing recommendation.

⁶ The information offered was that the Applicant was the more verbally abusive of the two codefendants.

unverified information from a correctional officer, rather than the affidavit signed by the detention director, was the real reason for the Applicant's removal, he should have avoided the topic altogether. Counsel's error in handling this topic constituted ineffectiveness and the Applicant was prejudiced immediately prior to his sentencing, where the judge, significantly, ignored the sentencing recommendation.

**VI.
CONCLUSION**

For all of the above reasons, the Applicant respectfully requests that this Court vacate his convictions and sentences and remand his case to the Clarendon County Court of General Sessions for a new trial. The Applicant expressly does not waive any issues raised at his Post-Conviction Relief hearing not argued herein. The Applicant would rely on all arguments and evidence previously submitted for any issue not addressed herein.

Respectfully submitted,


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ATTORNEY FOR THE APPLICANT

This 2nd day of April, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Jeremy Shay Sweat, 326997,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2010-CP-14-0076

CERTIFICATE OF SERVICE

I, Christina Parnall, hereby certify that on this date the Memorandum in Support of the PCR Application was served on opposing counsel, Assistant Attorney General Mary S. Williams.

April 2, 2012


 Christina Dixon Parnall

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Jeremy Sweat, #326997,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010-CP-14-0076

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 10/25/12Brenda B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 10, 2010. An evidentiary hearing into the matter was convened on March 22, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Christina Dixon Parnall, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were Harry Devoe, Esquire ("Counsel") and former assistant solicitor Amy Land, Esquire ("Land"). This Court had before it the records of the Clarendon County Clerk of Court, the guilty plea transcript, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and exhibits introduced at hearing.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the October 2007 term of the Clarendon County Grand Jury for (1) Kidnapping and (2) Criminal Sexual Conduct (First Degree) (2007-GS-14-0363). The Applicant was also indicted for (1) Kidnapping, (2) Criminal Sexual Conduct, and (3) Assault and Battery with Intent to Kill ("ABWIK") (2007-GS-14-0364). He was represented by Harry Devoe, Esquire. On March 10, 2008, the Applicant entered a guilty plea before the Honorable George C. James, Jr. Applicant was sentenced to concurrent terms of thirty (30) years each for Criminal Sexual Conduct (First Degree) and Kidnapping (2007-GS-14-0363). He was also sentenced to thirty (30) years for Kidnapping, to twenty (20) years for ABWIK, and to thirty (30) years for Criminal Sexual Conduct (2007-GS-14-0364). The sentences for 2007-GS-14-0364 were to be served concurrently with those for 2007-GS-14-0363 but consecutively to each other.

A notice of appeal was filed. The appeal was dismissed on June 19, 2009, for failure to establish any preserved issues for review.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel – conflict of interest."
2. "Involuntary guilty plea – Involuntary confession."
3. "Disparity in sentencing of co-defendant 8th Amendment violation."

In an amended application, Applicant set forth the following grounds for relief:

The amended Application specifically alleges that:

1. Defense Counsel was ineffective for failing to move to compel discovery when it

- was not timely produced and for failing to sufficiently review the discovery with the Applicant prior to the entry of his guilty pleas;
2. Defense Counsel was ineffective for allowing the Court to go forward on the Applicant's guilty pleas and failing to present adequate arguments and authority in support of his motion to withdraw those pleas, where the Applicant expressed to the Court and Defense Counsel, his confusion over the charges being pled to;
 3. Defense Counsel was ineffective for failing to obtain and review the audiotapes of the statements to law enforcement, attributed to the Applicant, that were damaging to the Applicant's case;
 4. Defense Counsel was ineffective for failing to inform the Applicant of the procedures available to him at trial by which he could challenge the admissibility of his statements to law enforcement, that fact that even if the statements were admitted the jury would have to make a predicate finding that the statements were voluntarily made and that any unfavorable ruling of the lower court concerning those statements could be reviewed by a higher court on appeal; and
 5. Defense Counsel was ineffective for offering information to the court, prior to the Applicant's sentencing, that the Applicant had been removed from the county jail for verbally abusive behavior.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Discovery / Audio Tapes

Applicant asserts that Counsel erred in failing to compel discovery and in failing to review

discovery with him. Applicant particularly notes that Counsel did not provide a video tape of Applicant's statement to law enforcement.

Former assistant solicitor Amy Land testified that Applicant's statement was produced on January 31, 2008, noting a letter documenting that a "copy of videos" was provided on that date. Land testified that the State provided hard copies of several items pursuant to Rule 5, SCCrimP, through letters dated March 3, 2008, and March 5, 2008 (Applicant's Exhibit 1 & State's Exhibit 1). Land also noted that, while she could not recall the precise date, she had reviewed physical evidence with Counsel prior to the March letters. Land further stated that the solicitor's office had an open file policy.

Counsel recalled contact from another individual in the solicitor's office in January 2007. Videos were mentioned in that communication, though Counsel could not recall whether he watched the videos. Counsel did have a transcript of the videotaped interview with Applicant. Counsel affirmed that he reviewed the statement with Applicant and that Applicant did not really express any concerns. Counsel further recalled receiving some items from the solicitor's office in mid-January 2007. Counsel testified that while he received the bulk of evidence in early March 2008, he was sufficiently prepared for a trial and the State had complied with their obligation to provide items to him within ten days of trial.¹

I find Counsel's testimony that he discussed the statement in some form with Applicant to be credible. Even if Counsel's performance had been deficient, Applicant has failed to show prejudice such that there is a reasonable probability he would have instead proceeded to trial. The transcribed statement was not exculpatory; in it, Applicant incriminated himself in detail. Therefore, it is not

¹ While Applicant entered a plea on March 10, 2008, there is no evidence of when the case was scheduled for trial.

likely that review of the statement would have prompted Applicant to proceed with trial. Applicant has made no other showing of items of evidence withheld from him which were exculpatory. The solicitor's file reflects disclosure of numerous documents, and I find that this documentation, with the solicitor's testimony, carries great weight. Based on all the foregoing, I find no violation of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963). Further, with regard to the videotaped statement, the State made the video available both as a video and in transcribed format and made the evidence available to defense counsel. Further, there is no evidence that the videotape was in any way exculpatory, and the transcription of the statement it contained reflects that the statement was inculpatory.

Admissibility of Statement

To the extent that Applicant asserts that Counsel should have advised Applicant regarding the admissibility of his statement, I find that Applicant has failed to carry his burden of demonstrating ineffective assistance. Indeed, had the case proceeded to trial, a hearing on the voluntariness of the statement pursuant to Jackson v. Denno, 378 U.S. 368 (1964) could have been held. Counsel stated that they did not discuss a Jackson v. Denno hearing because Applicant did not want to go to trial so they did not get to that point. However, Applicant has failed to show that his statement would have been suppressed following such a hearing. Land testified that Miranda warnings had been provided. No additional evidence which could have been offered at a pre-trial motion which would show the statement was inadmissible was presented to this court. Therefore, Applicant has failed to meet his burden in this regard.

Motion to Withdraw Plea

Applicant further asserts that Counsel was ineffective in moving to withdraw the plea based on the Court's pronouncement of a sentence well in excess of the recommendation. Counsel felt the sentence was "outrageous" and stated that he tried a motion to reconsider. As noted by Applicant, the fact that trial judge does not accept the State's recommendation does not affect validity of guilty plea. State v. Riddle, 278 S.C. 148, 292 S.E.2d 795 (1982). However, Counsel subsequently filed a timely, though unsuccessful, motion for reconsideration.² Applicant states that the motion to withdraw his plea should have been made on the basis of his alleged confusion which led to a break in the proceedings and his client's disagreement with some of the facts offered by the solicitor in order to argue that the plea was involuntary. Counsel did not recall exactly what was discussed in the break in the proceedings. Counsel noted that Applicant did ultimately admit guilt and had admitted using a broomstick to penetrate one victim in their private conversations. Applicant testified that he had decided to plead guilty when Counsel informed him before the plea that he faced life imprisonment if convicted, and Applicant stated that Counsel told him this again during the break in the proceedings. Applicant did in fact face life imprisonment if convicted, so this advice did not affect the voluntariness of his plea. While Counsel felt that Applicant was not the strongest reader, he felt that Applicant understood what was going on and Applicant's evaluation revealed no mental defect affecting his competence. For all these reasons, Counsel saw no basis for withdrawal based on voluntariness of the plea. I find Counsel's conduct reasonable. I further find that Applicant has failed to demonstrate that his plea was involuntarily made.

Information Regarding Applicant Being Moved from Local Detention Center

² Among the bases for reconsideration was Applicant's cooperation with law enforcement by admitting guilt and a willingness to testify against his co-defendant.

Applicant further asserts that Counsel was ineffective in failing to provide the Court with information as to why he was removed from the local detention center. Applicant introduced an affidavit of Shelton Hughes, an employee of the Detention Center in Clarendon County. Counsel stated that he raised the issue of Applicant's pre-trial detention at Lee County to garner sympathy. Applicant points to an isolated portion of Hughes' affidavit regarding the difficulty of keeping him safe as beneficial to him. However, when read as a whole, the affidavit is largely a negative portrayal, painting Applicant as "the greater threat/risk of the two defendants," and "prone to commit extreme acts of violence, making him a true threat to staff and other prisoners as well." Counsel stated that he had been told by a corrections officer that Applicant had been verbally abusive. Based on the affidavit in its totality and Counsel's inquiry, it appears that Applicant would not have gained any benefit from additional information presented on the subject. Applicant has further failed to show that failure to present the additional affected his decision such that but for the alleged shortcoming he would not have pled guilty. For all these reasons, I find Applicant has failed to meet his burden in this regard.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

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

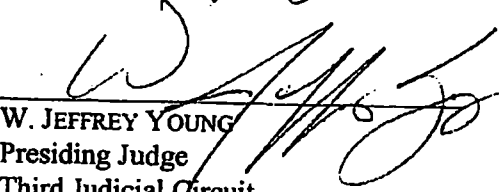
prejudice.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of July, 2012


W. JEFFREY YOUNG
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS

JEREMY SWEAT, 326997,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Order of Dismissal** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

Christina Dixon Parnall, Esquire
Ninth Circuit Public Defender
Charleston County Public Defender
101 Meeting Street, 5th Floor
Charleston, SC 29401

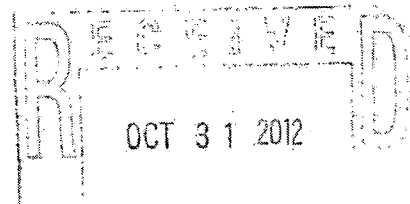
Tara Dawn Shurling, Esquire
Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive, Ste. A
Columbia, SC 29204

This 30th day of October, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

SWORN to before me this 30th day of October, 2012.

Judith A. Carey
Notary Public for South Carolina.
My Commission Expires: May 11, 2014



STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

JEREMY SWEAT, #326997

Applicant.

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

RULE 59(e) SCRPC, MOTION TO
ALTER OR AMEND

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRPC, to alter or amend its Order of Dismissal filed October 25, 2012. The Application for Post-Conviction Relief in this matter was filed on February 10, 2010. The State filed its Return on August 23, 2010. An evidentiary hearing was convened on March 22, 2012. The Applicant was present and represented by Christina Dixon Parnall, Esquire and the State was represented by Mary S. Williams, of the South Carolina Attorney General's Office. An Order of Dismissal was filed in this case on October 25, 2012 and was received by counsel for the Applicant on October 31, 2012.

The Applicant now respectfully notes that this Order fails to address, in totality, the allegations of his Amended Application for Post-Conviction Relief. The Order recites the five (5) specific grounds for relief (page 2, paragraph 4-page 3, paragraph 1), but omits the Applicant's general allegation that he received ineffective assistance of counsel prior to, during and after the entry of his guilty pleas in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution. He further generally alleged that his pleas of guilty were not voluntary

and intelligently entered, and, therefore, that the judgments and sentences against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel. The Applicant would request that this content be included in the Order to fully preserve his issues for appellate review.

Page 5, paragraph 1 of this Order states that the "Applicant particularly notes that Counsel did not provide a videotape of Applicant's statement to law enforcement." The Applicant would assert that this statement is taking his testimony regarding discovery out of context, in that his testimony was to the effect that he had not been able to review crucial discovery with defense counsel; not that defense counsel merely failed to provide him with a copy of a videotape. The Applicant would further address the fact that this section of the Order appears to conclude that the State met its obligations in making discovery available to defense counsel in advance of a scheduled trial. Assuming that this is the case, the fact remains that defense counsel did not recall receiving the tapes of the statement attributed to the Applicant, and otherwise, did not independently recall reviewing or sending crucial discovery to the Applicant.¹ The Applicant's testimony was that he did not have an understanding of his own discovery, and defense counsel did not clearly testify as to what discovery was reviewed with the Applicant and when.² It was defense counsel's own testimony that pointed a finger at the Solicitor's Office for his failure to timely review discovery with the Applicant. The Court's apparent conclusion that discovery was made available to defense counsel does not weaken, but strengthens, the Applicant's argument concerning defense counsel's deficiency.

¹ The Applicant would note that defense counsel recalled that he had reviewed with the Applicant, a transcript supplied by the State as being representative of a statement by the Applicant to law enforcement. Defense counsel did not provide the date when this might have occurred, and the Applicant would contend that it was necessary that defense counsel review the tapes of any actual statement, rather than relying upon a transcription provided by the State. This is especially so, when questions had been raised regarding the Applicant's comprehension.

² Except for the review of an unofficial transcript, previously mentioned in Footnote 1. Defense counsel did not testify as to when this was provided to or reviewed with the Applicant.

While resting upon the legal arguments previously set forth in the Applicant's Memorandum in Support of the PCR Action, the Applicant refers once more to the opinion of the Supreme Court of the United States in Boykin v. Alabama, 395 U.S. 238, 242-43 (1969). ("For, as we have said, a plea of guilty is more than an admission of conduct; it is a conviction. Ignorance, incomprehension, coercion, terror, inducements, subtle or blatant threats might be a perfect cover-up of unconstitutionality"). The Applicant asserts that his own testimony as well as the testimony of defense counsel establishes that defense counsel was deficient in failing to review crucial discovery with him prior to any plea or trial.

Page 6, paragraph 2 of this Order states that "Land testified that Miranda warnings had been provided. No additional evidence which could have been offered at a pre-trial motion which would show the statement was inadmissible was presented to this court." The Order concludes that, for this reason, the Applicant was not prejudiced by the failure to discuss the ability to challenge the admissibility of statements in a Jackson v. Denno³ hearing. The Applicant would respectfully submit that both defense counsel and the Applicant testified that the Applicant had challenges in comprehension which certainly would have been relevant as to the voluntariness of statements given, even if Miranda were properly administered. Defense counsel had a duty to advise the Applicant as to the means and ability to challenge prejudicial statements attributed to him.⁴

The beginning of page 7, paragraph 1 of this Order states that the Applicant's allegation concerning defense counsel's deficiency regarding the guilty plea and subsequent motion to withdraw was based on the fact that the sentence ultimately exceeded the recommended cap. The Applicant respectfully notes that this was not the basis for the Applicant's allegation. The

³ 378 U.S. 368 (1964).

⁴ It can be concluded from the testimony given at the evidentiary hearing and the guilty plea transcript, that this alleged statement would have been very damaging to the Applicant's case.

specific allegation contained in the Amended Application was that counsel should not have continued with the plea and failed to fully support his motion to withdraw where the Applicant clearly expressed confusion regarding the proceedings. Applicant's PCR counsel questioned, and defense counsel acknowledged, that the court's decision to exceed the recommended sentencing cap was not a sufficient ground for withdrawing the plea.

Assuming *arguendo*, that defense counsel did believe that Applicant was competent to stand trial (page 7, paragraph 1 of this Order); there were sufficient remarks by the Applicant during the guilty plea to inform counsel and the Court that the Applicant was confused and giving contradictory information regarding culpability. This fact combined with the Applicant's deficits⁵ and the gravity of the charges he was facing, should have provoked counsel to step down before tendering the plea and/or enabled him to more fully support his arguments in support of withdrawing the plea already tendered.

This same section of the Order notes that the Applicant testified that he "had decided to plead guilty when Counsel informed him before the plea that he faced life imprisonment if convicted..." The Applicant would assert that his testimony and his understanding of defense counsel's advice were that he **would** receive life imprisonment if convicted at a trial.

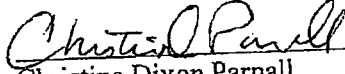
Page 8, paragraph 1 of this Order finds that the Applicant asserted that Counsel "was ineffective in **failing to provide the Court with information** as to why he was removed from the local detention center." The Applicant would refer to his Amended Application for relief as well as the allegations presented at the evidentiary hearing to respectfully correct this statement. The Applicant asserted that defense counsel was ineffective in **offering information** to the court regarding his removal that was not only highly prejudicial, but distinct from the credible

⁵ The Applicant and his mother testified as to the Applicant's lowered comprehension level. Defense counsel's testimony echoed this fact.

information that defense counsel had received on this subject. Plea Tr. at 40, ll. 20-23. Defense counsel's statement that the Applicant was being separated from his codefendant because he was the one that was more verbally abusive was clearly at odds with his own mitigation, that the Applicant was the codefendant's "henchman." Furthermore, it was not a reason enumerated in the Affidavit that supported the Applicant's removal. Applicant's Exhibit Number 3. This Affidavit, when taken as a whole, points to the reason for the Applicant's removal as the detention center's inability to safely detain him. This viewpoint is also supported by the referenced "Safekeeper" provision found at section 24-3-80 of the S.C. Code of Law. The information supplied by defense counsel concerning the Applicant did not come from the relevant Affidavit supporting his removal. Defense counsel testified that the basis for his belief that the Applicant had been more verbally abusive was something mentioned to him by a correctional officer.

For all the reasons set forth herein, the Applicant asserts that he has met his burden of proof with regard to his claim that he received ineffective assistance of counsel and that he was prejudiced by the deficiency of counsel. The Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRCP, grant the requested relief and remand the Applicant's case to the Clarendon County Court of General Sessions for a new trial. In the alternative, the Applicant would respectfully request that the Court issue an Amended Order of Dismissal making finding of fact and rulings of law concerning the issues addressed at his PCR hearing which were not addressed in this Court's Order of Dismissal. The Applicant would assert that his request for an Amended Order is necessary in order to fully preserve all of his arguments for appellate review.

Respectfully submitted,



Christina Dixon Parnall
Attorney and Counselor at Law

3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
cdixonparnell@gmail.com

Attorney for the Applicant

This 5 day of November, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

JEREMY SWEAT, #326997

vs.

STATE OF SOUTH CAROLINA

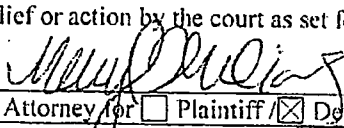
Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CASE NO.: 2010-CP-14-0076

MOTION AND ORDER INFORMATION
FORM AND COVERSHEETBEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2014 NOV - 6 PM 3:54

Plaintiff's Attorney: Tara Dawn Shurling, Bar No. _____ Address: 3614 Landmark Drive, Suite A, Columbia, SC 29204 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Mary S. Williams, Bar No. _____ Address: PO Box 11549 Columbia, SC 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant October 15, 2014 Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE 2156 Date: October 16, 2014
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

CERTIFIED COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 11/6/14

Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

Jeremy Sweat, #326997,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2010-CP-14-0076

ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMENDBEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2014 NOV -6 PM 3:51

This post-conviction relief matter was filed February 10, 2010. A hearing was held on March 22, 2012. The matter was denied and dismissed with prejudice in a written order dated July 5, 2012, and filed July 12, 2012. Applicant filed a "Rule 59(e), SCRCP, Motion to Alter or Amend" dated November 5, 2012.¹

Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.² Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court advises that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South

¹ Counsel for the Applicant states that she did not receive a copy of the filed order of dismissal until October 31, 2012.

² The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

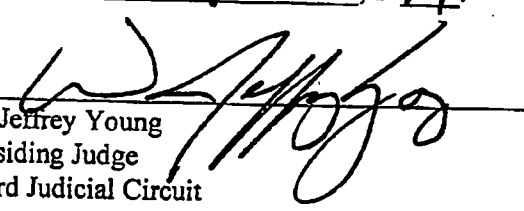
CERTIFIED COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 11/6/14

Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND IT IS SO ORDERED this 16 day of Oct, 2014.


W. Jeffrey Young
Presiding Judge
Third Judicial Circuit

Sumter, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS

JEREMY SWEAT, #326997

Applicant,

v.

STATE OF SOUTH CAROLINA,

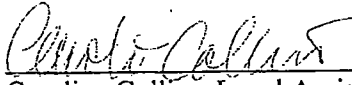
Respondent.

CERTIFICATE OF SERVICE

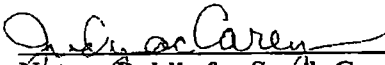
The undersigned hereby certifies that a true copy of the **Order Denying Applicant's Motion to Alter and Amend** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

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

This 19th day of November, 2014.


Caroline Collins, Legal Assistant
For Respondent

SWORN to before me this 19th day of November, 2014.


Notary Public for South Carolina.
My Commission Expires: 5/14/2024

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

INDICTMENT FOR
KIDNAPPING
CRIMINAL SEXUAL CONDUCT 1ST DEGREE

At a Court of General Sessions, convened on October 4, 2007, the Grand Jurors of CLARENDON County present upon their oath:

COUNT ONE - KIDNAPPING

That DUSTIN EVANS and JEREMY SHAY SWEAT did in Clarendon County on or about June 20, 2006, violate Section 16-3-910 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully seize, confine, abduct, and carry away, without the authority of law, and by the use of force Jacqueline Rhodes.

COUNT TWO - CRIMINAL SEXUAL CONDUCT 1ST DEGREE

That DUSTIN EVANS and JEREMY SHAY SWEAT did in Clarendon County on or about June 20, 2006, violate Section 16-3-652 of the Code of Laws of South Carolina (1976), as amended, in that the said Dustin Evans and Jeremy Shay Sweat did engage in, or attempt to engage in, a sexual battery in and upon Jacqueline Rhodes by using aggravated force and aggravated coercion upon her and assaulting her with the intent to engage sexual battery, and/or while the said Jacqueline Rhodes was the victim of kidnapping, with the said Dustin Evans and Jeremy Shay Sweat.

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

C. Kelly Jacobson

SOLICITOR

WITNESSES

9
97. Burgess - CCSO

ARREST WARRANT NUMBER

J121891 J121890

J121889

J121892

ACTION OF GRAND JURY

True Bill

Glover K. Beatson

person of Grand Jury
Date: 10-14-07

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-14-0363

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE
vs.

DUSTIN EVANS

JEREMY SHAY SWEAT

Indictment for

KIDNAPPING
CRIMINAL SEXUAL CONDUCT 1ST
DEGREE

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

INDICTMENT FOR
KIDNAPPING
CRIMINAL SEXUAL CONDUCT
ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on October 4, 2007, the Grand Jurors
of CLARENDON County present upon their oath:

COUNT ONE - KIDNAPPING

That DUSTIN EVANS and JEREMY SHAY SWEAT did in Clarendon County on or about July 3, 2006, violate Section 16-3-910 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully seize, confine, abduct, and carry away, without the authority of law, and by the use of force Jamila Rahim.

COUNT TWO - CRIMINAL SEXUAL CONDUCT

That DUSTIN EVANS and JEREMY SHAY SWEAT did in Clarendon County on or about July 3, 2006, violate Section 16-3-652 of the Code of Laws of South Carolina (1976), as amended, in that the said Dustin Evans and Jeremy Shay Sweat did engage in, or attempt to engage in, a sexual battery in and upon Jamila Rahim by using aggravated force and aggravated coercion upon her and assaulting her with the intent to engage sexual battery and/or while the said Jamila Rahim was the victim of a kidnapping, with the said Dustin Evans and Jeremy Shay Sweat.

COUNT THREE - ASSAULT AND BATTERY WITH INTENT TO KILL

That DUSTIN EVANS and JEREMY SHAY SWEAT did in Clarendon County on or about July 3, 2006, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that they with malice aforethought, committed an assault and battery upon one Jamila Rahim by stabbing her about the body numerous times, with intent to kill the said Jamila Rahim.

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

C. Kelly Jacobson

SOLICITOR

WITNESSES

Burgess - CCSO

ARREST WARRANT NUMBER

J121849 J121850

J121845 J121848

J121851 J121850

ACTION OF GRAND JURY

True Bill

Hoover K. Beston Jr.

Person of Grand Jury

Date: 10-4-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-14-0364

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

DUSTIN EVANS

JEREMY SHAY SWEAT

Indictment for

KIDNAPPING
CRIMINAL SEXUAL CONDUCT
ASSAULT AND BATTERY WITH INTENT
TO KILL

C. KELLY JACKSON, SOLICITOR

202 STATE OF SOUTH CAROLINA

COUNTY OF

STATE

VS.

JEREMY SHAY SWEAT

AKA:

Race: White

Sex: Male

Age: 26

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-14-0363

AW#: J121890

Date of Offense: June 20, 2006

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

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

TO: kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 9, 5

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

[Signature]
Solicitor

JEREMY SWEAT
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Ct. 2 and 07-GS-14-364

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§56-5-2995 (DUI Assessment)	\$12 \$
§35.13 (Public Def/Prob)	\$500 \$
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$
§50-21-114(BUI Breath Test Fee)	\$50 \$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$ <u>3.95</u>
TOTAL	\$ <u>128.95</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF

STATE

VS.

JEREMY SHAY SWEAT

AKA:

Race: White

Sex: Male

Age: 26

DOB:

Address:

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-14-364

AW#: J121892

Date of Offense: June 20, 2006

S.C. Code §: 16-03-0652

CDR Code #: 0160

CERTIFIED TRUE COPY
OF THE
SENTENCE ENTERED
IN THIS OFFICE
2/10/10
B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

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

TO: Criminal Sexual Conduct (1st degree)

in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code# 011610

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ \$17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Chimney Lord
Prosecutor

JEREMY SWEAT
Defendant

B. Roberts
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ct. 1 and 07-GS-14-364

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

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

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

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

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

3% to County (if paid in installments)

TOTAL

	\$
\$100	\$100.00
\$100	\$100.00
\$12	\$12.00
\$500	\$500.00
\$25	\$25.00
\$100	\$100.00
\$50	\$50.00
\$40/ea	\$40.00
	\$375.00
	\$1087.50

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2/10/08 413

Court Reporter:

SCCA/217 (9/2006)

204

(up to 30)

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE VS.

JEREMY SHAY SWEAT

AKA:

Race: White

Sex: Male

Age: 26

DOB:

Address:

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-14-0364

AW#: J121850

Date of Offense: July 03, 2006

S.C. Code §: 16-03-0910

CDR Code #: 0040-0095

SENTENCE SHEET

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

TO:

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code #

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

ATTES:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus
costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South
Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: cts. 2+3☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

SPECIAL CONDITIONS:

PTUP

_____ days/hours Public Service Employment.

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

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

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

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

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

3% to County (if paid in installments)

TOTAL

\$	\$
\$	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$ 25.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$ 3.75
\$	\$ 125.75

B. Roberts

Clerk of Court/ Deputy Clerk

Court Reporter:

M. Winfield

PRESIDING JUDGE

Judge Code:

Sentence Date:

3/10/08 413

SCCA/217 (9/2006)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CLARENDON

INDICTMENT/CASE#: 2007-GS-14-0364

STATE VS.

JEREMY SHAY SWEAT

AW#: J121848

AKA:

Date of Offense: July 03, 2006

Race: White

Sex: Male

Age: 21

S.C. Code §: 16-03-0652

DOB: [REDACTED]

CDR Code #: 0160

Address: [REDACTED]

DL#

SID#

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 2/10/10
Bentley B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

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

TO: Criminal Sexual Conduct - (1st Degree)

In violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

JEREMY SWEAT
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: CTS 1+3

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75
TOTAL		\$ 128.75

PTUP

days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Bentley B. Roberts
Clerk of Court/ Deputy Clerk

Court Reporter: Melana Winfield

SCCA/217 (9/2006)

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
3/10/08 4 13

206

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE

VS.

JEREMY SHAY SWEAT

AKA:

Race: White

Sex: Male

Age: 26

DOB:

Address:

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-14-0364

AW#: J121852

Date of Offense: July 03, 2006

S.C. Code §: 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Assault and Battery with Intent to Killin violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 01 01 114☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Amey Land
SolicitorJEREMY SWEAT
DefendantHenry R. Smith
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: cts 1+2☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

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

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

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

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

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$3.03
\$	\$128.73

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2/10/14
3/10/06

Clerk of Court/ Deputy Clerk

Court Reporter: