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JUL 13 2015

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from York County

J. Ernest Kinard, Jr., Circuit Court Judge

LENTAVIS BAXTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002111

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina.,) In the General Sessions Court
) of York
)
) Case No.: 2011-GS-46-0438
) 2011-GS-46-0440
 County of York.)

State of South Carolina.,)
)
 Plaintiff.,)
)
 -v-) Transcript of Record
)
 Lentavis Baxter.,)
)
Defendant.)

December 10, 2013
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge.

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

Ms. Erin Joyner
 Assistant Solicitor
 Sixteenth Judicial Circuit
 Moss Justice Center
 York, South Carolina
 803-980-3010
erin.joyner@yorkcountygov.com
 For the Plaintiff

COPY

Mr Philip W. Jamieson, PC
 Attorney at Law
 242 Oakland Avenue
 Rock Hill, South Carolina 29730-4022
 803-366-0405
Pjamieson@jamiesonlawfirm.com
 For the Defendant

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 To the Honorable John C. Hayes, III

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

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I-N-D-E-X - CON'T

E-X-H-I-B-I-T-S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EVD.</u> |
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No Exhibits were received into the record.

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1 (COURT IN SESSION IN THE MATTER OF STATE V. LENTAVIS
2 BAXTER ON MONDAY, DECEMBER 12, 2013, AT 02:43 P.M.)

3 THE COURT: Thank you. Take your seats.

4 (DEFENDANT, LENTAVIS BAXTER, BLACK MALE, ENTERING
5 COURTROOM.)

6 THE COURT: What is he pleading to?

7 SOLICITOR JOYNER: He is pleading to one court assault
8 and battery in the first degree and one count of criminal
9 sexual conduct in the second degree.

10 May it please the Court, Your Honor.

11 THE COURT: Yes.

12 SOLICITOR JOYNER: Before the court is Lentavis
13 Baxter, Your Honor. He is represented by Phillip Jamieson.
14 Mr. Jamieson was appointed in this case. He is entering
15 guilty pleas today of two indictments. The first, 2011-GS-
16 46-0-4-3-8 for assault and battery in the first degree.

17 Your Honor, I would note that that indictment contains
18 an error in the spelling of Mr. Baxter's name and we would
19 ask that as part of this plea to amend the spelling to
20 reflect the correct spelling of his first name to be
21 L-e-n-t-a-v-i-s.

22 The second indictment 2011-GS-46-0-4-4-0 originally
23 charged with criminal sexual conduct in the first degree
24 that is within count one, we are reducing this to a
25 criminal sexual conduct in the second degree. We are

1 dismissing count two, possession of a knife ---

2 (LOUD OUTBURST FROM THE COURTROOM.)

3 SOLICITOR JOYNER: --- during the commission of a
4 violent crime. We are dismissing per this plea the
5 remainder of these

6 (VICTIM, MITZI BAKER, VERY HURRIEDLY LEAVING COURTROOM
7 YELLING.)

8 MS. BAKER: Stupid ass, mother fuck'n Solicitor. I
9 never....

10 (YELLING OUTSIDE COURTROOM.)

11 SOLICITOR JOYNER: I apologize, Your Honor.

12 THE COURT: Well let's wait a minute. Let me talk to
13 counsel in chambers.

14 (IN CHAMBERS CONFERENCE OFF THE RECORD AT 02:47 P.M..)

15 (COURT BACK IN SESSION AT 02:47 P.M..)

16 THE COURT: We'll go back on the record on Mr. Baxter.

17 SOLICITOR ANTHONY: Thank you, Your Honor.

18 We're before the court, we're asking - -

19 THE COURT: Well wait.

20 THE BAILIFF: He's coming.

21 THE COURT: How long has he been in jail?

22 SOLICITOR JOYNER: Since September 22nd of 2010.

23 (DEFENDANT LENTAVIS BAXTER, BLACK MALE, REENTERING
24 COURTROOM.)

25 THE COURT: All right.

1 SOLICITOR JOYNER: Thank you, Your Honor.

2 As to State versus Lentavis Baxter he's entering
3 guilty pleas today to two indictments, Your Honor. Those
4 are Indictments 2011-GS-46-438 and 4-4-0- count one to the
5 lesser degree of CSC second degree.

6 Your Honor, just as to the record as to 438 assault
7 and batter in the first degree that is a direct indictment.
8 Mr Baxter had been previously arraigned, formerly arraigned
9 on that charge. We had marked the sentencing sheets as
10 recommendations, Your Honor. We wish to change that to
11 negotiation and we are asking the Court to accept an
12 negotiation of twelve years in this case. Mr. Baxter is
13 entitled to credit for time served since September 22nd of
14 2010.

15 THE COURT: All right. How old are you, Mr. Baxter?

16 MR. BAXTER: Twenty-three.

17 THE COURT: You represented by Mr. Jamieson?

18 MR. BAXTER: Yes, sir.

19 THE COURT: You satisfied with his services?

20 MR. BAXTER: Yes, sir.

21 THE COURT: You are charged with assault and battery
22 in the second degree - or first degree. And the allegation
23 is that on or about September 22nd, 2010 you committed an
24 assault and battery on Mitzi Baker during a commission of a
25 robbery and burglary kidnapping. But you are or attempted

1 to injure her with the present ability to do so during a
2 robbery burglary kidnapping or theft and that the means
3 were likely to produce death or bodily injury. You're
4 pleading to the lesser included assault and battery - I'm
5 sorry, I keep saying that. You're pleading guilty to
6 assault and battery in the first degree. This carries up
7 to ten years in jail and it is a felony.

8 Do you understand that charge and the potential
9 penalty?

10 MR. BAXTER: Yes, sir.

11 THE COURT: How do you plead to that charge?

12 MR. BAXTER: Guilty.

13 THE COURT: You're also charged with criminal sexual
14 conduct in the first degree and your pleading to criminal
15 sexual conduct in the second degree. It carries up to
16 twenty years in jail and it requires that you be placed on
17 the sex offender registry. It is a most serious offense, a
18 most serious offense is the type of offense that if in your
19 life time you receive three serious or a combination of
20 three serious and most serious offenses you'd be subject to
21 being incarcerated for life without parole. That is a true
22 life sentence. It is a violent offense; that means that
23 while you are incarcerated there will be certain programs
24 that are available to non-violent offenders which would not
25 be available to you.

1 It is also a no parole offense which means you would
2 have to serve at least eighty-five percent of your sentence
3 before you would be eligible for any early release. And if
4 you did receive early release it would be into a community
5 supervision program with certain conditions you would have
6 to follow or you could be reincarcerated and ultimately
7 serve your full sentence. Do you understand that?

8 MR. BAXTER: Yes, sir.

9 THE COURT: It's alleged the criminal sexual conduct
10 occurred on or about September 22nd when you engaged in
11 sexual battery of Jennie McCorkle during forcible
12 confinement, kidnapping, burglary or a similar act. Do you
13 understand that charge and the potential penalty?

14 MR. BAXTER: Yes, sir.

15 THE COURT: How do you plead to that?

16 MR. BAXTER: Guilty.

17 THE COURT: Other than the negotiation that you
18 receive a twelve year sentence has anyone made any other
19 promises or threats to cause you today to enter your plea
20 of guilty?

21 MR. BAXTER: No, sir.

22 THE COURT: Are you today under the influence of
23 anything that would cause you to be intoxicated?

24 MR. BAXTER: No, sir.

25 THE COURT: Are you entering your plea today to this

1 charge freely and voluntarily?

2 MR. BAXTER: Yes, sir.

3 THE COURT: Mr. Baxter, you have a right to a trial by
4 a jury on this charge and you are presumed innocent of the
5 charge until such time as the State is able to prove to a
6 jury your guilt beyond a reasonable doubt. As to the
7 charge you have the right to remain silent, the right to
8 confront the witnesses' against you, and you have the right
9 to have your witnesses' made to come to court to testify
10 for you. DO you understand you have these rights?

11 MR. BAXTER: Yes, sir.

12 THE COURT: Do you have any questions about that?

13 MR. BAXTER: No, sir.

14 THE COURT: I advise you that by entering a plea of
15 guilt you are giving up these rights. You're also giving
16 up any defense to the charges. Do you understand that?

17 MR. BAXTER: Yes, sir.

18 THE COURT: Knowing all those things I ask again, how
19 do you plead to assault and battery in the first degree?

20 MR. BAXTER: Guilty.

21 THE COURT: And criminal sexual conduct in the second
22 degree?

23 MR. BAXTER: Guilty.

24 THE COURT: Tell me the facts.

25 SOLICITOR JOYNER: Thank you, Your Honor.

1 This incident occurred on September 22nd, of 2010 at
2 Cardinal Pointe Apartments the address being 1720 Waylick
3 Lane, Apartment [REDACTED] and that is a location within York
4 County in Rock Hill.

5 Approximately at midnight on September 22nd, the
6 victim - the CSC victim Jennie McCorkle and her friend
7 Mitzi Baker were returning from the store according to the
8 statements they gave to the police victim Baker had left
9 something in the car, went out to the car and as she was
10 coming back into the apartment she was pushed into the
11 apartment by two men she did not know, the men named James
12 Page and the defendant Lentavis Baxter. Mr. Baxter
13 brandished a knife during this incident; he held the knife
14 to Ms. McCorkle's throat and used the knife throughout the
15 night and to coerce the women, both women, into having
16 sexual intercourse with him against their will. The
17 brother James Page likewise committed a crime of criminal
18 sexual conduct against both these victims. And during the
19 course of the night the victim Mitzi Baker was struck in
20 the face by the defendant. He also poked her in her
21 abdomen and in her buttocks with the knife causing minor
22 injuries to her.

23 Ultimately Ms. McCorkle was able to escape out a door
24 in the early morning hours and was able to call for the
25 police, the defendant's fled, and Mr. Baxter was

-11-

1 apprehended at an apartment complex across the way. In his
2 vehicle police found a knife, they found the victim's car
3 keys and other evidence that corroborative of what the
4 victim's had said. Ultimately Mr. Baxter provided a
5 statement to law enforcement that he had in fact been in
6 the residence. He claimed that this was for lack of a
7 better term a party gone bad and claimed that the victims
8 were angry because they had been cheated out of drugs he
9 had promised to them.

10 Search of the residence the police did locate cans
11 that had been fashioned to apparently smoke drugs and - and
12 they also encountered a very neat and tidy crime scene.
13 Ultimately Mr. Baxter's co-defendant, James Page, was tried
14 first before Your Honor and was convicted. And from the
15 record, Your Honor, he was not convicted of burglary first
16 degree and we are dismissing that charge against Mr.
17 Baxter. He was convicted of kidnapping and he was
18 convicted of the lesser counts of criminal sexual conduct
19 in the second degree as opposed to the first degree and he
20 was convicted of a lesser charges of assault and battery in
21 the second degree as opposed to assault and battery in the
22 first degree.

23 THE COURT: One count of each?

24 SOLICITOR JOYNER: He was convicted of two counts
25 each, Your Honor.

1 THE COURT: And you agree that's what happened, Mr.
2 Baxter?

3 MR. BAXTER: Yes, sir.

4 THE COURT: And the State - What did - Mr. Page got
5 thirty years?

6 SOLICITOR JOYNER: He got thirty years, Your Honor.

7 THE COURT: And the rationale to put on the record why
8 this would be - -

9 SOLICITOR JOYNER: Yes, sir, Your Honor.

10 In crafting this offer we considered a variety of
11 things. Your Honor, first and foremost the case against
12 Mr. Page was a stronger case for the State. Unlike Mr.
13 Baxter, his statements were very consistently in his favor.
14 Mr. Page gave a statement of certain facts that were very
15 damning to his case and so certainly going forward in the
16 trial against Mr. Page we separated those cases because we
17 knew we had a better case against Mr. Page from the
18 beginning. Ultimately even with that statement in which it
19 included Mr. Page acknowledging seeing a knife in Mr.
20 Baxter's hands he acknowledged I believe eh acknowledged
21 Mr. Baxter hit Ms. Baker and that he acknowledged seeing
22 the knife to Ms. McCorkle's throat. Even with those
23 statements he was convicted of the lesser offences and
24 acquitted of the burglary charge. Certainly we understand
25 from Mr. Baxter's statement and from Mr. Page's case he

-13-

1 presented at trial the defense would essentially remain the
2 party gone bad. And certainly we did a distinct preview
3 during that trial of what some of the defense witnesses'
4 would say. And although some may have not been as credible
5 as others there were certain witnesses' that would cast
6 doubt on the time line of who the victims would testify to
7 and these are neighbors who heard loud voices at much later
8 times and testify to having heard those voices at a much
9 later times than would have been consistent with the
10 victim's story.

11 Your Honor, ultimately additionally we have a trial
12 transcript and this always does leave the possibility there
13 will be minor changes although not suggesting that any
14 person would deliberately mislead but simply that it does
15 leave an edge to the defense. We took that chance when we
16 severed the trials. And finally this is has been a very
17 long road for the victim who you saw. Ms. Mitzi Baker and
18 obviously she was quite upset with the negotiations the
19 State had entered. Ms. Jennie McCorkle is in the courtroom
20 and doesn't wish to address the court, Your Honor. She's
21 in favor of the negotiation. She said to me many times
22 that she's ready for this to be over. And she understands
23 the issues that have brought this negotiation before the
24 Court and wants this to conclude today.

25 THE COURT: Do either of the victims' want to speak?

1 SOLICITOR JOYNER: Ms. McCorkle does not want to speak
2 and Ms. Baker has not returned to the courtroom so, Your
3 Honor, I do not wish to address the court.

4 THE COURT: Mr. Jamieson, I'm glad to hear from you
5 now.

6 MR. JAMIESON: Your Honor, my client is twenty-four
7 years old, he's a resident of Rock Hill, South Carolina.
8 He has many family members present in the courtroom today
9 to support him. He has virtually no criminal record, he
10 has been incarcerated since September 22nd of 2010. I ask
11 the court to give him credit for that time which I believe
12 he's entitled to. He went through the tenth grade of
13 school but did not finish. He was involved prior to being
14 charged in the restaurant industry and was working in food
15 service. I believe that he can get out and make something
16 of his life now. And I would ask the court to go along
17 with this...

18 THE COURT: Mr. Baxter, anything you want to say?

19 MR. BAXTER: No, sir.

20 THE COURT: All right. The sentence is ten years on
21 the assault and battery first degree. Twelve years on the
22 criminal sexual conduct second degree. Give him credit
23 from September 22nd, 2010; they are to run concurrent and
24 you will be enrolled on the sex offender registry.

25 Do you understand all of that?

-15-

1 MR. BAXTER: Yes, sir.

2 SOLICITOR JOYNER: Thank you, Your Honor.

3 THE COURT: Thank you. We'll be at ease until I hear
4 from the Solicitor.

5 (COURT AT EASE AT 03:11 P.M..)

6 - END OF TRANSCRIPT OF RECORD -
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 10th day of December, 2012.

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

Wanda Nelson
Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: ~~5-22-2013~~ 1-9-14

517

2013CP4603624

FORM 5

STATE OF SOUTH CAROLINA)
County of York)

IN THE COURT OF COMMON PLEAS

Lentavis Demard Baxter)
Full name and prison number (if any) of Applicant)

v.

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED - RECEIVED
2013 NOV 26 AM 11:45
DAVID HAMILTON
C.C.P. & G.
YORK COUNTY, SC

VERIFIED TRUE COPY

NOV 26 PM 3:07

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS B READ CAREFULLY

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

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

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

- Place of detention Tyger River CI, unit 7-102
200 Prison Rd. Enoree S.C. 29335
- Name and location of Court which imposed sentence York County Court
of General Sessions 16th Judicial Circuit
- Name(s) of co-defendant(s) (if any) James L. Page
- The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011GS4600438

(b) 2011 GS 4600440
(c) _____

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

(a) 12/10/12
(b) 12/10/12
(c) _____

6. 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 _____

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

NO

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

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

i. N/A
ii. N/A
iii. N/A

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

i. N/A
ii. N/A
iii. N/A

(c) the date of each such result:

i. N/A
ii. N/A
iii. N/A

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

i. N/A
ii. N/A
iii. N/A

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

(a) Attorney Never filled for appeal, or told me of my right to Appeal

- (b) _____
- (c) _____

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

- (a) INEFFECTIVE ~~CONSA~~ COUNSEL
- (b) illegal indictment. SCROCP Rule 6 § 1, 2, 3
- (c) _____

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

- (a) Attorney failed to investigate facts
- (b) SCROCP states must be indicted within 90 days of arrest.

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A

- iv. N/A
- (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (d) the date of each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Was Not Made Aware of right to appeal
- (b) Newly discovered evidence About illegal indictment see SCROP Rule 63123

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? N/A
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

- (a) the name and address of each attorney who represented you:
 - i. Attorney Philip Jamieson, PC
242 Oakland Avenue, Rock Hill, S.C. 29730
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. When guilty Plea was entered, AND sentence was rendered.
 - ii. _____
 - iii. _____

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

For this case to be overturned, AND for this sentence to be remanded, AND conviction to be reversed AND removed for record.

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of York 16th Circuit)

I, Lentavis D. Baxter #353613, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X *Lentavis D. Baxter*

SWORN to and subscribed before me this 20th day of NOVEMBER, 2013.

Herbert Jones (L.S.)
Notary Public OK SC

My Commission Expires: 1-14-2019

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

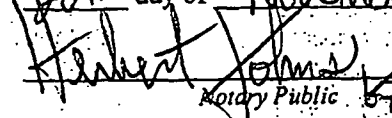
I, Lentavis D. Baxter #353613, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

20th day of NOVEMBER, 2013.


Notary Public SC

My Commission Expires: 1-14-2019

FILED - RECEIVED
2013 NOV 26 AM 11:45
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA COUNTY OF YORK |) | IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT |
| |) | |
| |) | |
| |) | |
| Lentavius Denard Baxter, #353613, Applicant, |) | 2013-CP-46-3624 |
| |) | |
| v. |) | RETURN |
| |) | |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |
| <hr/> | | |

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 26, 2013, 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 York County Clerk of Court. The Applicant was indicted at the February 2011 term of the York County Grand Jury for Assault and Battery, 1st degree (2011-GS-46-0438), Criminal Sexual Conduct, 1st degree (2011-GS-46-0440) and Possession of a Knife during the Commission of a Violent Crime (2011-CP-46-440A). Philip Jameison, Esquire, represented him. On December 20, 2012, the Applicant pled guilty to Assault and Battery, 1st degree as indicted and Criminal Sexual Conduct, 2nd degree as a lesser included offense before the Honorable John C. Hayes, III and was sentenced, pursuant to a negotiated sentence, to twelve (12) years for Criminal Sexual Conduct, 2nd degree and ten years, concurrent, for Assault and Battery, 1st degree.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals issued an order dismissing Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on December 11, 2013.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s) 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 Counsel"
 - i. "Attorney failed to investigate facts"
2. "Illegal indictment SCRPC Rule 6. §1,2,3"
 - i. "SCRPC states must be indicted(sic) within 90 days of arrest"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRPC(a).

III.

Respondent construes these allegations as ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective

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

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

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 5, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
)
)
 LENTAVIUS BAXTER, 353613)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

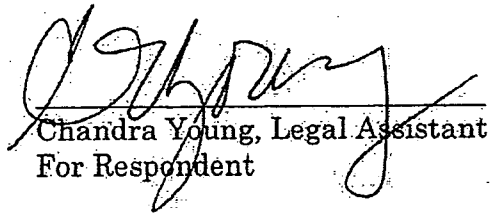
2013-CP-46-8624

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(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
 235 East Main Street; Suite 100
 Rock Hill, SC 29731

DATED this 5th day of February, 2014.


 Chandra Young, Legal Assistant
 For Respondent

| | | |
|-------------------------|---|-----------------------|
| STATE OF SOUTH CAROLINA |) | COURT OF COMMON PLEAS |
| |) | |
| County of York |) | 2013-CP-46-03624 |
| |) | |
| Lentavis Baxter, |) | |
| |) | |
| Applicant, |) | |
| |) | |
| vs. |) | TRANSCRIPT OF RECORD |
| |) | |
| State of South Carolina |) | |
| |) | |
| Respondent. |) | |
| |) | |

August 7th, 2014
York, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

LEAH B. MOODY, ESQ.
Attorney for the Applicant.

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

AMINAH R. HARDY, CM
Official Court Reporter

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(No exhibits were marked.)

P R O C E E D I N G S

1
2 MR. JOHNSON: May it please the Court, Your Honor.
3 This is the case of Lentavis Baxter versus state of South
4 Carolina, case number 2013-CP-46-3624. Mr. Baxter was
5 indicted at the February 2011 term of the York County
6 grand jury for assault and battery, first degree; criminal
7 sexual conduct, first degree; and possession of a knife
8 during the commission of a violent crime. On
9 December 20th, 2012, he pled guilty to assault and battery
10 first degree as indicted and criminal sexual conduct,
11 second degree as a lesser-included offense before the
12 Honorable John C. Hayes, III.

13 He was sentenced pursuant to the negotiated sentence
14 to 12 years for each charge. There was no appeal filed;
15 however, there was a timely PCR application filed
16 November 26th, 2013, and the state filed its return
17 February 5, 2014. He's represented here today by Ms. Leah
18 Moody.

19 THE COURT: Okay.

20 MS. MOODY: Thank you, Your Honor. Mr. Baxter wishes
21 to proceed with his case.

22 THE COURT: All right.

23 MS. MOODY: And at this time I would call Mr. Baxter
24 to the stand.

25 LENTAVIS BAXTER, after being duly sworn,

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MS. MOODY

4 Q. Mr. Baxter, could you please state your name for the
5 record.

6 A. Lentavis Baxter.

7 Q. And where are you currently being held?

8 A. Tyger River Correctional Center.

9 Q. How long have you been at that correctional facility?

10 A. Going on a year and a half -- like a year and a half.

11 Q. And you're here before the Court today for your
12 post-conviction relief?

13 A. Yes, ma'am.

14 Q. And you alleged in your post-conviction relief -- I'm
15 sorry. Who was your attorney in this case?

16 A. Phillip Jamieson.

17 Q. And you filed your PCR application against
18 Mr. Jamieson?

19 A. Yes, ma'am.

20 Q. And what are your allegations as far as ineffective
21 assistance of counsel?

22 A. Violating my sixth amendment as far as failure to
23 investigate and as far as new errors in my case that he
24 did not investigate as far as didn't he file motions. At
25 same time -- like my indictments was filed at the same

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 time.

2 Q. Let's go over this. You're saying that your attorney
3 failed to investigate the facts in your case?

4 A. Yes, ma'am.

5 Q. Okay. And how so?

6 A. When I told him basically go back and investigate as
7 far as the indictments, he -- what is on court records, he
8 said the solicitor handled the indictment fair, which was
9 not right because they indicted me twice. And then at the
10 same time, then I asked --

11 Q. Let me stop you there. When you say they indicted
12 you twice, explain to the Court what you mean, they
13 indicted you twice?

14 A. On the same charges.

15 Q. So they arrested you first and then indicted you?

16 A. Yeah, first I had -- I got some indictments. Like I
17 don't know if it was those indictments, but at the same
18 time the indictments as far as the charges they arrested
19 me for, I had them. After that, the 21st, I came back
20 in the courtroom -- like 21 months, to be exact, 21 months
21 I came in the courtroom as far as the same indictments.
22 They had reindicted me when I got arraigned for my -- I
23 got arraigned for my bond reduction.

24 Q. So they gave you additional charges?

25 A. Yes, ma'am.

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 Q. That's what you mean by they reindicted you for the
2 same offense?

3 A. Yes, ma'am.

4 Q. So when you got arraigned with additional charges,
5 what were those additional charges?

6 A. Assault and battery, kidnapping, same charges -- all
7 my charges that I was facing before.

8 Q. Okay. So the same exact charges you had an
9 arraignment?

10 A. Yes, ma'am.

11 Q. And so when you talked to your attorney, what, if
12 anything, did he explain to you about that situation?

13 A. Explained to me -- matter of fact, he said he wasn't
14 going to bring it to the solicitor's attention at that
15 time, the first time we had talked in the holding cell.
16 He said he wasn't going to bring it to the solicitor's
17 attention at the time.

18 Q. He said he wouldn't bring it to their attention?

19 A. He wasn't going to bring it to their attention at the
20 time.

21 Q. What, if anything, happened after that?

22 A. Been hard to contact him.

23 Q. Okay. So now what other investigation did you --
24 when you say "investigate," I'm assuming you're talking
25 about investigate the facts of the case?

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 A. Yes, ma'am.

2 Q. What specifically about the case did you want him to
3 investigate?

4 A. As far as the witnesses, as far as the -- if it was
5 consensual or not, like that. As far as about my speedy
6 trial, which had been violated. And the indictments,
7 pretty much. And at the same time with the solicitor --
8 solicitor being like a witness to the case as far as she
9 made Marshall Curtice recant his statement. I want to
10 know what's going on with that.

11 Q. So this is all before you entered your plea?

12 A. Yes, ma'am.

13 Q. Okay. So when you wanted to know whether something
14 was consensual, you're talking about as it relates to the
15 criminal sexual conduct?

16 A. Yes, ma'am.

17 Q. And your allegation was that the criminal sexual
18 conduct was consensual?

19 A. Yes, ma'am.

20 Q. And why -- what evidence would he have found
21 regarding consensual?

22 A. I mean, the doctor has to determine that. I don't
23 know. I just --

24 Q. So did your attorney talk to the doctor?

25 A. He said he had a doctor. During -- like going toward

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 trial?

2 Q. Yes.

3 A. He said he had a doctor. The investigator -- I
4 forgot his name. Denard (phonetic)? But he wanted -- he
5 wanted to go forward to trial, but I don't know why he
6 didn't want to go to -- why Phillip Jamieson didn't want
7 to go to trial. He wanted to go to trial. I told him
8 several times. In fact, three times I told him. After
9 that then he brought my parents back there to tell -- I
10 guess to manipulate me out of going to trial.

11 Q. So you indicated to your attorney that you wanted to
12 go to trial?

13 A. Yes, ma'am.

14 Q. And you wanted him to investigate the case?

15 A. Yes, ma'am.

16 Q. And you're telling the Court today that he did not
17 investigate the case?

18 A. Yes, ma'am.

19 Q. Okay. And as far as the witnesses were concerned,
20 what witnesses did you tell him you need him to talk to?

21 A. As far as the ones who was at the apartment complex
22 that the officers took statement of. After that, dude
23 named Marshall Curtice. Marshall Christ or something. I
24 think that's the victim's boyfriend. At the same time as
25 far as getting a statement from the solicitor to see why

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 she done what she did in the situation.

2 Q. So let me ask you this. When -- okay, before you
3 pled, had you all worked your case up that you were going
4 to trial?

5 A. Ma'am?

6 Q. Were you going to trial before you decided to accept
7 the plea?

8 A. Yes, ma'am. Yes, ma'am.

9 Q. So y'all had prepared for a trial in this case?

10 A. I was prepared for it. I don't know about his end.
11 I was prepared for it.

12 Q. Well, I mean, you had to talk to your attorney -- you
13 had a meeting with your attorney?

14 A. Sketchy. I ain't hardly get response back from him.
15 Like, I write letters and stuff like that. He'll tell me,
16 "Okay, we got a trial date come such and such." After
17 that, bam, all of a sudden I'm going to trial. But a week
18 before that, he tried to get off my case. He filed a
19 motion to get off my case. Other than that, I haven't
20 heard from him.

21 Q. Why did he try the get off your case?

22 A. Because at the same time he was under investigation
23 from disciplinary counsel at the same time. I guess he
24 didn't want to prolong the situation. I guess he just
25 felt like --

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 Q. Did you file the disciplinary counsel matter?

2 A. Yes, ma'am.

3 Q. And so basically you -- were you all getting along at
4 the time?

5 A. No, ma'am.

6 Q. So when it came down to the -- getting prepared for
7 the trial, there was an offer made to you?

8 A. What's that?

9 Q. An offer to plea.

10 A. Oh, yes, ma'am.

11 Q. And so up until the offer, were y'all going to trial?

12 A. I was. I was going to trial. I denied the pleas.

13 When he came with a plea of 12, I denied it. At the same
14 time, I felt bad, like basically I was angry when he was
15 discussing plea deals behind my back without my consent.

16 Q. Okay. All right, so let me take you back here. So
17 as far as the investigation, up until that time, you still
18 wanted your attorney to talk to the witnesses?

19 A. Yes, ma'am.

20 Q. Get the information from the solicitor regarding
21 recanting of one of the witnesses?

22 A. Yes, ma'am.

23 Q. All right. And then there was an allegation -- or
24 you informed him there was -- it was consensual conduct --

25 A. Yes, ma'am.

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 Q. -- on the part of the victim?

2 A. Yes, ma'am.

3 Q. And you had a codefendant in the matter?

4 A. Yes, ma'am.

5 Q. Okay. And were y'all both getting ready to go to
6 trial?

7 A. Well, he tried to file a joint trial motion, but it
8 got denied because he's presented -- he said something
9 like a joint trial motion and -- I don't know --

10 Q. A severance?

11 A. Ma'am?

12 Q. He was trying to separate your trial?

13 A. No, he -- him and my brother's lawyer tried to get a
14 joint trial motion, but they denied it. Judge Hayes
15 denied it. I guess -- I think the solicitor said it would
16 work better in the state's favor for them for the trials
17 separately, but they denied it.

18 Q. Okay. So -- all right. Now, as to your entering
19 your plea, you indicated that your parents came --

20 A. Yes, ma'am.

21 Q. -- and spoke with you?

22 A. Yes, ma'am. After several times, I tried to tell
23 them I wanted to go to trial.

24 Q. So your parents came in and subsequent to that, you
25 decided to plea?

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 A. Yes, ma'am.

2 Q. Do you recall what you were facing on all your
3 charges?

4 A: I think he said -- no, no, not all of them. I ain't
5 even get no number. No estimated numbers. Like for all
6 of them without the plea?

7 Q. Yes.

8 A. No, ma'am.

9 Q. So what, if anything, did y'all discuss before you
10 entered your plea?

11 A. Nothing. He came out the blue and told me we was
12 going to trial. After that, bam, this so-called plea deal
13 came up. When she started dropping all the things, like
14 she started dropping all the charges. And I kept telling
15 them I wanted tell them I want to go the trial.

16 Q. So are you saying that your attorney didn't discuss
17 with you?

18 A. Nothing.

19 Q. Okay. And your parents came in and you decided to
20 plea after talking to your parents?

21 A. Yeah.

22 Q. Now, what relief are you seeking from the Court
23 today?

24 A. Ask him to just -- I really want to go back into the
25 case. I wish the case would be reopened so I can have

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 relief in the situation.

2 Q. So you're asking for a new trial?

3 A. Yes, ma'am.

4 Q. Okay. And you recognize that if you get a new
5 trial -- if you're successful here, you start all the way
6 back over?

7 A. Yes, ma'am.

8 Q. Do you understand, like, the charges that you had,
9 the charges that the state dropped, those charges can be
10 brought back as if it was the -- at the very beginning of
11 your arrest?

12 A. Yes, ma'am. Yes, ma'am.

13 Q. Along with the charges that you've pled to already
14 and you're serving time on?

15 A. Yes, ma'am.

16 Q. And you still want the Court to grant you a new
17 trial?

18 A. Yes, ma'am.

19 Q. Is there anything else that you feel you need to tell
20 the Court here today?

21 A. Yes, ma'am. As far as the errors that was in my case
22 that's how my -- I just want to put this on the record --
23 that's how my brother's case got overturned. He's at home
24 right now --

25 MR. JOHNSON: Objection to anything that happened in

LENTAVIS BAXTER - DIRECT EXAMINATION BY MS. MOODY

1 his brother's case, Your Honor. It's completely
2 irrelevant to Mr. Jamieson's representation.

3 THE COURT: Right.

4 Q. So Mr. Baxter the information that you're -- you
5 can't say what what's going on with your brother.

6 A. I apologize.

7 Q. That's where you got the notion that your -- had your
8 attorney done the investigation, you could have been
9 successful in your trial?

10 A. Yes, ma'am.

11 Q. Okay. And would that have determined whether or not
12 you would have taken -- accepted a negotiated plea?

13 A. No, ma'am, I wouldn't have accepted it.

14 Q. And the relief you're asking from the Court today is
15 for a new trial?

16 A. Yes, ma'am.

17 MS. MOODY: No further questions for this witness.
18 Please answer any questions the state may have.

19 MR. JOHNSON: May it please the Court, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. JOHNSON

22 Q. Mr. Baxter, so what you're claiming is that
23 Mr. Jamieson never spoke to you about this case before
24 entering a guilty plea, correct?

25 A. Say what?

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 Q. So what you we're just claiming is that Mr. Jamieson
2 never discussed this case with you at all before you
3 decided to plead guilty?

4 A. No. Huh-uh. Mr. Jamieson -- Mr. Jamieson, he failed
5 to respond to my letters. He wasn't responding to my
6 letters. He would come out the blue and say -- tell me
7 some things about the case, and after that, bam, he'll
8 leave. He'll say he'll do this and do that but never do
9 that. He never -- out the blue, then he came talking
10 about, "We're prepared for trial." All right.

11 Q. And you do realize if you go back, you do face the
12 criminal sexual conduct first degree charge, and that it's
13 up to 30 years in prison?

14 A. Yes, sir.

15 Q. And you understand that you can be charged with
16 kidnapping as well, and that's another 30 years in prison?

17 A. Yes, sir.

18 Q. That's 60, right?

19 A. Yeah.

20 Q. And the assault and battery first degree, which is up
21 to ten. That's 70 years?

22 A. Yes, sir.

23 Q. So you're looking at pretty much the rest of your
24 life if you go back to overturn these charges and face a
25 trial; isn't that correct?

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 A. Yes, sir.

2 Q. And you're prepared to do that?

3 A. Yes, sir.

4 Q. Okay. Nobody threatened or promised you anything to
5 get you to plead guilty, did they?

6 A. No, sir.

7 Q. So you did this on your own accord? You decided to
8 plead guilty, right?

9 A. No.

10 Q. You didn't decide to plead guilty freely and
11 voluntarily?

12 A. No. After I told him -- after I told him I didn't
13 want to take this plea, three times like I said before,
14 based on my hands was forced to take a plea.

15 Q. But you told the judge during the guilty plea that
16 you were pleading freely and voluntarily, correct?

17 A. Yeah -- yeah, I told him that.

18 Q. But now you're saying you didn't actually plead
19 freely and voluntarily?

20 A. No. Really -- okay. When it come down to it -- when
21 it come down to it, when this man wanted to get off my
22 case -- when he want to get off my case and he got denied.
23 So basically they force us to work together. They forced
24 us. They forced my hand. Still -- I didn't have no like
25 about this man because at the same time, the -- like

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 basically as far as his presentation in the courtroom
2 was -- I ain't going to say it's up to par. I mean -- I'm
3 not a legal adviser myself, but at the same time as far as
4 him helping me, he wasn't doing nothing. At the same time
5 they forced -- they forced -- they forced us to work
6 together.

7 As far as -- then after that my trial came up. I
8 kept telling him, I want to go to trial. I want to go to
9 trial. And after that, he brought my parents back there.
10 One was crying -- my mother was crying, and after that, my
11 father came back there. Exact words. Father said he's
12 going to leave it in my hand now. And my mother said, she
13 said, "Take the plea." Then he told me what the judge
14 could have gave me -- after that, he said the judge would
15 not answer -- he said it's a possibility the judge would
16 not answer your fast and speedy trial motion might not get
17 dismissed --

18 (Reporter requested clarification.)
19 A. -- on the strength of the fact because they violated.
20 He said it's possible the judge would not dismiss the case
21 because they violated your fast and speedy trial motion.
22 So therefore -- then at the same time, I said -- what's
23 his name? I think his name is Bernard? The investigator,
24 he wanted me to go forward. He wanted me to go forward
25 with this case, because they proved that this sex was

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 consensual. But...

2 Q. But you decided to take the plea, right?

3 A. Because they forced my hand.

4 Q. Okay. But you just said that your mom and your dad
5 came and talked to you?

6 A. Yes.

7 Q. And then now you're saying Mr. Jamieson forced your
8 hand. You didn't tell the judge that --

9 A. I said they forced --

10 Q. Sir, answer my question, please. Yes or no. You're
11 saying Mr. Jamieson forced your hand to plead guilty,
12 correct?

13 A. I said they forced my hand, basically.

14 Q. Your parents?

15 A. No, not my parents.

16 Q. Mr. Jamieson and his investigator?

17 A. No, not Bernard. No, no, no, no.

18 Q. Who -- who are you saying forced your hand?

19 A. I'm saying that they forced my hand as far as --

20 Q. Who is "they"?

21 A. Solicitor and Mr. Jamieson.

22 Q. Okay. So basically your options were --

23 A. And the judge -- and the judge because they had us
24 to -- basically, they did not even grant him the motion.

25 If they granted him the motion, I probably never would

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 have had this plea. I would never had him as a lawyer, is
2 what I'm saying.

3 Q. So what the solicitor and Mr. Jamieson were saying is
4 you either go trial or you accept the guilty plea? Those
5 are your two options?

6 A. Yes, sir.

7 Q. And you decided to take the guilty plea, right?

8 A. I wanted to go to trial.

9 Q. You never told the judge that at your guilty plea,
10 did you?

11 A. No, sir. No, sir, not -- no, sir.

12 Q. Okay.

13 A. No, sir.

14 Q. And you also stated at the guilty plea that you were
15 satisfied with Mr. Jamieson's representation, did you not?

16 A. Because that was something I had was supposed to say.
17 I had to say that on the record as far as him.

18 Q. You never told the judge that he made you say that,
19 did he?

20 A. No, sir.

21 Q. So you said you were satisfied with counsel under
22 oath at your guilty plea, correct?

23 A. Yes, sir.

24 Q. And now you're saying you're not satisfied with him?

25 A. Yes, sir.

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 Q. So you lied at the guilty plea?

2 A. Yes, sir.

3 Q. The judge also read your constitutional rights to
4 you, including your right to a trial, your right to
5 cross-examination of witnesses, the right to present
6 witnesses, and your right to remain silent, correct?

7 A. Yes, sir.

8 Q. And you waived those. By pleading guilty, you waived
9 those rights, correct?

10 A. What you mean by "waived"?

11 Q. Judge asked you about those rights, and he said,
12 "What do you want to do?" And you said, "I still want to
13 plead guilty," correct?

14 A. Yes, sir.

15 Q. Okay. And during this guilty plea, you agreed with
16 the facts as presented by the solicitor, correct?

17 A. Uh-huh.

18 Q. So you were saying whatever the solicitor said as the
19 facts, that was what happened. That's what you said,
20 correct?

21 A. That's what that mean. So --

22 Q. When he was stating the facts of the incident?

23 A. Yes.

24 Q. And the judge asked you, "Do you agree with that,"
25 You said yes?

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 A. Yes, sir.

2 Q. So that's the facts as taken as the truth of what
3 happened that night, correct?

4 A. Uh-huh.

5 Q. Okay. Now you're saying it's consensual?

6 A. Yeah, he know -- the doctor --

7 Q. So now you're saying the sex was consensual?

8 A. Yes.

9 Q. So you lied again at the guilty plea?

10 A. Yes, sir.

11 Q. So you lied multiple times during the guilty plea at
12 under oath?

13 A. Yes.

14 Q. You lied about being satisfied with your counsel and
15 you lied about the facts as the solicitor presented them,
16 correct?

17 A. At the same time, I got paperwork that showed I was
18 putting in many complaints to different judges about
19 trying to get my -- get relief, but they kept on telling
20 me as far as, "Oh, no, he's a good counsel. He's a good
21 lawyer." If he's a good lawyer, how come he wasn't doing
22 anything for me? How come I kept continuing to make these
23 numerous complaints? Complaint, they come from somewhere.
24 It's error -- it's error somewhere. Same time, the
25 disciplinary counsel had him under investigation.

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 So if I was so satisfied with this lawyer -- if I was
2 satisfied with him, they wouldn't have never had a
3 investigation. I would have never made these claims. But
4 I had to -- I had to because like I said, my hand was
5 forced because they denied this motion.

6 Q. Answer my question. You lied multiple times at the
7 guilty plea?

8 A. Yes, sir.

9 Q. All right. And you actually accepted this plea offer
10 in order to not have to risk trial and face up to 70 years
11 in prison; isn't that right? So you took the 12 years
12 negotiated versus risking 70 years at the trial?

13 A. I didn't know I was risking 70 years.

14 Q. You were at least risking 30 because the judge told
15 you assault and battery first carried up to 10 and the
16 criminal sexual conduct second degree, which you pled down
17 to, carries up to 20. Did the judge advise you of that?

18 A. He advised me -- not that I remember. Not that I
19 remember. I do not remember.

20 MR. JOHNSON: May I approach, Your Honor?

21 THE COURT: Yeah.

22 MR. JOHNSON: Let the record reflect I'm showing the
23 applicant the copy of his guilty plea transcript dated
24 December 10th, 2013.

25 Q. Do you recognize this document, Mr. Baxter? Does

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 that look familiar?

2 A. Now I see it. It carries from 20 to 10.

3 Q. So you were advised you were at least facing 30 years
4 on those two charges. That's what you pled to?

5 A. Okay.

6 Q. And you pled to 12 years to avoid risking all the
7 other time at trial, right?

8 MS. MOODY: Objection.

9 THE COURT: What's your objection?

10 MS. MOODY: I think he's already testified that he
11 didn't know what he was facing, and this is when the judge
12 asked him, and he already said he was going to accept --
13 they were in the plea.

14 THE COURT: I understand, but I mean, I read the
15 transcript. Judge says carries 20 and ten and his -- he
16 was looking at at least 30 -- more than that if they
17 dismissed the kidnapping and a negotiated 12. He's given
18 up that, and that's a simple question. You pled to 12 to
19 not risk 30.

20 MS. MOODY: Right --

21 MR. JOHNSON: He could say, "No, I pled to 30 because
22 the solicitor called it for trial." He can say whatever
23 he wants, but it's not going to alter the fact that he
24 knew he was facing 30 and he got 12.

25 MS. MOODY: Right, and I thought he said yes, chose

LENTAVIS BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON

1 to take the 12 because you were risking 70. He already
2 testified he didn't know how much he was. He's already
3 said, yes, he knows --

4 THE COURT: But he just read to him at least he knew
5 he was facing 30.

6 MS. MOODY: Okay. Well, I understand that part.

7 THE COURT: That's all.

8 MS. MOODY: Just want to make sure.

9 MR. JOHNSON: That's all the questions I have, Your
10 Honor.

11 MS. MOODY: No further questions for this witness,
12 Your Honor.

13 THE COURT: You can step down.

14 MS. MOODY: Your Honor, I call Mr. Leonard Baxter to
15 the stand.

16 LEONARD BAXTER, after having first being duly sworn,
17 testified under oath as follows:

18 DIRECT EXAMINATION

19 BY MS. MOODY

20 Q. Mr. Baxter, could you please state your full name for
21 the record.

22 A. I'm Leonard Bernard Baxter.

23 Q. And how are you familiar with Mr. Lentavis Baxter?

24 A. He's my son.

25 Q. And you were present with your son when he decided to

LEONARD BAXTER -- DIRECT EXAMINATION BY MS. MOODY

1 take the plea of guilt?

2 A. Yes, ma'am.

3 Q. And prior to him deciding to plea, what, if any,
4 conversation did you have with him?

5 A. As he was saying, he was wanting to take the trial --

6 MR. JOHNSON: Objection. This is self-serving
7 hearsay.

8 THE COURT: He can say what he advised him. That's
9 all he can say.

10 MS. MOODY: You can't say --

11 THE COURT: He can't say what he wanted. He can just
12 say what he advised him, if he advised him of anything.

13 Q. What did you advise your son?

14 A. I advised him, let him know we was on his side. We
15 with him, whatever he decide to do. We with you. We
16 backing you up, and I told him to go for it.

17 Q. And what was the purpose of you -- when did you speak
18 with him prior to the plea?

19 A. Mr. Jamieson, he asked me and my wife -- my ex-wife
20 to go back there and talk to him. So we went back there
21 And talked to him.

22 Q. And at that time when he asked you to go back and
23 talk to him, was your son's position he wanted a trial?

24 A. Yes, ma'am.

25 Q. Okay. And after you all spoke with him, what, if

LEONARD BAXTER -- DIRECT EXAMINATION BY MS. MOODY

1 anything, happened next?

2 A. That's about it. When we got back there, as I was
3 saying, we told him we was on -- I basically told him I
4 was on his side, and I told him to go for it, and that was
5 it.

6 MS. MOODY: Beg the Court's indulgence.

7 Q. What was the purpose of Mr. Jamieson asking you to go
8 back and talk to your son?

9 A. I don't know, ma'am.

10 Q. He didn't relay anything to you? Just asked him to
11 go back and talk to him?

12 A. That's what I was thinking. He was -- just wanted us
13 to come back there and talk to him.

14 MS. MOODY: Okay. No further questions for this
15 witness, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON

18 Q. One question. Mr. Baxter, did you ever threaten your
19 son to plead guilty?

20 A. No, sir.

21 MR. JOHNSON: Thank you, Your Honor.

22 THE COURT: You can step down, Mr. Baxter.

23 MS. MOODY: No further witnesses, Your Honor.

24 THE COURT: All right.

25 MR. JOHNSON: State calls Phillip Jamieson to the

LEONARD BAXTER -- CROSS-EXAMINATION BY MR. JOHNSON
PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 stand.

2 PHILLIP JAMIESON, after having first being duly
3 sworn, testified under oath as follows:

4 DIRECT EXAMINATION

5 BY MR. JOHNSON

6 Q. Good morning, Mr. Jamieson.

7 A. Good morning.

8 Q. Please tell the Court how you became involved in this
9 case.

10 A. I was appointed to represent Mr. Baxter after he
11 relieved his first attorney, Phillip Smith.

12 Q. Did you file for discovery, or was discovery already
13 filed at that point?

14 A. Discovery had been filed, but I filed for it as well.

15 Q. And what all did you receive in discovery?

16 A. Well, two briefcases full. I received all the police
17 reports, all of the witness statements, all the
18 photographs, all of the DNA reports, all the fingerprint
19 reports. Eventually I got the transcript from Mr. Page's
20 trial, which went before Mr. Baxter's trial. Everything
21 that was in the file.

22 Q. And did you hire an expert -- an investigator in the
23 case?

24 A. Yes. Scott Bernard, Bernard Investigations.

25 Q. Did you hire any physicians or experts you would have

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 called to trial?

2 A. Hired Dr. Farran (phonetic) who was a physician who
3 was going to testify about the injuries to the victims.

4 Q. In all this discovery, did you -- how many times did
5 you meet with Mr. Baxter?

6 A. I went over that yesterday. I counted it. One time
7 was 16 and another time it was 18, so between 16 and 18
8 time.

9 Q. And did you discuss all the discovery with him?

10 A. Yeah. He got a copy of all the discovery and we went
11 over it in detail. We were prepared -- the day he pled,
12 we were actually there to begin the trial.

13 Q. What was your defense at trial?

14 A. Mr. Baxter and Mr. Page's defense both was that this
15 was a consensual encounter.

16 Q. And you explained that to Mr. Baxter, and he told you
17 his version of the facts?

18 A. Yes, and that was the theory going forward in the
19 case.

20 Q. And then at some point, I guess, the solicitor would
21 have come with an offer?

22 A. She originally made the offer that he finally
23 accepted at trial. She originally made an offer of 12
24 years after his brother went to trial and was convicted.

25 Q. And how did you relay that offer to Mr. Baxter?

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 A. I met with him and discussed it with him the first
2 time, and then the second time when she renewed the offer
3 we were there for trial, I met with him again.

4 Q. Was he onboard with the offer?

5 A. Yes.

6 Q. Whose decision was it to plead guilty?

7 A. It was his.

8 Q. Did you ever force or threaten him to plead guilty?

9 A. No.

10 Q. And he talked about his parents being involved -- or
11 dad and I guess ex-wife. Can you tell the Court why did
12 you decide to involve --

13 A. He initially wanted to go to trial. And his brother
14 had been tried on the same facts with the same witnesses
15 and got 30 years. I felt like he was running a pretty
16 large risk. I explained that to his parents and they told
17 me they thought he ought to plead guilty, but the decision
18 was his, and I told them that they could talk with him and
19 share that with him if they wanted to. I don't know what
20 they discussed.

21 Q. One of the allegations is failure to investigate
22 witnesses. Did you interview witness?

23 A. I interviewed not only the witnesses that law
24 enforcement found, but several people in the apartments
25 that they did not find. And we eventually located a

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 witness -- Mr. Baxter's story was that he met the victim
2 at a local store, which was locally known as the Chicken
3 Store and that there he propositioned -- they
4 propositioned him to exchange sex for drugs. And we
5 located a witness that law enforcement had not located who
6 was prepared to come and testify that day that he had seen
7 that encounter and had overheard the conversation, and
8 that's largely why the solicitor renewed the offer the
9 trial.

10 Q. He also claims the solicitor was going to be a
11 witness to the case based on a recanted statement?

12 A. I'm not exactly sure what he means by that, but there
13 was an incident that came up at Mr. Page's trial and we
14 had already known about it where the individual who was --
15 previously had been dating one of the victims called the
16 solicitor's office and left a message with them, and then
17 subsequently talked with the solicitor's office and
18 repeated the message that essentially outlined the case
19 exactly as we proposed it had gone forward. That
20 individual stated that the victim had told him that she
21 had made a bargain to exchange sex for drugs, and when
22 they did not provide the drugs as promised, that she
23 accused them of rape.

24 He had provided a recording to that effect, and he
25 subsequently told the solicitor that in person. He

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 subsequently recanted that statement, but we intended to
2 call him. Mr. Page attempted to call him and Judge Hayes
3 ruled that evidence was irrelevant. We intended to call
4 him in this trial as well, though I expected the same
5 result since Judge Hayes was the trial judge in both
6 cases.

7 Q. On the stand as you saw, Mr. Baxter was adamant he
8 wanted a trial and never wanted to take -- to accept the
9 plea offer. Did he ever tell you he wanted a trial and he
10 never wanted to accept the offer?

11 A. He told me on several occasions that he wanted a
12 trial. The day he decided to plea, he told me he wanted
13 to plea. Obviously, he told me he wanted a trial because
14 we were there to try the case.

15 Q. Did he tell you why he wanted to plea?

16 A. The risk was too great. The charge that he pled
17 guilty to, the assault and battery first, would have
18 carried up to ten years, and it was almost certain he'd be
19 convicted of that. The victim had substantial physical
20 injuries that substantiated an assault had occurred. Even
21 if you believed that the consensual nature of the sex,
22 there was no way to explain the fact that she had a busted
23 lip that required stitches and stab wounds. So he was
24 almost certain to be convicted of the assault and battery
25 first degree.

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 Q. So the state had great evidence to prove his guilt,
2 at least in the assault and battery first degree?

3 A. As regard to that I felt it was relatively certain he
4 would be convicted. He had a statement from his
5 codefendant as well where the codefendant described him as
6 holding a knife to the victim's throat.

7 Q. Did you ever explain to him what the potential
8 sentences were on his charges?

9 A. Many times.

10 Q. And you explained the elements of those charges?

11 A. Yes, I did, and I'll correct you slightly. He was
12 facing almost 100 years. He would have gotten 30 on the
13 burglary first, 30 on the criminal sexual conduct, and 30
14 on the kidnapping. He potentially could have gotten all
15 that, and then ten on the assault and battery first, and
16 five on possession of a weapon during commission of a
17 violent crime.

18 Q. So he was charged with burglary first degree?

19 A. Yes. That was dismissed as part of the plea
20 negotiations.

21 Q. And that carries 15 to life?

22 A. Yes.

23 Q. He was looking at a life sentence, not just 100
24 years?

25 A. Potentially.

PHILLIP JAMIESON -- DIRECT EXAMINATION BY MR. JOHNSON

1 Q. He also claims you never discussed anything before
2 him accepting the plea offer. But you have stated you met
3 with him 16 to 18 times?

4 A. Yes. We had extensive meetings. I met with him on
5 three or four occasions, an in-person meeting in the jail
6 that lasted several hours on each occasion.

7 Q. To reiterate, it was his decision to plead guilty?

8 A. Absolutely.

9 Q. You never forced or threatened that decision?

10 A. I didn't have any ability to force him, but even if I
11 had that ability, I wouldn't have forced him. Again, we
12 were there with witnesses being prepared to go trial.

13 MR. JOHNSON: No further questions Your Honor.

14 CROSS-EXAMINATION

15 BY MS. MOODY

16 Q. Mr. Jamieson, so basically this case boiled down to
17 what had happened in the first trial with his brother, as
18 well as the evidence that you obtained?

19 A. I don't think I understand the question.

20 Q. The evidence that you received from the state, you
21 indicated that you had evidence that the victim had a
22 busted lip, stab wounds, extensive injuries?

23 A. Yes.

24 Q. So going into the trial -- let's put aside his
25 brother's trial right now. But going into the trial, did

PHILLIP JAMIESON -- CROSS-EXAMINATION BY MS. MOODY

1 you discuss with Mr. Baxter the probability of him beating
2 these charges?

3 A. I told him that his brother had gotten 30 years,
4 based on the same witnesses and the same facts, but this
5 new witness we discovered and subpoenaed to court would
6 hopefully support his contention the sex was consensual,
7 and I thought that that would be a -- hoped that would be
8 a game-changer, but I told him I thought it was almost
9 certain he'd be convicted of the assault and battery first
10 degree because of the extent of her injuries.

11 Q. So when talking with the solicitor, how did the plea
12 offer come to be the assault and battery and the criminal
13 sexual conduct?

14 A. When she found out we had discovered a witness who
15 supported his theory of the case, the witness who said
16 that he overheard the conversation between Mr. Baxter, his
17 brother, and the victims, she obviously perceived that her
18 case wasn't as strong as she thought it was and she
19 renewed her offer.

20 Q. Was there any discussion about taking the CSC off the
21 table?

22 A. She was not willing to do that. Yeah, there was
23 extensive discussion about that.

24 Q. What, if any, evidence would you have used to argue
25 that it was consensual?

PHILLIP JAMIESON -- CROSS-EXAMINATION BY MS. MOODY

1 A. Well, again --

2 Q. Other than that witness?

3 A. Well, other than that witness we had a doctor who was
4 going to testify -- she had -- the victims had extensive
5 injuries to their genitals. The solicitor's theory of the
6 case was it was not consensual because of those injuries.
7 We had a doctor who was prepared to testify that the
8 injuries could have occurred as a result of consensual
9 sex. But it was going to be -- certainly going to be
10 difficult to explain consensual sex and stab wounds.

11 Q. And so based on that, you felt this offer was
12 reasonable?

13 A. I thought was extremely reasonable. And I thought
14 the risk was too great for him to take, but ultimately
15 that was his decision.

16 Q. He told you he would accept the plea because the
17 risks were too great, or was that your viewpoint that the
18 risk was too great?

19 A. That was certainly my viewpoint and that was his
20 viewpoint as well, at least as he expressed to me.

21 Q. Are you aware of any new evidence?

22 MR. JOHNSON: Objection, not pled in the application.

23 THE COURT: Okay. If it's not pled, you can't do it.

24 Q. Where is his brother now?

25 MR. JOHNSON: Objection. That's irrelevant now.

PHILLIP JAMIESON -- CROSS-EXAMINATION BY MS. MOODY

1 A. I don't have any idea.

2 MS. MOODY: I think it's relevant, Your Honor in
3 that --

4 THE COURT: Well, if his brother got a new trial, you
5 know, that's a separate issue. That's probably why he's
6 here. I don't know anything about that, but that's not
7 part of this case. That his brother got convicted with
8 the same witnesses pressured him to take the plea, I
9 understand that.

10 Q. In your -- you said you met with Mr. Baxter 16 to 18
11 times?

12 A. Yes.

13 Q. Towards the end preparing for the trial, you all
14 discussed each witness that you all had?

15 A. Yes.

16 Q. Did he appear to understand what the strategy was or
17 how great the witnesses might have been?

18 A. He certainly appeared to, yes.

19 Q. Did he ask you to investigate or find any other
20 witnesses?

21 A. We interviewed every witness that the police had
22 located. We interviewed people in the apartments that
23 they had not located, and we found the individual who
24 overheard the conversation at the store. I interviewed
25 every witness that I was aware of, every witness we could

PHILLIP JAMIESON -- CROSS-EXAMINATION BY MS. MOODY

1 discover. And I interviewed them personally along with my
2 private investigator.

3 Q. So as it relates to -- by this time, you were getting
4 ready to go the trial, and you had filed a motion to be
5 relieved on this case?

6 A. I filed -- Mr. Baxter wrote me on three occasions
7 asking me to be relieved. I filed three motions to be
8 relieved at his request, and each time when we came in
9 front of the judge, the judge gave him the option to -- as
10 he had already relieved one attorney -- to proceed with me
11 or proceed pro se. On each occasion, Mr. Baxter chose to
12 proceed with an attorney rather than pro se.

13 MS. MOODY: Beg Court's indulgence.

14 No further questions for this witness.

15 THE COURT: You can step down.

16 MR. JOHNSON: The state has no further witness.

17 However, I would like to correct myself for the procedural
18 history. There actually was an appeal filed, but the
19 Court of Appeals dismissed it for failure to provide a
20 sufficient explanation.

21 THE COURT: Yeah, I saw that in the file.

22 MR. JOHNSON: Thank you.

23 THE COURT: I can't help him based on what was
24 presented. I mean, the attorney not only worked hard on
25 the case, he found an independent witness that would have

PHILLIP JAMIESON -- CROSS-EXAMINATION BY MS. MOODY

1 backed up his story on swapping sex for drugs. You had a
2 doctor that testified that the genital area of the victim
3 could have occurred from consent also, and your client was
4 aware of all that.

5 The problem is you get called for trial and you're
6 ready for trial, it's a lot of pressure on a young person,
7 and you're looking at all kinds of time. So he could have
8 gone to trial that day, but he answered all the questions
9 that the judge asked if he understood everything and, you
10 know, he waived it that day. He agreed to accept the 12
11 years rather than that. Looks like he got ten anyway from
12 all the testimony I saw. He had the knife, cut the
13 victim. That was easily provable from the transcript I
14 read.

15 So he's just looking at two more years. He got -- if
16 he goes back to trial -- if he goes back to trial, it's
17 not in his best interests. I don't know what happened to
18 his brother's situation, but he's looking at 105 years
19 roughly, or life if you -- if they bring the burglary back
20 and somebody wanted to hammer him.

21 So I understand he thinks maybe his brother got out,
22 he should get out, but I'm just bound by the transcript
23 and what I read and what he presented, and on that day, he
24 was aware of everything. Attorney was clearly ready to go
25 to trial. He had all his witnesses lined up, including

PHILLIP JAMIESON -- CROSS-EXAMINATION BY MS. MOODY

1 the favorable witness and had the doctor there ready. So
2 I have to deny it. Good luck.

3 MS. MOODY: Thank you, Your Honor.

4 MR. JOHNSON: Thank you, Your Honor.

5 (Whereupon, the proceedings were concluded.)
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STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
)
)
 Lentavius Denard Baxter, #353613,)
)
) Applicant,)
)
) v.)
)
) State of South Carolina,)
)
) Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3624

ORDER OF DISMISSAL

FILED-RECEIVED
 2014 SEP 26 AM 9:24
 DAVID HAMILTON
 C.C.P.
 YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 26, 2013. The Respondent made its Return on February 5, 2014. An evidentiary hearing into the matter was convened on August 7, 2014, at the Moss Justice Center in York, SC. Leah Moody, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Lenard Baxter and Applicant testified on Applicant's behalf. Phillip Jamieson, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State Return and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the February 2011 term of the York County Grand Jury for Assault and Battery, 1st degree (2011-GS-46-0438), Criminal Sexual Conduct, 1st degree (2011-GS-46-0440) and Possession of a Knife during the

Commission of a Violent Crime (2011-CP-46-440A). Philip Jamieson, Esquire, represented him. On December 20, 2012, the Applicant pled guilty to Assault and Battery, 1st degree as indicted and Criminal Sexual Conduct, 2nd degree as a lesser included offense before the Honorable John C. Hayes, III and was sentenced, pursuant to a negotiated sentence, to twelve (12) years for each charge to run concurrently.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals issued an order dismissing Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) SCACR. The Remittitur was issued on December 11, 2013.

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

1. "Ineffective Counsel"
 - i. "Attorney failed to investigate facts"
2. "Illegal indictment SCRPC Rule 6 §1,2,3"
 - i. "SCRPC states must be indicted(sic) within 90 days of arrest"

At the hearing, the Applicant proceeded on his claim of ineffective assistance of counsel.

SUMMARY OF TESTIMONY

Applicant testified Counsel failed to investigate whether Applicant has been indicted twice for the same charges. Applicant also testified Counsel failed to interview witnesses, failed to investigate whether the sex between Applicant and Victim was consensual and failed to pursue a motion for a speedy trial. Applicant claimed he always told Counsel he wished to pursue a trial. Applicant also claimed he had a strained relationship with Counsel. Additionally, Applicant testified he rejected a plea offer from the State, but decided to accept the twelve-year offer after speaking with

his parents on the day he was scheduled to go to trial. Applicant further claimed Counsel never explained what sentences the charges carried and did not discuss anything with Counsel before his guilty plea.

On cross-examination, Applicant admitted that nobody promised him anything or threatened him to plead guilty. Applicant admitted that he pled guilty freely and voluntarily. Applicant also admitted that the plea judge advised him of his constitutional rights and that he waived those in order to plead guilty. Applicant agreed with the facts as stated by the solicitor during the guilty plea and was satisfied with Counsel's representation. After a discussion with the PCR court, Applicant admitted that he at least knew the sentences that Assault and Battery, 1st degree and Criminal Sexual Conduct, 2nd degree carried, as the plea judge advised him of such sentences.

Lenard Baxter, Applicant's father, testified that he advised Applicant that he supported whatever decision Applicant made concerning this case. Mr. Baxter also testified Counsel wanted him to speak with Applicant in aiding Applicant's decision to pursue a trial or accept a plea offer. Mr. Baxter further stated Applicant expressed that he wanted a trial. Mr. Baxter lastly stated he did not threaten Applicant to plead guilty.

Counsel testified he was appointed to represent Applicant. He stated he received two briefcases full of discovery documents. Counsel testified he hired a private investigator and a medical expert. Counsel also testified he met with Applicant around 16-18 times in consultation. Counsel stated he was fully prepared for trial and that the defense in this case was consent between Applicant and Victim.

Counsel stated the original offer from the State was twelve years, but Applicant rejected this offer. Counsel testified it was Applicant's decision to accept the offer of twelve years on the day he

was scheduled for trial. Counsel testified the State re-offered the twelve years and that he asked Applicant's parents to speak with Applicant about this case. Counsel also testified he did not threaten Applicant or promise anything to get him to plead guilty.

Counsel testified he interviewed every witness he could find that was listed in the discovery materials and that he even found a witness who was willing to testify that he overheard Victim speaking with Applicant about trading drugs for sex. Counsel also stated that Applicant wanted a trial, but realized the risks were too great and so, Applicant accepted the plea offer.

Counsel further testified that at a minimum, Applicant would have been convicted of the Assault and Battery, 1st degree based on the injuries to Victim, including stab-wounds. Applicant's co-defendant also gave a statement to police that Applicant possessed a knife during the incident and held it to Victim's throat. Counsel stated that all of Applicant's charges carried over 100 years' incarceration. Again, Counsel testified that it was Applicant's decision to plead guilty and that Counsel did not threaten Applicant.

On cross-examination, Counsel testified Applicant's co-defendant proceeded to trial and received a thirty (30) years sentence for the same crimes. Counsel also testified he advised Applicant that he would most likely be convicted of at least the Assault and Battery, 1st degree due to the severity of the injuries to Victim. Counsel then stated the State renewed the twelve-year offer when Counsel disclosed to the State that he had located a witness who would have testified that Victim offered Applicant sex for drugs, tending to show the sex between the two was consensual. Counsel testified he also hired a medical doctor who would have testified that the injuries to Victim's genitalia could have occurred even during consensual sex.

Counsel then testified he believed the offer from the State was extremely reasonable and that the risks of trial were too great; however, the decision to accept the plea offer and plead guilty was Applicant's. Counsel stated he discussed the witnesses he planned to call at trial with Applicant and Applicant understood to what they would testify. Additionally, Counsel stated Applicant wrote him and expressed concern with Counsel's representation; however, there were two prior hearings where Applicant wanted Counsel relieved, but when the judge advised Applicant that if he fired Counsel that Applicant would proceed without counsel, Applicant chose to proceed with Counsel.

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 (2003).

Ineffective Assistance of Counsel

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), SCRPC). 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 (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. 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 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant was charged with many different crimes and had a difficult decision to make: accept the plea offer and receive a certain and definite sentence or proceed to trial and face unknown consequences. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court finds the Applicant's testimony regarding Counsel's ineffectiveness is not

credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

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 notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South

Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



J. Ernest Kinard, Jr.
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9/3, 2014

Beaufort, South Carolina

WITNESSES

RHPD/ Harveston

DOCKET NO. 2011-GS-46- 00438

The State of South Carolina

County of York

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

Defendant

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

COURT OF GENERAL SESSIONS
February 17, Term 2011

ARREST WARRANT NUMBER

Direct Indictment

[Signature]
Defendant

THE STATE

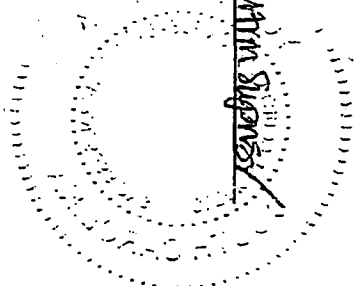
vs.

ACTION OF GRAND JURY

TRIEBIL

LENTAVIOUS DENARD BAXTER

Witness:
[Signature]
STEPHANIE KAPIS, Court Sargent
C.C.C. PLS. AND G.S.



VERDICT

Indictment for

ASSAULT AND BATTERY, 1st DEGREE

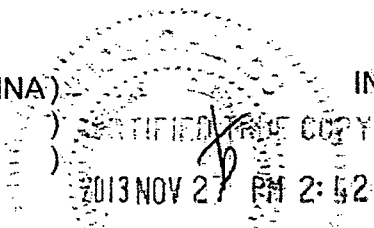
SC Code: 16-3-600
CDR Code: 34-12

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK




At a Court of General Sessions, convened on February 17, 2011, the Grand Jurors of York County present upon their oath,

ASSAULT AND BATTERY, 1st DEGREE

The defendant, ^{S. J. K.} Lentavious Baxter, did in York County, South Carolina, on or about September 22, 2010, willfully and unlawfully commit an assault and battery in the first degree by injuring the Victim, Mitzi Baker during the commission of a robbery, burglary, kidnapping, or theft; or by offering or attempting to injure the Victim, with the present ability to do so, during the commission of a robbery, burglary, kidnapping, or theft and/or by means likely to produce death or great bodily injury, all in violation of S.C. Code Ann. 16-3-60(C).

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


 ASSISTANT SOLICITOR

WITNESSES

RHPD, Harveston

DOCKET NO. 2011-GS-46-00440

2011GS4600440A

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 17, Term 2011

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

Defendant

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

CSC 200 Decker

HWG

ARREST WARRANT NUMBER

Count One: K617640

Count Two: Direct Indictment 1: Re: K617644

THE STATE

vs.

LENTAVIS DENARD BAXTER

TRUE BILL

ACTION OF GRAND JURY

J. P. Roll
Foreperson of Grand Jury
Date: 2/17/11

VERDICT

Indictment for

COUNT ONE
CRIMINAL SEXUAL CONDUCT, 1st DEGREE

SC Code: 16-03-652

CDR Code: 160

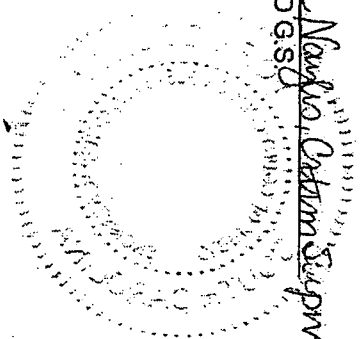
COUNT TWO
POSSESSION OF A KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 549

Foreperson of Petit Jury
Date:

Witness:
Stephanie Naylor, Victim Supervisor
C.C.C. PLS. AND G.S.D.



Lentavis D Baxter
Defendant

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

FILED THE COPY
2013 NOV 27 PM 2:42
DAVID TAYLOR
CLERK OF COURT
YORK COUNTY SC

At a Court of General Sessions, convened on February 17, 2011 the Grand Jurors of York County present upon their oath:


COUNT ONE
CRIMINAL SEXUAL CONDUCT, 1ST DEGREE

The Defendant, Lentavis Denard Baxter, did in York County, South Carolina, on or about September 22, 2010, wilfully, unlawfully commit the offense of criminal sexual conduct in the first degree by engaging in sexual battery with the victim, Jenny McCorkle, under any one or more of the following circumstances: the actor used aggravated force to accomplish the sexual battery; and/or the victim submitted to sexual battery by the actor under circumstances where the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act, all in violation of Section 16-03-652, Code of Laws of South Carolina, (1976, as amended).

COUNT TWO
POSSESSION OF A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME

The defendant, Lentavis Denard Baxter, in York County, South Carolina, on or about September 22, 2010, while committing the crime of Criminal Sexual Conduct 1st Degree, a violent crime under S.C. Code Ann. 16-1-60, did, himself or his co-defendant, visibly display a knife, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR