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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Darlington County

Thomas A. Russo, Circuit Court Judge

TIMOTHY FARRIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000230

A P P E N D I X

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

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

JESSICA KINARD
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
TIMOTHY MICHAEL FARRIS)
DEFENDANT)

March 9, 2011
Darlington, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

JASON ANDERS, ASSISTANT ATTORNEY GENERAL
Attorney for the State

MATTHEW SWILLEY, PUBLIC DEFENDER
Attorney for the Defendant

JOHN SPECT, Hartsville Police Department
STEVEN LINDSEY, Friend of Defendant
RICHARD MCWHORTER, Defendant's Grandfather

HATTIE O. GORDON
Circuit Court Reporter

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

MR. ANDERS: May it please the Court. Your Honor, before you is Timothy Farris. He is represented by Matt Swilley. Your Honor, he's before you on Darlington County Indictment 2008-GS-16-1555 on the charge of criminal solicitation of a minor.

Your Honor, this is a plea without negotiation or recommendation. There were three original warrants. He's pleading to one. The State is going to dismiss two of those, your Honor. It's my understanding that he's going to plead guilty to that today.

THE COURT: All right. You are Timothy Michael Farris?

MR. FARRIS: Yes, sir.

THE COURT: What is your age?

MR. FARRIS: I'm 23 now. I was 20 at the time of arrest.

THE COURT: Where are you from?

MR. FARRIS: Waxhaw, North Carolina.

THE COURT: Wrightsville?

MR. FARRIS: Waxhaw.

THE COURT: Waxhaw.

MR. FARRIS: Yes, sir.

THE COURT: Your occupation.

MR. FARRIS: At the time I was unemployed. I have

1 had three separate jobs.

2 THE COURT: And your education?

3 MR. FARRIS: High school.

4 THE COURT: The indictment that the Attorney General
5 has called alleges that in May, between the dates of
6 May 17th 2008 and July 24th 2008, you did willfully and
7 knowingly commit the crime of criminal solicitation of a
8 minor in that you, being a person 18 years of age or
9 older, did knowingly contact and communicate with a person
10 located in Darlington County that you reasonably believed
11 to be under the age of 18 for the purpose of or with the
12 intent of persuading, inducing, enticing, or coercing the
13 person to engage or participate in sexual activity as
14 defined in Section 16-15-375 Subsection Five, or a violent
15 crime as defined in Section 16-1-60 or with the intent to
16 perform a sexual activity in the presence of the person
17 reasonably believed to be under the age of 18.

18 This being a violation of Section 16-15-342 of the
19 Code of Laws of South Carolina 1976 as amended. For that
20 particular offense you could receive up to a maximum of?

21 MR. ANDERS: Ten years, Your Honor.

22 THE COURT: Ten years. You've heard the indictment,
23 the allegations, and how do you plead?

24 MR. FARRIS: Guilty.

25 THE COURT: Now, you were not present this morning

1 when I went over everybody's rights, were you?

2 MR. FARRIS: No, sir.

3 THE COURT: You fully understand by entering this
4 plea that you're waiving your constitutional right to a
5 jury trial?

6 MR. FARRIS: Yes, sir.

7 THE COURT: If you had a trial the State would have
8 to show or prove to the jury your guilt beyond a
9 reasonable doubt and convince all 12 of them unanimously
10 of your guilt. You would have a right, through your
11 attorney, to cross examine the State's witnesses and put
12 up your own defense and witnesses. You would be able to
13 testify at your own defense, but you would also have a
14 constitutional right to remain silent.

15 In other words, if you elected not to testify it
16 couldn't be held against you, and I would even tell the
17 jury that. That's your Fifth Amendment right.

18 You need to understand that you are innocent until
19 proven guilty, and that presumption of innocence stays
20 with you throughout any trial and would only end if a jury
21 convicted you. If a jury did convict you you would have a
22 right to appeal just as long as you file a Notice of
23 Appeal within ten days of sentencing. Same rule applies
24 for guilty pleas.

25 Those are your basic rights. Do you understand them?

1 MR. FARRIS: Yes, sir.

2 THE COURT: Do you have any questions?

3 MR. FARRIS: No, sir.

4 THE COURT: You do not want a trial?

5 MR. FARRIS: No, sir.

6 THE COURT: You're satisfied with your attorney's
7 advice and services?

8 MR. FARRIS: Yes, sir.

9 THE COURT: Answered all your questions?

10 MR. FARRIS: Yes, sir.

11 THE COURT: Are you today under the influence of any
12 drugs or alcohol or medication?

13 MR. FARRIS: No, sir.

14 THE COURT: Do you suffer from any condition, mental
15 or physical, that could be affecting your understanding?

16 MR. FARRIS: No, sir.

17 THE COURT: Has anybody promised you anything or
18 threatened you in any way in order to get you to plead?

19 MR. FARRIS: No, sir.

20 THE COURT: You're entering this plea of your own
21 free will and accord?

22 MR. FARRIS: Yes, sir.

23 THE COURT: Find your pleas freely, voluntarily and
24 intelligently entered into, and you've had the services of
25 a competent attorney with whom you say you're satisfied.

1 The plea is accepted. Solicitor.

2 MR. ANDERS: Thank you, Your Honor. And I did
3 neglect to introduce myself. Jason Anders with the
4 Attorney General's Office. Your Honor, this occurred
5 May 17th 2008. Investigator John Spect, who is to my
6 left, he's with the Hartsville Police Department, entered
7 Yahoo Chat Room posing as a 13 year old female. Soon
8 after that an individual with the screen name of Michael
9 243K9 entered into an instant messaging chat with the
10 undercover officer.

11 The individual was later identified as Timothy Farris
12 who was above the age of 18 at the time. Farris then went
13 on to discussing travelling to Hartsville for the purpose
14 of having sex with whom he believed to be a minor child.
15 He never did travel, Your Honor. He also asked the child
16 if she masturbated.

17 On June 4, 2008 Farris again made contact with the
18 Minor Persona. Farris asked the Minor Persona if he could
19 come to Hartsville, and if that Persona would allow him to
20 anally penetrate the child, Your Honor.

21 He made one more contact on June 13th 2008. The chat
22 was similar in nature as the other two chats. Your Honor,
23 on August 1st Mr. Farris was living in Union County, North
24 Carolina. And Investigator Spect was able to, with the
25 help of Union County Law Enforcement serve search warrants

1 and arrest warrants in North Carolina. He was extradited
2 from there to Darlington County.

3 As I stated earlier he was originally charged with
4 three warrants. He's pleading to one. Two will be
5 dismissed. And just for the record, Your Honor, this is a
6 crime which requires the sex offender registry. As a part
7 of this plea, Your Honor, he's also forfeiting his
8 computer that was used at the time of the crime. He has
9 no prior record. Your Honor, once again, this is a
10 straight up plea.

11 THE COURT: What kind of record does he got?

12 MR. ANDERS: No prior record, Your Honor.

13 THE COURT: Mr. Swilley.

14 MR. SWILLEY: Thank you, Your Honor. Please the
15 Court. Your Honor, Michael is now 23 years-old as he
16 stated. This occurred in 2008 when he was 20 years of
17 age. Your Honor, Michael is lifetime resident of Waxhaw,
18 North Carolina which is in and around the Charlotte area,
19 I believe, in Union County.

20 Went to Parkwood High School up there. Due to the
21 nature of his family he had to drop out. Began to work to
22 support his family. He works as a land surveyor for a
23 civil engineer when he was 17 years-old. Your Honor,
24 since that time he has obtained his G.E.D.

25 Your Honor, I would like the Court to be aware of the

1 fact that at the time of those instances were taking place
2 Mr. Farris was having problems with prescription
3 medication. He was abusing Zanex, and this has since been
4 rectified. He has completely rectified his problem with
5 substance abuse.

6 Your Honor, since this time he has worked a variety
7 of jobs. He's works for A.M.T. Advertising and Sales. He
8 works for Kirby Vacuums, and he has also worked as an
9 electrician apprentice. I think that's the most recent
10 job that he's lost due to economic circumstances. He's
11 even been to trade school with A.B.C. Learned how to do
12 electrician work.

13 Your Honor, Michael actually has a lot of activities
14 that reflect well on him that he participates in. He's
15 worked with the music director of the Wellington
16 Non-Methodist Church in and around his home town.

17 Judge, he still lives with his grandparents and both
18 his grandmother and grandfather who have raised him from
19 his youth. Grandmother works hospice care. His
20 grandfather also recently lost his job as well. Your
21 Honor, Michael has also been diagnosed in his adolescence
22 with A.D.H.D. as well as oppositional defiance disorder.
23 He is prescribed Ritalin for this.

24 Judge, I think that it's important to note that
25 although he knew this was wrong and it was an awful thing

1 to do I don't think in his wildest dreams he ever imagined
2 that he would standing here before you for what he did.
3 And that change anything that he did, and that doesn't say
4 anything about the illegality of his conduct. But I don't
5 think that he really ever had any serious intentions of
6 coming down to Hartsville to meet with anyone.

7 Your Honor, this young man, from what I have observed
8 of him, I think this is a serious deviation from the
9 conduct that he usually engages in. He also has been
10 helping out with Lancaster County Rescue Squad in South
11 Carolina as a volunteer. He helped them participate in
12 fundraising.

13 Judge, also I've been given some letters from friends
14 and family of Mr. Farris if the Court would care to read
15 them. At the appropriate time I'd be happy to hand them
16 up. One from his grandparents. One from a close personal
17 friend, Alisha Branding; and another is from a
18 professional associate, Joshua Taylor.

19 Your Honor, I would respectfully request that the
20 Court give Mr. Farris a sentence suspended upon the
21 service of probation and allow him to serve out that
22 probation in North Carolina. Your Honor, I think he would
23 be an excellent probation candidate. I think that he can
24 perform up to their standards. I don't think that he is
25 ever going to be in the justice system again for anything.

1 And, Your Honor, I believe at the appropriate time
2 Mr. Farris as well as some of the people that are
3 accompanying him today would like to address the Court on
4 his behalf.

5 THE COURT: Yes, sir. Need your name, please.

6 MR. LINDSEY: I'm Steven Lindsey, and I'm Michael's
7 best friend. We have been for many years. And, Your
8 Honor, please take into consideration what I have to say
9 before you make your decision.

10 As his closest friend I don't have a doubt that he is
11 truly a good person, and that the statements he made that
12 he's being accused of do not reflect who he is as a
13 person. He's always been an honest and loyal friend the
14 me, and he's always been there for me even when I had no
15 one else. He was also -- he's also a great friend to
16 Alisha Branding, my fiance. And has treated her with the
17 upmost respect even during the periods of time when she
18 and I were not together. And he continues to be
19 absolutely respectful to her.

20 Several years ago I was in charge of a worship band
21 at a wedding at the United Methodist Church, and I had to
22 leave for college, and he willingly took my place and
23 continued to guide them and lead worship and play guitar.
24 Had a lot of friends there, and they all got to know him
25 really well.

1 He was also a member of the Lancaster Search and
2 Rescue Squad, and had been a great help to a lot of
3 people. I know that he's an honorable man, and I ask that
4 you please be merciful. Thank you for your time.

5 THE COURT: Thank you for coming.

6 MR. McWHORTER: Yes, sir, Your Honor. I'm Richard
7 Quarters. I'm Michael's grandfather. Me and his
8 grandmother have raise him since he was nine months old.
9 His mother was on drugs. His father eventually ended up
10 in South Carolina penitentiary. We raised him for 23
11 years. We're still trying to raise him. He's our
12 grandson.

13 When he went to work he went to work with me. And
14 when he lost his job he was heart broken because he was
15 actually learning. Even though he didn't finish school at
16 that time he was learning how to work, and it was a great
17 time. But the company lost jobs, laid him off, and he
18 was -- this was the same period of time he was in a lot of
19 depression. And he got how he couldn't sleep and stuff,
20 and that's where he started taking the stuff he was
21 taking.

22 He would talk to anybody at any time, and it's a
23 fault -- to the fault. I mean no stranger, he meets no
24 stranger. Even on the internet he will talk to anybody.
25 I don't know why he said what he said that night, but it's

1 not like him. There is no -- I have no history of
2 anything close to this, but he's being charged with it.

3 His grandmother and I are just begging the Court to
4 be lenient on him because we need him, too. We love him,
5 and he loves us. We've done everything we can. I
6 believe -- I do believe he will be a credit to society
7 from here on out. I'm not saying it's going to be on his
8 record, but he knows he has made a big mistake. Thank
9 you, Your Honor.

10 CLERK OF COURT: Could you spell us your name?

11 MR. McWHORTER: Richard McWhorter, M-C-W-H-O-R-T-E-R.

12 THE COURT: Yes, sir. Anything else you want to say?

13 MR. FARRIS: No, sir.

14 MR. SWILLEY: I think that about sums it up, Judge.

15 THE COURT: I didn't mean to cut the police off.

16 Anything y'all want to add?

17 MR. SPECT: No, sir, I'm identify.

18 THE COURT: He cooperated?

19 MR. SPECT: He did.

20 MR. SWILLEY: Your Honor, I also would like to make
21 the Court aware that Mr. Farris actually came to my office
22 on Friday. We spoke at least about this. He's expressed a
23 great deal of remorse to myself. I think that also
24 reflects well upon his character.

25 THE COURT: How long were you in jail over this?

1 MR. FARRIS: I was in lockup for 18 hours, sir..

2 THE COURT: Sure better be thankful that you didn't
3 come down here. Did the 18 hours in jail impress anything
4 on you?

5 MR. FARRIS: Yes, sir. That was the scariest time of
6 my life.

7 THE COURT: If you think that will scare you what in
8 the world you think is going to happen to you if you go to
9 prison at the Department of Corrections? Well, one part
10 of it tells me to put you in jail or the other part says
11 that's not the right thing to do. I might be making
12 matters worse. But I'm glad you got a little taste of
13 jail to know what you're going to be facing if you ever do
14 anything that stupid again.

15 MR. FARRIS: Yes, sir.

16 THE COURT: And the other reason I'm not sending you
17 down the road is you're under a life sentence anyway, you
18 understand that?

19 MR. FARRIS: Yes, sir.

20 THE COURT: You understand that the hell you're going
21 to live through for the rest of your life?

22 MR. FARRIS: Yes, sir.

23 SENTENCE OF THE COURT

24 THE COURT: The sentence of the Court is that you be
25 confined to the State Department of Corrections for a

1 period of five years. That is suspended upon time served
2 of one and a half days. You're going to be on probation
3 for four years.

4 Provision of probation will be that may be
5 transferred to North Carolina if they can do it. I'm not
6 sure if they can. They'd had so many changes lately.

7 Here comes the bad part for you. You're going to
8 have to register on the sexual register for the rest of
9 your life unless somebody changes the law.

10 MR. FARRIS: Yes, sir.

11 THE COURT: You've got to pay \$500 representation fee
12 plus Court costs. Good luck to you.

13 MR. FARRIS: Thank you, sir.

14 MR. SWILLEY: Thank you, Your Honor.

15 MR. ANDERS: Thank you, Your Honor.

16 END OF TRANSCRIPT OF RECORD

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December 7, 2013



HATTIE O. GORDON, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Darlington)

IN THE COURT OF COMMON PLEAS

Timothy Michael Farris)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

12CP160814

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.

1. Place of detention Union County Department of Community Corrections
2. Name and location of Court which imposed sentence Court of general sessions
Darlington South Carolina 4th Circuit.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a)

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT, RMC
DARLINGTON COUNTY, S.C.

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) March 9th, 2011
(b) 5 years suspended on 4 years probation
(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. _____
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. _____
ii. _____
iii. _____
(c) the date of each such result:
i. _____
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
(a) was unable to reach my lawyer,

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Newly Discovered Evidence
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Did not show when asked, Full Discovery, Did not object to Evidence
- (b) Received Full discovery after asking 3 times on June 5th, 2012
- (c) _____
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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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?

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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) _____
 (b) _____
 (c) _____

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? no trial
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. _____

 ii. _____

 iii. _____

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

i. _____

 ii. _____

 iii. _____

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

To have my plea vacated, my name taken off the
South Carolina Sex Offender Registry

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

No

Revised 3/2003

STATE OF ^{North} ~~SOUTH~~ CAROLINA)
 County of Union)

VERIFICATION

I, Timothy Michael Farris, 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.

Timothy Michael Farris

SWORN to and subscribed before me this 20
 day of September, 2012.

Carol Godfrey (L.S.)
 Notary Public

My Commission Expires: Jan. 9, 2017

CAROL GODFREY
 Notary Public
 Union Co., North Carolina
 My Commission Expires Jan. 9, 2017

2012 SEP 24 AM 11:19
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY

Scott B. Suggs
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16- 814
	)	
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed September 24, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted by the Darlington County Grand Jury for criminal solicitation of a minor (2008-GS-16-1555). Matthew Swilley, Esquire, represented Applicant.

On March 9, 2011, the Applicant pled guilty as indicted before the Honorable Paul M. Burch, who sentenced Applicant to five years imprisonment suspended upon service of four years probation. Applicant did not appeal his sentence.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Newly discovered evidence

III.

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, 80 L.Ed.2d 674. 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, in addition to being successive. Therefore, Respondent requests this Court summarily dismiss the Application with prejudice.

IV.

The statute of limitations applicable to post-conviction relief actions bars the entire application. S.C. Code Ann. § 17-27-45 (Supp. 2001) requires an inmate to file a post-conviction relief application “within one year after the entry of a judgment of conviction” This provision applies to all convictions after the July 1, 1995 effective date of the statute. *See Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

Applicant’s conviction and sentence occurred on March 9, 2011. The Applicant should have filed this application on or before March 9, 2012. Applicant filed this post-conviction relief application over six months after his statute of limitations expired. Accordingly, since Applicant did not present these allegations in a timely manner, this Court should dismiss the application with prejudice as barred by the statute of limitations.

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

V.

The State therefore requests that this Court summarily dismiss this Application as it is filed outside the statute of limitations and seeks relief not available in PCR, pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

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 the Application be denied and the matter dismissed with prejudice.

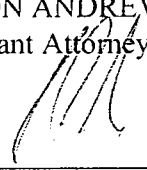
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General

P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

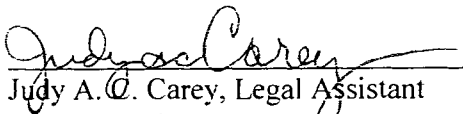
January 15, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-0814
	)	
TIMOTHY MICHAEL FARRIS	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Timothy Michael Farris
Union County Sheriff's Office
3344 Presson Road
Monroe NC 28112

DATED this 15th day of January, 2013.


 Judy A. Carey, Legal Assistant
 For Respondent

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	FOURTH JUDICIAL CIRCUIT
	)	
The State	)	
Plaintiff	)	
	)	JANUARY 23, 2013
Versus	)	
	)	
Timothy Michael Farris	)	2008-GS-16-1555
Defendant.	)	
_____	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

Chad Beard, Probation Agent

Richard Jones, Esquire
ATTORNEY FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

Probation Violation Hearing

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Ruling of the Court

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Certificate of Reporter

Page

THE STATE VERSUS TIMOTHY FARRIS

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1 (Whereupon, this hearing began at 10:45 a.m.
2 on January 23, 2013.)

3 **MR. BEARD:** Timothy Farris.

4 **MR. JONES:** Stand right here for me.

5 **THE COURT:** All right. Let's place Mr. Farris and
6 Mr. Beard under oath, please.

7 **WHEREUPON, TIMOTHY MICHAEL FARRIS**

8 **AND CHAD BEARD**

9 **AFTER BEING DULY SWORN TESTIFIES AS FOLLOWS**

10 **MR. FARRIS:** I do.

11 **MR. BEARD:** Yes, sir. I do.

12 **THE COURT:** All right. Mr. Farris, you're before me
13 today, and of course we have been together before.

14 **MR. FARRIS:** Yes, sir.

15 **THE COURT:** Because, The Department of Probation
16 says you have violated the terms of your probationary
17 sentence. Do you understand that?

18 **MR. FARRIS:** Yes, sir, Your Honor.

19 **THE COURT:** And the reason we are having this
20 hearing is to decide whether you have violated. If you
21 haven't, the court is going to make a finding to that effect
22 and enter an order in your favor. But, then the court may
23 revoke all or part of your suspended sentence. And, of
24 course, you have a five-year sentence which is sustained
25 over your head.

THE STATE VERSUS TIMOTHY FARRIS

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1 **MR. FARRIS:** Yes, sir.

2 **THE COURT:** Now, just one moment, please. That may
3 be a call that I need to stand down for before we proceed.

4 **(PAUSE.)**

5 **THE COURT:** Mr. Farris, I am going to step away from
6 the bench, and I will be right back.

7 **MR. FARRIS:** Yes, Your Honor.

8 (Whereupon, a recess was taken from 10:45
9 a.m. until 10:55 a.m.)

10 **THE COURT:** All right. Everyone thank you for that
11 courtesy while we were discussing the heating system in the
12 courthouse.

13 Mr. Farris, again as I say, we have been together
14 before. You are with me today because Probation says you
15 have violated the terms of your probationary sentence, and
16 you tell me you understand it.

17 Now, Mr. Jones, have you had ample time with Mr. Farris
18 to prepare for today?

19 **MR. JONES:** I have, Your Honor.

20 **THE COURT:** And, are you ready to go forward?

21 **MR. JONES:** Yes, sir.

22 **THE COURT:** Any objection to the jurisdiction or the
23 venue of this Court?

24 **MR. JONES:** No, sir.

25 **THE COURT:** All right. Is Probation ready to

THE STATE VERSUS TIMOTHY FARRIS

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1 proceed?

2 MR. BEARD: Yes, sir. I am.

3 THE COURT: All right. You had a criminal
4 solicitation charge against you, Mr. Farris. And, you were
5 placed on Probation back in March of 2011. The sentence at
6 that time was a five-year sentence provided that you served
7 only a couple of days of time, and then the balance of your
8 service on that five years was suspended and you were placed
9 on probation. You were before me back in January, it is
10 almost a year ago now, January 26, 2012. I continued you at
11 that time, restructured your accounts, and I found that your
12 violation in what was a close decision was not willful.
13 Now, you are back again. Probation says that based on this
14 charge that you have violated the conditions of your
15 probation, and this is their position, that you have
16 prepared and submitted to the State of North Carolina, or we
17 have received from North Carolina, information that you have
18 not obeyed the conditions of their probation; including ---
19 apparently there are some unpaid financial obligations. You
20 also have not complied with your sex offender counseling,
21 apparently taking the position that you will not admit that
22 you have guilt or responsibility. And, I am told that you
23 may have a legal position. But, nevertheless, whatever that
24 legal position is preventing you from complying with the
25 court's requirements that you undertake sex offender

THE STATE VERSUS TIMOTHY FARRIS

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1 counseling. In fact, you have been terminated from that
2 program. And, you have also not paid your drug test fee,
3 and otherwise followed the rules of probation.

4 Now, tell me, what else do you believe Mr. Farris has
5 done that violates his probation.

6 **MR. BEARD:** Your Honor, that is it. I would just
7 like to --- This violation report was prepared by our
8 Interstate Compact Office in Columbia. But, the main one is
9 the one you brought up about the sex offender counseling.
10 It says, the offender was removed from the program for lack
11 of attendance, and a lack of a meaningful participation. It
12 says, North Carolina reported that Mr. Farris has attended
13 seventeen out of thirty sessions. It says, that he
14 counseled with notice with calls on seven occasions, and
15 there was a no show on six occasions. I just wanted to make
16 sure that was clear for the record. But, I have no other
17 things to bring up about Mr. Farris.

18 **THE COURT:** All right. And, now, Mr. Jones, what do
19 you have to say for your client?

20 **MR. JONES:** Your Honor, I have dealt with Mr. Farris
21 pretty extensively over the last year. We have had numerous
22 conversations. As Your Honor said, this matter was actually
23 plead through our office with I believe Mr. Swilley, Ms.
24 Tonya Little had also talked to Mr. Farris prior to his
25 plea.

THE STATE VERSUS TIMOTHY FARRIS

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1 Judge, he has since the plea --- I think he has
2 basically tried to do everything that he is suppose to do on
3 probation. He has had some monetary issue. He tells me
4 that being in the position that he is in has obviously not
5 been good for his employment search. But, nevertheless, the
6 main situation we find our self here today is concerning the
7 counseling. And, it is my understanding that Mr. Farris has
8 engaged the services of an attorney in North Carolina for
9 some Federal issues resulting from his plea. But, he has
10 also a post conviction relief that he is very hopefully,
11 basically put him back to the starting point so that he can
12 do it all over again.

13 His counsel in North Carolina has advised him that he,
14 in order to secure his position, I guess, if the PCR is
15 granted, or if whatever Federal relief he is seeking is
16 granted, that he should not admit during the counseling
17 sessions whatever it is that they are required to admit,
18 that basically his confession, so to speak, and his
19 admission that he has a problem. As a result of that, he
20 has not attended various sessions. I think that counsel has
21 also advised him that there are some legal issues with what
22 the counselor is or is not doing. And, as a result, he has
23 followed that advice, and it puts him in a position where he
24 can no longer attend the sessions, because he is not
25 cooperating. He is not a bad person. He has been very

THE STATE VERSUS TIMOTHY FARRIS

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1 cooperative with our office. He has been very active, at
2 least in the last year that I have been talking with him
3 concerning all aspects of his charge, and all aspects of the
4 probation requirements. Unfortunately for Probation and
5 him, he has followed the advice of his attorney in North
6 Carolina that has gotten him where he is today.

7 **THE COURT:** Okay.

8 **MR. JONES:** I would respectfully ask that --- I guess
9 two things, and one in the alternative; is that you find him
10 not in wilful violation, because he has been following the
11 advice of this attorney. Or, in the alternative, that you
12 terminate his probation and let his PCR fall where it may,
13 and see where Mr. Farris ends up.

14 **THE COURT:** All right. Mr. Farris, do you have
15 something that you want to say, sir?

16 **MR. FARRIS:** If the court will allow me, I have a
17 sworn Affidavit from said counsel, stating that he has
18 advised me, and the therapist herself has advised me not to
19 participate, because she feels that it would violate my
20 rights when it comes to the PCR. Because she advised me on
21 a face-to-face basis, excuse me, Your Honor, that anything I
22 say can and will be used against me in a court of law, and
23 that she did not want that responsibility. She also told me
24 that she did not keep records on me. We requested all the
25 records on me from this counselor. She did not keep records

THE STATE VERSUS TIMOTHY FARRIS

9

1 on me.

2 And, on the 17th, Mr. Beard actually called me down to
3 his office. And, I showed him the documentation showing
4 that I have actually been in the hospital six times in the
5 past five months due to stress related issues. One was
6 actually a suicide attempt. And, I want to explain. I
7 don't want to be noncompliant. I want to do everything that
8 I am suppose to do. And, I want to clear my name and I will
9 be proved that I am innocent.

10 **THE COURT:** Well, Mr. Farris, sir, do you realize
11 that if you are granted your PCR, you are not acquitted of
12 the charge. You go back to square one, and you have the
13 charge facing you. And, of course, you have exposure for
14 being sent to corrections if you are found guilty of that
15 charge.

16 **MR. FARRIS:** I understand that, Your Honor. I am
17 very confident that I will be found not guilty. I am very
18 confident the charges will be dropped once I am able to
19 present my case to a court.

20 **THE COURT:** Then why would you plead guilty in the
21 first place, if you felt that you had a valid defense?

22 **MR. FARRIS:** I was never given a copy of the
23 evidence, Your Honor. I was never shown any of the
24 evidence. And, I was told that the Attorney General would
25 not pursue a case if it was not a slam dunk. I was told

THE STATE VERSUS TIMOTHY FARRIS

10

1 that if I went to trial that I would receive thirty years in
2 prison, and if I took a guilty plea I would most likely do
3 probation. I knew that at least on probation I could fight
4 it. I could do the steps that I needed to do while
5 maintaining that I am in compliance. That I would be able
6 to take the steps and the legal recourse that I am able to
7 prove my innocence.

8 **THE COURT:** All right. Sir, Mr. Farris, your North
9 Carolina counsel, have they discussed the fact with you that
10 there is an extremely low percentage of guilty plea PCRs
11 that are successful, and that percentage is less than three
12 percent. Do you understand me?

13 **MR. FARRIS:** Yes, Your Honor. I am very confident
14 that once I have been able to obtain legal counsel in South
15 Carolina, we will automatically request a Frank v Delaware
16 hearing, and that will show my innocence.

17 **THE COURT:** All right. And your North Carolina
18 counsel is not authorized to practice in South Carolina; am
19 I correct?

20 **MR. FARRIS:** Yes, Your Honor.

21 **THE COURT:** So, tell me, how do you intend to retain
22 South Carolina counsel to take this matter for you?

23 **MR. FARRIS:** I actually have a clinical social
24 worker who has reviewed my evidence in its entirety, and
25 believes in me as well. She has taken the time out for

THE STATE VERSUS TIMOTHY FARRIS

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1 months now researching this every day, and is raising money
2 for me right now. And, if the court would like, I could
3 have the contact information of these people listed. And, I
4 don't --- to be honest I don't know what else to say. I
5 have done everything that I can. I go to the meetings and I
6 am told not to speak. I was even sent home from the
7 meetings a few times because I was sick.

8 **THE COURT:** All right, sir. Do you have a response
9 you wish to make on the record to what you have heard, Mr.
10 Beard?

11 **MR. BEARD:** No, sir. I do not.

12 **THE COURT:** Mr. Farris, I am going to ask you to
13 step beyond the door, please. Just step out in the hall.
14 Please remain there, and we will send for you in just a
15 moment.

16 **MR. FARRIS:** Yes, Your Honor.

17 **THE COURT:** All right. Let's go off the record.

18 (Whereupon, a bench conference was held out
19 of the presence of the defendant.)

20 **THE COURT:** Bring him in, please. All right. Mr.
21 Farris, in your absence, just so you will be aware of what
22 happened. I was discussing with counsel the sentencing
23 parameters of the court.

24 **MR. FARRIS:** Yes, sir.

25 **THE COURT:** I also took a look at the previous

THE STATE VERSUS TIMOTHY FARRIS

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1 incident reports of the charges against you.

2 MR. FARRIS: Yes, Your Honor.

3 THE COURT: And, again, I reviewed the information
4 that Probation has provided me with today about your
5 probation.

6 MR. FARRIS: Yes, Your Honor.

7 THE COURT: Based on all of that, this is what I am
8 going to do.

9 First of all, I am simply going to terminate your
10 probation. I am going to let you off of probation.

11 MR. FARRIS: Thank you.

12 THE COURT: But, I am going to suggest this to you.

13 MR. FARRIS: Yes, Your Honor.

14 THE COURT: Mr. Farris, because I believe that ---
15 You know, now you have no consequence, no present
16 consequence from this plea. And, my suggestion to you is
17 that you not pursue the PCR, because I can tell it is
18 praying upon your mind. It is a very difficult task. I
19 know you have set out to clear your name. But, now I have
20 removed any present-day consequence from it. It will be on
21 your record, but that will be it. And, based upon your
22 mental status, as well as what I have received today, and
23 you tell me you are overwrought about where you find
24 yourself, your nerves, and your hospitalization. From a
25 holistic standpoint your best bet is to move forward and

THE STATE VERSUS TIMOTHY FARRIS

13

1 forget about it, and just go on with life. And, that would
2 be my suggestion to you. But, I am not here to give legal
3 advice. I just simply respond to what I see before me.

4 What information do you have for Mr. Farris about his
5 probation termination?

6 **MR. BEARD:** What we will do is, we will notify our
7 Columbia office about the results of the hearing today, and
8 then basically that would close interest in North Carolina
9 in this case. But, his registry requirements will still be
10 in effect, because he does still reside in the State of
11 North Carolina.

12 **THE COURT:** Do you have any questions about that,
13 sir?

14 **MR. FARRIS:** No, Your Honor.

15 **THE COURT:** All right, sir. Then this decision has
16 been in your benefit. Good luck to you. Have a good day.

17 (Whereupon, this hearing was concluded at
18 11:13 p.m. on Wednesday, January 23, 2013.)

19 -- END OF TRANSCRIPT --

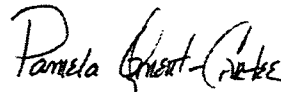
CERTIFICATE OF REPORTER

14

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of General Sessions in Darlington County, South Carolina, on the 23rd day of January 2013.)

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

November 2, 2013

A handwritten signature in cursive script that reads "Pamela Ozment-Cartee".

Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT GENERAL SESSIONS

County of Darlington
STATE VS.

Indictment Number: 2008-GS-16-1555
Probation C/W#s: C-47-12-0200

Timothy Michael Farris
AKA: _____
Race: W Sex: M
DOB: _____
SSN: _____
SID#: 01835554

Name of Original Offense: Criminal Solicitation of a Minor
Original A/W#: J-087214
Date of Original Offense: 5-17-08 to 6/13/08
Conviction S.C. Code #: 16-15-0342
Conviction CDR Code #: 2191919
Original Sentence: 5 yrs; provided upon service of 1 1/2 days; and bal ss w/ probation for 4 yrs
ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 3/19/11 in the Court of General Sessions of Darlington County (and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 1/26/12, as set forth in the attached warrant(s) or citation(s) dated 8/22/12. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 9 and 10

Therefore, IT IS ORDERED that:

- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years, the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☒ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of 1st degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Financial Obligations: Order satisfies: ☒ Department fees (arrearage) ☐ Civil judgment: ☐ Department fees
☒ Fines and other fees (arrearage/balance) ☐ Fines and other fees
☐ Restitution (and 20%) (arrearage/balance) ☐ Restitution (and 20%)
- ☒ Additional Conditions ordered by the Court: Terminate probation.

FILED
2008 FEB 19 AM 8:09
SCOTTS BLISS
CLERK OF COURT
DARLINGTON COUNTY, SC

- ☐ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- ☒ The defendant has previously served 1 1/2 days months/years on this sentence.
(split sentence time and/or prior partial revocation time)
- ☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 23rd day of JANUARY, 2013
DARLINGTON, SC

Presiding Judge [Signature]
Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature x [Signature]
Signed this 23rd day of JANUARY, 2013, at _____
Day Month Year

Witnessed by [Signature]
DARLINGTON SC
City

PROBATION CITATION

No. C-47-12-0200

SOUTH CAROLINA V. TIMOTHY MICHAEL FARRIS		COUNTY: DARLINGTON	
		SCDC #	SID # 01835554
TO: TIMOTHY MICHAEL FARRIS			
YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below.			
Place 2221 DEVINE STREET, COLUMBIA, SC		Room 4TH FLOOR-SUITE 422 Date and Time 9/24/2012 11:30 AM	
YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.			
Violations Charged TIMOTHY MICHAEL FARRIS WILLFULLY VIOLATED CONDITIONS OF PROBATION NUMBERS 9 AND 10 IN CAUSE NUMBERS 08-GS-16-1555 AS ORDERED BY THE DARLINGTON COUNTY COURT OF GS ON 03/09/11 AND SC STANDARD SEX OFFENDER CONDITION NUMBER 2 WHICH WAS SIGNED ON 03/09/11.			
YOU ARE HEREBY NOTIFIED that you have the rights listed below.			
List of Rights: You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.			
IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.			
COLUMBIA, South Carolina		Probation and Parole Agent Kirk V. Dudley	
Date 8/22/2012		Agent # 0186	
A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.			
Place NC DPS/DAC/SCC 2630-F Nelda Dr. Monroe, NC 28110		Date and Time 9/2/12 11:30am Serving Officer's Signature <i>[Signature]</i>	
Sworn to and subscribed before me this 9/2/12 day of September 2012			
<i>[Signature]</i> Signature of Notary Public		My Commission Expires May 13, 2013	

RECEIVED
SEP 17, 2012
SOUTH CAROLINA
INTERSTATE COMPACT

PROBATION CITATION

No. C-47-12-0200

SOUTH CAROLINA		COUNTY: DARLINGTON	
V.			
TIMOTHY MICHAEL FARRIS		SCDC #	SID # 01835554
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YOU ARE HEREBY NOTIFIED that you have the rights listed below.			
List of Rights: You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.			
IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.			
COLUMBIA, South Carolina		Probation and Parole Agent	
Date 8/22/2012		Kirk V. Dudley <i>Kirk Dudley</i> Agent # 0186	
A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.			
Place		Date and Time	
		Serving Officer's Signature	
Sworn to and subscribed before me this _____ day of _____			
Signature of Notary Public		My Commission Expires _____	

Addendum

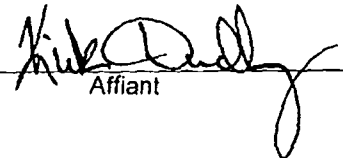
ENRICHMENT FOR LACK OF ATTENDANCE AND LACK OF MEANINGFUL PARTICIPATION. NC REPORTED THAT MR. FARRIS ATTENDED 17 OUT OF 30 SESSIONS, THAT HE CANCELLED WITH NOTICE ON 7 OCCASIONS (01/18/12, 01/25/12, 02/15/12, 02/22/12, 04/04/12, 04/18/12, AND 05/09/12), THAT HE WAS A NO SHOW ON 6 OCCASIONS (03/14/12, 05/02/12, 06/13/12, 06/27/12, 07/11/12, AND 07/15/12). MR. FARRIS FAILED TO PAY \$20.00 DRUG TEST FEE TO SCDPPPS. THESE VIOLATIONS CONSTITUTE A WILLFUL FAILURE TO FOLLOW THE ADVICE AND INSTRUCTIONS OF HIS SUPERVISING AGENT AND A WILLFUL FAILURE TO ABIDE BY THE CONDITIONS IN THE APPLICATION FOR ISC TRANSFER DATED 03/09/11.

Sworn to and Subscribed before me
this 22 day of August, 2012.



Signature of Notary Public

July 22, 2018
My Commission Expires


Affiant

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS

12-CP-16-814

Timothy Michael Farris,

Applicant,

v.

State of South Carolina.

Respondent.

CONDITIONAL
ORDER OF DISMISSAL

FILED
2013 FEB -5 AM 11:30
SCOTT B. SUGGS
CLERK OF COURT / P.O. D.C.
DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed September 24, 2012. Respondent made a Return, requesting summary dismissal of the matter. This Court also has before it the records of the Clerk of Court regarding the subject convictions.

PROCEDURAL HISTORY

JB
Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted by the Darlington County Grand Jury for criminal solicitation of a minor (2008-GS-16-1555). Matthew Swilley, Esquire, represented Applicant.

On March 9, 2011, the Applicant pled guilty as indicted before the Honorable Paul M. Burch, who sentenced Applicant to five years imprisonment suspended upon service of four years probation. Applicant did not appeal his sentence.

ALLEGATIONS

entitled to PCR JB
Applicant alleges that he is ~~being held in custody unlawfully~~ for the following reasons:

1. Ineffective Assistance of Counsel

2. Newly discovered evidence
DISCUSSION

This Court finds that the Application should be dismissed with prejudice as it was filed beyond the statute of limitations.

Statute of Limitations

Applicant has failed to comply with the filing procedures of the Act. S.C. Code Ann § 17-27-10 to -160 (1976 & Supp. 1997). The Act reads as follows:

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

S.C. Code Ann. § 17-27-45(a) (Supp. 1998).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant's conviction was on March 9, 2011. This Application was filed September 24, 2012, which was over six months beyond the time the statutory filing period expired.

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

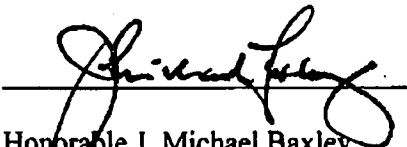
CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court, and serving such reasons with the SC Office of the Attorney General: Attn. Assistant Attorney General Tyson A. Johnson, Sr., Post Office Box 11549, Columbia, SC 29211.

AND IT IS SO ORDERED this

28th day of JANUARY, 2013.

FILED
2013 FEB -5 AM 11:30
SCOTT B. SUGES
CLERK OF COURT, D.D.
DARLINGTON COUNTY, S.C.


Honorable J. Michael Baxley
Chief Administrative Judge
4th Circuit

DARLINGTON, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	
	)	REPLY TO
v.	)	
	)	MOTION TO DISMISS and
State of South Carolina,	)	
	)	
Respondent.	)	CONDITIONAL ORDER OF DISMISSAL
	)	

Applicant Pro Se, in response to the Motion to Dismiss filed on January 17, 2013 and delivered to Applicant on February 8, 2013 would respectfully show this Court:

I.

Respondent erred in stating the Applicant was confined in the South Carolina Department of Corrections. Applicant was never confined by any court. But if Applicant was so confined, why did Respondent mail the Motion to Dismiss to the Union County Sheriff's Office in North Carolina? [Exhibit A]

1. If Respondent's Motion actually was mailed to Union County Sheriff's Office, the latter were under no obligation to track down and forward the mail to Applicant.
2. However, the Respondent's Motion was not received by the Union County Sheriff's Office. [Exhibit B]
3. Respondent's Motion was not delivered to Applicant until February 8, 2013, when the failed mailing was discovered inadvertently. Applicant had phoned the clerk's office to inquire about ordering hearing transcripts and learned, for the first time, that Respondent had filed the Motion and that a Conditional Order to Dismiss had been issued. The clerk with whom Applicant spoke, Jennifer Sanders, promptly placed the documents in an envelope addressed to his home address.
4. The Affidavit of Service by Mail, dated January 15, 2013 and filed on January 17, 2013 is a fraud on the court and a direct effort to quash the Applicant's rights.
5. In this reply, Applicant will show numerous errors of fact in Respondent's

Motion. Beneath Respondent's numeral I is the first error. Matthew Swilley did not represent Applicant on August 21, 2008, when Applicant was indicted.

6. No one represented Applicant until August 23, 2008 when, unknown to Applicant, Robert Kilgo, Jr. sent discovery request to the prosecutors. [Exhibits C].
7. Kilgo's name continues to appear on the docket because he is the only defense counsel who filed anything on behalf of Applicant. [Exhibit D] They never met and never spoke. Applicant did not know of his existence until June 4, 2012.
8. Matthew Swilley was not appointed to represent Applicant until two weeks prior to the Plea Hearing. [Exhibit E]
9. The last paragraph under number I contradicts the first paragraph, and does state correct facts: "On March 9, 2011, the Applicant pled guilty as indicted before the Honorable Paul M. Burch who sentenced Applicant to five years imprisonment suspended upon service of four years probation. Applicant did not appeal his sentence."
10. Applicant could not appeal his sentence because he tried to reach his plea counsel, Matthew Swilley, every day for fifteen days—past the ten day statute of limitations for filing an appeal. This was the last issue of many that will prove ineffective assistance of Counsel.
11. Respondent should have known at the time their Motion to Dismiss was filed that Applicant continued to be on probation, resided at his North Carolina home, and was under the supervision of probation officers of South Carolina, North Carolina, and the Interstate Compact. Any one of these officers could have provided the correct address.
12. It is not harmless error for the State to fail to mail its Motion to the correct address.

II.

Respondent **wrongly** states that Applicant alleges he is being held in custody unlawfully. Applicant alleges he was wrongly indicted and wrongly convicted and, for the first time can provide proof based on:

1. Ineffective Assistance of Counsel
2. Newly discovered evidence

III.

Respondent correctly cites case law applicable to proving the allegations in the application for post-conviction relief. It will become evident to the court when Applicant files his Motion for Summary Judgment that these cases unequivocally entitle Applicant to post-conviction relief.

IV.

Respondent claims the statute of limitations applicable to post-conviction relief actions bars the entire application. Respondent errs.

1. Applicant is aware that when he filed the PCR on September 24, 2012, it was beyond the one-year statute of limitations.
2. Applicant's failure to timely file is excusable. It was not due to lack of diligence. Rather, it was due to hardship: ineffective counsel; counsel's refusal despite, repeated requests, to provide the complete file; new information; inability to use the new information due to lack of knowledge of the law; months of not knowing about the PCR; and more months of fruitless search for an attorney willing to represent him pro bono.
3. The State's failure to respond within the statutory limit of (60) sixty days places them on equal footing with Applicant.
4. When the State filed its Reply on January 17, 2013—two months past the statute of limitations—it was in procedural default, the consequence of violating S.C. CODE §17-27-70, Rule 12(A). The State's lack of due diligence is inexcusable. Justice requires the State be held to the same standard as applicants for post-conviction relief.
5. It is a matter of record that the State flouted procedural rules numerous times:
 - by failing to request a continuation to permit a late filing;
 - by not responding to the PCR complaint within the requisite (60) sixty days—not until January 17, 2013;
 - by failing to serve the pro se plaintiff with their answer;
 - by filing a false certification of mailing with the court. When a plaintiff or applicant is pro se, the Answer to a Complaint should be mailed to the plaintiff. It is beyond credibility that the Attorney General's staff is not cognizant of this.
6. The State is not excused from default simply by filing an answer *eventually*. "[F]iling a late answer would not alter the fact that Appellants were in default, especially if entering default is a ministerial act to be automatically performed once an affidavit shows the defendant has failed to comply with the requirements of the rules.[citation]." *Stark Truss Co., Inc. v. Superior Construction Co., et al*, No. 3859 (S.C. App. Ct. 2004).
7. The Court cannot grant equitable tolling to the State's violation of statute of limitations and simultaneously dismiss Applicant's petition based on the statute of limitations. No hardship prevented the State from filing on time, whereas Applicant's case exemplifies those rare and exceptional circumstances that warrant application of the doctrine of equitable tolling.

"[E]quitable tolling, which allows a plaintiff to initiate an action beyond the statute of limitations deadline, is typically available only if the claimant was prevented in some extraordinary way from exercising his or her rights, or, in other words, if the relevant facts present sufficiently rare and exceptional circumstances that would warrant application of the doctrine." *Pelzer v. State*, No. 4439 (S.C. App. Ct. 2008).

8. Applicant received new evidence on June 4, 2012 and filed his PCR on September 24, 2012—well within one year after the date of actual discovery of new evidence. In *McCoy* the South Carolina Supreme Court emphasized this exception to the statute of limitations:

"[S]ection 17-27-45(C) provides that if a PCR applicant discovers 'material facts not previously presented and heard that require[] vacation of [his] conviction or sentence,' he may file a PCR application 'within one year after the date of actual discovery . . . or after the date when the facts could have been ascertained by the exercise of reasonable diligence.'" *McCoy v. State*, No. 27214 (S.C. Supreme Court, February 6, 2013).

9. Moreover, "[w]hen considering the State's motion for summary dismissal, where no evidentiary hearing has been held, the PCR judge must assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. § 17-27-80)." *Id.*
10. "Where an applicant alleges facts that would establish an exception to [] the statute of limitations [] and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing. Cf. Delaney v. State, 269 S.C. 555, 556, 238 S.E.2d 679, 679 (1977)." *Id.*
11. The PCR judge in *McCoy* was chastised for overlooking "the discovery rule in section 17-27-45(C), which allows one year after the discovery of 'material facts not previously presented and heard that require[] vacation of the conviction or sentence' to file a PCR application." *Id.*

V.

Applicant therefore requests this Court to find the State in procedural default as a matter of law, and seeks relief in accord with *McCoy v. State* on the basis there are

genuine issues of material fact which necessitate an evidentiary hearing.

VI.

Wherefore, having made sufficient argument as to the appropriate timing of the PCR and the reasonableness of an evidentiary hearing, Applicant requests this Court to so hold and to appoint an appellate defender to assist the Applicant.

Respectfully submitted,

BY: _____
Timothy Michael Farris, Applicant Pro Se

EXHIBITS

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
)
TIMOTHY MICHAEL FARRIS)
)
Applicant,)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

2012-CP-16-0814

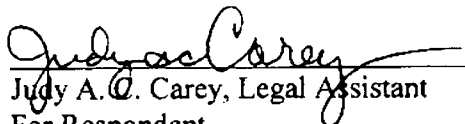
AFFIDAVIT OF SERVICE BY MAIL

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

Timothy Michael Farris
Union County Sheriff's Office
3344 Presson Road
Monroe NC 28112

DATED this 15th day of January, 2013.

FILED
2013 JAN 17 AM 11:04
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.


Judy A. Carey, Legal Assistant
For Respondent

6. The names and current addresses of any expert witnesses the State has used to assist in the investigation of its case or any witnesses that the State propose to use as witnesses at the trial.
7. The results of any photo identification procedures employed in this case together with any photographs so employed.
8. The best results of scientific, psychological, and/or psychiatric test or experiments conducted in this case.
9. The names and present addresses of person(s) who has knowledge of the existence of evidence relevant to the acts charged in this case, including all persons who will be called as witnesses for the State upon trial of this case and those who will not be called as witnesses for the State.
10. All information relevant to the credibility of any government witness.
11. All information concerning the conduct, character and reputation of such witnesses.
12. The criminal records either juvenile or adult, of such witnesses.
13. The substance of any agreement or proposed agreement made between the State or it's agents and any witness in this case dealing with of reward, favored treatments, or leniency in return for information or favorable testimony.
14. The substance of any such agreements entered into in the past between the State, its agents and any potential witness in this case with reference to other criminal cases or investigations.
15. All materials of any nature and witnesses names and addresses that may be exculpatory.

FURTHER, The Defendant will specifically move that said Order requiring production, inspection, copying and/or photographing specifically require compliance by the state within (30) days of receipt of this Motion. This production is specifically sought so that the information discoverable pursuant to the Rule 5, South Carolina Rules of Criminal Procedure, will be meaningful for the proper preparation of the defense of TIMOTHY MICHAEL FARRIS.

Darlington, S.C.
August 23, 2008

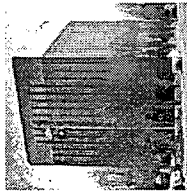
Robert Kilgo, Jr.
Public Defender
300 Russell Street, Suite 113
Post Office Box 648
Darlington, S.C. 29540
(843) 398-4320

SAVED FOR EXHIBIT B

Darlington County Fourth Judicial Circuit Public Index



60



Darlington County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

The State of South Carolina VS Timothy Michael Farris

Case Number:	1087214	Court Agency:	General Sessions	Filed Date:	08/18/2008
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Burch, Paul M.
Disposition:	Pled Guilty				
Disposition Date:	03/09/2011	Date Received:	08/18/2008	Arrest Date:	08/01/2008
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:		Indictment Number:	2008GS1601555	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Farris, Timothy Michael	Order/Form 9 restructure accounts	Order		01/26/2012-14:17		
Farris, Timothy Michael	Active - Probation	Filing		03/21/2011-12:25		
Farris, Timothy Michael	Bond Comment To Notes Screen	Filing		03/10/2011-00:18	03/09/2011-00:18	
Farris, Timothy Michael	RULE 5 KILGO 082508LT FROM ATTY GEN OFFICE 101508	Filing			03/09/2011-00:00	

CMSWeb 6.1
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SC Commission of Indigent Defense
Office of the Fourth Circuit
Public Defender
313 West Hampton Street
Post Office Box 29
Dillon, South Carolina 29536

A.C. Michael Stephens, Chief Circuit Public Defender

J. Richard Jones, Deputy Chief Public Defender
Emily M. Crayton, Assistant Deputy Chief Public Defender
William E. Grove, Assistant Public Defender

Matt S Swilley, Assistant Public Defender
Tiffany Gibson, Assistant Public Defender
Christa Caines Lane, Circuit Administrator

February 24, 2011

Office of the Solicitor
William B. Rogers, Jr.
Fourth Judicial Circuit
Darlington County, South Carolina

RE: Notice of Assignment of Attorney
Timothy Michael Farris
J 087214; J 087215; J 087216
;;

Dear Solicitor:

Please be advised that the Fourth Circuit Public Defender Office has assigned the above referenced case.

Matt Swilley is the Public Defender representing the above client in this matter.

Fourth Circuit Public Defender
313 West Hampton Street
Dillon, South Carolina
877-225-2922



A.C. Michael Stephens
Chief Circuit Defender

16A08-00000786

CHESTERFIELD **DARLINGTON**
TELEPHONE 1-877-225-2922

DILLON **&**

MARLBORO **COUNTIES**
E-FAX 1-800-670-6375

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	2012-CP-16-814
	)	
Timothy Michael Farris,	)	
	)	
Applicant,	)	MOTION
	)	
v.	)	AND MEMORANDUM
	)	
State of South Carolina,	)	FOR SUMMARY JUDGMENT
	)	
Respondent.	)	FOR THE APPLICANT
	)	
	)	

Applicant moves for summary judgment on the grounds of ineffective representation and newly discovered evidence—material facts, not previously presented and heard, that require vacation of the conviction in the interest of justice.

Ineffective Representation

1. Applicant is the victim of a rogue police officer and defense counsel who made no effort to comply with the duty to advocate. The issues presented here will “identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” *Strickland v. Washington*, 466 U.S. 688 (1984).

2. Plea counsel, Matthew Swilley, was appointed to represent the Applicant on February 24, 2011. [Exh. A] One week later he phoned the Applicant to notify him about a plea hearing scheduled for the following week. Swilley did not ask for a continuance.

When they met, Swilley did not review the evidence nor consult with the Applicant.

Swilley told him he had no choice but to plead guilty. [Applicant's affidavit] With these words, Matthew Swilley assumed the role of judge.

South Carolina Did Not Have Jurisdiction

3. It is reasonable to presume defense counsel did not look at the file or do any research. Thus, he was not aware that South Carolina could not claim personal jurisdiction for the twenty-years-old, long-time resident of North Carolina. Defense counsel undoubtedly was ignorant of the fact that the Applicant, a musician with no criminal record, had no business contacts nor ever committed a tortious act within this state (S.C. Code Ann. § 36-2-803).¹ "The Fourth Circuit 'has made it clear that due process requires that a defendant's contacts with the forum state be tantamount to physical presence there.'[citation]" *Perficient Inc. v. Pickwick*, No. 11-cv-479 (W.D. N.C. 2012). Ignorant of these facts and relevant law, defense counsel failed to assert Applicant's due process rights. Also see, *World-wide Volkswagen v. Woodson*, 444 U.S. 286 (1980).

Invalid Arrest Warrant

4. The South Carolina arrest warrant was deficient on its face. Had defense counsel read it, he would have realized that the affidavit in support of the warrant did not meet the constitutional and statutory requirements for issuance of an arrest warrant.

5. Due to defense counsel's negligence, he was not aware the affiant, Mica

¹ "First, the nonresident defendant's conduct must meet the requirements of South Carolina's long-arm statute. [citation] Second, the exercise of jurisdiction must comport with the requirements of the due process clause. [citation] The defendant must have sufficient contacts with South Carolina so that the constitutional standards of due process are not violated. [citations]" *Moosally v. Norton*, Op. No. 3769 (S.C. Ct. App. filed April 5, 2004).

Griggs, was not an investigator, had no personal knowledge, and could swear to nothing other than what would be considered hearsay in court. Griggs wrote, "Sgt. John Specht, a Hartsville police investigator states to the affiant . . ."² Specht's *unsworn* oral statement to Griggs cannot support the warrant. [Exh. B]

6. The court reversed the conviction in *State v. Dunbar*, Op. No. 3866 (S.C. Ct. App. Sept. 27, 2004) when it found, "The person signing the affidavit had no knowledge of the facts alleged in the affidavit." The *Gist* court similarly ruled: "[A] warrant issued upon a statement of facts not sworn to is unconstitutional." *Gist v. Berkeley County Sheriff's Dept.*, 151 S.E.2d 162 (S.C. Ct. App. 1999).

7. Here, as in *Gist, Id.*, the affidavit for the arrest warrant failed to describe how the Applicant was linked to the crime. Mere conclusory statements do not suffice. The observations of *State v. Jenkins*, Op. No. 4958 (S.C. Ct. App. dated June 20, 2012) similarly apply: "[W]e find the police did not provide the magistrate a substantial basis on which to find probable cause."

8. A challenge to the integrity of the affidavit would have revealed intentionally or recklessly omitted material facts:

- No facts establish jurisdiction of a non-resident;
- No facts show how emails were traced to Applicant's computer;
- No facts show how emails were traced to this particular computer user;
- No facts establish how it was determined that the Applicant's email

²Rule 602, SCRE requires a witness other than an expert to have personal knowledge of the matters testified to.

address was not used by another resident of his home, a guest, or an email hijacker;

- No facts identify the person accused to a moral certainty as the perpetrator of the criminal act;
- The investigating officer, Specht, did not swear to any facts.

9. The warrant's affidavit did not support a finding of probable cause. "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others. In order to ensure that such an abdication of the magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued." *Illinois v. Gates*, 462 US 213 (1983).

10. Hartsville Municipal Court Judge Rilla Thomas did not ask why a local police officer did not refer an out-of-state suspect to federal law enforcement. When there is evidence of a defendant who crosses, or intends to cross, state lines to meet a minor, jurisdiction belongs to federal investigators. But federal investigators require "a substantial step" (i.e., plans to meet with the minor) for probable cause.

To prove an attempt to violate § 2422(b), the Government must establish beyond a reasonable doubt that defendant used a facility or means of interstate commerce to intentionally "persuade, induce, entice, or coerce a person whom he believed to be a minor into illegal sexual contact and took a substantial step toward that persuasion or enticement." *United States v.*

Barlow, 568 F.3d 215, 219-20 (5th Cir. 2009) (internal quotation marks, brackets, and citation omitted).³

11. An alternative to referring the case to federal investigators was described in *State v. Gaines*, Op. No. 26549 (S.C. Sup. Ct. dated October 6, 2008). It began when a Pennsylvania detective, pretending to be a twelve-years-old girl with the screen name "LilAshleyPA," was contacted by William Gaines of South Carolina. Using the computer alias, "HMMRTHEGRT8" on their AOL internet chats, Gaines encouraged "LilAshleyPA" to travel to Greenville to see him; proposed renting a hotel room where she could stay with him; offered to buy her clothing and lingerie; requested nude photos of her; and cautioned "LilAshleyPA" to keep their plans secret because "guys my age aren't allowed to date girls your age."

The Gaines matter was referred to SLED (South Carolina Law Enforcement Division). SLED agents set up an AOL internet account using the screen name "Allyinsc13," and posed as a thirteen-year-old girl living in Columbia. Gaines responded to the decoy with nearly the exact same enticements. The chats continued until SLED agents procured an order for HMMRTHEGRT8's records from AOL; confirmed the online chats originated from Gaines' South Carolina home; obtained a search warrant; and confiscated Gaines's computer.

Gaines appealed his jury conviction and lost. Unlike Specht's investigation of the Applicant, the suspect was referred to investigators in Gaines' home state; the second series of chats replicated the first, and there was evidence of intent (plans to meet).

³*U.S. v. D'Andrea*, No. 10-60996 (5th Cir. 2011)

12. The Gaines conviction occurred prior to the arrest of the Applicant, and could have served as a model for Detective Specht. Instead, he acted without probable cause—which he undoubtedly knew since he enlisted a low level employee to substitute for him on a sworn affidavit. Judge Thomas could have stopped the runaway train, if she recalled that “The arrest warrant process should not be treated as a bureaucratic process in which the magistrate or municipal judge becomes merely a rubber stamp for the police.”⁴

13. Defense counsel’s failure to challenge the affidavit and arrest warrant as invalid and lacking probable cause contributed to the violations of the Applicant’s Fourth Amendment rights. Citing United States v. Leon, 468 U.S. 897, 920, 104 S. Ct. 3405, 3419, 82 L. Ed.2d 677 (1984), the South Carolina Supreme Court noted,⁵

three situations in which [] deference to a magistrate's finding of probable cause was not warranted: First, the deference accorded to a magistrate's finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which that determination was based. . . . Second, the courts must also insist that the magistrate purport to 'perform his 'neutral and detached' function and not serve as a rubber stamp for the police." . . . Third, reviewing courts will not defer to a warrant based on an affidavit that does

⁴Judge's Bench Book, available at www.sccourts.org/summaryCourtBenchBook/HTML/CriminalC.htm

⁵*State v. Weston*, Op. No. 24724 (S.C. Sup. Ct. filed December 15, 1997).

not "provide the magistrate with a substantial basis for determining the existence of probable cause."

14. Although the investigating officer in *Giordenello v. United States*, 357 U.S. 480 (1958) was not as unscrupulous as Detective Specht, the Supreme Court concluded that violations of Fourth Amendment rights demanded the conviction be set aside.

Unlike Specht, the investigating officer in *Giordenello* appeared at court and submitted a sworn affidavit. His affidavit was defective "on any of several grounds," including that he "relied exclusively upon hearsay information rather than personal knowledge." The hearsay was from law enforcement officers and other persons, none of whom either appeared or submitted affidavits. *Giordenello* is directly applicable to this Applicant. The conviction of the Applicant must be set aside.

Illegal Seizure

15. The very next day Detective John Specht drove a red, unmarked car to North Carolina to meet with a Union County detective. Three days earlier he had convinced his North Carolina counterpart to acquire search and arrest warrants from a North Carolina court, and a Fugitive Arrest Warrant "to aid in extradition back to SC." (quoted from Specht's incident report). **[Exh. C-1 incident report]**

16. What defense counsel could have learned without great effort is that Specht could not get a Fugitive Arrest Warrant issued by South Carolina.⁶ Additionally, the Applicant was not a fugitive. He had never been indicted anywhere.

⁶South Carolina did not enact the Uniform Criminal Extradition Act. South Carolina's extradition statute allows the state to respond to demands from other states, but there is no provision to demand return of a fugitive. (S.C. Code Ann. § 17-9-10)

17. Specht and four North Carolina police officers entered the mobile home of the Applicant's grandparents, using the unlocked back door, found the Applicant alone and asleep in his bedroom, woke him, showed him the warrants, and proceeded to interrogate him—without Miranda warnings.⁷ [Exh. C-2 incident report]

18. The North Carolina search warrant specifies digital devices and electronic storage devices. Officers went beyond the search warrant, confiscating a webcam (which does not store anything), handwritten letters, and proceeded to search a closet and dresser drawers. When Applicant's grandmother returned home she saw the officers confiscating not only the Applicant's computer but also her new Dell computer, the Dell monitor, mouse, and keyboard. She complained that she had just finished paying for these. They took them anyway, and turned all items over to Specht. [Exh. D]

19. Hartsville Detective Specht did not have authority to seize these items, nor to arrest the Applicant—beyond the borders of South Carolina. Yet defense counsel did not question Specht's confiscation of Applicant's possessions and his grandmother's possessions. Defense counsel did not question the confiscation of items not relevant to the alleged crime. Defense counsel did not question the illegal seizure of the Applicant. Was defense counsel not familiar with the Fourth and Fourteenth Amendments?⁸

⁷*Missouri v. Seibert*, 542 US 600 (2004).

⁸Amendment XIV Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Also see, *U.S. v. Place*, 462 U.S. 696 (1983) (A seizure of personal property is *per se* unreasonable . . . unless it is accomplished pursuant to a judicial warrant issued upon probable cause and particularly describing the items to be seized.)

Illegal Extradition

20. In shackles, the twenty-years-old Applicant was brought to the court in Union County, North Carolina for extradition. Defense counsel should have known that Applicant was not a fugitive from justice within the meaning and intent of the Constitution and laws of the United States (Art. 4, Sec. 2, Constitution of the United States; R. S. § 5278, 18 U.S.C.A. § 662, relating to extradition).

21. Applicant was told to sign a Waiver of Extradition. Defense counsel's neglect to review and discuss the file with the Applicant is the reason he never knew what transpired when the Applicant asked for an attorney. **[Applicant's affidavit]**. Applicant signed the Waiver without reading it.

22. Had defense counsel looked at the Waiver, he would have seen nothing in the huge blank space designated, "Crime(s) in Demanding State." He would have seen no date in the blank space for "Date of Crime(s)." **[Exh. E]** Although South Carolina is entered in the box for "Demanding State," the demand was from Hartsville Detective John Specht, acting without authority. It was Specht who was demanding.

23. These blank boxes indicate awareness by a North Carolina judge, Detective Specht, and other officials that the Applicant was not a fleeing fugitive. Despite this, whomever prepared the Waiver chose to check the box that reads, *"I understand that I have been arrested in this State under criminal process alleging that I committed the crime(s) shown above on the date and in the demanding state and county named above."* The twenty-years-old, a captive of law enforcement, signed without reading. **[Applicant's affidavit]** Although defense counsel knew (or should have known) the Applicant had never

been arrested prior to the extradition, he did not challenge this.

24. Within two days the Applicant's Constitutional rights were violated four times. His Fourth Amendment rights are applicable to the States through the Due Process Clause of the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). Not one of the three appointed defense attorneys (2008-2011) raised this issue.

Unlawful Custodial Arrest

25. Detective Specht brought the Applicant to Darlington Detention Center, eighty miles from Applicant's home. Applicant again asked about a lawyer, and was told to get in the holding cell. This was another violation of Applicant's Fourth and Fourteenth Amendment rights. Fifteen hours later—the next day—the prisoner was brought to a room where he sat in handcuffs to view Judge Rilla Thomas on closed circuit television. This was the bail hearing. The Applicant was not represented.

26. Applicant does not recall Judge Rilla telling him he had the right to request a preliminary hearing. It was his first arrest and Applicant had no idea what it was, nor that by not requesting a preliminary hearing he missed an opportunity to challenge Detective Specht and, possibly, end his ordeal quickly.⁹

27. Two weeks later, on August 18, 2008, assistant attorney general Susanna Ringler brought State v. Farris to the grand jury. Three days later Applicant was indicted. [Exh. F] It is likely Ringler need only read aloud "sexually explicit" phrases from Specht's alleged transcripts and the grand jury, ever ready to indict a ham sandwich, indicted

⁹"A preliminary examination is a critical state in a criminal proceeding. Thus the defendant should have the opportunity to obtain counsel or have such appointed before the examination. *State v. Taylor*, 255 S.C. 268, 178 S.E.2d 244 (1970)." *South Carolina Court Bench Book*, section F(7). Available at <http://www.judicial.state.sc.us/summaryCourtBenchBook/HTML/CriminalF.htm>.

Timothy Michael Farris for criminal solicitation of a minor.¹⁰

Discovery Oddities

28. Applicant did not apply for a public defender and did not pay the forty dollar screening fee but, unknown to him, an attorney was assigned. Two days after the indictment, Robert Kilgo, Jr. sent discovery requests to the prosecutors. [Exh. G] Several months later Kilgo departed employ as a public defender—without ever speaking with the Applicant. The two public defenders who succeeded Kilgo never questioned the Applicant about his claim of innocence, nor followed up on the discovery (evidenced by the file the Applicant did not see until June 2012).

29. Assistant A.G. Ringler responded to Kilgo's discovery request on October 14, 2008, with 114 pages of discovery and one disc.¹¹ Her cover letter noted that she was enclosing the prosecution's discovery requests. [Exh. H] According to the file delivered to the Applicant on June 4, 2012, no response was made to her requests.

30. Ringler's letter added, "Additional evidence and results from [the] computer examination will be disclosed as they become available."¹²

¹⁰S.C. Code Ann. §16-15-342(A): The elements of criminal solicitation of a minor include: (1) a defendant who is at least eighteen years old; (2) who must knowingly contact, communicate, or attempt to communicate with; (3) a person who is actually, who reasonably believed to be, under the age of eighteen; (4) for the purpose of or with the intent of persuading, inducing, enticing, or coercing to engage in a sexual activity or a violent crime; or (5) with the intent to perform a sexual activity in the presence of the person under, or reasonably believed to be under, the age of eighteen.

¹¹Ringler appears to be unaware of the lack of a search warrant for the confiscated items. And she made no mention of examination of the 20 unlabeled CD-R discs, nor the videotape confiscated from Applicant's residence.

¹²The reference to one computer implies no examination was made of the Dell, which belonged to Applicant's grandmother. Yet her Dell computer was kept in evidence.

31. On December 12, 2008, Ringler sent Kilgo a disc with discovery material she described as, "the forensic report on the equipment seized from the defendant." [Exh. I] Apparently none of the public defenders examined the file since they were not aware that the forensic exam disc was missing.¹³

32. When Tonya Copeland-Little phoned to introduce herself, Applicant believed she was his first defense counsel. Neither she nor Swilley, her successor, was aware of the blank spaces on the Extradition Waiver, and neither appear to have read numerous other items that might have been used in Applicant's defense.

Specht's Affidavit

33. Among the items defense counsel did not read is the only affidavit signed by Detective Specht. [Exh. J] Dated June 6, 2008, two months before Specht drove to North Carolina to seize the Applicant, the single paragraph states,¹⁴

Beginning on May 17, 2008, this officer was posing undercover on the internet as a thirteen (13) year old female, utilizing Yahoo! Instant Messenger. The defendant in this case, **positive identity yet unknown** but referred to from this point as "Michael24339" (his screen name) engaged the undercover in a chat conversation on Yahoo Messenger. Throughout the course of May 17 chat, and again on June 4, 2008, the defendant chatted over periods of several hours with the officer. During the first chat, "Michael24339" asked the undercover about her sexual experiences and masturbation habits. On the second chat, "Michael24339" again asked about those topics, but additionally asked about anal sex with the undercover. He has also mentioned making a roadtrip [sic] to Hartsville SC, to meet the undercover.

¹³The forensic disc was not in the file at the public defender's office on June 4, 2012.

¹⁴Bold added; otherwise, copied exactly including misplaced commas and other mistakes.

During the course of the chats, and during a third chat on 6-6-2008, in which sex was not the preferred topic of conversation, "Michael24339" messaged a link to a MySpace page which he claims belongs to his "record label", of which he claims to be the proprietor. The FRIEND ID# for that page is 305952311. Through investigation, the officer also located another MySpace page for "Michael24339", which is identified as FRIEND ID# 14362323. It is believed that the requested MySpace records will help to corroborate the identification of "Michael24339." "Michael24339" also seems repeatedly directly **related to the name "Michael Farris", which is information obtained not only through Yahoo! chat (after being added as a friend) but also through publicly available web searches.** This information is requested in order to facilitate the prosecution of a Criminal Solicitation of a Minor offense which has already occurred.

34. Within the short time it took to write that paragraph, Specht progressed from "positive identity yet unknown" [line four] to "the name 'Michael Farris" [counting up from the bottom, lines 8-12]. Not one word describes Specht's experience or training, nor whether he had specialized training as a member of the Internet Crimes Against Children (ICAC) task force. He admits he identified the Applicant using nothing more sophisticated than publicly available web sites. He provides no facts to describe how the chats were traced to the Applicant or to his computer, nor how the Applicant was identified as the person behind the keyboard. Apparently it did not occur to Specht (nor to defense counsel) to wonder if the Applicant's screen name had been hijacked and used by someone else.

35. Specht's affidavit was the basis for a search warrant requested on August 1, 2008, the date of the Applicant's arrest, by assistant attorney general Megan B. Wines. The search warrant ordered Yahoo, Inc. to provide information related to the screen name or user name "Michael24339." [Exh. K] Although Wines refers to a "Yahoo! South Carolina

chat room," the source of this information is a mystery. It is not mentioned elsewhere—not in the affidavit nor the incident reports. There are a few other oddities, among them the search warrant reference to a Yahoo profile for the Applicant. That profile lists the wrong birth year for the Applicant, making him five years older. [Exh. L] None of these oddities was questioned by defense counsel.

Yahoo Search and Seizure

36. Wines' search warrant request repeats Specht's assertion—that the decoy stated "she" was thirteen years-old. But there is no supporting evidence. Similarly, in paragraph two, Wines states that Applicant "sent Alliekat0416 several pictures." But the only pictures in the file are a head shot from Applicant's driver license and numerous photos of his home taken by the police on the day of the raid..

37. Wines states: "Based on his training and experience Detective Sergeant Specht believes that the individual associated with the screen name 'Michael24339' is a threat to children." Training and experience? Defense counsel did not ask, nor did defense counsel question the basis for Specht's "belief" that Applicant posed a threat.

38. Apparently Wines did not read the actual documents since she failed to notice that Specht, as "Alliekat0416," never mentioned age. She was not aware that the emailer never took the "substantial step" to initiate a meeting. She was not aware of the absence of pictures Specht claimed were sent by the Applicant. That may be excusable. It is not excusable for defense counsel, who neglected the duty to challenge the absence

of this essential information, without which there is no crime.¹⁵

39. The Yahoo search warrant requested addresses, connection logs with times and dates, etc. Most odd is the footnote on page three. The State specifically did *not* want the contents of any electronic messages, whether or not in electronic storage.¹⁶ Why was this not challenged by defense counsel?

40. Yahoo's eleven-page reply listed more than two dozen IP addresses. If defense counsel had checked, it would be apparent that not one of the IP addresses matched the IP address on the Yahoo profile for "Michael24339," and none could be traced directly to Applicant's computer. [Exh. M]

41. Then there is the incongruity of time. If defense counsel compared the time on Specht's chat logs with the times on the Yahoo list, and applied a conversion table for Yahoo's Greenwich Mean Time (GMT) to Eastern Daylight Savings Time (EDST), it would be obvious they do not match.¹⁷ This surely would have raised questions about the possibility of email hijacking, had defense counsel troubled to look at the file.

¹⁵S.C. Code Ann. §16-15-342(A). Also see, *State v. Nesbitt*, 346 S.C. 226, 550 S.E.2d 864 (Ct. App. 2001): In "the context of an attempt crime, specific intent means that the defendant consciously intended the completion of acts comprising the choate offense." Also see, *State v. Quick*, 199 S.C. 256, 19 S.E.2d 101 (1942). The Supreme Court explained that preparation to commit a crime and overt acts are different, and that "preparation consists in devising or arranging the means or measures necessary for the commission of the crime; the attempt or overt act is the direct movement toward the commission, after the preparations are made."

¹⁶From the Department of Justice: "While it may be possible to obtain non-content log records through a subpoena or § 2703(d) order, the use of a § 2703(a) search warrant, as a matter of prudence, provides the broadest legal basis to obtain log records, particularly if content is involved. CCIPS is available to assist in answering these legal questions. For more information, call 202-514-1026." *Obtaining and Admitting Electronic Evidence*, Vol. 59, No.8, Nov. 2011. Available at http://www.justice.gov/usao/eousa/foia_reading_room/usab5906.pdf

¹⁷Conversion tables are readily available on the internet.

42. A similar request was sent to MySpace, but the evidence file received by the Applicant in June 2012 did not include the replies. [Exh. N] Why did defense counsel not ask for these items?

Hijacked Email (Identity Theft)

43 When the Applicant saw the file in June 2012—more than one year after the plea hearing—he said the chat logs were “fabricated.” If Detective Specht is not responsible for creating them, it is likely the Applicant’s email address was hijacked. In a similar way, Arizona state representative Michelle Ugenti became a victim of identity theft through email hijacking. Strangers using Twitter accounts posed as Ugenti. They used names such as “Michelle@RubbingUGently” and “MichelleUgenti@RepMUgenti.” Each account described her factually—her location, that she is a mother, and one used an actual photograph of her.¹⁸

44. A far more serious cyber attack occurred to the South Carolina Department of Revenue. Hackers gained personal information and social security numbers of 3.8 million taxpayers and 1.9 million dependents plus “particulars of 699,900 businesses in the state.”¹⁹ There were reported cyber attacks on *The New York Times* and the *Wall Street Journal*, banks, and even the Federal Reserve. Hackers acquire personal information about targets from *Facebook* (e.g., the target’s friends and interests), and “visit *Twitter* to

¹⁸Source: Digital Media Law, January 5, 2013, article by attorney Marie-Andree Weiss. Available at: www.dmlp.org/blog/2013/parody-or-drime-az-bill-may-blur-line

¹⁹*South Carolina Department of Revenue Public Incident Response Report* November 20, 2012. Available at [http://governor.sc.gov/Documents/MANDIANT Public IR Report Department of Revenue - 11 20 2012.pdf](http://governor.sc.gov/Documents/MANDIANT%20Public%20IR%20Report%20Department%20of%20Revenue%20-%2011%2020%202012.pdf), and <http://www.jdjournal.com/2012/11/21/south-carolina-revenue-director-resigns-over-4-million-taxpayer-accounts-hacked/>

get a sense of how someone writes.”²⁰ In a *Wall Street Journal* report on cyber attacks an expert described one attack where a hacker learned that a systems administrator had five children. “The hacker crafted an email with a malicious file attachment that appeared to come from the company’s human-resources department and contain information about a new benefit program for families with four or more kids.”

45. “The Internal Revenue Service has issued several consumer warnings on the fraudulent use of the IRS name or logo by scamsters trying to gain access to consumers’ financial information in order to steal their identity and assets.”²¹ Why, in response to Applicant’s insistence that he was innocent, did defense counsel not consider the possibility of email hijacking (i.e., email identity theft)?

46. Raphael Golb of New York was prosecuted for falsifying email addresses. Golb set up email accounts in which he pretended to be scholars who disagreed with his scholar-father’s opinion on the origin of the Dead Sea Scrolls.²² Among other things, defendant sent emails in which one of his father’s rivals purportedly admitted to acts of plagiarism. As the court stated, Golb was prosecuted “for giving the false impression that his victims were the actual authors of the emails. The First Amendment protects the right to criticize another person, but it does not permit anyone to give an intentionally false

²⁰“Watching and Waiting,” Ben Worthen, *Wall Street Journal*, April 1, 2012.
Available at: online.wsj.com/article/SB10001424052970204603004577269544215115670.html

²¹Available at <http://www.irs.gov/uac/Suspicious-e-Mails-and-Identity-Theft>

²²*People v. Golb*, 2013 NY Slip Op 00436, Jan. 29, 2013, affirming the conviction for identity theft, criminal impersonation, forgery, aggravated harassment, and unauthorized use of a computer. “The People were required to prove that defendant had the specific fraudulent intent to deceive email recipients about his identity, and to obtain benefits or cause injuries as a result of the recipients’ reliance on that deception. The statutes criminalized the act of impersonation . . .”

impression that the source of the message *is* that other person.” [italics in original]²³ This Applicant believes he was similar to Golb’s victims and, in particular, the scholar who seemed to admit to plagiarism.

47. Detective Specht identified the Applicant through his frequently used Yahoo email address, and that makes this case unique. Research into numerous ICAC prosecutions reveals a consistent pattern of defendants who solicited minors for sex hiding behind pseudonyms. They use an anonymous and sometimes quirky email address. All were indicted after arranging a meeting with the person they believed was a minor. These cases will be presented at an evidentiary hearing (some from ICAC prosecutions in South Carolina, some from other states).

Defense Counsel’s Investigation

48. Defense counsel did not question Detective Specht’s failure to authenticate the message logs. Nor did defense counsel challenge the content of these pages, which do not contain any statement by Specht, as decoy, of being age thirteen. Nor did defense counsel challenge the lack of evidence of intent (typically by attempting to arrange a meeting). Without these two elements, there was no crime, no probable cause.²⁴

49. If defense counsel did any research, he would have learned from cases such as *State v. Reid*.²⁵ In *Reid* the ICAC detective testified about software incorporated into his

²³*Id.*

²⁴ “[I]f the right to counsel guaranteed by the Constitution is to serve its purpose, defendants cannot be left to the mercies of incompetent counsel, and that judges should strive to maintain proper standards of performance by attorneys who are representing defendants in criminal cases in their courts.” *McMann v. Richardson*, 397 US 759 (1971).

²⁵ *State v. Reid*, Op. No. 27004 (S.C. Sup. Ct. dated July 11, 2011).

computer, which recorded the chats in real time. There is no evidence Specht used ICAC-approved software to record the chats he had with "Michael24339."

50. In *State v. Odom*²⁶ the court summarized how the email was traced to a user—evidence lacking in regard to the Applicant. Additionally, at Odom's pre-trial suppression hearing the court learned about ICAC "Program and Investigative Standards." Did Specht have ICAC training? Did he follow ICAC protocol? Did he use ICAC-approved software? No one asked these questions.

51. The *Odom* appeals court reversed the suppression (on the basis of weight versus admissibility of evidence), but a footnote in the ruling is significant—the explanation of the importance of the IP address.

Each computer connected to the internet is assigned a unique numerical address, otherwise known as an Internet protocol or IP address, to identify itself and facilitate the orderly flow of electronic traffic. An IP address is a string of up to twelve digits, such as '202.134.34.9.'" Peterson v. National Telecommunications and Information Admin., 478 F.3d 626, 629 (4th Cir. 2007).

The cited *Peterson* ruling was one year prior to the arrest of the Applicant. Defense counsel have no excuse for not using it in his defense. Did they look at the list of more than two dozen IP addresses provided by Yahoo? Not one IP, and none that can be directly

²⁶ *State v. Odom*, Op. No. 26624 (S.C. Sup. Ct. filed March 30, 2009).

traced to Applicant's computer. Why did defense counsel not question this?

52. Equally relevant is the *Odom* court's explanation of ICAC software:

"The ICAC computers are equipped with software capable of recording various information concerning all communications sent and received in the course of undercover investigation." *Id.* This directly applies to the pages Specht claimed were transcripts of his chats with "Michael24339." The pages have a suspiciously strong resemblance to ordinary word processing pages. [Exh. O] Defense counsel did not challenge anything. If Specht were questioned on a witness stand, he may be forced to reveal a wealth of exculpatory evidence.²⁷

53. Due to failure to review the file and do basic research, not one of the public defenders was aware of flaws in the state's case. Neither Copeland-Little nor Swilley was prepared to provide effective representation for a client accused of a felony that carried a lifetime sentence as a Registered Sex Offender.²⁸

The First Plea Hearing

54. Copeland-Little ignored the Applicant's refusal to plead guilty and ordered him to be at court at two p.m. on November 9, 2009. [Exh. P]²⁹ Outside court, Applicant again told Copeland-Little he would not plead guilty because he was innocent. In court,

²⁷"The Sixth Amendment right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, *supra*.

²⁸"The vast number of attorneys in SC who get appointed to these cases do not have the proper experience in these areas of practice." Commission on Indigent Defense Accountability Report FY 11-12, p.3. Available at www.scstatehouse.gov/reports/aar2012/e23.pdf.

²⁹Exh. O reveals Copeland-Little's unfamiliarity with the Applicant. She addressed him as "Timothy," although he told her repeatedly that throughout his life he has been called Michael.

with an attorney as effective as the diploma she hung on her wall, the Applicant told the judge he was not guilty.³⁰ **[Applicant's affidavit]**

55. Applicant expected that now his public defender would do the work to take his case to trial. It was not to be with Tonya Copeland-Little. Some time later she left the employ of the public defender's office—without notifying Applicant. No one notified him. In 2010, approximately six months after the plea hearing, having heard nothing, Applicant phoned. He was told no attorney was assigned to him. Applicant was elated, thinking this meant the prosecutor was dropping the case. The year ended and another began.

Swilley and the Plea

56. On February 24, 2011 Matthew Swilley, admitted to the South Carolina bar in November 2009, was appointed to represent the Applicant. One week later he phoned to introduce himself and to announce a hearing date the following week. Aware that his client faced a felony conviction, Swilley said, "We have to set up a plea."

57. Applicant repeated that he was innocent. He was instructed to plead guilty. When he asked, "Can't we fight it?" Swilley said, "No, the AG would not take it if it wasn't a slam-dunk case." Nearly thirty years ago—before Swilley was born; before the Applicant was born—law professor Stephen J. Schulhofer wrote, "[I]nvestigation of the facts and the law is necessary to decide whether a trial is desirable and, if not, to negotiate the best

³⁰For unknown reasons, there is no evidence of the first plea hearing in the court clerk's docket but Attorney Copeland-Little's mother must recall since she attended. The judge welcomed her and invited her to sit in the jury box, where she would have a better view of proceedings.

possible bargain."³¹ But there was no plea bargaining.

58. Applicant told Swilley he would be at his office Friday morning to prepare for the hearing. At the meeting, he asked about filing a Clayton motion.³² Swilley said South Carolina did not have anything like that. Applicant asked about pleading "no contest." Swilley said it was not possible. Applicant asked if there was any motion that could be filed. Swilley said, "No." Applicant did not know he had a right to see the entire file. He did not know that defense counsel was obligated to consult with him about the state's case before deciding whether to plead or go to trial. **[Applicant's affidavit]**

59. When he asked about his file, Swilley handed him a slim manila file folder. **[Exh. Q]** Within the folder were pages from Specht's incident reports, backdated from the date of the arrest. Other than describing the arrest, the content consisted of statements copied from the pages he claimed were instant messaging chats. **[Exh. R]**³³

60. The Applicant did not know there were more than eighty pages he had not seen. He had learned there needed to be an explicit statement of age by the detective, and he searched for this. It did not exist. These few pages confirmed there was no evidence of a crime. But what could he do? The hearing was one week away. Swilley did not believe he was innocent. The Applicant could insist on going to trial, but what kind of assistance

³¹"Effective Assistance on the Assembly Line," Stephen J. Shulhofer, *NYU Rev. of Law & Soc. Change*, Vol. XIV:137 (1986).

³²Clayton Motion refers to the provisions of N.Y. Crim. Proc. Law §§ 210.40 and 210.45 that require a hearing when either the prosecution or the defendant moves to dismiss the indictment in the furtherance of justice. Source: *Wikipedia.org*.

³³The entire file, received in June 2012, was more than one hundred pages.

would Swilley give?³⁴

To Plead or Not to Plead

61. As South Carolina courts know, "'a defendant's decision whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case.' [citations] When a defendant lacks knowledge of material evidence in the prosecution's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary. [citations]" *Gibson v. South Carolina*, 334 S.C. 515 (1999), 514 S.E.2d 320.

62. Applicant finally saw a few pages, but he was not aware there were more than one hundred pages, many that would at least raise reasonable doubt as to his guilt. When the *Gibson* court affirmed setting aside the guilty plea and granting a new trial, its reasoning was based on prosecutors' failure to "share with defendants information favorable to the defense and material to guilt or punishment." Here, unlike *Gibson*, the failure to share information rests on the shoulders of defense counsel, a failure compounded by the failure to investigate anything. As the court recognized in *Hill v. Lockhart*, 474 U.S. 52 (1985), "failure to investigate or discover potentially exculpatory evidence" is an example of ineffective assistance of counsel that could result in an invalid plea.

63. Swilley was insistent about the plea. The Applicant knew his defense counsel

³⁴"[T]he core purpose of the counsel guarantee was to assure 'Assistance' at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor." [citation] If no actual 'Assistance' 'for' the accused's 'defence' is provided, then the constitutional guarantee has been violated. To hold otherwise 'could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment. [citation]" *Cronic v. United States*, 466 U.S. 648 (1948).

had abandoned his duty to advocate. He felt abandoned but he did not know that Swilley was violating his Sixth and Seventh Amendment rights. Lacking help or advice from anyone and, again faced with an incompetent attorney, the Applicant caved.³⁵

64. On March 9, 2011, the Applicant went to court with Matthew Swilley as plea counsel. The Applicant was instructed to "plead as indicted." Swilley also instructed him to answer, "Yes," to every question the judge asked, or his guilty plea would be denied and he would face trial, with prison—and the possibility of a ten year sentence—a certainty. Swilley instructed him to commit perjury.

Perjury

65. As in *Lynumon v. Illinois*, 372 U.S. 528 (1963), "a confession made under such circumstances must be deemed not voluntary, but coerced. That is the teaching of our cases. We have said that the question in each case is whether the defendant's will was

³⁵South Carolina's Supreme Court affirmed the trial court in *Kolle v. State*, No. 26771 (S.C. 2010), which vacated a conviction based on a guilty plea due to numerous instances of ineffective assistance.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). "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). "Plea counsel is ineffective within the meaning of the Sixth Amendment only when the applicant satisfies both requirements." *Stalk v. State*, 383 S.C. 559, 561, 681 S.E.2d 592, 593 (2009).

overborne at the time he confessed." This Applicant knowingly perjured himself. It was not an easy choice, nor a voluntary confession.

66. It was a quick hearing. Applicant plead as indicted, the judge never learned the facts of the case, and the plea was accepted. Then his grandfather got up to beg the judge not to send his grandson to prison. The fear of prison was realistic. Another innocent young man, Richard Danziger of Texas, was finally exonerated through DNA evidence but it was too late. In prison he was severely beaten, leaving him disabled due to brain damage.

67. Applicant was granted a suspended sentence and probation by Judge Paul M. Burch, who also informed Applicant of the ten-day window for filing a direct appeal, and fined him \$500.00 to be paid to the Office of Indigent Defense. This was added to other fees designated as Law Enforcement Funding Surcharge, SC Criminal Justice Training Academy, Victim Conviction Surcharge, and a Collection Fee.

68. Applicant's perjury was the first time he ever did anything illegal. "Plea bargains have become so central to today's criminal justice system that defense counsel must meet responsibilities in the plea bargain process to render the adequate assistance of counsel that the Sixth Amendment requires at critical stages of the criminal process. *Missouri v. Frye*, 132 U.S. 1399 (2012).

69. The false confession and guilty plea instantly branded the Applicant as a convicted felon and Registered Sex Offender—for life.

[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 question of an effective waiver of a federal constitutional right in a proceeding is of course governed by federal standards. [citation] Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth. [citation] Second, is the right to trial by jury. [citation] Third, is the right to confront one's accusers. [citation] *Boykin v. Alabama*, 395 U.S. 238 (1969).

70. Despite exonerations of more than two thousand wrongly convicted people, at least twenty-five percent of whom falsely confessed, judges as well as juries find it difficult to believe anyone who is innocent would falsely confess to a heinous crime.³⁶ For this reason, Applicant asks the Court to take notice of an unique legal treatise in which the researchers, a lawyer and a psychologist, placed college students in a situation where they had to choose between a false confession for cheating with a minor punishment, or possibly lose their argument for innocence, in which case the penalty was severe. "The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem," *103 Journal of Criminal Law & Criminology*, No. 1 (2013), Lucian E.

³⁶See, www.innocenceproject.org and the National Registry of Exonerations at <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>

Dervan, J.D., and Vanessa A. Edkins, PhD. [Exh. S] Also, please see attorney Dervan's treatise, "Bargained Justice," Utah Law Review (2012). [Exh. T]

71. Immediately after sentencing, Applicant was instructed to go directly to the probation office, two blocks away. Now he learned that probation placed him under the supervision of three offices: South Carolina, North Carolina, and the Interstate Compact. South Carolina restricted him from places where children congregated, including church services. North Carolina turned his life into a virtual prison: curfew at 6 p.m.; no computer in the home, no use of computer or digital device anywhere; weekly attendance at a sex offender therapy group for which he was required to pay \$35.00; monthly payment of \$40.00 to the probation office (probably to pay for the gas to drive to his rural home for surprise raids); no liquor at any time; drug and alcohol testing. Any violation, including non-payment of fees, could result in revocation of probation and prison.

72. After registering, when he asked if he could go home now, one of the officers shouted at him, "You're a sex offender!" The officer assigned to Applicant told him to provide DNA; he would be billed \$250.00 for the test and another \$20.00 for a drug test. When he again asked about going home, the same woman said, "Didn't your lawyer tell you anything?" Obviously not. It was an unpleasant surprise to learn he could not return home with his grandparents. Applicant had to wait four days while paperwork between the states was processed and North Carolina allowed him to return home.

73. Unknown to the Applicant, the day after the plea hearing Matthew Swilley signed a forfeiture agreement for Applicant's possessions and his grandmother's monitor,

keyboard and mouse.³⁷ The space for Applicant's signature is *blank*. [Exh. U]

74. Although the form refers to S.C. Code Ann. § 16-15-445, the requisite hearing does not appear on the docket, nor was notice of a hearing given to "all interested parties." His grandmother's monitor, mouse and keyboard were forfeited without notice. Everything confiscated from the Applicant was forfeited. He did not know about the forfeiture until June 2012, when he acquired the complete file. Swilley, obviously, was not familiar with the Fifth Amendment.

Direct Appeal

75. The Applicant had misgivings about his guilty plea. The slim packet of evidence Swilley had given him on Friday did not seem sufficient for a conviction, if he went to trial. He needed a new attorney. He expected the appellate defenders to be far more experienced, competent, and diligent than any of the public defenders assigned to

³⁷If the computer, digital camera, and CDs were destroyed or compromised in any way, that is yet another violation of Applicant's Constitutional rights. *California v. Trombetta et al.*, 467 U.S. 479 at 480 (1984), "The Due Process Clause of the Fourteenth Amendment requires the State to disclose to criminal defendants favorable evidence that is material either to guilt or to punishment."

The Court further stated that "[w]hatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, see *United States v. Agurs*, 427 U.S., at 109-110, 96 S.Ct., at 2400, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means."

The above is quoted from a letter dated Nov. 9, 2010, by Senior Assistant Attorney General Charles H. Richardson to Representative G. Murrell Smith. Available at <http://www.scag.gov/wp-content/uploads/2011/03/smith-g-m-jr-os-9162-11-9-10-preservation-of-evidence-act.pdf>.

Also see, *OZO, Inc. v. Moyer*, 594 S.E.2d 541 (S.C. Ct. App. 2004) (trial court did not abuse its discretion in striking the defendant's answer and entering judgment for the plaintiff on the issue of liability where the defendant reformatted a computer's hard drive, effectively erasing any information the computer may have contained, a day before surrendering it for court ordered inspection).

him. The file he never saw would be available to an appellate attorney. Once he or she perused the file, there would be grounds to appeal the involuntary plea.³⁸

76. He began phoning Swilley. Leaving messages with the receptionist and not hearing back, Applicant kept phoning. Fifteen days after the plea hearing he reached Swilley. **[Applicant's affidavit]** It was too late to withdraw his plea, too late to file a direct appeal. Once again, Applicant had been denied his Sixth Amendment rights.³⁹ "[C]ounsel's conduct was objectively unreasonable and demonstrated the requisite prejudice resulting from the constitutionally deficient representation." *Frazer v. South Carolina*, 430 F.3d 696, 712 (4th Cir. 2005).

77. When Applicant asked if there was anything else in the file, Swilley said he would mail him the Yahoo search warrant and Yahoo IP logs. Applicant asked why he was not given these when he came to the office. Swilley said, "I gave you all that was relevant."⁴⁰

78. The package that was mailed was, again, slim, and once again did not look like a slam-dunk. Applicant suspected Swilley was holding back other files, but had no idea how to get what was missing. He began phoning attorneys for advice. Thirteen months after the plea hearing, in June 2012, an attorney who had no criminal law nor constitutional law experience took sympathy. He traveled to North Carolina and, after Applicant received

³⁸Although the direct appeal could not have raised the issue of ineffective representation, other issues could have been raised (e.g., jurisdiction, illegal seizure, illegal arrest, numerous violations of Constitutional rights).

³⁹Applicant did not waive his right to appeal; defense counsel was obligated to file an appeal on his behalf. *U.S. v. Poindexter*, 429 F.3d 263 (4th Cir. 2007).

⁴⁰Swilley withheld approximately 80 pages the Applicant never saw prior to June 4, 2012.

permission from the probation office to travel to South Carolina, they went directly to the public defender director's office in Dillon. The attorney had told the Applicant he had a right to see the entire file and probably a right to have a copy of every page. And that is what he told A.C. Michael Stevens, the director of the Fourth Circuit Public Defender office.

The Complete File—Finally

79. Attorney Stevens initially refused to give Applicant anything from his file. Finally, he agreed to make copies. The sympathetic attorney insisted that Stevens sign the list of items, attesting that this was everything in their files. Stevens did so, but refused to allow them to view the disc that was in the file, claiming he had printed what was on the disk—the Detective's incident reports—and they would find these printed, in the batch he had copied. **[Applicant's affidavit]**

80. From the time of his arrest in 2008 and until June 2012, the Applicant was denied the right to view the file, thereby denying him the opportunity to consider any defense. As the *Holmes* court ruled, "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. [citation]" *Holmes v. South Carolina*, 547 U.S. 319 (2006).

81. The numerous violations of the Applicant's constitutional rights that were ignored by defense counsel, plus repeated and consistent failures of defense counsel more than suffice for the criteria enunciated by *Strickland v. Washington*: errors so serious that defense counsel's performance fell below an objective standard of reasonableness and

outside a wide range of competence.

Newly Discovered Evidence

82. The hundred-plus pages received on June 4, 2012 are the source material for this motion. Without that information, it would have been impossible to support a petition for Post-Conviction Relief. The starred Appendix Items are among the newly discovered evidence acquired in June 2012.

Conclusion

Summary judgment is appropriate in a case when it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; see also, e.g., *Brandt v. Goodling*, 368 S.C. 618, 626, 630 S.E.2d 259, 263 (2006).

The one hundred-plus pages of evidence were in the possession of the Office of Indigent Defense but inaccessible to the Applicant prior to June 2012. *State v. Harris*, 706 S.E.2d 526, 529 (S.C. Ct. App. 2011). These items support the following key issues:

- South Carolina did not have personal jurisdiction over this Applicant.
- Numerous violations of the Applicant's constitutional rights, primarily the extradition, arrest warrant, detention, seizure of property, wrongful conviction.
- Ineffective representation.

South Carolina Code of Laws, Title 17, chapter 27, section 70(c) empowers this court "to grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving

party is entitled to judgment as a matter of law.”

In *Martinez v. Ryan*, 131 S.Ct. 1309 (2012) the Supreme Court reminded us that “the right to effective trial counsel is a bedrock principle in this Nation’s justice system.” The responsibility for this Applicant’s conviction rests directly on the shoulders of his trial counsel.

For these reasons the Applicant prays this Court will grant summary judgment as a matter of law and, in the interest of justice, vacate the conviction with prejudice.

I swear under penalty of perjury that every statement in this pleading is true.

Dated: _____

Timothy Michael Farris, Applicant Pro Se
[REDACTED] Hillanby Court
Waxhaw, North Carolina 28173
[REDACTED]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	APPLICANT'S AFFIDAVIT
	)	
	)	IN SUPPORT OF
v.	)	
	)	MOTION FOR SUMMARY
State of South Carolina,	)	
	)	JUDGMENT
Respondent.	)	
	)	
	)	

1. I am Timothy Michael Farris, the applicant. Before I was arrested I was busy nearly every night rehearsing our band for church concerts. My friend, Steven, and I had been leading the church praise band together for a while. In the spring of 2008 we decided to put together the best local talent we could for church concerts. I was supposed to play rhythm guitar, to compliment another lead guitarist, but after seeing that I was more aggressive about writing lead lines, the other guitarist stopped coming to practice. Nick was a drummer in the praise band, with influences varying all the way from country to metal. Steven molded himself after David Crowder, the Famous Christian Musician, The bassist molded himself after the famous Victor Wooten, and I followed in the footsteps of John Petrucci. This was a very odd combination, but we sounded amazing together.

2. We practiced at the church on the night of July 31, 2008. I did not get to bed until after one, and over-slept the next morning. I was twenty years of age, probably the reason I was startled and scared when I woke up the morning of August 1st, 2008 to find

three Union county sheriffs' deputies standing in the doorway of my bedroom.

3. My immediate thought was something had happened to my grandparents, with whom I live. They told me to get out of bed and escorted me to the living room. I only had a pair of boxers on. I asked for a moment to put some pants on. I was not given this opportunity. Upon entering the living room I saw five uniformed deputies and one man in casual clothing, a man I later found out was Hartsville, South Carolina Detective John Specht. Each of the deputies stood with arms crossed. I was intimidated by them and I was embarrassed, standing in my boxers. One of the deputies was a female.

4. I asked if something had happened to my grandparents or another family member. The officers told me to sit down. I sat on the couch. They presented me with the affidavit for a search warrant. I skimmed it and saw the words "chat room" and "undercover." I asked, "What is all of this?" Detective Specht replied. "It's called criminal solicitation of a minor. It's a proactive law that allows cops to go after sexual predators." I asked if it was like that show on TV, going after pedophiles. He nodded. I then told him I had Yahoo instant messenger on my computer but never spoke to any 13 year olds. He asked if I ever used my grandmother's computer, as well. I told him I did from time to time, but I never chatted with ANYONE under-aged and rarely used it to begin with.

5. I asked the officers why they thought I had done this. They said my Yahoo account was used in a South Carolina Yahoo chat room to solicit sex from an undercover police officer who posed as a thirteen-years-old girl. I told the officers I used that account to communicate on Yahoo messenger (a different application from chat rooms), but I had little knowledge or experience utilizing Yahoo chat rooms.

6. When they said nothing, I asked, "Are you arresting me?" One of the

deputies said, "There is a great possibility." I asked again if I could put on clothes, and was told to wait. They began searching my home. They searched through my drawers, closet, and under my bed. My computer, monitor, keyboard, mouse, digital camera, web camera, music CDs, a video cassette, and letters from a former girl friend were confiscated.

7. They also confiscated my grandmother's computer, mouse, keyboard and monitor. When I saw this, I asked if I could phone my grandmother since those were her possessions. Finally, they said I could put on clothes but to come back into the living room to phone my grandmother. I put on pants and a shirt but did not put on shoes. I did not expect to be arrested.

8. My grandmother arrived home roughly ten minutes later to find me sitting at our kitchen table surrounded by police officers. Just as confused as I was, she asked the officers what was going on. They told her the same things they had told me.

9. She told the officers she did not understand why her personal belongings were being confiscated. They said it was standard procedure. I sat at the kitchen table feeling utterly powerless. I did not understand why this was happening. I knew I had not done anything wrong.

10. After confiscating all these items, the officers told me I had to go with them to the Union County Sheriff's Office. I put on shoes and was led out of my home to a blue SUV. I was not handcuffed. I was not read my Miranda Rights, not then, not ever. From T.V., I thought it was required, if ever you were arrested.

11. We arrived at the Union County Sheriff's office, but I don't remember much about that time, nor who took me out of the SUV. Not sure what was going to happen or why I was there, I kept hoping they would realize this was a mistake.

12. I was told they needed to speak in another room and was asked to sit and wait in an open room. I recall seeing Detective Specht carrying a compact disc with a label on it that read, "Farris Photos." Today, I think those were the photos that were taken of my house. Several minutes later, an officer came to handcuff me and I was led down a hallway to a window. Behind the window was a woman at a desk. I was being arrested.

13. I must have been in a daze because the next thing I recall is being taken out of a police car in the parking deck of the Union County courthouse. I was shackled and led into the building. We took an elevator up, and then I shuffled in shackles down a long hallway to a courtroom. I was told I was facing extradition to South Carolina police.

14. I remember little except that each time I asked a police officer if I could get a lawyer, I was told I had to wait until Monday. I told the officer that I felt that I needed a lawyer now. He said, "You can get a lawyer, but you'll sit in a jail cell until Monday, at least. And you'll most likely lose the extradition hearing, and then you'll spend even more time in a jail cell in South Carolina. If you sign this paper though, you'll probably be home tomorrow." He handed me a piece of paper and said, "Sign here." Still in shackles, I signed. I had no idea it was an extradition waiver.

15. Once that was done I was taken by Detective Specht to a red, unmarked car. He said we were going to Darlington County Detention Center. The drive took forty-five minutes. Since then, I've been back and forth to Darlington several times. The eighty mile drive never takes less than an hour and a half from Union County, North Carolina.

16. Detective Specht was speeding the entire drive. That made me nervous as I was sitting in the front seat in handcuffs. I am not a person who speeds. I was fearful to be handcuffed in a car going eighty to ninety miles per hour, driven by a man who was

busy talking on his cellular phone. Before closing the phone, Detective Specht said, "Honey, I'll deal with this later."

17. Upon arriving at the Darlington County Detention Center I again asked to be assigned a lawyer. Detective Specht said, "Get in the that cell right there," and pointed to a holding cell behind me. Not wanting to make things worse, I entered the holding cell and found a small concrete bench and sat down. It was freezing in the holding cell. The concrete floor radiated the cold. Using my shoes as a pillow I tried to get some sleep. I was exhausted mentally and physically. Nearly five hours later, I was taken out of the holding cell and had my fingerprints taken and a mug shot photographed. Thankfully, I was allowed to wear my street clothes. I think the reason is I was being held in a holding cell with fifteen or twenty other people.

18. I had not had breakfast or lunch and when dinner was served in the holding cell, it looked like slop. I ate nothing.

19. Another ten hours passed and an officer came for me. I was led in handcuffs to a small room. My grandmother was there, and she was the one who told me it was a bail hearing. In handcuffs, I sat before a television screen to view the judge. I don't remember much of anything. I kept thinking, *Why don't I have a lawyer? None of this makes sense. How did they know I was guilty without asking for my side of the story?* I had not been given a chance to speak nor ask questions, and now I was sitting before a judge.

20. I was released on \$5 thousand bail, and I left with my grandparents. On the ride home, I asked my grandfather for a cigarette. He handed his pack and lighter to me without a word. After a while my grandfather said he was glad it had stopped raining. My grandmother said she never wanted to go to Darlington again. For the rest of the ride, no

one spoke. The trip home took roughly an hour and forty-five minutes.

21. Later, my grandmother told me that someone from the Hartsville police department had phoned about the bail hearing, told her to go to the bail bond office across from Darlington Detention Center and bring five hundred dollars. When she and my grandfather went into the first bail bond office, they were told they did not handle people arrested by Hartsville. They did not know what to do. They went into Darlington Detention Center to get more information. A man who heard them tell this story walked up and said he could arrange the bail. Then they asked directions to Hartsville. An officer told them the hearing would be held right there, in Darlington. He must have felt sorry for them, realizing they had taken that long ride in rain, and said he would break the rules and allow one of my grandparents to sit with me. My grandmother went into the room, not expecting to see me in handcuffs.

22. My grandfather, my grandmother, and I wanted to forget what happened and go back to our normal lives. That night I went straight to my church band practice, as I had done so many evenings before. I loved playing music with others in my church. We did this for services on Sundays and Wednesdays. Music and my church were important to my life.

23. I struggled to live my normal life but I felt different, as if I had been struck by lightning. I began to suffer migraine headaches, and it was more than physical. I could not shake the fear whenever I saw a police officer or a police car. If I could be arrested once for no reason, I could be arrested again for no reason. I tried to tell myself this was crazy thinking, but some of my friends said the same thing to me—they were worried. Would they be arrested for associating with me? What if the police thought we were a gang?

24. After the Sunday show my band mates went their separate ways. I tried to

cope with what had happened. I found myself afraid to negotiate contracts with other musicians, thinking they would magically know I had been arrested for something as disgusting as Criminal Solicitation of a minor. I began to shy away from music altogether, aside from sitting down in my room with my guitar.

25. My focus was primarily finding employment. Due to the economy, I was laid off several months prior to the arrest. After the arrest I continued to look for employment in land surveying, since I had experience doing this. It was important to get a job. My grandparents had to come up with bail money they could not afford, and my grandmother no longer had a computer. They needed my help with expenses.

26. But I kept worrying when I put in a job application. Would the arrest show up on a background check? I did not understand what happened or why, and I knew no lawyer who could explain it or help me. These worries made it more difficult to focus on my qualifications and to be as confident as I should have been.

2009

27. Then I had a phone call from a woman in South Carolina. She introduced herself as Tonya Copeland Little. She said she had been appointed as my lawyer and would be defending my case. When she called me by my first name, "Timothy," I told her that I have been called Michael for most of my life. I told her of my fears and concerns, and asked why I hadn't been given a chance to show my innocence or defend myself. I was always told that a person was innocent until proven guilty.

28. She laughed and said that she wished things worked that way. Mrs. Little told me I needed to make certain I was present for all the court-appointed hearings, even though I wouldn't be standing before a judge. I told Mrs. Little that I appreciated her help

and wanted to do whatever was necessary to prove my innocence and resolve the situation.

29. Mrs. Little said I should plead because Attorney General McMaster, who was heading the task force, was adamant about these cases, and nobody had ever beaten him on a case of the nature by which I was charged. She said he took these cases personally.

30. Months passed and I heard nothing more from her nor from any of the officers involved in my arrest. Then, in November 2009, more than a year later, I had another phone call from Mrs. Little. Again she called me "Timothy," and again I asked her to call me by my preferred name.

31. Mrs. Little was calling to explain that the attorney general wanted to move forward on my case and would be in Darlington to hear my plea. I was hit with an overwhelming sense of fear. But I knew I was innocent and hoped that I would have the opportunity to speak for that innocence to someone who would listen.

32. That same November, I appeared before the court and plead "not guilty" in front of the judge. The judge then asked if I was sure I knew what I was doing. I responded confidently, "Yes, your honor, I am." I thought it extremely odd for the judge to say that. I found it odd, as well, that Mrs. Little, my lawyer, had brought her mother along for my hearing and introduced her to the judge. The judge invited her to sit in the empty jury box, so that she had a good view. I wondered if there was something special about my case.

2010

33. Again, months passed. It was the summer of 2010 and, having not heard anything from Mrs. Little, I called the public defender's office. The receptionist informed me that Mrs. Little no longer worked for the county and, at the time, I did not have an assigned

attorney.

34. I felt relieved, thinking they had realized my innocence and the charges were to be dropped. Now I thought I could pick up the pieces of my life. Although I continued to seek employment, I refocused on my music and composition. I purchased a new computer to continue recording my music. I was twenty-one, just beginning my adult life.

35. I found work in late 2010 with an electric company, installing systems for large commercial projects like hospitals. I made friends with another employee who was into music, mostly hard rock, hip-hop, and intellectual (not street) rap. We became such good friends that I decided to assemble a band with him. We gathered old and new contacts and met twice a week at "Bat Cave," a separate room behind the car port at my house. The band worked on a set list and recorded at each practice, to pick out ideas we liked and would work on the next time. When we got attention from the local music scene, I thought it was time to put myself back out there. I was beginning to feel normal again.

36. Then, in February 2011, Mr. Swilley called. My band mates were aware I was arrested back in 2008 but, like me, they thought the charges had been dropped. Mr. Swilley's phone call put a stop to everything. Once the plea happened and I was placed on probation, it became impossible to gather and record our ideas. The members were increasingly unable to attend practice, due to their apprehension of my probation officers. The band fell apart less than a month after the plea.

Swilley and The Plea

37. Mr. Swilley said he had been assigned as my attorney and the attorney general was still intent on moving forward with my case. My heart sank. I had spent the three years since my arrest doing my best to move forward. Here I was, two steps back.

38. I asked Mr. Swilley what he could tell me about my case, what sort of evidence they had against me. He said he was "extremely familiar" with the details of my case. I felt a sense of relief. But it was short-lived. When I asked Mr. Swilley how he planned to defend my innocence, it was apparent he did not believe I was innocent. He said that the attorney general, Henry McMaster, "does not take a case unless it's a complete slam-dunk for him." Mr. Swilley said there was no way out for me.

39. Hoping to convince him to defend me, I asked him if it would be possible to meet at his office. I told him I had not seen one shred of evidence and had no clue why I was in this situation. He agreed.

40. That Friday, accompanied by close friends who came along for moral support, we made the trip to the Darlington Public Defender's office. I asked Mr. Swilley for a copy of all of the evidence associated with my case. He gave me with a small manila folder labeled "Warrants." There were no warrants but there were Detective Specht's incident reports (not all of them, as I later learned) and a rather unofficial looking copy of the Yahoo chat logs.

41. I asked Mr. Swilley if there was any motion that could be filed to help defend my case. An attorney from New York had told me about something called a Clayton Motion. He said it was used in situations such as mine where there was little-to-no evidence and one wished to have the charges dismissed in the interest of justice. I asked Mr. Swilley if we could file a Clayton Motion.

42. He said no such motion existed in the state of South Carolina, and there was no motion whatsoever that could be filed. He reiterated that no one had ever beaten Attorney General Henry McMaster, whose task force had a 100 percent conviction rate. He

said the best thing I could do was plead guilty, hope for probation, and keep my head down. If I took my chances with a trial, I could end up with a thirty year jail sentence.

43. My plea hearing was scheduled for March 9th, 2011. I arrived early. Mr. Swilley told me I must answer yes to any question the judge asked, or my plea would not be accepted. However, if asked if I had been coerced I must say no.

44. Trusting in the knowledge of my lawyer, I did exactly as he said. I stood before Judge Burch and perjured myself. I answered yes to every question asked of me. When I was asked if this was a knowing and voluntary plea, I answered yes. When I was asked if the plea counsel was adequate, I answered yes. When I was asked if I was coerced in any way, I said no. I remember standing before the judge and feeling that no matter what I said I was going to end up in jail.

45. My grandfather got up and begged the judge not to send me to jail. The judge then said he would not give me "active jail time." He sentenced me to five years suspended sentenced upon completion of four years probation. This meant if I violated probation I would serve five years jail time.

46. The judge then explained that I had the right to appeal my plea within ten days. After this, I was led into a small office and presented with paperwork to sign. It was at this point that I felt grateful. By staying out of prison, I could try to find a way to fix the situation.

47. After completing paperwork I was sent to the probation office a block away from the courthouse. I sat there for several hours. They administered a drug test, a DNA swab, and I was given more paperwork to sign. After spending more time sitting, I asked a female probation officer if there was anything else they needed from me or could I return

home. The female probation officer then screamed at me, "YOU'RE A SEX OFFENDER," and walked away, sighing heavily.

48. I sat there, in complete disbelief that someone would speak to a complete stranger with such unkindness. But I remained quiet. I knew that despite how inappropriate her response was to my simple question, I needed to stay calm and avoid antagonizing an already difficult situation.

49. When I asked if I could go home, another probation officer told me I was required to stay in Darlington until they could complete the transfer of my probation paperwork to my home state of North Carolina. I was forced to stay in a decrepit motel, at my own expense, for three days. During this time I again tried to contact Mr. Swilley. I wanted him to initiate an appeal or tell me how to do it myself. I was unable to reach him.

50. When I was finally permitted to return home, I was told to go directly to the probation office in Monroe, North Carolina. Upon arrival I was met by Allen Hughes, who informed me that he was the intake officer and would be explaining to me all the details of my probation. He said that I would be required to maintain a curfew of 6 p.m., and had to be in my home by that time every evening as of that very day. By that time I was too intimidated to ask how I was supposed to hold a job, if I had to be in my home by six p.m.

51. Hughes continued with a list of conditions. I was not permitted to use a computer for any reason, not even to facilitate employment or further my education. I would be subject to random drug testing as well as random searches of my room and the common areas of my home. I must pay \$40 a month to the probation office as a charge for their supervision of me. I could not be within 1000 feet of any place where anyone under the age of eighteen gathered. I could not contact anyone under the age of eighteen

by any means, not even members of my family who were underage. I would be required to secure employment, but could not work anywhere in which another employee was under the age of eighteen. I could not work within a 1000 feet of any establishment that employed minors or anywhere in which those under the age of eighteen congregated. I would also be required to attend a weekly group therapy session specifically for sex offenders. The group sessions also required a weekly fee of \$35. Failure to pay all fees and abide by all the terms of my probation would result in immediate arrest.

52. I was heartbroken. Because of the terms of my probation I would be unable to see nor speak to my thirteen-years-old half-brother, with whom I was extremely close. I would be unable to attend church, as there were many young people in my church community. I hadn't the slightest idea how I would be able to pay those fees, when finding employment was extremely difficult.

53. The thought of attending weekly therapy sessions surrounded by people who physically harmed others made my stomach churn. I was immediately afraid of what I would hear in those therapy sessions.

54. As Mr. Hughes spoke, I kept reminding myself that this was better than prison. At least this way I could fight my conviction and clear my name. And I expected a professional therapist would readily see my innocence and would be know I was not threat to anyone.

55. I made it home just in time at 5:50 that evening, walked in the door and sat down to tell my grandmother about all the stipulations related to my probation. My grandmother became very upset. That made my heart heavy. My probation also meant that no one in my home could use a computer or have a smart phone, and everyone in the

family would be subject to having strangers enter our home and invade their personal space.

56. My grandmother felt as though everyone was being punished. She was so upset that she went to her room to lie down. Almost immediately, Mr. Hughes pulled into the driveway to ensure I had complied with my new curfew. I greeted Mr. Hughes at the door. He entered my home and proceeded to my grandparents' bed room, to speak with all of us.

57. My grandparents sat on their bed, with me sitting at the foot of the bed. Mr. Hughes, standing, explained to us that I would be checked at least twice a week to ensure that I was home by 6 PM every night. He repeated the list of probation conditions, and left.

58. Several days later a man in a Ford Taurus pulled into my driveway at 6:01 pm. He said his name was Kevin Whitfield, and he was my curfew officer. He said there would be surprise raids at my home, and they could occur at any reasonable time.

59. I was not permitted to have alcohol in my home and any prescriptions of mine must be cleared with the probation officer. He informed me that Tara Richardson would be my supervising officer. I had yet to meet her, but he explained that I would be required to appear in person at her probation office the first Sunday of each month. At that time they would administer a drug test and complete a progress report. He also noted that I would be allowed time to return home late on Wednesday evenings, after I attended the mandatory group therapy sessions as required. The therapy sessions began at 6:30 PM and ended at 7:45 PM. This would be my life from now on.

60. Fifteen days after the plea hearing, when I phoned the Darlington County Public Defenders' office, I finally reached Mr. Swilley. I had tried phoning him every day,

sometimes several times a day, and left messages. He never returned any.

61. I told him I wanted to appeal the plea. He explained that the ten day period had passed and there was nothing I could do. I told him that I had tried without success to get in touch with him over the past two weeks, and was told over and over again that he would return my call. He said he forgot to return my calls. He did not apologize.

62. I asked Mr. Swilley if there was any more evidence I had not been shown. Based on what he had given me, it did not seem there was enough information for a conviction. Mr. Swilley said that there was indeed more evidence, but he had shown me all that was relevant. I told him I should have been shown everything related to my case. It was my life that was affected. I again asked to be given the rest of the evidence. Mr. Swilley agreed to send it, and quickly hung up.

63. Several weeks later a slim package arrived in my mailbox. The contents were the arrest warrants, the search warrant, extradition waiver, a printed copy of my Yahoo profile, a log from Yahoo with a list of IP addresses and the Yahoo search warrant. At this point I had very little knowledge of what all this paperwork meant. I had never even seen an arrest warrant. I read through everything and immediately found inconsistencies. I asked friends to help do research for my case and find names of lawyers. I could not do this, since I was not permitted to use a computer.

64. I continued searching for jobs—anything I could possibly get. Probation told me I was required to apply for fifteen jobs a week. I tried to apply for more than fifteen. I soon realized that finding employment under the terms of my probation would be as big a burden as pleading guilty in court. Because of the curfew, I tried to get minimum-wage kitchen work at a restaurant, but conversations with potential employers always seemed

to end the same: "Thank you for your time but we cannot take a risk on hiring a convicted sex offender." This made me feel worthless. How could I help my grandparents pay bills? How could I pay the required fees? How could I afford to feed myself, if I could not find stable employment? I wanted badly to find a job and contribute to my family. To keep me out of prison, my grandparents paid the fees.

65. In an effort to ensure that I did everything possible to comply with probation, I went out of my way to leave a store if a child was present. I would immediately leave a food establishment if a group of children entered the building. I attended the weekly group therapy sessions, which became increasingly difficult. I could not participate because I had no stories to tell. I was not a sex offender. I did not physically harm anyone. I did not try to solicit sex from anyone.

Sex Offender Group Therapy

66. When asked questions by the therapist, I responded that I had not done what I was accused of. The therapist was angry each time I refused to admit to being a sex offender. Everyone else in the room spoke about their crimes—in excruciating detail. Hearing these men talk about raping women and molesting young children made me sick. I spent a good deal of the therapy time praying to God to help me make it through each session, and to give me the strength not to let these horrible stories weigh down on my heart.

67. I was surprised that the therapist did not give me any tests. I was certain that if she did, she would find out I telling the truth about being innocent. Several times I tried to tell her I was innocent, but she did not believe me. I told her I couldn't understand how the interactions of these sessions applied to me, as I could not sit there and tell stories of

rape or molestation. I had not done those things.

68. Anytime I spoke it was met with hostility and accusations. I was told over and over that I must have done it, otherwise I wouldn't be there. I was told I was a liar, and because I was a liar that made me just as bad as every other convicted man in the room.

69. Someone told the therapist that the curfew officer had come into the bed room to meet with my grandparents and me. The therapist said, "That is diagnostic, that you would meet with him in your grandparents' bed room." I had no idea what she meant, only that she was angry.

70. Group therapy sessions became increasingly harmful. I was sickened by what I had to listen to, and the therapist seemed to have one emotion: hostility. Except when she applauded someone for describing details of his crime. Nothing I said was valid to her, and oftentimes probation officers sat in on group sessions and took notes. During those sessions, I sat in fear of the probation officer. The therapist had said, repeatedly, that I could be violated for refusing to admit I did what I was accused of. If she asked me, again, to confess and I insisted I was innocent, and the probation officer took note of this, would it doom me to a fate worse than what I was living?

71. As time progressed, the terms of my probation began to take a toll on me in every way. I began to feel as if I were in a prison. I was watchful, constantly on edge, worried that at any time the law would come after me. Every evening I waited for the curfew officer to arrive. I began to battle persistent insomnia. I worried that if I slept I would wake up to another raid.

72. In an attempt to make myself feel more secure, I tacked up blankets over my bedroom window. I hoped this would help me find a way to sleep. Instead I continued to

feel like I was just waiting for the next officer to knock on my door. Every day I worried, What if a police officer stopped me while I was walking on the street? Would they claim an automatic probation violation? I began to feel like even the slightest thing could cause a probation violation and send me to prison.

73. One morning my grandmother announced that our family was coming to visit, adults and their children. To comply with the rules of probation, I locked myself in a separate part of our home, as far as possible from where my family would gather. My uncle, with whom I was very close, sat in the living room. I could not visit with him at all and I knew he was battling stage four colon cancer. My uncle passed away the following week.

74. Trying to deal with my grief over the loss, I requested permission from my probation officer to attend my uncle's funeral. I was denied permission.

75. One day a friend brought her computer to my house. Friends often used to do this, setting up their computers in the separate part of the house I called, "Bat Cave," where I recorded music. Although I had told everyone I was not allowed to have a computer, this friend forgot, plugged in her computer to an outlet in that room, and did not tell me. And then probation came to check my curfew.

76. On past curfew checks the officer and I chatted about me teaching him to play guitar. This day I told him I had a song I wanted to show him. He escorted me out to the separate part of the house. When I opened the door, there sat a computer. It was like opening the door to a seven foot roaring monster. I panicked. I told him it was not mine, and immediately called my friend to come, get her computer.

She explained to the officer that I had no knowledge of the computer on my property, and said she would remove it immediately. She pleaded with him not to report

me for probation violation. Of course, he did.

77. During this time I met Leah, a beautiful young woman. In September of 2011, several weeks after the computer incident, Leah's sister was visiting when a surprise raid occurred. This was due to Mr. Whitfield finding my friend's computer on the premises. The probation officer, Tara Richardson, along with Alan Hughes and Kevin Whitfield, searched my room. They tore through my belongings as if they were garbage, and knocked Leah's and my things off the dresser top. Then they frisked Leah and her sister, and made them lift their shirts. I felt humiliated, for them as well as for myself. The probation officers found nothing of consequence and left, but the effect of that raid makes me shudder each time I think of it, to this day. That was when I fully realized that anyone who got close to me would be subject to the consequences of my probation.

78. A few months later I was summoned to a preliminary hearing in Columbia, South Carolina—about the computer in my home. I was told I did not have the right to have an attorney appointed to represent me. The friend whose computer it was agreed to come to explain what actually happened. She would help me prove it was a non-willful violation.

79. At the hearing, Agent Kirk Dudley of the South Carolina interstate compact office read the charges against me. I asked what the bar was to establish a non-willful violation. A woman probation officer conducted the hearing. She said a non-willful violation was a violation that is out of your control, something you had no knowledge of, and if you had knowledge you would have prevented it from happening.

80. I told her I could meet that bar. My computer-owner friend testified, and I testified. The preliminary hearing officer decided there was probable cause I had violated probation. The case was removed to the Court of General sessions in Darlington.

81. Convinced I would be going to jail, my paranoia went into overdrive. I started begging all my friends for whatever help they could give: call lawyers, try to find someone who could somehow put me in a position to fight back. Their efforts were in vain.

82. On December 17th, 2011, I went before Judge Baxley. To my astonishment, he found my explanation satisfactory and the violation non-willful. That gave me an enormous uplift—and hope. If I could just figure out how to use what Mr. Swilley had sent me, I could finally clear my name and end this.

83. Throughout all the months I tried to find an attorney who would help at no charge, only one was interested, a New York attorney. He said there had to be more evidence than what I possessed. I did not know how to get what was missing. He offered to come to North Carolina. He arrived in June, 2012, traveling on his own dime, and accompanied me to the probation office, to get permission to drive to Dillon, South Carolina. It would be the first time I visited the office of the chief of Fourth Circuit Public Defender office. It was an added forty-five miles beyond Darlington, and I was gloomy. I wanted to be hopeful, but I did not expect to find much more in the file.

84. We met with A.C. Michael Stephens, the Chief Public Defender for the Fourth Circuit. He demanded the attorney's bar card. Then he told us it would take an hour or two to put together the entire file. We waited in the lobby. When he returned with the packet of pages, both the attorney and I insisted that A.C. Michael Stevens sign and state on the itemized list that this was everything in my file, that nothing had been left out. He did so, and we left.

85. Three days later the New York attorney came with me to the office of the court-ordered therapist who conducted the group sessions. He asked for copies of all my

records (session notes, psychological evaluations, etc.). She said she never did any testing and did not keep any records. If I wanted psychological testing, she could refer me to the psychologist who trained her. She smiled as she told me the cost: twelve hundred dollars.

86. A week after he arrived, I drove the lawyer to the airport. He had done all he could, and it was more than I could do for myself. When I returned home I learned my great-grandfather was in the hospital, in South Carolina. Probation would not give me permission to visit him. I guess that was the tipping point. I had newly discovered evidence but did not know how to use it, and now the fear of losing another family member without being able to say good-bye.

87. That was the last thing I remember before waking up in the hospital, one week later. I awoke to a tube in my bladder, an IV in my wrist, and constricting cloths on my legs to keep the blood from clotting. I thought I had been in a car crash. I assumed this because Leah, now my fiancée, was not there. I asked the doctor what happened to me. He answered my question with one of his own.

"Why did you do it?"

"Why did I do what?" I responded. He said I had taken over one hundred Xanax (my grandmother's prescription) in an apparent suicide attempt. I was floored, confused, scared. I had no memory of being suicidal, I did not feel suicidal. I had shaved my face before taking the attorney back to the airport. I realized, then, laying in the hospital bed, that a week must have passed because I had facial hair again.

88. When Leah came to visit, she told me I had not been myself for the entire week. I was hostile, depressed, and increasingly erratic. It ended when my fiancée found me convulsing in bed, and called the police.

89. To this day I have no memory of any of it. I spoke with the hospital's psychologist. He determined I was not a risk to myself or others, and I was released the next day. I do not know why Tara Richardson, the probation officer in North Carolina, did not violate me for this.

90. After this incident, I went to the therapist I was forced to see, and took Leah along because I had no memory of the events of that entire week. The therapist lashed out at me, called me a drug addict, claimed Leah had given me the pills, insinuated she had given me other illegal drugs. I struggled to keep down my anger as I tried to explain that I had no memory of anything and I was not suicidal. I told her she was supposed to help me, not yell at me. She did not respond.

91. In May 2012, at a workshop for felons who apply for jobs, I took notes, filled out an application for employment, and learned my GED was not valid. I had gone to an online high school after dropping out of high school in 2005, after my grandfather was laid off and the family was in danger of losing our home. I got a job doing land surveying.

92. When I realized my online GED was worthless, I immediately enrolled in the GED program at the local community college. Within one week, I had my GED and graduated with honors. It felt grand, to finally accomplish something. I then took the college placement test, thinking to go to college. I've always been interested in physics.

93. I could not attend college, according to Tara Richardson, the North Carolina probation officer, due to computers on campus. I asked how I could go about getting an exception. She told me to contact Mr. Dudley from the South Carolina interstate compact.

94. I did so immediately. He told me that the ultimate decision would be made by my therapist. I knew what this meant. I was right. She told Mr. Dudley there was no way

she would say I would not re-offend. I was not permitted to attend.

95. I feel into a deep funk. How was I supposed to do anything worthwhile? My life was meaningless. As the winter of 2012 approached, my health declined. I suffered migraines on a daily basis, had numerous colds and several bouts of the flu, twice in 2012 and again in 2013. To go to the emergency room after 6 pm, I had to risk being violated. Every minute I sat in the hospital, I was filled with dread that a probation officer would discover me there. It was a short drive from the probation office to the hospital.

96. I continued to look for work, going into many stores to ask if they were hiring for anything, stock room, mopping floors, anything. I went to the state employment security commission to seek help from a man who works directly with R.S.O.s (Registered Sex Offenders). Through him I finally found a job. I had to get permission from probation to work nights at a factory, from 6 pm to 6am., six days a week.

97. I had panic attacks when I heard other employees talk about probation (most were felons). Migraines became so severe I could not risk driving. Due to my health, I missed four days of work in three months, and was fired. I was severely disappointed in myself for losing the job. But I did not know how to deal with the situation.

98. One morning a few months later Leah woke me, screaming that my grandmother was cold and not moving. I jumped out of bed. She was in her room and unresponsive, with pills scattered everywhere and a suicide note saying she could not take the stress of what our lives had become. I immediately called 911 and proceeded to do CPR, which I knew from when I was a volunteer with the local Search And Rescue Squad. I managed to get her heart beating again and the ambulance took her to the hospital. This had taken such a toll on our whole family. How could I fix this?

99. My grandmother survived, but the damage was done. Shortly after I began missing the therapy groups due to migraines and multiple doctor visits for stress-related illnesses, colds, even pneumonia, which again had me hospitalized. During these illnesses I tried to attend the therapy group, and was sent home when it was obvious I was sick.

100. The last time I attended group therapy, I was terminated. The woman in charge had told us she was going hunting with her husband and that another therapist would lead the group. When he asked a newcomer why he was convicted, he told about meeting a woman at a bar who was carded, when she ordered a drink. Her driver license showed she was twenty-four, although this man as well as the bartender thought she looked younger. Later, he slept with her. It turned out she was sixteen and used a phony driver license. He was convicted for this.

101. I argued that she should be held accountable, not him. And asked why she was not charged for using a fraudulent government-issued identification. The man who led the group became angry that I raised these issues. He terminated me and told me to leave. When I attempted to attend the next session, the woman in charge refused to allow me in. She said I was terminated due to not being complaint. I had missed too many sessions.

102. Being terminated counted as probation violation. Now I faced five years in prison. I knew this was a non-willful violation, but would the court agree? I was not sure I had the strength to fight for myself any longer. Suddenly, all those phone calls to lawyers turned up useful information: I could file for post-conviction relief (PCR). Yes, I could—now that I had the entire file. I filled out the paperwork, citing ineffective assistance of counsel and newly discovered evidence. This gave me a little hope.

103. I had another preliminary hearing for the violation of being terminated from

therapy. This hearing was in the interstate compact office in Columbia. I prepared for months, and brought the hospital records. I was told the hearing was just a formality at this point, conducted by a probation officer. It would be decided in the court of general session, due to the nature of the case.

104. Tara Richardson, the North Carolina probation officer, told me she could have violated me for not admitting guilt, and she put that in the violation report she sent to South Carolina.

105. On December 15, 2012, three days before the hearing, I received a phone call from Chad Beard, my South Carolina probation officer. He was moving the hearing to the 20th (originally scheduled for the 18th) and wanted to meet with me first. When I went to the Darlington county probation office, I told Mr. Beard I had filed a PCR. I told him if he was going to try to send me to prison for five years for something I did not do, he should look at the evidence. I summarized what was in the package I brought.

He said he did not need to see the evidence; he was not going to send an innocent man to prison. He made a copy of the PCR application I had filed.

I asked him, What could we do?

He said he could do only one thing—not object when my new public defender, Rick Jones, asked the court to terminate my probation.

I was elated. I could imagine what life would be like if I did not have to be searched anymore; did not have curfew raids; did not have to go to court-ordered therapy; did not have to be yelled at for being innocent and not backing down. I cried in his office.

106. Part of the ordeal would end, once I showed the court that South Carolina probation did not object to the motion to terminate probation. Unfortunately, the court

hearing would not be until the 23rd of January. I could hardly wait.

107. The morning of January 23rd the air conditioning was broken in the fifth floor courtroom. It was humid and hot. Case after case was called. With each case, I grew more and more nervous. I could not help worrying about being sentenced to five years. Then my name was called.

108. My heart was pounding as Judge Baxley went through the usual courtroom routine—you know why you are here today; you are facing a revocation of all or part of your probation. This was the same judge as at the previous probation hearing. He said he remembered me, and that the last time I got off by a slim margin.

109. My lawyer, Rick Jones, told the judge I had paperwork from the doctors' visits and the hospital. The judge seemed more interested in the fact that I would not admit guilt. I was not allowed to speak at that point.

110. I knew that Rick Jones was going to ask that I be terminated from probation and that Mr. Beard would not object. After they did as expected, I was asked to leave the room, for them to deliberate. This scared me. The judge had said nothing other than this could be called a violation, and a willful one. I was almost certain I was going to jail.

11. I waited in the hall. An officer escorted me back into the hearing room. The judge told me he was removing me from probation. He said it was intended to remove the incentive to continue with my PCR. His voice was kind as he explained that only two percent of PCRs that are filed to reverse a guilty plea are successful. He did not want me to continue with mine—for my own good.

I smiled and told him I was more than confident in that matter. The judge released us from the hearing. I walked outside to greet my wife for the first time off-probation.

Probation had been such a burden that I was sure things would begin to be better. I was wrong. I was still a convicted felon, and a Registered Sex Offender.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	SEPARATE STATEMENT OF
v.	)	
	)	UNDISPUTED FACTS IN SUPPORT OF
State of South Carolina,	)	
	)	APPLICANT'S MOTION FOR
Respondent.	)	
	)	SUMMARY JUDGMENT
	)	

"Exh." references exhibits in the Appendix.

1. South Carolina lacked jurisdiction to arrest the Applicant in North Carolina.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).
2. The South Carolina arrest warrant, signed on July 31, 2008 was facially deficient.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).
3. In the presence of Hartsville Detective Specht and others, the Applicant was told to sign the Waiver of Extradition.
SUPPORTING EVIDENCE: Applicant's affidavit; Exh. E (Waiver).
4. The Waiver is blank in the boxes for "crime(s) in demanding state" and "date of crime(s)."
SUPPORTING EVIDENCE: Exh. E (Waiver).
5. The Waiver falsely states that Applicant was a fleeing felon.
SUPPORTING EVIDENCE: Exh. E (Waiver).
6. Detective Specht knew the Applicant was not a fleeing felon.
SUPPORTING EVIDENCE: Exh. G (Indictment).
7. Detective Specht took custody of the Applicant and the confiscated items in North Carolina.
SUPPORTING EVIDENCE: Exh. C and D (Incident Report; List of Items).
8. Detective Specht did not have authority to transport the Applicant to South Carolina.
SUPPORTING EVIDENCE: Exh. B (Affidavit for SC arrest warrant).

9. Detective Specht drove the Applicant from North Carolina to Darlington Detention Center in South Carolina.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.
10. Two weeks later, on August 21, 2008, the Applicant was indicted for criminal solicitation of a minor.
SUPPORTING EVIDENCE: Exh. G (Indictment).
11. Two days after the indictment, appointed attorney Robert Kilgo, Jr. sent discovery requests to the prosecutor. Several months later Kilgo left the public defender's employ without ever speaking with the Applicant.
SUPPORTING EVIDENCE: Applicants's affidavit; Exh. H (Kilgo's discovery request); court records.
12. Detective Specht's affidavit in support of the Yahoo search warrant admits he relied exclusively on publicly available web sites to link the Yahoo email name "Michael24339" to the Applicant.
SUPPORTING EVIDENCE: Exh. J (Specht's affidavit).
13. In the pages Detective Specht claims are records of the Instant Messages (IM) there is no evidence Specht stated he was posing as a girl of thirteen years.
SUPPORTING EVIDENCE: Exh. O.
14. In the pages Detective Specht claims are records of IM exchanged with Michael24339, there is no evidence of plans to meet (i.e., no intent).
SUPPORTING EVIDENCE: Exh. O.
15. There is no evidence of authentication of the IM (chat logs).
SUPPORTING EVIDENCE: Exh. K (footnote #1, p.3, Yahoo search & seizure).
16. There is no evidence of tracing the IM to Applicant's computer.
17. There is no evidence of tracing the IM to Applicant's grandmother's computer.
18. Specht confiscated property that was not relevant to the alleged crime.
SUPPORTING EVIDENCE: Exh. D.
19. At the time of the arrest and indictment Chief Justice Finney's 1999 Order required disposition of criminal cases within 180 days of arrest.
SUPPORTING EVIDENCE: Judge Finney's Order.
20. No court determined that exceptional circumstances existed to allow a delay of fifteen months to dispose of the case against the Applicant.
SUPPORTING EVIDENCE: Court docket.

21. On November 9, 2009—fifteen months after his arrest—the Applicant was ordered to a plea hearing scheduled by the prosecutor. He refused to plead guilty.
SUPPORTING EVIDENCE: Applicant's affidavit; Exh. O (attorney Little's letter).
22. Two and a half years after the arrest, on February 24, 2011, Matthew S. Swilley was appointed to represent the Applicant.
SUPPORTING EVIDENCE: Exh. A (Appointment).
23. One week after his appointment, Swilley phoned the Applicant to notify him about a plea hearing scheduled for the following week.
SUPPORTING EVIDENCE: Applicant's affidavit.
24. Swilley did not ask for a continuance to allow him to investigate or prepare for trial.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.
25. Swilley abandoned any semblance of representing the Applicant.
SUPPORTING EVIDENCE: Applicant's affidavit; court records.
26. At the plea hearing on March 9, 2011 the Applicant was sentenced to probation.
SUPPORTING EVIDENCE: Court records; Applicant's affidavit.
27. Two days after the plea hearing plea defense counsel Swilley signed a forfeiture of the Applicant's computer, webcam, digital camera, music CDs, letters, and his grandmother's computer monitor, keyboard, and mouse.
SUPPORTING EVIDENCE: Exh. U (Forfeiture form).
28. The forfeiture form has a space for the Applicant's signature. It is blank.
SUPPORTING EVIDENCE: Exh. U (Forfeiture form).
29. Swilley never notified the Applicant about the forfeiture.
SUPPORTING EVIDENCE: Applicant's affidavit.
30. Forfeiture of Applicant's grandmother's monitor, mouse, and keyboard were improper and illegal.
SUPPORTING EVIDENCE: S.C. Code Ann. §16-15-445.
31. Forfeiture of Applicant's property was improper and illegal.
SUPPORTING EVIDENCE: S.C. Code Ann. §16-15-445.
32. The Applicant did not know about the forfeiture until he received the entire file in June 2012.
SUPPORTING EVIDENCE: Applicant's affidavit.
33. Applicant left messages for Swilley each day after the plea hearing but did not reach him until the fifteenth day. It was too late to withdraw the guilty plea, too late to file a direct appeal. This was a violation of Rule 62.
SUPPORTING EVIDENCE: Applicant's affidavit.

34. In June 2012, nearly four years after the arrest, the Applicant received the entire file from the public defenders' office. A.C. Michael Stevens noted on one of the pages that this was the complete file.
SUPPORTING EVIDENCE: Exh. V (list of items).
35. On September 24, 2012 the Applicant filed for post-conviction relief, pro se.
SUPPORTING EVIDENCE: Court records.
36. The state was required to respond within sixty days of the September 24th filing.
SUPPORTING EVIDENCE: S.C. CODE §17-27-70, Rule 12(A).
37. The state did not request an extension of time for filing.
SUPPORTING EVIDENCE: Court records.
38. On January 17, 2013 the state filed a motion to dismiss. It was mailed to the wrong address and not received by the Applicant.
SUPPORTING EVIDENCE: Court records; Applicant's Reply to Motion to Dismiss.
39. On February 5, 2013 the court issued a Conditional Order of Dismissal, granting the Applicant 20 days to respond. Because this was mailed by the clerk's office, it was sent to the correct address.
SUPPORTING EVIDENCE: Court records.
40. On February 13, 2013 the Applicant responded to the Conditional Order.
SUPPORTING EVIDENCE: Court records.
41. On March 19, 2013 the Applicant again requested appointment of counsel.
SUPPORTING EVIDENCE: Court records.
42. On April 22, 2013 prosecutor T. Andrew Johnson filed his appearance with the court for this case.
SUPPORTING EVIDENCE: Court records.
43. No attorney has been appointed for the Applicant, who continues pro se.
SUPPORTING EVIDENCE: Court records.
44. Unless the conviction is vacated, the Applicant will be a Registered Sex Offender for the remainder of his life.
SUPPORTING EVIDENCE: S.C. Code Ann. §23-3-46; N.C. G.S. § 14-208.12A.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	2012-CP-16-814
	)	
	)	
Timothy Michael Farris,	)	
	)	WOLK AFFIDAVIT
	)	
	)	IN SUPPORT OF APPLICANT'S
v.	)	MOTION FOR EXPEDITED HEARING
	)	(RE: MOTION FOR SUMMARY JUDGMENT)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
_____	)	

My name is Gloria Grening Wolk. I am a resident of Raleigh, North Carolina, and have been over the age of eighteen for decades. I am responsible for the pleadings filed by young Mr. Farris.

My introduction to legal research and writing was the certificate program, "Social Work and the Law," offered at the graduate school where I received the Master's degree in Social Work. In recent years, having read a great deal of law and about wrongful convictions, I offered research and writing services to a number of innocence groups. That is how Timothy Michael Farris and I became acquainted—a referral.

I am not a lawyer but I admit to being a ghost researcher and ghost writer—actions most lawyers and judges find deplorable—because the results of my work are irrefutable evidence of the failures of defense counsel.

Mr. Farris' affidavit describes the hell his life has become since being arrested. What he does not know—and will not know until I mail this to him—is that people on the sex offender registry are targeted by serial killers (see attached). Recently, in Columbia, South

Carolina, two people were arrested after killing a man who was on the registry and the man's wife. They planned to kill others on the registry.

Although Mr. Farris is listed at many websites, along with his physical description, photo, and home address, the website for the Darlington sheriff's office also includes a description of his car and license plate number. He is at risk every day of his life, as is each family member.

Mr. Farris is innocent and has waited too long for justice. Every day prolongs the pain and the risk. His case was not added to the July-December 2013 docket, but it needs to be heard now, not in months, not next year. Once he is exonerated, he will be a productive, contributing member of society. Until then, he remains a victim.

I swear under penalty of perjury that every statement in this pleading is true.

DATED: _____

Gloria Grening Wolk MSW
[REDACTED] New Falls of Neuse #149-247
Raleigh, NC 27614
888-798-2665

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	2012-CP-16-814
	)	
	)	
Timothy Michael Farris,	)	
	)	
Applicant,	)	APPLICANT'S MOTION FOR
	)	
v.	)	EXPEDITED HEARING ON
	)	
State of South Carolina,	)	MOTION FOR SUMMARY JUDGMENT
	)	
Respondent.	)	
	)	

For the following reasons the Applicant respectfully requests the Court to add his petition for post-conviction relief to the current docket, to expedite the hearing, and to give it calendar priority.

1. This is an extraordinary case. It does not involve drugs. It does not involve violence. It does not involve a victim. Unlike most PCR petitioners, this Applicant has no criminal history. Nothing—until branded by false charges brought by a rogue police officer.

2. Moreover, “this is not a hard case in which to find a deficiency,” as the Supreme Court noted in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). The meritorious claims, detailed in Applicant's Motion for Summary Judgment, show that defense counsel ignored evidence of violations of Applicant's Fourth, Fifth, Sixth, and Fourteenth Amendment rights.

3. The Applicant was devastated to find he is not listed on the current docket. The irreparable harm from false charges, abandonment by defense counsel, and the consequences of being coerced into a guilty plea will be exacerbated by delay.

4. If the South Carolina courts are sincere in their dedication to justice, the court will act on this request expeditiously, by adding the Applicant to the current docket and

giving it calendar priority.

No Hardship for South Carolina

5. The Applicant is desperate for relief, as described in the enclosed Affidavit.

6. This should be a simple case for the court, as detailed in the Motion for Summary Judgment. In essence, South Carolina did not have jurisdiction, and there is no evidence a crime was committed.

7. If a court date is set within the next two months, there will be no hardship for the state. Although it is likely no one ever examined the file, everything is obvious with three exceptions, none that will take more than half an hour to verify. Using the exhibits in the Appendix for the Motion for Summary Judgment, the state will be able to confirm:

- No crime was committed because no age was stated by the detective who claimed he posed as a thirteen-years-old girl. To check this, use the computer search feature for the pages the detective claims are chat logs. [Exhibit N]
- No evidence exists that the Applicant's computer was used for the alleged internet chats. To check this, convert the Greenwich Mean Time (GMT) as stated on Yahoo logs [Exhibit M] to eastern standard time (EDST). Then compare the times with those on the detective's alleged chat logs [Exhibit N]. It will be clear the times do not match.
- No evidence links the chats to the Applicant's computer's IP. To check this, use the search feature on the computer to try to match the IPs on the Yahoo logs [Exhibit M] with the IPs registered with Yahoo as shown on the Applicant's profile [Exh. L].

The Disposition Clock

8. Expediting the Applicant's petition is warranted for additional reasons: The Applicant has been the victim of delay by the state since his arrest in 2008. And, as recently as 2012, the state failed to comply with the statutory requirement to file its answer to the PCR petition within sixty days.

- Without requesting an extension, the state's reply was filed two months late.
- It was mailed to an erroneous address, one never listed anywhere for the Applicant.
- Since it was not delivered, it should have been returned to sender. Yet the state never attempted to resend to the correct address.
- The docket evidences the certificate of mailing to the erroneous address.
(Also see, Applicant's Reply to the Motion to Dismiss.)

9. Back in 2008, the clock for disposition started August 1, 2008, the date of the illegal arrest of the twenty-years-old Applicant. Two weeks later he was indicted. No further action was taken for another fifteen months (the plea hearing at which the Applicant refused to plead guilty). This violated the 1999 mandate of Chief Justice Finney, which reads in part

*Pursuant to Article V, § 4, of the South Carolina Constitution,
IT IS ORDERED that all criminal cases in the State of South Carolina shall
be disposed of within 180 days from the date of the defendant's arrest.
Provided, however, that the circuit court may continue a criminal case
beyond 180 days by written order if the court determines that exceptional
circumstances exist in the case.*

10. Ignoring this Order, the state did not request the court to determine whether exceptional circumstances existed for the fifteen months' delay.

11. More than two years after the illegal arrest, the Applicant again was ordered to appear at a plea hearing (March 9, 2011). Once again, the 1999 Order of Chief Justice Finney was violated. Once again, no request was made to the court to determine whether exceptional circumstances existed for the delay.

12. But for grossly ineffective representation by defense counsel, these failures would have entitled the Applicant to move for dismissal of all charges since “this length of time is presumptively prejudicial.” *State v. Langford*, Opinion No. 27195, (S.C., filed November 21, 2012). It did not happen.

13. Even when the state’s delay is due to a neutral reason, “including overcrowded dockets or negligence,” these “still count against the State because it bears the ultimate responsibility for these circumstances.” *Langford, id.*

14. The state cannot claim “complex case” as an excuse. It was a simple case. There was one witness—the detective who claimed he posed as a thirteen-years-old girl and was solicited for sex via the internet. Had there been a trial, whatever evidence might have been presented was available within the 180 days of Judge Finney’s order.

15. But the Applicant knew nothing about his rights. He did not know enough to request a preliminary hearing. He did not know enough to request a speedy trial. Not one of three sequential defense attorneys advised him of his rights.

16. In contrast, *State v. Kennedy*, Op. No. 3125 (S.C. App. 2000), was complex. Yet the court ruled,

The Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution provide that a criminal defendant is entitled to a speedy trial. State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997).

. . . *The trial court found the length of delay, two years and two months, was troubling and sufficient to trigger inquiry into the other factors. The court found the State's claim of a heavy docket to be accurate but insufficient to excuse the delay.*

17. Delay prejudiced the Applicant's defense. If plea counsel had prepared for trial in 2011, three years after the arrest, the Applicant's alibi witnesses no longer could pin exactly the dates and times their band rehearsed for a church concert—dates and times that might have conflicted with the dates and times of computer use. Citing *Barker v. Wingo*, 407 U.S. 514 (1972) the *Langford* court said, "the inability of a defendant adequately to prepare his case skews the fairness of the entire system."

18. The Applicant was further prejudiced when he was abandoned by defense counsel and coerced into pleading guilty. The repercussions of this plea prejudiced the Applicant's daily life and continue to do so, as described in the attached affidavit.

19. The Applicant does not want dismissal on procedural grounds. The prejudice to his reputation and his future is so great that he needs exoneration based on the facts and the law. He needs exoneration that will restore the liberties denied by this wrongful conviction.

20. Denial of this request to expedite and give his petition calendar priority will result in continuing harm to the Applicant and his family.

The Court has the Power to Expedite

21. The judicial power to determine the order in which cases shall be heard is vested under Article 5, Section 1 of the constitution of this state. As the court in *Langford*, *Id.* noted,

In 1980, we recognized that "[t]he authority of the court [] to determine the

order in which cases shall be heard is derived from its power to hear and decide cases." Williams v. Bordon's, Inc., 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). "This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." Id.

22. Following the South Carolina Supreme Court's decision on *Langford, Id.*, on November 21, 2012 the court issued an Order for disposition of cases in general session. Section (B)(2) emphatically grants the right to the Chief Judge for Administrative Purposes "to add cases to any trial roster or designate cases for a day certain as the CJAP deems appropriate, subject to the notification requirements"

Conclusion

This Applicant has been the victim of injustice for five years. It behooves the court to provide the remedy as quickly and efficiently as possible. This is a simple case. The Motion for Summary Judgment should suffice, making a hearing unnecessary.

This court has the authority to add the Applicant to the current docket and give his petition for post-conviction relief calendar priority. Doing so will be the first step toward restoring rights the Applicant lost by the wrongful arrest and wrongful conviction.

The Applicant respectfully requests the court to rule on this within thirty days.

I swear under penalty of perjury that every statement in this pleading is true.

Dated: _____

Timothy Michael Farris, Applicant Pro Se
 [REDACTED] Hillanby Court
 Waxhaw, North Carolina 28173
 [REDACTED]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	[Proposed] ORDER
	)	on Motion to Expedite
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
_____	)	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The matter of Applicant, Timothy Michael Farris, to expedite the hearing on his Motion for Summary Judgment and post-conviction relief petition having been presented to this Court, and the Court having considered the pleadings and papers submitted in support and opposition therein, and finding good cause and justification hereby ORDERS the matter to be given calendar priority and decided without an evidentiary hearing on or before _____.

Dated: _____

Honorable J. Michael Baxley
Chief Administrative Judge
Fourth Circuit

Certificate of Service

A true and correct copy of the **Motion to Expedite** and two supporting affidavits were mailed to the Office of

Assistant Attorney General Tyson A. Johnson, Sr.,

Post Office Box 11549

Columbia, SC 29211

This ____ day of _____, 2013.

Timothy Michael Farris, Pro Se
[REDACTED] Hilllanby Court
Waxhaw, North Carolina 28173
[REDACTED]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	Notice of Intent to File Petition for
State of South Carolina,	)	Writ of Mandamus
	)	
Respondent.	)	
	)	
_____	)	

The Applicant hereby notifies this Honorable Court of his intention to file a Petition for Writ of Mandamus with the South Carolina Supreme Court.

In support of his motion the Applicant states that he intends to file a Petition for Writ of Mandate in regard to his Motion for Summary Judgment and his Motion to Expedite and grant calender priority, both of which were filed on August 9, 2013.

The Court has a duty to act on these motions, since they are ministerial in nature. The Petitioner has a right under state and federal law for the discharge of the Court's duty. The Petitioner has no other legal remedy.

Respectfully submitted,

Timothy Michael Farris, Applicant Pro Se
 [REDACTED] Hillanby Court
 Waxhaw, NC 28173
 [REDACTED]

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

TIMOTHY MICHAEL FARRIS,

APPLICANT,

v.

THE STATE OF SOUTH CAROLINA,

RESPONDENT.

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-16-0814

**ORDER RESCINDING THE
CONDITIONAL ORDER OF
DISMISSAL AND GRANTING AN
EVIDENTIARY HEARING**

On February 5, 2013, this Court signed a Conditional Order of Dismissal ("COD") in the above captioned case on the basis that Applicant's Post Conviction Relief ("PCR") action was apparently filed outside the statute of limitations. Applicant then filed a timely response to the COD, contending that his PCR application was timely on the basis of newly discovered evidence, *see* S.C. Code Ann. § 17-27-45(C), and raised substantive arguments in support of his ineffective assistance of counsel claim. After review of the Applicant's PCR file, this Court took the unusual step of appointing Tristan M. Shaffer, Esq. to appear on behalf of Applicant for the purpose of arguing why the Court should not sign a Final Order of Dismissal ("FOD") in Applicant's PCR action. Accordingly, the Court convened a hearing on December 9, 2013 in Dillon County, South Carolina, and took arguments from both the Applicant and the State on the issue of whether a FOD should be issued in this case. Present and participating at the hearing were Joshua L. Thomas, Esq., on behalf of the State, the Applicant, and Applicant's attorney, Tristan M. Shaffer, Esq. For the reasons set forth below the COD is rescinded, and this case should proceed to an evidentiary hearing to determine the merits of Applicant's PCR claim.

BACKGROUND

On March 9, 2011, Applicant pleaded guilty to the charge of Criminal Solicitation of a Minor before the Honorable Paul M. Burch. Applicant was sentenced to five (5) years' imprisonment, suspended upon the service of four (4) years' probation. Applicant did not file a direct appeal, but instead filed this current PCR action on September 24, 2012.¹

The State moved to dismiss the Application as untimely pursuant to S.C. Code Ann. § 17-27-45(A). A COD was signed by this Court on February 5, 2013, based on the State's assertion that the Application was filed outside the statute of limitations.

In subsequent *pro se* filings, Applicant asserted that in spite of multiple requests, trial counsel failed to provide him with a complete copy of his file until June 4, 2012. Applicant asserted, among other things, that he was unaware of the factual basis to support his PCR Application until receiving his complete file. At the hearing on December 9, 2013, Applicant argued that the statute of limitations should have begun when he received his entire file from his attorney on June 4, 2012, and thus, his PCR application is timely under S.C. Code Ann. § 17-27-45(C). Alternatively, Applicant contended that even if S.C. Code Ann. § 17-27-45(C) did not apply, the statute of limitations should be equitably tolled based on his trial attorney's failure to provide him with a copy of his complete file upon request.

DISCUSSION

Generally, an application for post-conviction relief must be filed within a year of the entry of the conviction or within a year of a remittitur being sent from a direct appeal. S.C. Code Ann. § 17-27-45(A). Failing to file within the statute of limitations is grounds for summary dismissal. When the State moves for summary dismissal in the absence of an evidentiary

¹ Applicant claims that he attempted to contact his attorney numerous times following his plea for purposes of an appeal, but unable to reach his attorney until after the time to file an appeal had expired.

hearing, a court must "assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant." See *State v. McCoy*, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013). When an Applicant alleges facts that establish an exception to the statute of limitations and such facts are not clearly refuted by the record before the Court, a hearing is required to resolve the question of fact. *Id.*

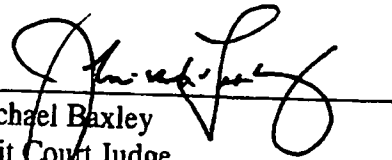
At the December 9, 2013 hearing, Applicant asserted that pursuant to S.C. Code Ann. § 17-27-45(C) the applicable statute of limitations should begin running from June 4, 2012, the date when he received his full file from his trial counsel. Applicant claims that there are information and documents in his full file which had not previously been disclosed to him and which, he asserts, may support a finding of ineffective assistance of counsel and actual innocence. Specifically, Applicant received all relevant information pertaining to the Yahoo internet chat which led to Applicant's criminal charge. While the Court takes no position on the relative substantive merits of Applicant's PCR claim, Applicant has presented the Court with a sufficient ground to prevent the Court from taking the administrative action of signing a FOD.

Under S.C. Code Ann. § 17-27-45(C), a PCR application based on "evidence of material facts not previously presented" must be filed within one year of the "date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence." *Id.* In his affidavit and at the hearing, Applicant asserted that information contained within the file established the factual basis for the grounds alleged in his PCR. Applicant stated that he requested his file on multiple occasions but trial counsel did not provide it to him until June 4, 2012. Based on the facts presented in the affidavit and during the hearing, Applicant has established that a sufficient factual basis which would require an

evidentiary hearing on the merits. Accordingly, the Court finds it appropriate to rescind the COD and order this matter to proceed to an evidentiary hearing.²

IT IS THEREFORE ORDERED that the Conditional Order of Dismissal be rescinded and that this case be scheduled for a hearing on the merits.

IT IS SO ORDERED.



J. Michael Baxley
Circuit Court Judge
Fourth Judicial Circuit

January 10, 2014

Hartsville, South Carolina

² Because the Court finds in favor of Applicant on his argument that his PCR is timely under S.C. Code Ann. § 17-27-45(C), it is not necessary for the Court to reach Applicant's equitable tolling argument.

1 State of South Carolina

2 County of Darlington

3

4 Timothy Farris,) Post-Conviction Relief
5 Plaintiff) 2012-CP-16-00814

6 vs.

7 The State of South Carolina,) July 24, 2014
8 Defendants) Darlington, S.C.

9

10

11

12 Before the Honorable Thomas A. Russo, Judge.

13

14

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

16 Mr. Tristan M. Shaffer,
17 Attorney for Plaintiff

18 Mr. Joshua L. Thomas,
19 Attorney for Defendant

20

21

Margaret T. Sullivan,
Court Reporter

22

23

24

25

	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
1					
2	<u>Timothy Farris</u>				
	by Mr. Shaffer	19		47	
3	by Mr. Thomas		42		
	Tonya Copeland Little				
4	by Mr. Thomas	49		63	
	by Mr. Shaffer		57		
5	Matthew Swilley				
	by Mr. Thomas	64			
6	by Mr. Shaffer		71		

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Exhibits

No.	Description	Id.	Ev.
D-1	Incident Report		54
P-1	Video (to be sent)		79

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1 MR. THOMAS: I beg the court's indulgence.

2 THE COURT: Yes, sir. This is Timothy
3 Michael, is that correct?

4 MR. THOMAS: That's correct, Your Honor.
5 This is Timothy Michael Farris versus the State of
6 South Carolina. It's case No. 2012-CP-16-814.
7 Mr. Farris was indicted December of 2008, for
8 three counts of criminal solicitation of a minor.
9 He was represented on that charge by Tonya
10 Copeland Little, and Matthew Swilley. He pled on
11 March 9th 2011. I believe it was just one. It
12 might have been to all three or it might have been
13 just to one. I don't have that in front of me.

14 But regardless, he pled in front of Judge
15 Burch. Judge Burch gave him 5 years, suspended on
16 time served. And 4 years of probation. He did
17 not appeal from that, but he did file a PCR action
18 September of 2012, alleging ineffective assistance
19 of counsel. Judge Baxley issued a COD February of
20 2013. We had a hearing on that. And on
21 December 9th, Judge Baxley withdrew the COD. And
22 set this for a evidentiary hearing. He's present
23 in court. He's represented by Tristan Shaffer.

24 The State is ready to proceed and I think
25 Mr. Shaffer has some amendments he might need to

1 put on the record.

2 THE COURT: Mr. Shaffer.

3 MR. SHAFFER: Your Honor, I had filed a
4 Motion for a Continuance in this event.

5 THE COURT: All right.

6 MR. SHAFFER: Mr. Farris, I got appointed
7 to Mr. Farris' case probably in December of last
8 year by Judge Baxley. At the time Mr. Farris had
9 been out. And he was out on the original charge.
10 His probation had been terminated by Judge Baxley
11 previously. And we -- and I was appointed to the
12 case. It had been called several times. And his
13 case is I guess a little more complicated than
14 your average PCR. There was a lot going on with
15 it. He had previously filed several pro se
16 documents, including a 32-page Motion of Summary
17 Judgment. And there were other documents as well
18 along with that, that had been filed pro se
19 previously.

20 He, since then, we were in contact, fairly
21 good contact. He would e-mail me. He would call
22 me, and we would speak. He was probably more in
23 contact with me than I was back with him. But,
24 you know, I did keep contact with him. I imagine
25 we spoke at least once every 6 weeks or so since

1 the beginning of the year. Well he was supposed
2 to come to my office, I think we arranged it right
3 at -- he had arranged right at -- he had arranged
4 it with my paralegal around the end of June. And
5 he was supposed to come back next week to my
6 office and meet with me.

7 Well he didn't show up. And the reason he
8 didn't show up is, he had gotten locked up.
9 Mr. Farris was married to someone who had helped
10 him with his case previously, and she has since
11 filed charges against him. He is locked up in
12 Lancaster County Detention Center. He missed a
13 meeting with me. I didn't realize that was a
14 Sunday. On Sunday I called again his or I called
15 his grandfather. I had previously called his
16 grandfather. But I did call his grandfather on
17 Sunday just to say, why isn't Michael calling me
18 back. And he informed me about the charges.

19 We were able to get him here today, which
20 is good, but there were couple of things he wanted
21 me to do, and to discuss with me more thoroughly.
22 And I mean he had made several attempts to ask me
23 to sit down and talk with him over stuff.
24 Obviously our meeting got derailed because of the
25 pending charges. But one thing he had wanted me

1 to do, probably the most important one, is he has
2 a partial alibi witness that is alleging that
3 trial counsel was ineffective for failing to
4 interview him and talk to. It was one of the
5 members of his band, that would alibi him for one
6 of the chats. Basically, there were three
7 different chats. Three main periods of chats.
8 And then the last one, am I correct, the last one,
9 he tells me that. The last one was, he had the
10 alibi one to say that he was not sitting in front
11 of a computer making the chats. I was not able to
12 get him here. He's out of state.

13 So, Your Honor, versus filing an out of
14 state subpoena process which is quite lengthy,
15 what I did instead was because he was friendly
16 witness, I was planning on just calling Mr. Farris
17 in arranging him to come down. He had agreed to
18 come down, and I wasn't going to actually send him
19 a subpoena, and, you know, file an action in North
20 Carolina and give the subpoena and everything
21 else.

22 THE COURT: Let's address this concern
23 that I immediately have, as I hear you talk about
24 this. He pled guilty.

25 MR. SHAFFER: Yes, Your Honor.

1 THE COURT: Any issue regarding an alibi
2 witness or anything else of that nature, should
3 have been dealt, and I haven't read this plea
4 colloquy, but I'm assuming the court went over
5 with him his rights, and his waiver of rights and
6 all of those things. I mean how is that relevant
7 to being able to go forward on this hearing today?

8 MR. SHAFFER: I guess even when your
9 client is pleading guilty, you have a duty to
10 conduct some sort of independent investigation.
11 And I think---

12 THE COURT: Well and there also is a duty
13 on the defendant when he enters a plea, again,
14 I've read it. But this is Judge Burch, I'm
15 confident, Judge Burch went over with him, are you
16 satisfied with your attorneys. Have they done
17 everything you need them to do. And he answered,
18 I'm assuming in the affirmative or he would
19 haven't have gone forward.

20 MR. SHAFFER: And he did. And the thing
21 is; is that, you know, if that was the end of it,
22 we basically wouldn't have PCR's. I imagine, you
23 know, a good portion, of these people have waived
24 all the rights or they would been asserting under
25 PCR during their hearing. And I guess we're

1 challenging whether or not that was a voluntary
2 waiver of those rights, you know, knowingly and
3 intelligently made waiver of those rights. And I
4 guess if he had known some additional information
5 that his, or if his attorney had known more
6 information it probably would have resulted in
7 maybe in having a better grasp of what the case
8 was.

9 THE COURT: Well I mean that deals with
10 one chat. He's charged with three.

11 MR. SHAFFER: Yes, sir.

12 THE COURT: And I realized he pleads to
13 one. Is that correct? He pled to one count.

14 MR. SHAFFER: Pled to one count. And I am
15 not sure which count it cites here.

16 THE COURT: I am going deny the Motion to
17 Continue. I don't see that the lack of having
18 that witness present how that would prejudice in
19 regards to this PCR hearing.

20 MR. THOMAS: Your Honor, I think if we go
21 forward here I can proffer some testimony that
22 will actually confirm that.

23 THE COURT: Okay. Are there any other
24 matters that we need to take up before we proceed.

25 MR. SHAFFER: No, Your Honor. Well I

1 guess I need to put on the record, I'll go ahead
2 and put the allegations that were made. And I
3 might need to refer to my client as well in some
4 cases.

5 THE COURT: All right.

6 MR. SHAFFER: But there's an allegation
7 involving the arrest warrant which, Your Honor,
8 the arrest warrant I believe was invalid. It
9 would create several problems, especially in an
10 extradition case. We believe -- we're asserting,
11 do you have a copy of the arrest warrant up there,
12 Your Honor?

13 THE COURT: Let's see. Yes, one signed.
14 Michael Griggs.

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: Yeah.

17 MR. SHAFFER: The arrest warrant is, I
18 don't think it establishes probable cause. And
19 the basis of that is, I don't think it adequately
20 identifies the connection between or how they
21 identified my client as being the person who
22 engaged in. And there's a couple of cases. I
23 would cite a few cases. The first one is
24 Gist v. Berkeley County Sheriff's Department.

25 THE COURT: What is it now?

1 MR. SHAFFER: Gist is, G-I-S-T.

2 THE COURT: Okay.

3 MR. SHAFFER: And the citation is 151 S.E.
4 2d, 162. And it's a civil case where they where
5 arguing basically whether or not his arrest was
6 lawful. But it was action, I guess a false
7 imprisonment action against the Berkeley County
8 Sheriff's Office. And they were arguing whether
9 or not the -- a warrant in that case, it doesn't
10 sufficiently identify. Basically it just gives a
11 recitation of the statute. It doesn't
12 sufficiently identify how the client -- I mean how
13 the defendant would be the perpetrator of the
14 action would be, you know, well they basically
15 found that was no probable cause because there
16 wasn't the fact that it didn't establish probable
17 cause. You know, they didn't sufficiently
18 identify how the defendant was involved in the
19 crime.

20 And in this situation, all they did was a
21 conclusory statement staying that he committed it,
22 and that they spoke with him. But they don't
23 identify how they know they spoke with him I
24 guess. That's the first issue in the case which
25 creates a problem. Also with the extradition

1 being improper. And the search while you're in
2 North Carolina as being improper.

3 THE COURT: Let me again go back to, when
4 you plead guilty, it's brought out that you waive
5 these rights, and you waive any defenses that you
6 have.

7 MR. SHAFFER: Yes, Your Honor.

8 THE COURT: And I haven't gone through the
9 colloquy like I said, but so am curious as to....

10 MR. SHAFFER: There was a waiver, but I
11 guess the argument would be that, you know, the
12 Mr. Swilley was ineffective for failing to present
13 this argument to essentially inform my client,
14 that hey, there's a defense out there that you
15 could raise regarding the arrest warrant, which
16 would then possibly go into the search warrant in
17 North Carolina and your extradition. And the
18 search warrant in North Carolina involves the
19 computer that was seized. Which is essentially
20 the real evidence that they have in this case.

21 They have, you know, in these computer
22 chat cases, they have one side of it being the---

23 THE COURT: Let's look at the arrest
24 warrant. Now your issue is it states that the
25 defendant did in Hartsville, in Darlington County,

1 on or about that date, commit the offense, and
2 then it gives the particulars; that the defendant
3 did knowingly contact and communicate via the
4 internet with a Person reasonably believed to be
5 under the age of 16, and it goes further and talks
6 about with that person, with an undercover
7 officer, using a decoy account.

8 And you're saying that that's deficit
9 how?

10 MR. SHAFFER: Your Honor, I think it's
11 deficient in identifying how, how they established
12 the probable cause that he was actually the person
13 on the other end of the chat. Just to make a
14 statement of saying well I was chatting with him,
15 you know, there's a question of how you know you
16 were chatting with him that comes up. And just to
17 say that he was the one who did this, isn't
18 sufficient whenever, you know, there's an inherent
19 identification problem with all these cases, you
20 know, over chat messages. Because, you know, you
21 don't know who's on the other end of that computer
22 necessarily.

23 THE COURT: And this Gist case the holding
24 is, that's relevant is what?

25 MR. SHAFFER: Your Honor, I think the

1 holding is in that case was it is not a computer
2 chat. But what it said was just mere conclusory
3 statements identifying the defendant and then
4 stating the statute, was insufficient to establish
5 probable cause when there was no -- they didn't
6 put forth the evidence.

7 In that situation it was armed robbery.
8 And the Gist case is armed robbery and a case out
9 of Berkeley County. And there was some questions
10 that the cops knew somehow that the officer or the
11 store clerk that whether or not they could
12 identify the person, the possible defendant. They
13 ended up identifying him, but they didn't put in
14 the warrant, the arrest warrant, how they knew
15 that they could identify him. And they said at
16 that point it became a question for the jury to
17 determine whether or not it was a lawful arrest.
18 Because you know obviously they were under a
19 different procedural posture than we are today.
20 But I think that as a matter of law you can't say
21 that there was probable cause to know that he was
22 involved in it based off the face of this warrant.

23 And, Your Honor, I would like to cite one
24 other case just for the record. And I am probably
25 butchering the pronunciation of this but,

1 Giordenello. It's G-I-O-R-D-E-N-E-L-L-O. And
2 it's a U.S. Supreme Court case. It's 357 U.S.
3 480.

4 THE COURT: 357, U.S.

5 MR. THOMAS: 480.

6 MR. SHAFFER: And it creates sort of a
7 little bit of a different problem. And the little
8 bit of a different problem is, you know,
9 essentially they have a law enforcement officer
10 vouching for what another law enforcement officer
11 said. Michael Griggs had no personal knowledge of
12 exactly what happened. Merely it's saying well I
13 was told by John Speck that they had probable
14 cause, so I'm willing -- knew they had probable
15 cause. I think that it creates a problem there in
16 establishing probable cause on the unsworn
17 testimony.

18 THE COURT: Mr. Thomas, do you want to
19 speak to that issue or?

20 MR. THOMAS: I think I can briefly address
21 those, Your Honor. Although it might be better to
22 handle that at the end after the testimony. But
23 as far as the warrant issue goes, it's fairly
24 detailed and warranted. It says, you know, what
25 they, it has a defendant. And it has a basically

1 recites all the elements of the crime. I will
2 note, and I don't know if this part of the record
3 or it's not. I can certainly make it part of
4 record at the end though. I will note that the
5 incident report that the police officers prepared,
6 does indicate that they positively identify him,
7 via his IP address, and via some investigation
8 from Yahoo or My Space.

9 And as far as the issue with Officer
10 Griggs not having any personal knowledge, the law
11 is pretty clear. And I can cite to a case here it
12 says, State v. Dunbar 361, S.C. 240. And that's
13 actually a case where they said there was no
14 support for the warrant. But they do talk about
15 how an affiant can attest to information and
16 supplied by and by another office. Magistrates
17 can issue search warrants based upon hearsay
18 information that's not a result of direct
19 observations.

20 It cites State v. Sullivan, 267, S.C. 610.
21 And I'll note that the search warrant says that
22 the affiant has information from Detective Speck
23 about those things that he's swearing to.

24 MR. SHAFFER: And, Your Honor, related to
25 that issue, there's confusion but there's also

1 cases that say that you can't have a affidavit
2 based on unsworn testimony. And I guess in my
3 mind, that will be a problem rectifying which
4 because it seems like there's plenty of authority.
5 And so, you know, essentially I'd like to argue
6 that issue. At least argue that issue in court.
7 And that's the reason I'm doing it now. I think
8 there is case law sort of going both ways to be
9 honest.

10 MR. THOMAS: And that's fine. And I would
11 just liken it to a situation where a police
12 officer receives a phone call or goes on to the
13 scene, and finds someone injured. And they say,
14 you know, so and so did this to me. Defendant
15 injured me. And then the police officer goes and
16 gets a warrant based on that testimony. I think
17 it's the same situation here. But I'm happy to
18 consent to the amendment to include this
19 allegation.

20 THE COURT: All right.

21 MR. THOMAS: And we can address it later
22 down the road.

23 THE COURT: Well let's proceed with
24 application then.

25 MR. SHAFFER: And, Your Honor, the other

1 allegations that weren't even raised. I think the
2 ones involving the search warrant depending on the
3 arrest warrant from South Carolina. I think they
4 went and got a search warrant in North Carolina.
5 So it's effect an arrest in South Carolina. Their
6 search I believe it's improper at that point.

7 You know, also there was a statement that
8 was made during the -- in the information
9 involving the, I believe it's in the search
10 warrant information from North Carolina. What
11 they said was basically that they positively
12 identified him. And also that the person on the
13 other end, which was John Speck, was acting like a
14 13-year-old girl. Or was taking concern over a
15 13-year-old girl. He had said that he was 13.
16 The -- that's not supported in the chat box, Your
17 Honor. At no point does he ever say that he was
18 13 years old to the defendant. There is no record
19 of that. I watched the video all the way through.
20 I've looked at the chat box.

21 They have mentioned that he claims that
22 he's 13 years of age. So I think that, you know,
23 there is some incorrect information that was given
24 to North Carolina from the South Carolina law
25 enforcement authorities, where there was an

1 intentional lie. It was incorrect information
2 that was given, which was the basis of the search
3 warrant in North Carolina and the seizure.

4 So I guess in that sort of defense
5 pro-evidence, and the incorrect information, we
6 are going to make an allegation regarding that.
7 So it was ineffective for counsel not to raise
8 that issue and not to try it out or at least
9 raise -- discuss that with the client. The next
10 allegation involves chronic. Mr. Swilley had
11 taken over this case about two -- Mr. Swilley had
12 taken over this case about two weeks prior to the
13 plea. He was the one who actually made the or had
14 convinced him to plea. Prior to that I don't
15 believe he was intending to plead guilty. And I
16 don't believe that those two weeks that regardless
17 of prejudice, I don't think that's sufficient time
18 to adequately inform your client of whether or not
19 he should plead guilty.

20 And additionally, we also have no
21 investigation involving other witnesses and
22 failure to go over all the discovery with him, and
23 advise him of what the discovery contained and
24 possible defenses in connection with discovery.
25 Thank you.

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1 THE COURT: All right, proceed.

2 MR. THOMAS: And for the record, the State
3 consents to all of those amendments.

4 MR. SHAFFER: The applicant would call
5 Timothy Farris.

6 Timothy Farris, being first duly
7 sworn, testified as follows:

8 Direct Examination by Mr. Shaffer:

9 Q Mr. Farris, how old are you?

10 A I am 26 years old.

11 Q Where are you from?

12 A Waxhaw, North Carolina.

13 Q Have you lived there all your life?

14 A Yes.

15 Q Where are you currently staying?

16 A Lancaster County Detention Center.

17 Q When did you get arrested?

18 A July 5th.

19 Q Prior to that, where were you living?

20 A Waxhaw, North Carolina.

21 Q Do you live on your own, or do you live
22 with?

23 A I live with my grandparents.

24 Q Were you living with your grandparents
25 when this allegation arose?

Timothy Farris-Direct by Shaffer.

1 A Yes.

2 Q Tell us a little bit about what happened
3 whenever you first learned about these
4 allegations.

5 A I was asleep. And I would sleep late,
6 because the night before, my band and I were still
7 staying up for a show we were doing at Wellington
8 United Methodist Church. I was awoken by I'd say
9 three officers in my room, what do you call it,
10 the entrance to my room. They told me to get up.
11 And they led me into living room just in boxers.
12 They wouldn't let me put on clothes. And they sat
13 me down, and they handed me the application for
14 the search warrant. And it was at that point
15 where they told me that I was being charged with
16 criminal solicitation of a minor.

17 Q And what happened after they gave you the
18 search warrant, did they proceed to search?

19 A They immediately proceeded to search.

20 Q Did you make any statements to the
21 officers?

22 A They asked me if I used Yahoo messenger.
23 And I told them that I did use Yahoo messenger,
24 but I never chatted with anyone under the age of
25 18.

Timothy Farris-Direct by Shaffer

1 Q How do you know you've chatted with anyone
2 under the age of 18?

3 A Because I mainly use it just to talk to my
4 friends.

5 Q Did you chat with other people?

6 A Other people as in?

7 Q Other those people that you didn't know.

8 A Not really. I just used it as a quick way
9 to get messages out to my friends and the band
10 mates.

11 Q And how old were you when these
12 allegations arose?

13 A 20 years old.

14 Q What happened after they searched the
15 residence?

16 A They lead me out to a blue SUV, and they
17 took me immediately to the Union County Sheriff's
18 Office.

19 Q Did you get appointed an attorney at that
20 point?

21 A No, I asked for an attorney multiple
22 times. They told me that it would be at least
23 until Monday, and that it would be useless for me
24 to ask for an attorney again.

25 Q And who was the first attorney you spoke

Timothy Farris-Direct by Shaffer

1 with?

2 A I'm sorry, sir?

3 Q Who was the first attorney you spoke with?

4 A Tonya. I believe Tonya Copeland Little.

5 Q Did -- what did you all talk about the

6 first time you spoke with her?

7 A I can't remember.

8 Q How long was it was after you had gotten

9 arrested?

10 A It was I think months.

11 Q How many times did you speak with Tonya,

12 do you recall?

13 A I'd say less than 10 times.

14 Q And did she ever give you a copy of your

15 discovery?

16 A No.

17 Q Do you know what discovery was?

18 A No.

19 Q How long were you in Lancaster? I mean,
20 not Lancaster, I apologize. How long were you in
21 Darlington County?

22 A 15 hours.

23 Q So you were out on bond whenever you met
24 with Tonya.

25 A Yes.

Timothy Farris-Direct by Shaffer

1 Q Were you able to call her?

2 A Yes.

3 Q Did she spoke with you about the case?

4 A Yeah. She -- one of the main
5 conversations I remember with her was, she told me
6 that there was an issue. I don't remember what
7 happened. She didn't go into details, but she
8 said that it would take longer for my case to be
9 heard. I remember I was at the mall when she
10 called.

11 Q And did she -- and you were being
12 prosecuted by the attorney general's office, is
13 that right?

14 A Yes.

15 Q Did she tell you anything about the type
16 of case you had?

17 A No.

18 Q Did she tell you anything about the
19 charges that were against you?

20 A She told that if I pled, it would be, I
21 would have to register as a sex offender. And,
22 you know, I made it known very quickly that I was
23 very scared of that. And, you know, I think she
24 offered to make a counter offer to the State's
25 plea offer. We talked about possibly, I think,

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1 what's it called, contributing to the delinquency
2 of a minor, just because it wouldn't come with a
3 sex offender thing. And, you know, I was scared
4 out of my mind.

5 Q How much -- did she tell you how much time
6 that the charge carried?

7 A 10 years a piece. She told me I was
8 facing 30 years.

9 Q Now whenever you were with her or whenever
10 you met with her, did she ever let you view the
11 video of the chats?

12 A No.

13 Q Did she ever tell you there was a video of
14 the chats?

15 A No.

16 Q Did she let you read the transcript of the
17 chats?

18 A I don't believe so.

19 Q Now at some point, she left, correct?

20 A I was never notified that she left.

21 Q Prior to whenever you met with her, or
22 whenever you were meeting with her.

23 A Uh-huh. (Affirmative.)

24 Q When she was your attorney.

25 A Uh-huh. (Affirmative.)

Timothy Farris-Direct by Shaffer

1 Q Did you ever tell her that you wanted to
2 plead guilty?

3 A No. I did not want to plead guilty.

4 Q Did you -- at any point did you tell her
5 that you wanted to go to trial?

6 A I told her it was on the forefront of my
7 mind.

8 Q And what happened when she left? You got
9 appointed another attorney?

10 A I was without an attorney for gosh, I
11 think 6 to 8 months. Because the only way that I
12 found out that she left was that I called the
13 public defender's office and I asked to speak with
14 her, and they told me she was no longer employed
15 there. And I thought they had dropped it. Well
16 they didn't tell me that she had left. They told
17 me I didn't have a lawyer assigned to me. And I
18 thought that they had dropped the charges against
19 me at that time.

20 Q But you found out that they hadn't.

21 A Yeah, when Matthew Swilley contacted me.

22 Q And was that?

23 A Two weeks before March 9th. I can't
24 remember the exact date. I think it was February
25 24th.

Timothy Farris-Direct by Shaffer

1 Q Did you speak to him over the phone, or
2 did you meet with him?

3 A I had spoke with him once over the phone,
4 and I went to meet with him once.

5 Q And when you met with him, did he go over
6 your discovery with you?

7 A He gave me -- I asked him at that time for
8 my evidence. He gave me a small manila envelope
9 that said warrants on it. And it had the chat
10 logs and the officer's faxed personal incident
11 reports, and that was it.

12 Q Did he show video of the case?

13 A No.

14 Q Now at any point did he tell you about
15 your chances of trial versus whether to go plead
16 guilty?

17 A He told me the State had a slam dunk case
18 should and that I should plead guilty.

19 Q Did he ever tell you anything about your
20 changes of winning if you didn't plead guilty?

21 A He told me there was almost a certainty
22 that the attorney general would win. He said the
23 attorney general's task force had almost a
24 100 percent conviction rate.

25 Q Did he tell about any defenses that you

Timothy Farris-Direct by Shaffer

1 could raise if you had gone to trial?

2 A I asked him about a Clayton Motion. I had
3 heard about that. I asked him if we could file a
4 Motion to Dismiss in the interest of justice.
5 Because I knew that I hadn't done it. And I knew
6 that -- I was still under the assumption that it
7 had to be some mistake. And I figured a Motion to
8 Dismiss in the interest of justice, would get the
9 evidence out, and it would show I didn't do
10 anything.

11 Q And that Clayton Motion was that something
12 you had heard about from another state?

13 A Yes. Yeah, there was something that a New
14 York attorney had told me about.

15 Q When did you first speak to the New York
16 attorney?

17 A I'd say 2010.

18 Q Why did you contact an attorney in New
19 York?

20 A He was a federal lawyer and I honestly,
21 this is at the time when Tonya wasn't my lawyer
22 anymore, and I had no one to talk to about the
23 case. So I reached out to someone who knew him
24 through a friend.

25 Q Now how long do you think that your

Timothy Farris-Direct by Shaffer

1 meeting with Mr. Swilley was?

2 A 30 minutes tops.

3 Q But he didn't tell you about your, you
4 know, any defenses that you would raise if you
5 went to trial?

6 A He told me there was nothing we could do.
7 I asked him if he could file any motions and he
8 said no.

9 Q Now after that meeting, what did you
10 decide to do?

11 A I talked about it with my grandparents at
12 length, and Mr. Swilley said if I pled, there was
13 be a good possibility of me getting probation. If
14 I didn't plead, I would still -- I was facing 30
15 years. And my grandparents and I talked about it
16 endless nights. And we all decided I wanted to be
17 home. I want to be able to fight this. If I
18 couldn't fight it at that time, I would find a way
19 to fight, but I couldn't do it from prison. And I
20 think my grandfather can testify to that as well.

21 Q Now you ended up pleading guilty, correct?

22 A Yes.

23 Q You waived your right to go to trial?

24 A Yes.

25 Q You waived your right to confront

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1 witnesses against you.

2 A Yes.

3 Q And you waived your right to, you know,
4 make any sort of defense.

5 A Yes.

6 Q And you said you were satisfied with your
7 lawyer?

8 A Yeah.

9 Q Why did you say all that?

10 A Because Mr. Swilley told me that if I
11 didn't say yes to all the questions, my plea
12 wouldn't be accepted. Except for had I been
13 coerced. He said I had to say no to that.

14 Q Were those true statements?

15 A I was scared, and I wasn't exactly happy.
16 Anyone can tell you I wasn't happy with the way
17 things happened. I wouldn't have asked about
18 filing motions if I was just content to plead
19 guilty.

20 Q Now after you plead guilty, what happened?

21 A I was taken into a room and the process
22 begun for probation.

23 Q Did you ever get to speak to Mr. Swilley
24 again?

25 A No, not at that time.

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1 Q Did you try to?

2 A Two weeks later I got a hold of him.

3 Q Is that the first time you tried?

4 A No. No. I called him almost every day.

5 Q Starting when?

6 A The next day, March 10th.

7 Q And....

8 A He was out of the office.

9 Q Why were you trying to contact him?

10 A Because I didn't feel right about it. I
11 wanted to withdraw my plea.

12 Q And whenever you finally spoke to him two
13 weeks later, what did he tell you?

14 A He said that there was nothing I could.
15 He said the time for withdrawing the plea had
16 passed. I asked him if there was anymore
17 evidence, because a friend of mine looked at the
18 discovery that was given to me. And he said there
19 is no way they can convict you just on that. So I
20 asked him if there was anymore discovery, and he
21 said, yes. And I said why didn't you give it to
22 me. H responded with, I gave you everything that
23 I thought was relevant.

24 Q Did you eventually get ahold of the other
25 evidence?

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1 A He sent me a little bit more. That came
2 about three weeks after I had asked for it. He
3 sent me the Yahoo, .Yahoo IP addresses. And I
4 think it was the Yahoo IP addresses, I think. I
5 don't want to say anything wrong. I know he sent
6 me the Yahoo IP addresses.

7 Q But did you receive everything?

8 A No.

9 Q When did you determine that you had not
10 received everything?

11 A After I called again and I asked if there
12 was anymore. And they told me, yes, there was
13 more. And I said again, why haven't been given
14 everything. And they couldn't respond to that.
15 But they wouldn't give it to me either.

16 Q Did you finally get a complete copy of the
17 file?

18 A Yes, in June of 2012.

19 Q And how did go about doing that?

20 A The attorney from New York that I spoke to
21 in 2010 actually flew down on his own dime. And
22 he went to the public defender's office in Dillon,
23 and we demanded a full copy of my file and an
24 itemized list attached to it. And at first, they
25 were reluctant. They asked my attorney's bar

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1 card. So after they copied that, they said it
2 would be a few hours. And we had basically
3 Michael Stevens actually signed and dated saying
4 this was everything in my file.

5 Q Now you got -- did you get a copy of the
6 video then?

7 A No.

8 Q When did you get a copy of the video?

9 A It wasn't until you and I had talked.

10 Q And whenever you saw the video, you have a
11 copy of video, correct?

12 A You shared it on your google drive with
13 me.

14 Q And you were able to view it, right?

15 A Yes.

16 Q And when you viewed a copy of the video
17 did anything stick out in your mind about a
18 possible defense to this case?

19 A There was never any age mentioned, which
20 is essential element of the crime.

21 Q So you mean never any age mentioned on---

22 A On the officer's part.

23 Q So the officer never claimed that---

24 A They were any age.

25 Q They were any age.

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1 A Yeah.

2 Q Or at least not to you, right.

3 A Yeah, not to me. They he did -- he did it
4 in other chat windows.

5 Q What A/S/L mean?

6 A Age, sex, location.

7 Q Did you ever ask for the age, sex and
8 location of Speck?

9 A I never had the chats with Detective
10 Speck. But on the chat, the chat web space.

11 Q And I apologize. Did -- that was your
12 account on the chat, right?

13 A It was my account.

14 Q And your account, did it ask -- did it
15 ever ask for whoever was on there ever ask for
16 age, sex and location?

17 A No, It did not.

18 Q And on that video it shows a good may
19 other chats going on at the same time, right?

20 A Yes.

21 Q And some of those asked for age, sex,
22 location.

23 A Yes.

24 Q And in those windows, did Speck list an
25 age?

Timothy Farris-Direct by Shaffer

1 A Yes.

2 Q What was that age that he listed?

3 A 13.

4 Q Now at some point during the chat window,
5 you stated to Speck, or I am sorry not you.

6 A Thank you.

7 Q The, your persona or your account, someone
8 on your account stated to Speck that they were 20
9 years older than Speck's persona, right.

10 A 7 years old.

11 Q I'm sorry, 7 years older than Speck's
12 persona.

13 A Yes.

14 Q And at the time you were 20, right?

15 A Yes.

16 Q Do you have any explanation for why they
17 would have done that?

18 A My only explanation is that it had to be
19 someone who knew it was Speck, and knew that he
20 was supposed to be 13. Because also in the chat,
21 my account magically knew that he was from
22 Hartsville without ever being told as well.

23 Q But you never made any of those
24 statements?

25 A No.

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1 Q Were you at your computer during that
2 time? Do you know?

3 A I couldn't. That was 6 years ago.

4 Q And there's three chats, right?

5 A Yes.

6 Q What was going on in your life during the
7 time that those chats were?

8 A I was almost at church every day. We were
9 preparing a big show for the youth group that me
10 and my best friend Steven Lindsey, ran together.
11 And we were over at the church, it's called the
12 Family Life Center almost every day, setting up
13 for that show. And that had started from I would
14 say early July, up until the time of the show
15 which was August 10th.

16 MR. SHAFFER: Court's indulgence.

17 Q Were other people available around you
18 during that time when you were preparing for the
19 youth group?

20 A Yes.

21 Q Did you tell your attorneys about that?

22 A I had told -- Steven actually was with me
23 the first time I met with Mr. Swilley.

24 Q And who is Steven?

25 A Steven Lindsey is my best friend. And

Timothy Farris-Direct by Shaffer

1 he's also the lead singer of my band.

2 Q And he was with you the first time.

3 A The only time I met with Swilley.

4 Q And what was he -- well why was he with
5 you?

6 A He was with me for moral support, and he
7 mentioned the fact that we had been putting
8 together the show, but I don't -- there was no
9 reaction from Mr. Swilley.

10 Q Did you ever ask him to look into
11 it? Mr. Swilley that is?

12 A I thought that was part of his job.

13 Q Were you trusting Mr. Swilley?

14 A Yes.

15 Q Were you trusting his judgment?

16 A Yeah.

17 Q Even though he just got put on your case.

18 A I didn't know how much experience he had.
19 I didn't know any of his credentials. I assume
20 that since they put him on my case, he must be
21 competent.

22 Q Did -- but you only had one 30-minute
23 discussion with him?

24 A Uh-huh. (affirmative.)

25 Q And then based off of that, you decided to

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1 plea.

2 A It was based off the conversations I had
3 with my grandparents. Because Mr. Swilley said he
4 felt strongly that I could get probation versus
5 going to trial and getting 30 years.

6 Q And he never mentioned any defenses that
7 he had raised at trial?

8 A No.

9 Q But he told you it was going to be a slam
10 dunk.

11 A Yeah, he told me the attorney general's
12 office wouldn't take it unless it was a slam dunk
13 case.

14 Q If you had a defense do you think he would
15 have mentioned it?

16 A Yes.

17 Q Did you assume you didn't have a defense?

18 A He, once he told me the attorney general's
19 office had a slam dunk case, I thought what do we
20 do. But he essentially told me---

21 Q Did he ever talk to you about the fact
22 that they -- that Speck never mentioned their age
23 to your screen name.

24 A He never mentioned that to me.

25 Q Now in video there is a period of time

Timothy Farris-Direct by Shaffer

1 where there is no -- they turn off the camera. Do
2 you recall that?

3 A Vaguely. It's been a very long -- I
4 watched one time the day after you sent it to me.

5 Q Did Mr. Swilley ever mention anything
6 about that?

7 A No.

8 Q Now you've done a great deal of research
9 on this case, right?

10 A Yes, sir.

11 Q And if you could, tell the court what
12 issues if any I forgot or I missed that you would
13 like to raise?

14 A I would say that there was never a trace
15 done to my computer in the beginning. They filed
16 for a 2703(d) order, but they never went to my
17 internet service provider, which had been done in
18 lot of other ICAC cases. Which definitely showed
19 that the chats came from that person's computer.
20 That was never done in my case. Like you and I
21 just discussed.

22 Q When did you find that out?

23 A I found that out through my own
24 investigation after calling my internet service
25 provider to find out if the police had ever

Timothy Farris-Direct by Shaffer

1 contacted them, or if there had been anything.

2 Q Was that before your trial?

3 A No, after. I wasn't aware of any of those
4 methods before.

5 Q Go ahead.

6 A And you and I mentioned, there was no age
7 mentioned in the chats, which is explicitly stated
8 in the statute itself. It says a person is guilty
9 of criminal solicitation of a minor if they
10 attempt to contact or contact someone under the
11 age of 18, or reasonably believed to be under the
12 age of 18. That makes an essential element of the
13 crime.

14 Q Did either of the attorneys ever point the
15 fact out that they never mentioned the age of the
16 chat?

17 A No.

18 Q Were there any -- now going back to that,
19 have you, did you forfeit your computer?

20 A I did not. Mr. Swilley signed it.

21 Q Did you sign off on an order doing that?
22 Did you give him permission to do that?

23 MR. THOMAS: I object to this line of
24 testimony, Your Honor. I don't think this has
25 anything to do whether his plea was knowingly and

Timothy Farris-Direct by Shaffer

1 voluntarily.

2 THE COURT: What relevance has that got to
3 do with this proceeding?

4 MR. SHAFFER: And, Your Honor, essentially
5 it puts forth the fact that we can't necessarily
6 prove certain things on the computer, because it's
7 gone. Now, you know, it was in the custody and
8 control of the opposing party. You know,
9 obviously they had an ability to preserve it
10 because they had it. And in many civil cases you
11 can at least, there's a permissive adverse
12 inference that can be drawn from the failure to
13 preserve evidence.

14 There's Stokes v. Spartanburg Regional
15 Medical Center, which will allow a jury charge
16 specifically to that point. In this case, I think
17 that at least getting the fact that they didn't
18 preserve it, and they didn't preserve it through
19 no fault of his own, you know, at least it would
20 go to rebut us -- any allegation the State
21 possibly could make about us failing to prove our
22 case regarding the -- or failing to present
23 evidence about the IP addresses not coming back,
24 and the computer not being definitively linked to
25 the other side. Or his computer not being linked

Timothy Farris-Direct by Shaffer

1 to the chats. Thank you, Your Honor.

2 THE COURT: Overruled.

3 Q But you didn't request and preserve it,
4 correct?

5 A I didn't request anything, no.

6 Q But you didn't request that they destroy
7 it either.

8 A No, I did not.

9 Q Did you ever give permission?

10 A No.

11 Q Did anyone ever talk to you about that?

12 A No. I found out about that afterwards. I
13 found the Consent Order afterwards when I got the
14 full file.

15 Q And we weren't able to actually get anyone
16 to test it because of that, right?

17 A Exactly.

18 Q I informed you they didn't have it
19 anymore, right?

20 A Yes. You informed me they destroyed it.

21 Q Are there any other allegations that I
22 have missed at this point?

23 A Detective Speck did not swear to anything.

24 Q And we discussed that prior to the
25 hearing. I think it's probably adequately

Timothy Farris-Cross by Thomas

1 preserved at least.

2 A I would say the Motion for Summary
3 Judgment covers pretty much everything.

4 MR. SHAFFER: No further questions.

5 THE COURT: Mr. Thomas.

6 Cross Examination by Mr. Thomas:

7 Q Mr. Farris, a rough estimation of how many
8 times you meet with Ms. Copeland Little.

9 A Once.

10 Q And she, you said she didn't review any of
11 the discovery with you?

12 A Not that I can remember.

13 Q And you didn't discuss any possible
14 defenses you might have?

15 A Not that I can remember.

16 Q Let's go back to the day you were arrested
17 for this crime.

18 A Okay.

19 Q The police came in your door, and woke you
20 up out of bed.

21 A Yes.

22 Q Sat you down on the couch.

23 A Yes.

24 Q Told you they were investigating these
25 chats with an underage girl?

Timothy Farris-Cross by Thomas

1 A Yes.

2 Q And in reply to that, you said, yes, I use
3 the computer for chatting.

4 A Uh-huh. (Affirmative.)

5 Q And you admitted that you had set the
6 chats that they showed you.

7 A No.

8 Q You didn't admit to that?

9 A No, I didn't. That was actually written
10 in officer -- Detective Speck's incident reports,
11 and that was one of the issues that I brought up.

12 Q And you didn't tell them that you sent the
13 chats, but you didn't think you could get in
14 trouble because you didn't plan to go to
15 Hartsville?

16 A No, I actually said -- I asked them a
17 question if this was like that show Dateline to
18 Catch a Predator. And that's the only -- that's
19 the only exposure I've ever seen to that is when
20 they go to meet and they get arrested.

21 Q This stuff about the chats don't show you
22 ever asking about age, sex and location. How do
23 you know what age, sex and location means? Where
24 did you -- did you read that?

25 A I grew up in the computer age.

Timothy Farris-Cross by Thomas

1 Q But the chats do say that the person you
2 are allegedly talking to is 7 years younger than
3 you?

4 A That's what my account says to them
5 without any prompting.

6 Q So to get to 7, you would have to do some
7 math. Say to 20 minus 13. Is that how you get to
8 7? So somebody had to know that one party was 20,
9 and one party was 13?

10 A The only way that could have been known is
11 if it was someone who already knew it was an
12 undercover investigation, and knew how old Officer
13 Speck, excuse me, Detective Speck was claiming to
14 be.

15 Q Do you know anyone in Hartsville?

16 A I do not.

17 Q Do you know anyone in Darlington County?

18 A I do not.

19 Q You told Ms. Copeland Little that you
20 wanted to go to trial on these charges?

21 A I told her I didn't want to plead guilty.

22 Q So you told her you wanted a trial?

23 A Potentially, yeah. I believe that's what
24 it means.

25 Q So why did you not to go trial? I mean,

Timothy Farris-Cross by Thomas

1 if you wanted a trial, why did you plead guilty?

2 A Actually with her, she brought me up
3 before the court. And they asked me to plead
4 guilty, and I said, no. I said I plead not
5 guilty. And that was November of 2009.

6 Q And what changed between then, and when
7 you actually pled guilty?

8 A Mr. Swilley's rather forceful use of the
9 term slam dunk in 30 years.

10 Q You didn't want to go to jail on these
11 charges, right?

12 A No, sir.

13 Q So you plead guilty to avoid going to
14 jail?

15 A That was essentially, yeah. I figured I
16 could fight it and win on the outside. But I knew
17 if I was in prison, I was -- I mean there's
18 nothing you can do in prison.

19 Q So you were ready to get this whole thing
20 wrapped up and behind you?

21 A I was scared, and they had been drawing it
22 out for three years.

23 Q Were you ready to get this whole thing
24 wrapped up and behind you?

25 A I would say it was time, yeah. I was

Timothy Farris-Cross by Thomas

1 scared.

2 Q And you plead guilty, because you thought
3 you were going to get probation and you wanted to
4 avoid jail time?

5 A Because that was what Mr. Swilley said to
6 me, yeah.

7 Q You pled guilty, because you wanted to
8 avoid going to jail.

9 A For something I did not do, yes.

10 Q You never told Ms. Copeland Little or
11 Mr. Swilley that you had an alibi for these
12 crimes?

13 A I thought that they were supposed to
14 investigate that. That's what I was told. They
15 were supposed to investigate my side.

16 Q You never looked at Ms. Copeland Little
17 and said, I have a person who can tell you where I
18 was when these happened?

19 A It wasn't at the forefront of my mind at
20 the time.

21 Q You didn't say that to her then?

22 A No.

23 Q Could you answer out loud.

24 A I said, no.

25 Q And you didn't tell that to Mr. Swilley

Timothy Farris-Cross by Thomas

1 either.

2 A No, but Steven did tell him that we were
3 preparing for that church show around the time.
4 And there was no reaction to it whatsoever.

5 Q You said Mr. Swilley told you what to say
6 at the plea?

7 A Yes.

8 Q So were those statements you made at the
9 plea were they true statements?

10 A No. That was the first time I'd ever
11 committed a crime.

12 Q So you lied at the plea.

13 A Yes.

14 MR. THOMAS: Thank you, Mr. Farris.
15 That's all I have.

16 REDIRECT EXAMINATION BY Mr. Shaffer:

17 Q If Mr. Swilley had not said it was a slam
18 dunk, would you have gone to trial?

19 A Yes.

20 Q If Mr. Swilley had not said that the
21 attorney general's office never loses, would you
22 have gone to trial?

23 A Yeah.

24 Q If Mr. Swilley had told you about some of
25 the defenses that we talked about today, would you

Timothy Farris-Cross by Thomas

1 have gone to trial?

2 A Yes. I think my reaction would have been
3 the same as when you and I spoke, and after I
4 discovered it.

5 Q But Mr. Swilley didn't tell you those
6 things, and didn't tell you about the defenses,
7 right?

8 A No. He did not tell me those things.

9 Q And based off of that, did you think you
10 had a chance of not going to jail by taking it to
11 trial?

12 A I was under the impression that if I took
13 it to trial, it was a sure thing that I was going
14 to jail.

15 Q So when the attorney general asked you
16 several times about whether or not you plead
17 guilty to avoid jail time, do you think that made
18 that decision with your eyes wide open?

19 A No.

20 MR. SHAFFER: No further questions.

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

23 MR. SHAFFER: The applicant rests.

24 THE COURT: Mr. Thomas, anything from the
25 State?

Tonya Copeland Little-Direct by Thomas

1 MR. THOMAS: Your Honor, the State would
2 call Ms. Tonya Copeland Little to the stand.

3 Tonya Copeland Little, being first duly
4 sworn, testified as follows:

5 MR. THOMAS: May it please the court.

6 THE COURT: Yes, sir.

7 Direct Examination by Mr. Thomas:

8 Q Good morning, Ms. Copeland Little, how are
9 you doing.

10 A Good afternoon, I am fine.

11 Q Is it afternoon? I'll make this painless,
12 I promise. Could you give us a brief overview of
13 your experience practicing law?

14 A I graduated from law school in 2006. I
15 worked for approximately a year as an assistant
16 solicitor. And then I spent 3 years at the public
17 defender's office. And then I went into private
18 practice. I'm also a part-time municipal judge.

19 Q Can you recall how you became involved in
20 Mr. Farris' case?

21 A I do. I think it was right after I joined
22 the public defender's office. Mr. Kilgo was my
23 boss, and he assigned the case to me. Michael was
24 not in jail at the time. And so he lived out of
25 state. I guess I probably -- I don't even know

Tonya Copeland Little-Direct by Thomas

1 how he found out I was his attorney. I'm assuming
2 I wrote him a letter. And then he came to the
3 office. I think he brought his grandfather with
4 him. He came to meet me at the office.

5 Q How many meetings did you have with him
6 before trial?

7 A I'm thinking probably four. Four times
8 maybe.

9 Q And did you file any Rule 5 or Brady
10 motions?

11 A I did. Or I did file the motions or
12 Mr. Kilgo did. But we did.

13 Q Did you -- what did the State provide in
14 response to that?

15 A I don't have the file right in front of
16 me, but I remember there was a CD of a -- I mean a
17 video of the chats. There was an incident report,
18 arrest warrants, search warrant. That's basically
19 what I remember.

20 Q Did you have an opportunity to review all
21 of that?

22 A I did.

23 Q Including the video?

24 A Yes.

25 Q Did you have an opportunity to review that

Tonya Copeland Little-Direct by Thomas

1 Mr. Timothy Farris?

2 A I did.

3 Q Including the video?

4 A I do not specifically recall showing him
5 that video, but I know I gave him a copy of the
6 transcripts.

7 Q Based upon your review of that and your
8 discussions with him, what kind of defenses did
9 you sort of formulate to these charges?

10 A Well the first time I met Mr. Farris, he
11 explained to me that, yes, he did this. He was on
12 pills at the time, and he was high. And he didn't
13 really think he was going to get in trouble. He
14 never even denied doing it. And I asked him, who
15 else had access to his computer. And he said
16 nobody except for his grandparents. So he never
17 told anybody else could have. He never mentioned
18 an alibi. He never even denied doing it.

19 Q So along those lines, what kind of plead
20 negotiations did you enter into with the State?

21 A I really like -- I felt sorry for Michael,
22 because he was not a traveler. And personally I
23 don't think people should be punished for their
24 thoughts. So I did a lot of research. I went on
25 list serve, tried get some advice from other

Tonya Copeland Little-Direct by Thomas

1 people. I actually convinced the -- at the time
2 the AG, assistant AG was Ms. Ringler. I actually
3 wrote her a letter asking her to ask her
4 supervisor if they would consider reindicting him
5 for attempted contributing to a delinquency of a
6 minor. Attempted contributing to the delinquency
7 of a minor. But basically anything that I could
8 plead him to that was going to keep him off the
9 sex offender registry. He had no prior record.
10 And it really bothered me. I did not feel like
11 he should be on the registry.

12 Q And so did---

13 A That was denied. They denied my request
14 obviously. The only thing I was able to do is get
15 them to agree to drop two of the charges, and
16 allow him to plead to one charge. And there was
17 one that was a little worse than the other ones.
18 It talked about anal sex. And I think that was
19 the one that we ended up pleading; that he was
20 going to plead to.

21 Q Regarding the chats, was it -- how did you
22 know the elements of the crime of that? How did
23 you know the victim was or the alleged victim was
24 a police officer here?

25 A All through the chats, if I recall, and

Tonya Copeland Little-Direct by Thomas

1 I'm assuming that it was Michael, because he never
2 denied that he did it. He's talking about, I
3 can't someone so young is on here. You're
4 7 years younger than I am. Are you sure this
5 isn't MSNBC sting. I mean -- I like young girls
6 with bad -- good girls, young girls, who have a
7 bad streak. I mean it seemed clear that he was
8 talking -- he knew he was talking or thought he
9 was talking to a 13-year-old. Because part of the
10 statute is reasonably believed that person to be
11 under the age of 18. And so I certainly looked at
12 that closely.

13 Q So based on your review of it, were all
14 the elements of the crime there?

15 A Yes, I think they were. Unfortunately,
16 because I didn't think it was fair but, yes.

17 MR. THOMAS: May I approach the witness,
18 Your Honor.

19 THE COURT: Yes, sir.

20 Q I am going to hand you what has premarked
21 as Exhibit No. 1 for respondent. Does that look
22 familiar to you?

23 A Yes.

24 Q And what is that document?

25 A That's Detective Speck's incident report.

Tonya Copeland Little-Direct by Thomas

1 Q Is that something that you've seen before?

2 A Yes.

3 Q And is that an exact copy of the one that
4 you received from the State in the discovery
5 packet?

6 A It appears to be.

7 MR. THOMAS: I'm sorry, can I get that
8 back. May approach, Your Honor?

9 THE COURT: Yes, sir.

10 MR. THOMAS: Your Honor, at this time,
11 I'd move to introduce State's Exhibit No. 1. It's
12 an incident report.

13 THE COURT: Any objection?

14 MR. SHAFFER: No objection, Your Honor.

15 THE COURT: Without objection. State's 1.

16 (Incident Report marked Defendant's
17 Exhibit No. 1.)

18 Q Reading through that incident report, did
19 you any concerns that maybe Mr. Timothy Farris had
20 given a statement?

21 A I did, because even without going back and
22 looking I remember that he said that he had
23 admitted making the chats. Yeah, he admitted to
24 the chats, but claims not to have recollection of
25 some of them. And that is actually something he

Tonya Copeland Little-Direct by Thomas

1 told me that he was on pills at the time, and he
2 couldn't remember actually the details of the
3 conversations.

4 Q And based upon your review of that at this
5 time, and then when you had it then, did you also
6 have any concerns that maybe they had -- the State
7 had ability to prove the chats came from his
8 computer?

9 A I am not extremely computer, I wouldn't
10 say, I'm not a computer whiz, but I did see in the
11 report that with help from sled and I think Monroe
12 County Sheriff's Department, he was able to
13 positively link Mr. Farris to that name, or the
14 person that was chatting. He was able to
15 positively identify him as Michael Farris.

16 Q I guess just sort of the last thing I want
17 to ask you is, at what point did, or I guess at
18 any point, did he ever decide that he wanted to
19 plead to these charges?

20 A The whole time he was having difficulty
21 making up his mind. He couldn't decide. He
22 didn't want to plead, but he didn't want a trial.
23 He never actually -- we actually talked -- I
24 talked to him about a jury trial. I talked about
25 a bench trial. I talked about whether or not I

Tonya Copeland Little-Direct by Thomas

1 would be able to get a jury charge on contributing
2 to the delinquency of a minor. I wasn't sure that
3 I would be able to. But I never discouraged him
4 from going to trial, because I still think he
5 would have had -- he had a shot at trial, because
6 I think some jurors would probably be of a like
7 mind as I am, that that shouldn't really be a
8 crime.

9 Q So I guess, but I guess---

10 A So I'm sorry. What was your question?

11 Q You kind of answered. My question is
12 basically, while you still were representing him,
13 and he decided to enter a plea at that point?

14 A It was going to be a plea. I thought it
15 was going to be a plea. And I had told him that I
16 thought there was a good chance I could get him
17 probation. But we went back and forth. I mean
18 the whole thing was trying to get him to plead to
19 something other than something that would carry a
20 sex offender registry. He never even, you know,
21 denied that he did it to me.

22 Q But it was important for him to avoid
23 jail time?

24 A Oh, yes. He was terrified of going to
25 jail.

Tonya Copeland Little-Cross by Shaffer

1 MR. THOMAS: Thank you, Ms. Copeland
2 Little. I'll let you answer any questions.

3 Cross Examination by Mr. Shaffer:

4 Q You said you thought it was going to be a
5 plea.

6 A Yes.

7 Q How did you think it was going to be a
8 plea?

9 A We had actually scheduled a plea a year
10 before he actually pled with Ms. Ringler. And
11 when I was looking back at my notes earlier, I had
12 written him a letter and told him that it was --
13 we were not going to go forward with a plea,
14 because Ms. Ringler had left AG's office, and
15 there was a new AG. And so it basically was just
16 put on hold.

17 Q At any point at that point, did he ever
18 express concern afterward, or excuse me, after
19 that point, did he ever express interest in going
20 to trial?

21 A He, like I say, he was afraid to plea and
22 he was afraid to go to trial. He didn't want to
23 do either. He didn't want to do anything. He
24 was terrified. In fact, he did -- we came here
25 for a status conference. And at -- I don't think

Tonya Copeland Little-Cross by Shaffer

1 that that was ever scheduled for a plea. I think
2 that was a status conference after Mr. Senn became
3 the assistant AG. And even at that time he
4 wasn't sure if he was going to plead guilty or
5 not. He didn't want to plead guilty.

6 Q So there was still some question in his
7 mind afterwards?

8 A He didn't want to plead guilty, and he
9 didn't want a trial.

10 Q Okay. And you said you thought it was
11 going to be plea. And I guess, you know, in
12 dealing with cases I mean I know the last case I
13 tried I thought It was going to be a plea to, and
14 it turned out not to be.

15 A Right.

16 Q You never really know for sure, right?

17 A Exactly.

18 Q Now whenever you got involved in this case
19 did you call any experts?

20 A No, I did not. I did not get to that
21 point of calling any experts. But what I did is
22 have a lot of conversations on list serve with
23 other attorneys who had tried similar cases. And
24 so that was sort of the way I investigated it.

25 Q And there was a couple of defenses that

Tonya Copeland Little-Cross by Shaffer

1 are generally raised, right?

2 A Well....

3 Q Through your research, did you find out
4 about defenses that are a lot of times raised in
5 similar cases?

6 A Yes.

7 Q One of those defenses is that the computer
8 wasn't mine, right?

9 A Right.

10 Q Or?

11 A Or somebody else is using my computer.

12 Q Okay.

13 A Right.

14 Q And another defense sometimes is the role
15 playing defense, right? Did you ever hear about
16 that from anyone?

17 A Yes.

18 Q About the possibility that it was role
19 playing?

20 A Right.

21 Q Did you ever look at the Yahoo user
22 agreement?

23 A I don't specifically recall.

24 Q But the Yahoo user agreement said you had
25 to be 18, is that, would you disagree?

Tonya Copeland Little-Cross by Shaffer

1 A I don't disagree with that.

2 Q You said that they definitely linked him
3 or positively ID'd him. How did they go about
4 positively ID'ing him exactly, do you recall?

5 A I believe there was some kind of subpoena
6 to Yahoo messenger. I'm not exactly sure.

7 Q Okay.

8 A But of course, as I said, Michael never
9 denied doing any of this. He always from one day,
10 admitted he did it.

11 Q So if you went to trial, what sort of
12 defense would you have put up?

13 A You know, I don't know. I thought about
14 it a lot. I think it would -- I probably would
15 have him, you know, say that he was just talking.
16 He wasn't really ever planning to do any of that
17 stuff. He was just thinking about. Or I don't
18 know. I don't know what I would have done. I
19 don't even know if I would have put him on the
20 stand, because he was really scared. And the only
21 other two people in the house were his
22 grandparents who had access to his computer. So I
23 didn't -- I didn't see where that was going to --
24 he never told me anybody else used his computer.
25 The first I heard of that was after he pled

Tonya Copeland Little-Cross by Shaffer

1 guilty.

2 Q And do you have your file with you?

3 A I do not. All our files are on a computer
4 now. I don't even have access to the program
5 anymore, but I did just scan it earlier today.
6 Skim through it.

7 Q And you said you do not recall showing him
8 the video necessarily?

9 A No.

10 Q Do you recall talking to him about the
11 fact that the video never showed -- did you view
12 the video yourself?

13 A Yes.

14 Q Do you remember talking to him about the
15 fact that the video never showed the girl's age or
16 the persona's age?

17 A Yeah, I don't know that we specifically
18 talked about that, because in my mind, he knew the
19 the girl was 13, I guess is what I'm saying. I
20 never really -- I mean I thought there was enough
21 evidence that he knew how young the girl
22 supposedly was. Because he was 20. And he said
23 I'm 7 years older than you. And age was talked
24 about a lot. But the girl never actually said I'm
25 13-years-old. But she said -- he said I'm

Tonya Copeland Little-Cross by Shaffer

1 7-years-older than you are. Does that bother you.
2 So I, you know, maybe I should have paid a little
3 more attention to that, but I thought there was
4 enough there to show that he thought the person
5 was 13.

6 Q Did you ever make any Motion to Suppress
7 the Search or to dismiss the warrant?

8 A No.

9 Q Did you ever speak to any of the people in
10 North Carolina, the officers in North Carolina
11 that did any of this?

12 A No.

13 Q Or have any investigator speak to them?

14 A No.

15 Q Did you ever tell him about his chances at
16 trial?

17 A Yes. I mean I can't predict what anybody
18 chances at trial, because I've been wrong a
19 million times. But I thought he had a shot,
20 because I thought that some jurors might not find
21 that to be criminal behavior since he didn't take
22 any -- he didn't travel. He wasn't a traveler.
23 He didn't take any steps.

24 Q So it basically would be like a jury
25 nullification type.

Tonya Copeland Little-Redirect by Thomas

1 A Similar, yeah.

2 MR. SHAFFER: No further questions.

3 MR. THOMAS: Brief recross, Your Honor.

4 THE COURT: Yes, sir.

5 Redirect Examination by Mr. Thomas:

6 Q Remind me again, have you or have you not
7 read the Yahoo user agreement?

8 A I don't know if I ever read it.

9 Q So any, any -- you would be just be
10 speculating about the terms of the Yahoo
11 agreement?

12 A Yes. And, yes.

13 Q If Mr. Farris had asked for a trial, would
14 you have explored the possibility of retaining
15 some experts for this case?

16 A I would have.

17 Q And if he had asked for a trial, would you
18 have probably filed some Motions to Suppress and
19 Motions in Limine?

20 A Certainly.

21 Q From your recollection and your view of
22 the warrant in this case, did you see anything
23 wrong with it?

24 A No.

25 Q And do you -- what are part or your duties

Matthew Swilley-Direct by Thomas

1 as a municipal judge?

2 A I set bonds and I sign warrants. Do
3 preliminary hearings. Traffic court.

4 Q As far as the elements of this crime, the
5 elements of criminal solicitation don't require an
6 active step in furtherance of the?

7 A Yes, correct.

8 MR. THOMAS: That's all I have.

9 THE COURT: Thank you very much, ma'am.
10 You may step down.

11 MR. THOMAS: Your Honor, I would ask that
12 Ms. Copeland Little be excused from her subpoena.

13 THE COURT: Any objection to her being
14 excused?

15 MR. SHAFFER: No objection.

16 MR. THOMAS: The State would call Matthew
17 Swilley.

18 THE COURT: Mr. Swilley, come around and
19 be sworn.

20 Matthew Swilley, being first
21 duly sworn, testified as follows.

22 Direct Examination by Mr. Thomas:

23 Q Good afternoon, Mr. Swilley. Just
24 briefly, what's your experience practicing law?

25 A I graduated from the University of South

Matthew Swilley-Direct by Thomas

1 Carolina in 2009, with a Juris Doctor. I began
2 working with the 4th Circuit public defender's
3 office that November. Worked as an assistant
4 solicitor in the 8th Judicial Circuit in
5 Greenwood. I began that job in 2011. I worked
6 with as associate attorney with the Frederick Law
7 Office with Bobby Frederick in Myrtle Beach from
8 about Labor Day 2012 until December 2013. January
9 of 2013, I came back to the 4th Circuit public
10 defender's office, and I now work in Chesterfield.

11 Q And how did you come to be involved in
12 Mr. Timothy Farris' case?

13 A I first learned about Michael's case, I
14 believe the first week I was on the job here in
15 Darlington. Tonya was talking to me about this
16 case, and about how, you know, it was a tough
17 case, because, you know, yeah, the elements could
18 be proven, but this kid, he didn't, he didn't
19 belong on the sex offender registry. And she
20 talked to me a lot about Michael. You know, I
21 mean just basically how he was pathetic. And he
22 just whined a lot and, you know. But, you know,
23 he didn't belong on the registry.

24 I went through copies of the Yahoo chats
25 at that time. I remember went through it. And I

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1 felt that although it was on the fringe of
2 solicitation, I mean there were, the incidences of
3 solicitation were there. After Tonya -- I think
4 Tonya left for private practice around, I can't
5 remember. It wasn't maybe 6 or 8 months after I
6 began. And then of course the case wasn't
7 assigned to a specific attorney at that time.

8 Q And did you have an opportunity from the
9 time it was assigned to you, to fully review the
10 discovery that was provided?

11 A I did.

12 Q And did you get a chance to watch the
13 video?

14 A I don't have any independent recollection
15 of watching the video. I mean ordinarily when I
16 handle cases, I try to look at every single piece
17 of evidence, you know, the State gives us even if
18 I think, it's a no issue. It's something you have
19 always have got to go through.

20 Q How many opportunities did you have meet
21 with Mr. Farris?

22 A I met with Michael. Michael, we got in
23 contact via phone, via phone call after Jason
24 Anders I believe had contacted me. Jason Anders,
25 Assistant Attorney General. Basically saying,

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1 hey, look, this case needs to be resolved. You
2 know, if he wants to plea, he can plea. Or if
3 wants a trial, just let me know. Michael and I
4 spoke on the phone of that. He was pretty -- he
5 was a little reticent. He was concerned. I
6 remember him telling me that, you know, he was
7 concerned about whether or not I was going to
8 fight for him. And I told him, look, you know,
9 I'm here to put you in the best position possible
10 that I can.

11 You know, we talked about what he was
12 facing. I remember he commented that the
13 potential sentence he could get was overkill. He
14 really was very lamenting, you know, just in his
15 whole predicament. And he should have been. I
16 mean, it was, you know, a sad situation.

17 Q What -- how did he come to the point where
18 he decided where he was ready to plea?

19 A He came to my office at 300 Russell St.
20 Came and met with me. He had a friend with him.
21 Kind of an off looking fellow in a trench coat, I
22 think. It may have been his friend Steven that he
23 testified to. I don't recall. And then his
24 friend's wife was there was well. I remember
25 spoke with them. I spoke with Michael and we

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1 talked about pretty much what your options are.
2 He didn't want a trial, but he didn't want to
3 plead guilty. He never denied -- I mean he openly
4 conceded to the fact that it was on him there,
5 but he did make the excuse that he was on pills at
6 the time. He was struggling with that. You know,
7 he never really I don't think, I think he said he
8 never really wanted or never had any intention of
9 coming down. Basically just saying how he was
10 being unfairly treated.

11 We talked a lot about what was the right
12 thing to do. I told him, you know, that the
13 attorney general was going to try the case. I did
14 tell him that I thought the time it was a slam
15 dunk against him, even though it wasn't as
16 egregious, I thought it was provable. He didn't
17 deny the fact he was on the other end of computer
18 talking to Investigator Speck.

19 And I told him that, you know, he could
20 get potentially get the consecutive time.

21 I told him -- I let him know what he was
22 exposed to. And I told him that if he were to
23 plead, that I can't guarantee a result, but I was
24 pretty sure that he wouldn't get any jail time.
25 I'd seen Judge Burch. Judge Burch was the judge

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1 for the upcoming term. I'd seen Judge Burch take
2 a similar plea for a gentleman, Jim Cox, and Ed
3 Saleeby represented him. And I'd seen -- it was
4 an ICAC plea. And it was much more egregious than
5 anything he had alleged. And Judge Burch put that
6 gentleman on probation. The same type of
7 situation. No criminal history. Never -- wasn't
8 a traveler. And I felt Judge Burch may feel the
9 same way about Michael. And that was probably the
10 best avenue to get him out of the case without
11 going to prison, which was his main concern.

12 Q And so how important was it to him to
13 avoid prison time?

14 A I believe it was to him the utmost
15 importance. Obviously he wouldn't do well in
16 prison. At the time, you know, he looked a lot
17 younger than he did now, a lot more vulnerable. I
18 believed him to be extremely vulnerable. That's
19 what I was worried about. He would not do well in
20 prison. And he understood that as well, I
21 believe.

22 Q Did you ever tell him -- well let me ask
23 you this. Whose decision was it to enter that
24 guilty plea?

25 A It was his decision.

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1 Q What did you tell him about how to answer
2 the questions?

3 A I told him to answer the questions
4 truthfully. I never ever told him to lie to
5 anyone.

6 Q And just a quick, if he had told you he
7 wanted a trial, would you have been prepared for
8 trial?

9 A Absolutely.

10 Q Would you have -- what would you -- what
11 kind of defenses would you have explored at trial?

12 A Well what I was thinking, and I thought
13 this then, and I've thought about it since then.
14 He never denied the fact he was on the other end
15 of that computer. And I would have argued to the
16 jury that he never had any intent to solicit
17 anybody. It was just some -- I would, you know,
18 you read those chats and you think of some like
19 rock star Axle Rose guy on the other end. And
20 then you see Michael, who's at the time, was this
21 kind of younger pudgy, you know, non-threatening
22 looking kid. And I said this kid never -- I would
23 have told the jury this kid never tried to solicit
24 anybody. He was just acting like a big man on the
25 internet. Kind of, not a jury nullification type

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1 offense. But I think I would have said, well, he
2 was just talking. He never tried to solicit
3 anybody. That's the defense that I think I would
4 have tried to employ.

5 Obviously, you know, If I felt that if he
6 had told me that he was not the person on the
7 other end of computer, I would have consulted an
8 expert. I would have got funding through indigent
9 defense to go into that. But he never denied the
10 fact that that was him. Only after the pleading
11 he told me that it wasn't him, and that it was
12 somebody named Richard Colin.

13 Q Did he ever give you -- what kind of alibi
14 witnesses or other witnesses generally did he tell
15 you to go talk to?

16 A None. He never denied that it was him on
17 the other end. He never gave any alibi. I wish
18 he would have. I mean if that were the case. But
19 based upon my examination of the evidence and
20 speaking with him, there was no doubt in my mind
21 that it was him on the other end of the computer.

22 MR. THOMAS: Thank you, Mr. Swilley. I'll
23 let you answer any questions on cross.

24 Cross Examination by Mr. Shaffer:

25 Q You said you reviewed the evidence the

Matthew Swilley-Cross by Shaffer

1 first day.

2 A I reviewed the Google chat printouts from
3 the first week I think I was employed with this
4 office.

5 Q And you reviewed that in the first week
6 you were working there, but you didn't take the
7 case for 6 to 8 months, is that right?

8 A I don't think I was assigned the case for
9 that long, but I mean I was very familiar with it.

10 Q Do you recall when you were assigned it?

11 A Formally assigned by Mr. Stevens, I don't.

12 Q When was the first time you did anything
13 on the case as the attorney?

14 A As the attorney, I think when it was
15 assigned to me the first thing I would have done
16 was go to offender data and go through everything
17 I would have had. That's ordinarily what I did.

18 Q Do you recall how soon that was to the
19 plea?

20 A I guess, you know, from the time I was
21 assigned to whatever it was in March, I guess it
22 would have been that length of time. I can't
23 really tell you a definitive amount of time before
24 the plea.

25 Q Was it a matter of weeks, months, years?

Matthew Swilley-Cross by Shaffer

1 A I guess it probably would have been weeks.

2 Q Would you have called the defendant at
3 that point? Your client at that point?

4 A I should have, yes.

5 Q So is it safe to say the first time you
6 called the client would have been the time you got
7 assigned to it, right?

8 A Yeah, close in proximity, I would say.

9 Q And you said you never viewed the video,
10 right?

11 A I don't recall ever viewing the video.

12 Q And you testified that he admitted to
13 making the -- being the person on the other end of
14 the computer.

15 A Right. He made excuses for it, you know,
16 that he was on pills. And that he, you know, he
17 never had any intent of coming down.

18 Q And you said that you would fight for him,
19 right?

20 A I would have. I've never not once in
21 5 years ever told someone who told me they were
22 not guilty to plead guilty. If he told me it
23 wasn't him and that he wasn't guilty, I would not
24 have told him to plea.

25 Q You said you didn't tell him what to say,

Matthew Swilley-Cross by Shaffer

1 right?

2 A I told him to answer the questions
3 truthfully.

4 Q Did you tell him what would happen if he
5 didn't answer the questions truthfully?

6 A I probably would told him that the judge
7 wouldn't take it. I told him that if he answered
8 the questions -- some of the questions, that he
9 was asked about whether or not, you know, if he
10 answered in the negative to most of the questions
11 that pertain to the voluntariness of the plea, the
12 judge wouldn't take his plea. I did tell him
13 that. But I told him to answer truthfully.

14 Q Previously you told him if he didn't plead
15 he would have to go to trial, right?

16 A Right. Right.

17 Q You told him it would be a slam dunk,
18 right?

19 A I told him at the time I felt like it
20 would be a slam dunk case, even though it wasn't
21 an egregious case. In retrospect now, my opinion
22 has changed. Me now, I think I could have won
23 that case. I didn't think it was a great chance,
24 but I think it could have happened. Even, you
25 know, even if we didn't employee whatever he's

Matthew Swilley-Cross by Shaffer

1 saying it wasn't him. Even if we didn't employee
2 that, I think under my original theory, I think
3 it's possible we could have won. At the time I
4 didn't think so.

5 Q And did you review the Google, I mean not
6 the Google, the Yahoo logs with the IP addresses?

7 A If it was in the discovery, I went through
8 it.

9 Q Did you know what any of it meant?

10 A No.

11 Q Did you consult an expert to find out what
12 any of it meant?

13 A No. I mean at the time, I didn't think
14 there was any reason to believe that he was not on
15 the other end of the computer with Investigator
16 Speck.

17 Q Did you tell him you think he would, if he
18 went to trial, he would more than likely end up in
19 jail?

20 A Yes, that's what I thought at the time. I
21 think if he would have been convicted at trial,
22 he would have gone to prison.

23 Q Okay. Did you discuss any defenses you
24 might have raised with him at the time?

25 A Not -- I don't have any recollection

Matthew Swilley-Cross by Shaffer

1 talking about defenses we would employee. Just I
2 mean in my mind, I would just have argued that he
3 wasn't trying to solicit anybody under the
4 statute.

5 Q But that's something you came up with
6 afterwards, right?

7 A What?

8 Q Thinking about it. You just said you had
9 thought about it a lot, and you came up with that
10 afterwards.

11 A Well I thought about that beforehand, but
12 then thinking about it more afterwards, you know,
13 I felt that that may be a more viable defense than
14 it was at the time. If you want to call it
15 defense, I mean it's just really a denial of
16 culpability in violating the statute. I do recall
17 that I think I informed Michael that we not be
18 able to raise the defense of entrapment, because I
19 had done some research, and I don't think we could
20 have gotten a jury charge on entrapment. I do
21 believe I informed him about that.

22 Q Did you give him a copy of a video?

23 A I don't recall giving him a copy of the
24 video.

25 Q Did you play the video for him?

Matthew Swilley-Cross by Shaffer

1 A No.

2 Q Prior to the trial, did you give him a
3 copy of the IP logs? Or prior to the plea, excuse
4 me, did you give you a copy of the IP logs?

5 A I did give him -- I gave him discovery,
6 and I don't know if that was in there or not.

7 Q Was it a complete copy of discovery or
8 partial?

9 A At the time I thought it was everything
10 that I had, or everything that was relevant. I
11 think I ended up, I did I mailed another package
12 with every single thing in the file later on that
13 was scanned in the defendant data.

14 MR. SHAFFER: Court's indulgence.

15 THE COURT: Yes, sir.

16 Q Do you recall how much discovery there
17 was?

18 A Not a lot. Not a lot of paper.

19 Q How many pages were the chat logs?

20 A I don't recall.

21 Q How many pages were the IP logs?

22 A I don't recall.

23 Q If I told you, what do you consider a lot
24 in discovery?

25 A You know---

Matthew Swilley-Cross by Shaffer

1 Q For a 4th Circuit case. For a Darlington
2 County case.

3 A For a Darlington County case, a lot of
4 discovery. You know, hundreds of pages would be a
5 lot of discovery with disks. Disks maybe, and I
6 really can't give an estimation about how many
7 pages it was. I mean there was the incident
8 report, the IP logs I recall. I mean it had his
9 bond paperwork in there. I can't recall much
10 else.

11 Q Okay. And the video of this, do you have
12 any idea how long it was?

13 A I don't know.

14 Q Do you have any experience in tracking
15 basically computer forensics or tracking IP
16 addresses over the internet? Or did you at the
17 time?

18 A No, not at the time.

19 Q Since then have you gone for training for
20 that?

21 A No, I don't -- I haven't been to any
22 formal training for that. I think when I worked
23 for Bobby Frederick that he had consulted an
24 expert about computers with a similar type of
25 case. But I really don't have any more knowledge

Matthew Swilley-Cross by Shaffer

1 of it now than I had then.

2 Q And it was a somewhat of a complicated
3 case that's why you consulted an expert?

4 A I think, oh, the other case, yeah, I think
5 so.

6 Q And tell us what you did which was an
7 independent investigation of the facts in this
8 case.

9 A Well as far as an independent
10 investigation, I met with John Specks at a social
11 event actually. And we had talked about the case.
12 He basically verified everything that was in the
13 report. And Investigator Speck, you know, pretty
14 much stressed to me that he didn't that Michael
15 needed to go to prison either. I think he
16 basically said I don't think this kid ever really
17 planned on doing anything with anybody. But I
18 mean, you know, he did solicit. He was of the
19 belief that he did violate the statute.

20 But he told me he thought he was just a
21 loser and that, you know, he wasn't really a
22 threat to anybody. And of course, I talked to
23 Michael about it.

24 MR. SHAFFER: No further questions.

25 MR. THOMAS: No redirect, Your Honor.

Matthew Swilley-Cross by Shaffer

1 THE COURT: Any objection to him being
2 excused?

3 MR. THOMAS: No objection, and the State
4 rests.

5 THE COURT: I am going to take this matter
6 under advisement. If you want to make a brief
7 closing remark, I'll be happy to hear from you.

8 MR. SHAFFER: Your Honor, there is one
9 thing that I would ask is that the court to
10 consider the pro se filing may be added. The
11 exhibits and pro se filing and possibly the video.
12 If you wouldn't mind actually allowing us to send
13 you a copy of the video just for it to be in the
14 record. You know, obviously view it if you like.
15 You know I can send you a copy. I don't actually
16 have a disk. Someone may have one in their file.
17 I don't have one in front of me, but I can copy
18 one.

19 MR. THOMAS: I'll consent to leaving the
20 record open for him to submit that as Applicant's
21 Exhibit No. 1. If I can just get a copy of that.

22 THE COURT: Has the motion, has that been
23 heard?

24 MR. THOMAS: We've dealt with the Motion
25 to Dismiss. Judge Baxley found that it was based

1 on the discovery rule that it was a timely filing.
2 So this one, this is just the merit's of the
3 matter.

4 MR. SHAFFER: Are you discussing the
5 Summary Judgment Motion?

6 THE COURT: Yeah.

7 MR. SHAFFER: Yeah, I don't think there's
8 an official ruling on it. Judge Baxley sort of
9 gave me....

10 THE COURT: I mean, it's not before me as
11 far as deciding it. But if you wanted me to
12 consider what's the theme of it, I'm trying to get
13 a grip on it. If that's a matter that's been
14 heard and decided or. And here is another
15 question I have regarding that. You know, the
16 court doesn't receive dual filings when someone is
17 represented by counsel, they don't receive, you
18 know, pro se.

19 MR. SHAFFER: Yes, sir. This was before I
20 was representing.

21 THE COURT: It might have been before you,
22 but wasn't someone else on the case?

23 MR. SHAFFER: No, Your Honor. He was
24 pro se at the time. It was -- I got appointed on
25 it after the conditional dismissal was signed.

1 For the soul purposes of arguing -- originally for
2 the soul purposes of arguing the conditional order
3 of dismissal. Then I was appointed after the --
4 at the hearing for that. Whenever he rescinded
5 the conditional order of dismissal, Judge Baxley
6 just appointed me to the rest of the case.

7 MR. THOMAS: Judge Baxley's order
8 rescinding the COD, which I believe is in your
9 packet on page 4. It's ordered: Conditional
10 order rescinded in this case shall be scheduled
11 for a hearing on the merits. I would submit that
12 everything has been ruled upon. We are strictly
13 going onto the merits of this case.

14 THE COURT: I'll let you submit it, and
15 I'll review it. I mean I'm not going to be
16 looking at it as making a decision on the Motion
17 for Summary Judgment. But I'll consider it in
18 addition to the other information that you submit.

19 MR. SHAFFER: Thank you, Your Honor. I'll
20 send you copy of it. And maybe -- would you
21 prefer it sent to your chambers and clocked as
22 well?

23 THE COURT: If you don't mind, if you
24 would please send it to, it's actually Judge
25 McMahon's office. Just put my name on it and send

1 it to that address.

2 MR. SHAFFER: Yes, sir, Your Honor. I
3 will send it to Lexington. Thank you, Your Honor.

4 MR. THOMAS: And I'm fine with that.

5 ---End of Requested Transcript of Record---

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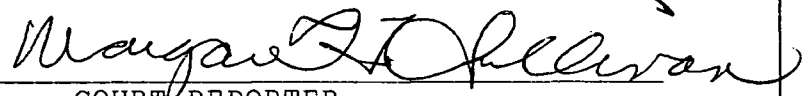
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the
Third Judicial Circuit of 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 on February 24, 2014, in the
Common Pleas Nonjury Court, Darlington County,
Darlington, South Carolina.

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

5/27/15
DATE


COURT REPORTER
My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	FOR THE FOURTH JUDICIAL CIRCUIT
Timothy M. Farris,	)	Case No. 2012-CP-16-814
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 24, 2012. The Court convened an evidentiary hearing into the matter on July 24, 2014, at the Darlington County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsels, Tonya Copeland Little, Esquire, and Matthew S. Swilley, Esquire, also testified. The Court had before it a copy of the plea transcript, the probation termination transcript, the records of the Horry County Clerk of Court regarding the subject conviction, the filings in the case, and the exhibits introduced at the hearing. The Court finds as follows:

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CLERK OF COURT
DARLINGTON COUNTY, S.C.

I. PROCEDURAL HISTORY

Applicant is not presently confined in the South Carolina Department of Corrections. In December 2008, the Darlington County Grand Jury indicted Applicant for criminal solicitation of a minor (2008-GS-16-1555). Tonya Copeland Little, Esquire, and Matthew S. Swilley, Esquire, represented Applicant. On March 9, 2011, Applicant pled guilty as indicted. In

exchange for the plea, the State dismissed two (2) other pending solicitation charges. The Honorable Paul M. Burch sentenced Applicant to five (5) years of incarceration, suspended upon the service of time served and four (4) years of probation. Applicant did not appeal his plea or sentence. On January 23, 2013, the Honorable J. Michael Baxley terminated Applicant's probationary sentence.

Applicant filed the current application for post-conviction relief on September 24, 2012. Respondent made a timely return and motion to dismiss on or about January 15, 2013, asking the application be dismissed as untimely. By order dated January 28, 2013, Judge Baxley conditionally dismissed the action as untimely. Applicant filed a timely response to the conditional order, and Judge Baxley rescinded the conditional order by written order dated January 10, 2014.

II. ALLEGATIONS

In his application, Applicant alleged he is entitled to relief for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Did not show when asked, full discovery, did not object to evidence"
2. "Newly Discovered Evidence"
 - a. "Received full discovery after asking 3 times on June 5th, 2012"

At the evidentiary hearing, Applicant proceeded on the following allegations of ineffective assistance of counsel:

1. Failure to object to an invalid arrest and search warrant.
2. Failure to object to an improper extradition.
3. Failure to advise Applicant the State had no evidence the alleged victim was thirteen (13) years old.
4. Failure of Mr. Swilley to properly prepare based on the length of his representation.
5. Failure to investigate witnesses.
6. Failure to share discovery.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court also reviewed Applicant's pro se filings. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Specifically, the Court finds Ms. Little's and Mr. Swilley's testimony very credible and gives it great weight. Correspondingly, the Court finds Applicant's testimony not credible. Set forth below are the other relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified he was living in North Carolina at the time he was arrested. He recalled Ms. Little was his first attorney, but could not recall his first meeting with her. Applicant testified he never received a copy of his discovery. He alleged he never saw a video or received a transcript of the internet chats that led to his charges. Applicant testified he told Ms. Little he was thinking about a trial, but admitted he never specifically told her he wanted a trial instead of a plea. Applicant also admitted he pled guilty to avoid a harsher sentence if convicted.

Applicant testified he only met with Mr. Swilley one time. He testified Mr. Swilley provided him copies of some of the State's evidence, but did not give him copies of everything in his file. He recalled Mr. Swilley advised him the State would be successful at trial. Applicant testified Mr. Swilley told him how to answer questions at the plea colloquy. Applicant also admitted he lied at the colloquy. Applicant denied his guilt to the crime, and averred he had an

alibi witness to establish he was at band practice during the times the chats allegedly occurred. However, he admitted he did not give the name of this witness to Ms. Little or Mr. Swilley.

Ms. Little testified she was an assistant public defender when appointed to represent Applicant. She recalled meeting with Applicant four (4) times during her representation. At the first meeting, Applicant admitted to sending the messages to the undercover officer, but said he was struggling with a pill addiction at the time. Ms. Little testified Applicant never told her he had an alibi witness. Ms. Little testified she did not hire an expert to review the computer records, but did research similar cases and discuss the issues with other attorneys. However, she testified she would have explored the possibility of expert testimony if Applicant requested a trial. Ms. Little recalled discussing bench and jury trials with Applicant. She testified Applicant had difficulty deciding to plea, but she never anticipated the case would go to trial. Ms. Little recalled attempting to negotiate an offer to plea to a lesser charge and stay off the sex offender registry, but the State did not make any such offer. Ms. Little recalled reviewing the arrest and search warrants and finding nothing objectionable about them.

Mr. Swilley testified he became involved in Applicant's case when he became a public defender. He recalled thorough discussions with Ms. Little about the case. He testified the case was difficult to defend because Applicant's actions met the definition of solicitation. However, he believed he could argue to a jury that Applicant never intended to follow through on his statements and should not be convicted. Mr. Swilley recalled reviewing the chat logs and discussed the case with Applicant. He recalled Applicant admitting he sent the chats, but he would have sought an expert if Applicant had said it was not him. He also recalled Applicant did not claim to have an alibi or any other defense. Mr. Swilley testified he explained Applicant's

exposure if convicted at trial, and it was of utmost importance to Applicant to avoid jail time. He testified he only told Applicant to be truthful with the plea judge. Mr. Swilley testified it was Applicant's decision to enter the plea, but he would have been prepared if Applicant requested a trial.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its

"reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

1. Failure to challenge the arrest and search warrants.

The Court finds Applicant has not met his burden of proving plea counsel ineffective in failing to challenge the search and arrest warrants in this case. Specifically, the Court finds there are no facial deficiencies in the arrest warrant. The warrant is sworn by affiant Mica Griggs, and conveys information relayed from Sergeant John Specht of the Harstville Police Department. The fact Sergeant Specht did not personally appear before the magistrate is not fatal to the validity of the warrant. State v. Dunbar, 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004) ("Probable cause for a search warrant can be supported by information given to the affiant by other officers." (citing U.S. v. Ventresca, 380 U.S. 102, 108 (1965))). Furthermore, the warrant alleges sufficient facts to show Applicant committed each element of the crime of criminal solicitation of a minor. See S.C. Code Ann. § 16-15-342(a). Finally, the magistrate properly issued the arrest warrant where the crime was committed in Darlington County, even though Applicant resided in North Carolina. See Spiker v. Com., 711 S.E.2d 228, 230-31 (Va. Ct. App. 2011) (discussing other jurisdiction that have determined venue for internet crimes is proper in the location to which the defendant directed his internet communications).

Accordingly, Applicant has not demonstrated plea counsel would have any proper grounds to object to the issuance of the arrest warrant. See Palacio v. State, 333 S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments"). Thus, the Court finds credible Ms. Little's testimony that she had no reason to challenge the arrest warrant. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Regardless, an unlawful arrest does not preclude the court from exercising jurisdiction over Applicant where he was later indicted by the grand jury. See State v. Holliday, 255 S.C. 142, 146, 177 S.E.2d 541, 543 (1970) (citing State v. Waitus, 226 S.C. 44, 83 S.E.2d 629; State v. Swilling, 246 S.C. 144, 142 S.E.2d 864; Thompson v. State, 251 S.C. 593, 164 S.E.2d 760). Thus, the State could have properly secured a conviction at trial even if counsel had successfully challenged the arrest warrant.

The Court notes Applicant conceded at the evidentiary hearing that the search warrant was subject to the same probable cause analysis as the arrest warrant. Assuming the contents of the search warrant affidavit were similar to the arrest affidavit, the Court would also find plea counsel was not deficient in failing to challenge the validity of the search warrant. However, no copy of the search warrant was presented at the evidentiary hearing, nor was one included in Applicant's filings. Accordingly, the Court finds Applicant has not demonstrated he was prejudiced by the lack of a challenge to the search warrant. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (finding of prejudice cannot be based on "pure conjecture"). Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and

defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). Because Applicant knowingly and voluntarily pled guilty, he cannot now challenge the sufficiency of these warrants. Thus, Applicant has not demonstrated plea counsel was ineffective for not challenging the arrest and search warrants.

2. Failure to challenge an improper extradition.

The Court finds Applicant failed to demonstrate plea counsel was ineffective in failing to challenge Applicant's extradition to South Carolina. Applicant raises various allegations about the documentation supporting South Carolina's demand for extradition. However, the extradition waiver indicates Applicant voluntarily waived extradition to South Carolina. Any flaws in the content of the extradition warrant were waived by his consent to be extradited. Furthermore, Applicant willfully and voluntarily appeared for all of his scheduled court dates. These appearances waived any complaints he may have had about his extradition to South Carolina. State v. Adams, 354 S.C. 361, 374-75, 580 S.E.2d 785, 792 (Ct. App. 2003) ("A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." (citations omitted)). Again, Applicant's plea also waived any challenge he may have to the extradition procedures. Whetsell, 276 S.C. at 297, 277 S.E.2d at 892. Thus, Applicant has not demonstrated plea counsel was ineffective in any way for failing to challenge the validity of the extradition waiver.

3. Failure to advise Applicant the State had no evidence the alleged victim was thirteen (13) years old.

The Court finds Applicant failed to demonstrate plea counsel failed to advise Applicant regarding the State's evidence. Regarding this allegation, the Court finds especially credible Ms. Little and Mr. Swilley's testimony that they each independently reviewed the chat logs and other evidence with Applicant. The Court finds neither credible nor believable Applicant's testimony neither attorney ever discussed the State's evidence with him. Ms. Little and Mr. Swilley both understood the chat logs indicated Applicant believed he was chatting with a thirteen (13) year old girl. Although Applicant alleged the actual video of the chats did not include the undercover officer's age, that video was not presented to the Court. Clark, 315 S.C. at 388, 434 S.E.2d at 267. However, the chat logs indicate Applicant understood the age of the person he believed he was soliciting. At one point, Applicant states he is seven (7) years older than the officer, and then describes himself as twenty (20) years old. (Resp.'s Ex. 1, p. 5). Accordingly, the record contains evidence the State could prove Applicant believed he was soliciting a thirteen (13) year old victim. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense).

In addition, Applicant thoroughly discussed this evidence with plea counsel. Accordingly, his plea acted as a waiver of any challenge to the validity of this evidence. Whetsell, 276 S.C. at 297, 277 S.E.2d at 892; see also Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a

plea is usually, but not invariably, foreclosed. (citing Blackledge v. Allison, 431 U.S. 63 (1977))). Therefore, the Court finds plea counsel was not ineffective in this regard.

4. Failure of Mr. Swilley to properly prepare based on the length of his representation.

The Court finds Applicant failed to meet his burden of showing Mr. Swilley failed to adequately prepare for his plea. Applicant alleges the limited amount of time Mr. Swilley spent on the case indicates he was presumptively prejudiced by Mr. Swilley's performance. However, Applicant's reliance on United States v. Cronic, 466 U.S. 648 (1984), is misplaced. This case presents none of the three (3) scenarios giving rise to presumed prejudice under Cronic. Applicant was not denied counsel at a critical stage of prosecution. Cronic, 466 U.S. at 659. Nor did plea counsel "entirely fail[] to subject the prosecution's case to meaningful adversarial testing[.]" Id. Finally, this not an instance where "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." Id. (citing Powell v. Alabama, 287 U.S. 45 (1932)). Instead, the record reflects Mr. Swilley reviewed the file, discussed the case with Applicant, and considered all possible outcomes to the proceedings. The Court finds very credible Mr. Swilley's testimony he would have sought expert testimony and prepared for trial had Applicant requested one. However, the record reflects Applicant accepted the State's plea offer and declined a trial to avoid a harsher sentence. See Bennett v. State, 371 S.C. 198, 204-05, 638 S.E.2d 673, 676 (2006) (counsel not deficient for advising client to plea to avoid maximum penalty if convicted).

Furthermore, brevity of consultation is not *per se* grounds for relief. See Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) ("Therefore, it is not enough to merely show that

counsel only met with Easter twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case.”); cf. Avery v. Alabama, 308 U.S. 444 (1940) (no denial of constitutional right to assistance of counsel where counsel appointed three days before capital trial). Here, Mr. Swilley discussed the case thoroughly with Ms. Little. He also reviewed the discovery and spoke with the investigating officer. Again, Mr. Swilley credibly testified he would have been prepared for trial had Applicant wanted one. Under the circumstances, the Court finds Mr. Swilley conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Applicant has failed to demonstrate what further preparation or investigation could have been accomplished had Mr. Swilley represented Applicant for a longer period of time. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information). Furthermore, in light of the overwhelming evidence of Applicant’s guilt, he has not demonstrated plea counsel improperly advised him to enter a guilty plea. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (applicant must show “something that would have affected counsel’s advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it”). Therefore, Applicant has not demonstrated Mr. Swilley was ineffective in any way.

5. Failure to investigate witnesses.

The Court finds Applicant failed to meet his burden of proof to show plea counsel was ineffective in failing to investigate an alibi witness. Here, the Court finds very credible the

testimony of Ms. Little and Mr. Swilley that Applicant admitted to sending the internet chats with the alleged minor. The Court also finds credible their testimony that Applicant never gave them any information concerning potential alibi witnesses. The Court finds Applicant's testimony on this issue wholly not credible. Because Applicant admitted his guilt to plea counsel and never provided any potential alibi witnesses, he has not demonstrated plea counsel was deficient in failing to investigate in this regard. See Rodriguez v. State, 74 S.W.3d 563, 568 (Tex. App. 2002) ("Moreover, we opt not to fault trial counsel for the intentional withholding of vital information by his client." (citations omitted)).

Furthermore, Applicant presented no testimony from alleged alibi witnesses at the evidentiary hearing. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (applicant must present testimony of a favorable witness at evidentiary hearing in order to establish prejudice (citations omitted)). Even assuming such a witness would have testified Applicant was at church at the time some of the chats were sent, such testimony would not have provided an alibi for all of the chats. State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) ("[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." (quoting 21 Am. Jur. 2d Criminal Law § 136)). Thus, Applicant also failed to demonstrate how he was prejudiced by plea counsel failing to investigate alibi witnesses.

6. Failure to share discovery.

The Court finds Applicant failed to demonstrate plea counsel ineffective for failing to share discovery. Again, the Court finds the testimony of Ms. Little and Mr. Swilley very

credible on this issue, while finding Applicant's testimony not credible. Ms. Little and Mr. Swilley shared the State's discovery response with Applicant. Even assuming plea counsel did not provide Applicant a copy of the entire file, he was fully aware of the evidence against him when he made the decision to enter his plea. Accordingly, Applicant has not shown a deficiency in plea counsel's performance. Cf. Hyman v. State, 397 S.C. 35, 46, 723 S.E.2d 375, 381 (2012) (court unwilling to "assume that the Constitution requires disclosure of Brady evidence to a criminal defendant *personally*" (emphasis in original)). He also has not shown he was prejudiced by not receiving a copy of the evidence. Id. at 49, 723 S.E.2d at 382 (applicant failed to demonstrate possibility of different outcome had he personally received discovery where he "was fully aware of the inculpatory nature of the [evidence] throughout the negotiations and the guilty plea proceedings"). Therefore, Ms. Little and Mr. Swilley were not ineffective for failing to give Applicant a physical copy of their entire file.

C. All Other Allegations

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

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms or that the outcome of his plea would have been different had counsel

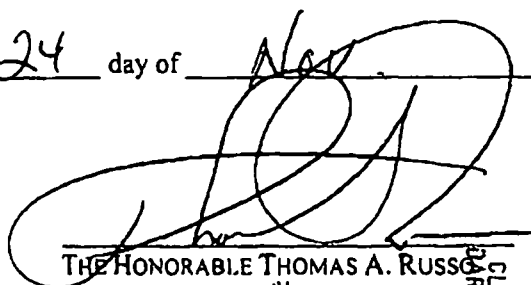
performed differently. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk, 383 S.C. at 563, 681 S.E.2d at 594. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 24 day of November, 2014.


 THE HONORABLE THOMAS A. RUSSO
 Presiding Judge 2141

Lacington, South Carolina

FILED
 2014 DEC 19 PM 1:10
 SCOTT B. SUGGS
 CLERK OF COURT/R.D.O.
 DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	NOTICE OF MOTION AND
State of South Carolina,	)	MOTION TO ALTER OR AMEND ORDER
	)	PURSUANT TO RULE 59(E), SCRCP
Respondent.	)	
	)	
	)	

TO: HONORABLE THOMAS A. RUSSO

JOSHUA THOMAS, ESQ., COUNSEL FOR RESPONDENT

YOU WILL PLEASE TAKE NOTICE that the undersigned, Applicant Pro Se, will move before this Court at such time and place as the Court may direct, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, for an Order altering or amending the Order of Dismissal filed on December 19, 2014.

The grounds for this motion are as follows:

I. Illegal Extradition from North Carolina to Darlington Detention Center

A. The Court erred by citing *Adams* and *Whetsell* to excuse the illegal extradition.¹ *Adams* centers on prisoners and the Interstate Agreement on Detainers—not extradition. Extradition law is older, very different, and centers on fugitives. *Whetsell*, similarly, is irrelevant--Whetsell would have pleaded guilty again, if granted a new trial.

¹ *State v. Adams*, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003); *Whetsell v. State*, 276 S.C. 295, 277 S.E.2d 891 (1981).

B. Extradition was illegal because the Applicant was not a fugitive from justice. He had never been indicted in South Carolina nor any other state.

C. The extradition was illegal without a request for extradition from the Governor of South Carolina. Sergeant Specht had no authority to enter North Carolina to arrest a suspect.¹

D. Ignoring the law, Detective Specht arrested the Applicant in North Carolina and drove him, in handcuffs, to Darlington Detention Center.

E. Ignoring the law, Detective Specht **twice** refused the Applicant's requests for a lawyer.

F. Detective Specht also seized belongings of the Applicant and of his grandmother and brought these items to South Carolina. He had no authority to seize these items.

G. Detective Specht violated the Applicant's Fourth and Sixth Amendment rights, and his Extradition rights.²

H. Neither of the public defenders who testified challenged these violations of the Applicant's rights. This is a jurisdictional issue. The seizure of the Applicant and the family's possessions violated the Fourth Amendment.

I. The failure of both defense counsel, Little and Swilley, to recognize these violations, and their failure to challenge jurisdiction is a blatant example of ineffective representation.

J. The Court erred when it stated that the Applicant waived his rights by consenting to

¹ See, Section 2, Clause 2 of Article 4 of the Constitution of the United States. ("A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."); also see, *South Carolina v. Bailey*, 289 U.S. 412 (1933) in which Bailey, similar to this Applicant, was a resident of North Carolina and not a fugitive. Bailey had the opportunity to prove he had not fled South Carolina after committing a crime.

² "[L]aw enforcement officials [must follow] the clear mandates of state and federal extradition laws in the apprehension and transportation of fugitives." *Wirth v. Surles*, 562 F.2d 319, 323 (1977). Also see, *Roberts v. Reilly*, 116 U.S. 80, 29 L. ed. 544, 6 Sup. Ct. Rep. 291.

extradition. These rights cannot be waived by conduct or consent.¹ Moreover, he did not know his rights—other than to ask for a lawyer. He was intimidated into compliance. No attorney spoke with the Applicant for more than a year after the illegal extradition and illegal arrest—and that attorney was oblivious. The Applicant was ignorant of law; he had no one who could advise him; and neither he nor his grandparents had funds to pay a lawyer.

K. The 20-year-old was dragged from bed, was in shock at being arrested and shackled and surrounded by law enforcement. He was submissive and compliant, when ordered to sign the Waiver, and did so without reading it. He did not know until four years later, when he saw a copy, that the Extradition Waiver included a box checked by an unknown person—a box that said he admitted to being a fleeing felon. Since he had no criminal history, why didn't his attorneys ask him about this? How could he possibly know his rights, if his attorneys did not advise him?

L. The Applicant's "very credible" attorneys, Little and Swilley, would have known that South Carolina did not have personal jurisdiction *if* they examined the discovery provided by the state and did a pinch of legal research. Their failure to do this was prejudicial. "Jurisdiction of the offense charged and of the person of the accused is indispensable to a valid conviction."²

M. The Court erred when it stated the Applicant waived his rights to challenge personal jurisdiction by South Carolina. The defendant's relationship with the state must arise from the defendant's contacts with the forum, not with persons who reside there.³

N. The failure of each appointed attorney to challenge jurisdiction is clear evidence of

¹ *State v. Dudley*, 364 S.C. 578, 614 S.E.2d 623 (2005).

² *State v. Dudley*, 354 S.C. 514, 523, 581 S.E.2d 171, 176 (Ct.App.2003), *aff'd* as modified, 364 S.C. 578, 614 S.E.2d at 175 (2003) (quoting *State v. Langford*, 223 S.C. 20, 26, 73 S.E.2d 854, 857 (1953)).

³ *Walden v. Fiore*, 134 U.S. 1115 (2014). "The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts."

ineffective representation that prejudiced the Applicant.

II. Failure to Challenge the Arrest and Search Warrants

A. No search warrant, other than those served on Yahoo and MySpace, was provided to this Court, although both testifying attorneys claimed to have reviewed a search warrant. The Applicant never received a personal search warrant issued by South Carolina, nor was one in the file he received in June 2012. It is likely none was issued by South Carolina, since it would have required the magistrate to authorize Sergeant Specht to search a home and car in another state.

B. The Applicant agrees with the Court that Sergeant Specht's failure to appear personally before the magistrate is "not fatal to the validity of the warrant." What makes the warrant invalid is:

1. Sergeant Specht did not provide an affidavit, let alone a sworn affidavit.
2. The sworn affidavit was submitted **not** by an investigator but by a low level employee of the police department who had no personal knowledge to support the arrest warrant;¹
3. The affidavit is conclusory and insufficient. Among other things, it "recited no more than the elements of the crime charged" and did not state how (or if) the computer chats were traced to the Applicant's computer.² It does not contain any facts linking Farris to the alleged crime.³

¹ "[T]he magistrate or municipal judge must find within the complainant's affidavit enough information that will justify a reasonable belief that (1) a crime has been committed and (2) the person to be arrested committed the offense . . . [T]he affidavit must contain facts, not conclusions. For example, if the complainant merely says, 'I swear under oath that Brian Smith stole an automobile,' it is conclusory and insufficient." *Judge's Bench Book*.

² *Giordenello v. United States*, 357 U.S. 480 (1958). (Conviction "set aside" due to (a) "...suspicion of petitioner's guilt derived entirely from information given him by law enforcement officers and other persons . . . none of whom either appeared before the Commissioner or submitted affidavits." and, (b) "The complaint contains no affirmative allegation that the affiant spoke with personal knowledge of the matters contained therein.")

³ *Gist v. Berkeley County Sheriff's Department*, 336 S.C. 611 (1999), 521 S.E.2d 163. ("The affidavit does (continued...)

4. No attempt was ever made to cure these defects.¹

5. The arrest warrant limits the arrest to the state of South Carolina but was executed in North Carolina.

6. Despite these defects, the Court found “credible Ms. Little’s testimony that she had no reason to challenge the arrest warrant.” Contrary to the Court’s conclusion, this was not evidence of “strategy.” It was evidence of incompetence or neglect.

7. Cases cited by the Court in support of Sergeant Specht’s North Carolina arrest expedition are inapposite. *Spiker v. Comm.* addresses whether an officer from one county can arrest a person in another county **within the same state.**² In other words, Sergeant Specht of Hartsville could arrest anyone in Berkeley or Horry or any other county of South Carolina.³ *Spiker* does not support the Court’s conclusion that Specht had authority to arrest a suspect beyond the borders of this state.

8. *State v. Dunbar*, briefly cited by the Court and also in the Applicant’s Motion for Summary Judgment, does not support the affidavit for Specht’s arrest warrant.⁴ Contrary to this Court’s interpretation, the *Dunbar* court reversed the conviction after finding, “The person signing the affidavit had no knowledge of the facts alleged in the affidavit.”

³(...continued)

not contain any facts linking Gist to the crime.”) Conviction reversed.

¹ “[T]he complaining officer [] relied exclusively upon hearsay information, rather than personal knowledge in executing the complaint; and (2) that the complaint was, in any event, defective in that it, in effect, recited no more than the elements of the crime charged . . .” *Giordenello, supra*.

² 711 S.E.2d 228 (Va. Ct. App.).

³ S.C. Code Annot. Chapter 13, Section 17-13-40 confers similar statewide jurisdiction.

⁴ 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004).

9. There was no probable cause to arrest the Applicant in North Carolina.¹ In every other case of internet solicitation of a minor, the suspect was arrested when he went to meet the decoy. Sergeant Specht could have waited until there were arrangements to meet and the suspect arrived in South Carolina, where Specht had the right to arrest him. Arranging to meet is one of the criteria used in all other cases.

III. “All Other Allegations”

A. These issues are crucial, which is why they needed twenty pages of the 32-page Motion for Summary Judgment. The Order of Dismissal lumps them together as “all other allegations” and, ignoring Exhibits E-V, dismisses them with the words, “Appellant failed to present any evidence regarding such allegations.”²

B. The Applicant requests specific findings of fact and expressly stated conclusions of law related to each issue (and the evidentiary support) in the Motion for Summary Judgment.³ The PCR court is required to do this.

C. Contrary to their testimony, neither Little nor Swilley discussed the file with the Applicant and they did not show him the evidence. Such testimony by police has come to be known as “testilying.” These lawyers adopted that modus operandi for self-preservation. For example, Ms. Little falsely claimed that the Applicant admitted his guilt at their first meeting. Then why did he

¹ “The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest.” *State v. Baccus*, 625 S.E.2d 716 (S.C. 2006)

² See, Appendix list and Statement of Undisputed Facts from Motion for Summary Judgment (Exh. 2, 3).

³ “A PCR court ‘shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented.’ S.C. Code Ann. § 17-27-80 (2003)” *Marlar v. South Carolina*, 653 S.E.2d 266, 267 (S.C. 2007); *Elam v. South Carolina Dep’t. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (“A party must file such a motion when an issue or argument has been raised, but not ruled on, to preserve it for appellate review.”) (emphasis in original).

refuse to plead guilty in November 2009, when she ordered him to a plea hearing?¹ If he admitted anything to her, it was the use of Yahoo chat but not the *intent* to have sex with a minor, nor that he had any knowledge he was chatting with a minor. The First Amendment protects obscene chats between adults.

D. If Ms. Little did any legal research on behalf of the Applicant, she would have learned that “To prove attempt, the State must prove that the defendant had the *specific intent* to commit the underlying offense, along with some *overt act*, beyond mere preparation, in furtherance of the intent.”²

E. If either attorney perused the documents, they would know Sargent Specht claimed that they discussed plans to meet in Hartsville. This is not supported with evidence. A simple computer search of the chats will prove the word “Hartsville” is not mentioned.³

F. If either attorney did legal research, they would have learned that pedophiles “groom” their victims (i.e., promises of gifts, flattery, etc.) and sometimes email photos of their genitals. Pedophiles typically are older and pretend to be much younger, when they chat with a minor. Throughout the nation, the computers of convicted pedophiles invariably include child pornography. None of this is true of this Applicant.⁴ Ignorance of this type of crime has to be reason Ms. Little urged him, and Mr. Swilley coerced him to plead guilty. It is inexplicable how could this Court could view them as “very competent” (pgs. 3, 10-11, 12, 13).

¹ Exhibit P, Motion for Summary Judgment

² *State v. Reid*, 679 SE2d 199 (Ct. App. 2009) citing *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001).

³ Exhibit O, Motion for Summary Judgment (Chat logs)

⁴ His computer was examined by the state. If child pornography had been found, that charge would have been added. There was time: The Applicant was not indicted for solicitation until two weeks after his arrest.

G. The Applicant was *told* there was evidence of his guilt. He testified that neither Little nor Swilley discussed the evidence with him—and that is the reason he did not know the dates, the times, or the content of the chats. When he finally saw the chat logs in 2012, he saw no evidence that the investigator pretended to be a 13-year-old and, contrary to the investigator’s statement in his Incident Report there was no mention of meeting in Hartsville.¹

H. In 2014, the PCR attorney viewed the video of screen shots of the chat logs and told the Applicant there was no evidence of the age of the decoy. That the video was not presented to this Court is the fault of the PCR attorney. This is a serious omission—exculpatory evidence.

I. The Court failed to address the possibility of email address hijacking. A review of South Carolina appeals that challenged convictions for internet solicitation of a minor reveals email aliases not associated with the identity of the accused:

1. In *State v. Reid*, the defendant used the alias, "Fine_Ass_Seminoles_Fan."²

2. In *State v. Odom* the defendant (a former prosecutor) used the alias, "Danger6552000," which also displayed the name "Roge Wilson."³

3. In *State v. Gaines*, the defendant used the alias, "HMMRTHEGRT8."⁴

4. In *State v. Green*, the defendant used the alias, "blak slyder."⁵

5. There are many such examples—from other states as well as the federal courts. All used an alias; none used an email address widely known as his computer identity. Could the reason

¹ Exhibit O, Motion for Summary Judgment (Chat logs)

² 679 SE2d 199 (Ct. App. 2009)

³ 676 S.E.2d 124 (2009), 382 S.C. 144.

⁴ 667 S.E.2d 728 (S.C. 2008).

⁵ 724 S.E.2d 664 (SC 2012).

be that they knew they were chatting with a minor? Because they had *intent*?

6. Apparently, both defense counsel presumed guilt so as to convince the client to plead, sparing the work of investigation, avoiding the time to research similar cases. Despite the Court's belief that Little and Swilley were "very credible," neither had a clue how to advocate, if they were forced to go to trial. They did not know enough about these types of cases. They did not know, for example, that if their client actually was the emailer the state would have to prove he knew he was chatting with a minor, that he had intent to solicit sex with the minor, that he committed some overt act which showed intent.¹

7. No defense attorney considered the possibility that someone, possibly a much older man, hijacked the email address. It would have been easy to "spoof" Farris' identity. He used "Michael24339" for frequent postings that revealed much about his life—as do many naive people of all ages. Sergeant Specht admitted he identified the email address as belonging to Farris through internet postings.² As detailed in the Motion for Summary Judgment, cyber-identity theft ("spoofing") is a frequent occurrence, affecting an Arizona legislator and leading to criminal charges in New York. Not included in that Motion is a summary of the Associated Press' Twitter feed being hacked on April 22, 2013. A fake tweet was sent—that there had been two explosions at the White House and President Barack Obama had been injured. This led to the Dow Jones Industrial Average

¹ "S.C. Code Ann. § 16-15-342(A) provides:

"(A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he **knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen**, or a person reasonably believed to be under the age of eighteen, **for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity** as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen. (emphasis supplied)." *Gaines, supra* (emphasis in *Gaines*)

² Exhibit J, Motion for Summary Judgment.

falling more than 150 points in a two minute span.

8. The failure of the attorneys to investigate is fatal to their claims of competency.¹

J. The Court needs to consider the issue of IP addresses provided by Yahoo. According to the Applicant's Yahoo registration, his IP address was 69.40.60.194.² A computer search of the more than two dozen IP addresses used by "Michael24339" on the dates provided by Sergeant Specht turns up not one that matches the Applicant.

K. The Court believes the Applicant knew he was chatting with a 13-year-old because the chat logs show "Michael24339" claiming to be seven years older. His Yahoo account has the wrong birth year, making him five years older—and seven years older than an eighteen-year-old.³ This could mean the person who used "Michael24339" believed the girl was eighteen—the age required by Yahoo for participation. Or it could mean the person who used "Michael24339" knew the spoofed identity belonged to someone who was 20 years (easily learned from his many email postings on the 'net—the source of Sergeant Specht's identification of him).⁴ Because neither Little nor Swilley discussed the evidence with the Applicant nor showed it to him, he had no opportunity to point out possible alternative explanations.

L. Of chief concern among the issues ignored by the Court are IP addresses. At the hearing, attorney Swilley admitted he did not know what the IP addresses meant—and he admitted

¹ *United States v. Cronin*, 466 U.S. 648 (1984). [If no actual "Assistance" "for" the accused's "defence" is provided, then the constitutional guarantee has been violated. To hold otherwise "could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment." *Avery v. Alabama*, 308 U.S. 444, 446 (1940)]

² Exh. L, filed with Motion for Summary Judgment.

³ *Id.*

⁴ If the emailer knew Farris was twenty and not twenty-five, it does not explain how the hacker would know the decoy was thirteen.

he did no investigation. "[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."¹ He would have known, if he researched South Carolina case law.²

1. IP addresses have been addressed by other courts, as detailed in the Motion for Summary Judgment. Had either attorney investigated, it would be apparent that the "Michael 24339" email was used by more than two dozen computer IP addresses. Had they compared the times this email was used with the times on Sergeant Specht's chat logs they would know that none of the times matched. Had they traced the location of these IP addresses . . . All this and more is in the Motion for Summary Judgment.

2. The failure of attorneys to investigate is ineffective representation.³

3. These "very credible" attorneys did not know Farris had alibi witnesses because they did not ask—even when one sat with Mr. Swilley and the Applicant one week before the plea hearing. Neither the witness nor the Applicant knew at that time that an alibi witness could be helpful to the defense. Two years later, in 2013, this witness provided a notarized affidavit.⁴ He would have testified in 2014—but the PCR attorney did not notify him about the hearing. Nor did the

¹ *Strickland v. Washington*, 466 U.S. at 691 (1984).

² "Each computer connected to the internet is assigned a unique numerical address, otherwise known as an Internet protocol or IP address, to identify itself and facilitate the orderly flow of electronic traffic. An IP address is a string of up to twelve digits, such as '202.134.34.9.' *Peterson v. National Telecommunications and Information Admin.*, 478 F.3d 626, 629 (4th Cir. 2007)." *State v. Odom*, 676 S.E.2d 124 (2009), 382 S.C. 144.

³ *Edwards v. State*, 392 S.C. 449; 710 S.E.2d 60 (2011) ["This Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); see also *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) ("A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.")]

⁴ Exhibit Q, filed with the Motion for Summary Judgment.

PCR attorney file the notarized affidavit from another alibi witness, one with a better memory for details. He, too, was not notified about the hearing.

IV. Ineffective Assistance of Plea Counsel

A. Representation by Matthew Swilley and his predecessor, Tonya Copeland Little, was a sham. They had scant knowledge of the facts, scant knowledge of relevant law, but their attempts to justify their limited investigation somehow convinced the Court to find them “very credible.” Not only was the Court emphatic about this, but repeatedly emphatic, using that exact phrase on pages 3, 10-11, 12 and 13. Somehow the Court did not realize that Tonya Copeland Little violated attorney-client privilege when she testified as a prosecution witness. This was unethical since she was not a named defendant in the petition for Post-Conviction Relief.

B. Ms. Little perjured herself when she claimed the Applicant told her he was guilty. Perhaps she wrote “guilty” in her notes because that was her mind-set. She testified that (a) he “had difficulty deciding to plea, but she never anticipated the case would go to trial,” and (b) “he never told her he wanted a trial.”

But when she ordered him to attend a plea hearing, he came—with his grandfather. And stood before the judge and declared he would not plead guilty. What choices were left? Ms. Little departed without another word to the Applicant. After several months, he phoned her office and learned she no longer was an assistant public defender and that no attorney was assigned to him. In his ignorance, he presumed the case was gone.¹

C. Ms. Little testified that she tried to arrange a plea deal. What she failed to tell the Court is how liberal she is with facts. She wrote to the assistant attorney general that the Applicant had completed drug rehabilitation. [Exh. A] Possibly her intent was to create sympathy, but this

¹ Applicant’s Affidavit in support of Motion for Summary Judgment.

statement is untrue. The Applicant had no insurance, his grandparents had minimal income and, in fact, filed for bankruptcy protection the year prior to the Applicant's arrest. There simply was no money to pay for rehabilitation—if he had needed it.

D. Both Ms. Little and Mr. Swilley testified if the Applicant wanted a trial, they would have hired an expert witness. That reveals how little they knew of the facts and the law. An expert was unnecessary. Other than legal research, everything needed to advocate for the Applicant was in the file—if they troubled to peruse it. Ms. Little's claim of doing legal research is a smokescreen. She claimed to have reviewed the arrest warrant and found "nothing objectionable." Had she actually done legal research instead of presuming guilt, she would not have been insistent about a guilty plea.

E. Mr. Swilley testified he had "thorough discussions with Ms. Little." He is required to do his own, independent investigation¹. He chose not to do so because Ms. Little convinced him that the Applicant's actions met the definition of solicitation. It did not occur to him that the chats could be interpreted as obscene conversation between two adults.

Mr. Swilley testified that he "spoke with the investigating officer"—at a social function. When the officer heard the name of Swilley's client, he said, "He's a loser." Swilley did not ask why he made that remark. He did not ask under what authority the investigating officer crossed into North Carolina to make the arrest, nor why he could not wait until the suspect came to South Carolina. He did not he ask why the chat logs do not include the number "thirteen."

Neither of these attorneys knew the Applicant had alibi witnesses—because they did not ask. And he did not know enough to volunteer this information.

Swilley's self-serving claim that he did not know the Applicant wanted to go to trial reflects selective memory. Evidence that the Applicant wanted an alternative to a guilty plea was his

¹ *Edwards*, supra, p. 10 n.2.

questions—about filing a Clayton motion; about pleading “no contest;” and whether there was any motion that could be filed.¹ Applicant had no idea the evidence against him was insufficient—and neither did his attorney. Because neither examined the documents.²

F. The Court cites *Whetsell* to support the view the Applicant’s guilty plea prohibits him from claiming ineffective representation.³ The defendant in *Whetsell* was very different—he would have pleaded guilt again, if given the chance.⁴ But if this Applicant had been granted the direct appeal to which he was entitled, and if represented by an experienced, competent, diligent appellate defender, the story would have had a very different end.

This Applicant never had the experience described in *Whetsell*: a discussion in which “the defendant and his counsel must make their best judgment as to the weight of the State’s case. Counsel must predict how the facts, as he understands them, would be viewed by a court. If proved, would these facts convince a judge or jury of the defendant’s guilt?”

The Applicant did not know that defense counsel was obligated to consult with him about the state’s case before deciding whether to plead or go to trial.

Who would risk a trial one week away, with an attorney who believes in your guilt, does not discuss the case with you, asks no questions, does nothing to prepare for trial and warns a trial could lead to a decade or more in prison?

The Duke lacrosse players did not know their rights when they were arrested for first-degree

¹ See Applicant’s Affidavit in support of Motion for Summary Judgment.

² It is astonishing to read, “the Court finds Mr. Swilley conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.”

³ *Whetsell*, supra., p.1.

⁴ *Johnson v. State*, 336 S.C. 354, 520 S.E.2d 617 (1999) (“*Whetsell* does not stand for the proposition that a defendant who admits his guilt is barred collaterally attacking his conviction. *Whetsell* stands only for the narrow proposition that a PCR applicant who has pled guilty on advice of counsel cannot satisfy the prejudice prong on collateral attack if he states would have pled guilty in any event.”)

rape, first-degree kidnapping, first-degree sexual offense, common-law robbery, “felonious strangulation,” and conspiracy to commit murder. If they were represented by the type of attorneys assigned to this Applicant, they would be in prison today.

G. Ms. Little attempted to negotiate a plea agreement. Mr. Swilley made no such effort. Neither discussed with the Applicant how they might advocate for him. Neither suggested they might challenge jurisdiction. All they said and all they failed to do spelled doom for the Applicant. He went to the plea hearing hoping for probation and fearing a ten year sentence. That was all Swilley offered, when he coached the Applicant on how to answer the judge's questions.

The Court's Order excuses this deficient performance by citing *Hyman*.¹ But *Hyman* does not refer to defense counsel's failure to investigate, nor the failure to evaluate the evidence with a client. *Hyman* refers to the requirement for a state to disclose *Brady* material to the defense. The state is not at fault here—defense counsel is at fault. Instead of reviewing with the Applicant the state's evidence, they *told* him the evidence condemned him. They did not know, therefore he did not know the evidence was insufficient. All he knew was he needed a better lawyer, but an appeal was foreclosed when Mr. Swilley was inaccessible to daily phone calls until fifteen days after the plea hearing.

With attorneys of the caliber of Little and Swilley, the Applicant did not have a chance.

CONCLUSION

For the foregoing reasons the Applicant respectfully requests that the Court alter or amend its Order filed on December 19, 2014, as requested herein, and enter judgment in favor of the Applicant.

<<<<<<<<<<<<<<<<<<<<<<<<<<<<SIGNATURE PAGE ATTACHED>>>>>>>>>>>>>>>>

¹ *Hyman v. State*, 397 S.C. 35, 723 S.E.2d 375 (2012).

Exhibits

Tonya Little's letter in which she falsely claimed her client had drug rehab.

Appendix to Motion for Summary Judgment

Statement of Undisputed Facts from Motion for Summary Judgment

Respectfully submitted,

timothy Michael Farris Dated: 1-5-~~14~~15

Timothy Michael Farris, Applicant Pro Se

Please direct any reply to me at:

, Waxhaw, NC 28173
(704) 256-9001

Fourth Circuit Public Defender's Office
 300 Russell Street, Suite 113
 Darlington, S.C. 29532

A.C. Michael Stephens, Circuit Defender

J. Richard Jones, Assistant Circuit Defender
 Tonya Copeland Little, Assistant Circuit Defender

Mailing Address:
 P.O. Box 848
 Darlington, S.C. 29540-0848

Telephone - 877.225.2922
 Facsimile - 800-670-6375

June 19, 2009

Ms. Susanna Ringler
 Assistant Attorney General
 PO Box 11549
 Columbia, SC 29211-1549

Re: State v. Timothy Michael Farris

Dear Ms. Ringler:

Thank you for your letter dated May 12, 2009, and your plea offer. Mr. Farris and I have discussed your offer at length and he is currently considering his options.

Mr. Farris is 21 years old and has a high school diploma. He has never been arrested in the past and works as an account manager for AMT Advertising. He successfully completed substance abuse counseling almost a year ago and is currently living with his grandparents in Waxhaw, NC.

From our phone conversation, it is my understanding that this is your final offer and you will not consider a counteroffer unless it is approved by your supervisor. However, on behalf of my client and at his request, please consider or ask your supervisor to consider the following counteroffer and write back or call me:

1. PLEAD TO ONE COUNT CONTRIBUTING TO DELINQUENCY OF A MINOR (NEW INDICTMENT)
2. CONSENT TO FORFEITURE
3. DISMISS PENDING CHARGES

Thank you for your consideration.

Sincerely,



TONYA COPELAND LITTLE

cc: Timothy Michael Farris

✓ Timothy:

Contributing to Delinquency of a
 Minor is a misdemeanor -
 it carries up to 3 yrs.

<u>Exh.</u>	<u>Content</u>	<u>Memorandum Page</u>
Exh. A	* Swilley appointment	1
Exh. B	* Affidavit for South Carolina arrest warrant	3
Exh. C-1, -2	* Pages from Specht's Incident Reports	7, 8
Exh. D	* Confiscated items turned over to Hartsville P.D.	8
Exh. E	* Fugitive Arrest Warrant Waiver of Extradition	9
Exh. F	* Indictment	10
Exh. G	* Kilgo's discovery request	11
Exh. H	* Ringler discovery letter #1	11
Exh. I	* Ringler discovery letter #2	12
Exh. J	* Detective Specht's affidavit	12
Exh. K	* Yahoo Application for Search and Seizure	13
Exh. L	* Yahoo profile with wrong date of birth	14
Exh. M	* Yahoo IP logs	15
Exh. N	* Request to Myspace	16
Exh. O	* Specht's Chat/ Instant Messages	20
Exh. P	* First Plea Hearing	20
Exh. Q	Witness Affidavit	22
Exh. R	* Pages from Specht's Incident Reports	22
Exh. S	Legal treatise, "The Innocent Defendant's Dilemma"	25
Exh. T	Legal treatise, "Bargained Justice"	25
Exh. U	* Forfeiture	28
Exh. V	* List of items rec'd 06/04/12	30

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	FOR THE FOURTH JUDICIAL CIRCUIT
Timothy M. Farris,	)	Case No. 2012-CP-16-814
	)	
Applicant,	)	
	)	
v.	)	RETURN TO APPLICANT'S
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to Applicant's "Notice of Motion and Motion to Alter or Amend Order Pursuant to Rule 59(c), SCRCF" received by Respondent on January 12, 2015, Respondent would show this Court:

I.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 24, 2012. The Court convened an evidentiary hearing into the matter on July 24, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. The Court denied relief by an order dated November 24, 2014, and filed December 19, 2014. The present motion asks the Court to reconsider the findings of fact and conclusions of law contained in the order of dismissal.

II.

Initially, Respondent submits this motion should be dismissed because it violates the prohibition against hybrid representation. Rule 11(a), SCRCF, requires every pleading, motion or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. Applicant was represented by Tristan M.

Shaffer, Esquire, at the time this motion was filed.¹ Thus, “substantive documents filed *pro se* by a person represented by counsel are not accepted unless submitted by counsel.” State v. Stuckey, 333 S.C. 56, 58, 508 S.E.2d 564, 564 (1998) (citing Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989)). Because Applicant was represented by counsel when he filed this *pro-se* document, Respondent submits the Court should refuse to consider the substance of this motion.

III.

Respondent further submits this motion should be dismissed as untimely. Rules 59(b) and (e), SCRPC, requires that any post-trial motions be served within ten (10) days of notice of entry of judgment. The Court’s order of dismissal was filed on December 19, 2014. Applicant mailed this *pro-se* motion to Respondent on January 7, 2015. (See Attachment #1 – mailing envelope). Twenty (20) days elapsed from filing of the order to service of the motion, and Applicant has failed to account for this delay. Accordingly, Respondent submits Applicant has not shown his motion was timely served.

IV.

Applicant argues the Court erred in finding counsel was not ineffective regarding Applicant’s extradition. (Mot. to Alt. or Amend p. 1-4). Respondent submits this is not a proper issue to raise in a motion to reconsider. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (“Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not yet ruled upon by it.” (citing Hubbard v. Rowe, 192 S.C. 12, 5 S.E.2d 187 (1939))). Respondent further submits the Court’s order adequately addresses the issue of Applicant’s extradition. See, e.g., Spiker v. Com., 711 S.E.2d 228, 230-31 (Va. Ct. App. 2011) (discussing other jurisdiction

¹ Respondent notes the Honorable Paul M. Burch relieved Mr. Shaffer as counsel on January 21, 2015.

that have determined venue for internet crimes is proper in the location to which the defendant directed his internet communications); State v. Adams, 354 S.C. 361, 374-75, 580 S.E.2d 785, 792 (Ct. App. 2003) (defendant waives objection to personal jurisdiction by appearing to defend his case (citations omitted)); Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (knowing and voluntary plea waives non-jurisdictional defects (citations omitted)).

V.

Applicant argues the court erred in finding counsel was not ineffective in failing to challenge the arrest and search warrants. (Mot. to Alt. or Amend p. 4-6). Respondent submits this argument is not properly raised in a post-trial motion. Wilder Corp., 330 S.C. at 77, 497 S.E.2d at 734. Respondent also submits the Court properly addressed this issue in its order of dismissal. See, e.g., State v. Dunbar, 361 S.C. 240, 249, 603 S.E.2d 615, 620 (Ct. App. 2004) (affidavit may be supported by hearsay); State v. Holliday, 255 S.C. 142, 146, 177 S.E.2d 541, 543 (1970) (invalid arrest warrant does not preclude prosecution and conviction upon valid indictment).

VI.

Applicant alleges the Court failed to consider the arguments raised in his *pro se* filings, including his pro-se motion for summary judgment. (Mot. to Alt. or Amend p. 6-12). Respondent submits the Court's order clearly indicates it considered the *pro se* filings in making its findings of fact and conclusions of law. (Order of Dismissal p. 1; p. 3). To the extent Applicant raises new issues in his motion for reconsideration that were not addressed via testimony at the evidentiary hearing, Respondent submits such issues are not properly before the court. See Stevens & Wilkinson of S. Carolina, Inc. v. City of Columbia, 409 S.C. 563, 567, 762

S.E.2d 693, 695 (2014) (“[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not.” (citing Hickman v. Hickman, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990))). Because Applicant presented no evidence on these issues, he cannot ask the Court to rule on them at this juncture. Otherwise, Respondent submits the Court’s order properly addresses the issues raised in Applicant’s *pro se* filings and presented at the evidentiary hearing.

VII.

Applicant argues the Court erred in finding the testimony of his plea counsel credible. (Mot. to Alt. or Amend p. 12-15). Respondent submits the Court’s credibility determinations are proper in light of its role as finder of fact. Okatie River, L.L.C. v. Se. Site Prep, L.L.C., 353 S.C. 327, 338, 577 S.E.2d 468, 474 (Ct. App. 2003) (“Credibility determinations regarding testimony are a matter for the finder of fact, who has the opportunity to observe the witnesses, and those determinations are entitled to great deference on appeal.”). Thus, Respondent submits Applicant has not shown sufficient grounds to challenge the Court’s findings in this regard.

VIII.

Applicant included in his motion a copy of a letter from plea counsel. However, this letter was not introduced at the evidentiary hearing or included in Applicant’s initial *pro se* materials. The inclusion of this letter is an improper attempt to introduce new evidence after the record has been closed. Stevens & Wilkinson, 409 S.C. at 567, 762 S.E.2d at 695. Accordingly, this letter should be stricken from the record as it is not properly presented for the Court’s consideration. Respondent also objects to the letter because it has not been properly authenticated and it contains inadmissible hearsay. See Rules 901(a) and 802, SCRE.

IX.

WHEREFORE, Respondent asks the Court to deny Applicant's motion for reconsideration. Respondent further asks the Court to strike those portions of the motion, including attachments, that attempt to introduce new information that was not timely presented at the evidentiary hearing.

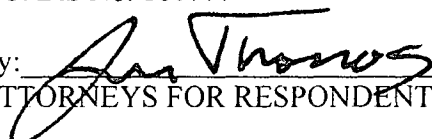
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

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

Feb 10, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTH JUDICIAL CIRCUIT

Timothy M. Farris,)

Case No. 2012-CP-16-814

Applicant,)

v.)

CERTIFICATE OF SERVICE

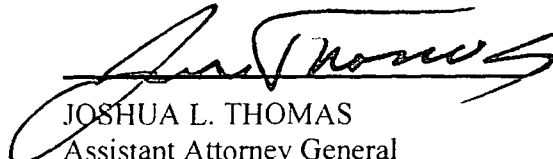
State of South Carolina,)

Respondent.)

Pursuant to Rules 5(a) and (b)(1), SCRPC, the undersigned certifies I have served the within
RETURN TO APPLICANT'S MOTION TO ALTER OR AMEND on Applicant by
 depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Timothy M. Farris
 Hillanby Court
 Waxhaw, North Carolina 28173

CERTIFIED THIS 6th DAY OF February, 2015.


 JOSHUA L. THOMAS
 Assistant Attorney General
 S.C. Bar No. 100777

Post Office Box 11549
 Columbia, South Carolina 29211
 (803) 734-3737

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
	)	2012-CP-16-814
Timothy Michael Farris,	)	
	)	
Applicant,	)	
	)	
v.	)	
	)	REPLY TO STATE'S OPPOSITION TO
State of South Carolina,	)	MOTION TO ALTER OR AMEND ORDER
	)	PURSUANT TO RULE 52(b)
Respondent.	)	AND RULE 59(E), SCRC
	)	
	)	

This is in reply to Respondent's opposition to the Motion to Alter or Amend. The opposition is based on two primary grounds, hybrid representation and timeliness, and several lesser issues.

I. HYBRID REPRESENTATION

1. Hybrid representation does not exist when, as here, the attorney of record abandons the Applicant.
2. Tristan Shaffer, attorney of record and PCR counsel, did not contact his client once after the July, 2014 Evidentiary Hearing, and did not contact him after the Order to Dismiss was filed on December 19, 2014.
3. Throughout these months, PCR counsel did not respond to phone messages.
4. Shaffer did not respond to text messages. (*see*, attached text logs)
5. Shaffer did not reply to a letter from the Applicant asking if he would file a notice of appeal. "[I]t is appointed counsel's duty in PCR matters to serve and file the notice of appeal."¹

¹*Dennison v. State*, S.C.S.C. (Order, 2006).

6. The Order of Dismissal notified PCR counsel that “Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel’s receipt of notice of entry of judgment.” It also noted, “Applicant has a right to appellate counsel’s assistance in seeking review of the denial of post-conviction relief,” and that “PCR counsel must serve and file a notice of appeal on Applicant’s behalf.” Apparently, PCR counsel had no intention of doing any of these required tasks.²

7. PCR counsel signed his own Motion to be Relieved on November 11, 2014 but did not serve or file it until January 7, 2015. Similar to *Mackay*, whose lawyer failed to notify the court of his intention to withdraw, this Applicant was deprived of the opportunity to proceed *pro se* and to personally receive docket notifications from the court.³

8. In order to timely file *pro se*, the Applicant asked attorney Shaffer for the mailing date of the notice of filing of the Order to Dismiss. It was imperative to know this, in order to calculate when a response was due. This time Shaffer replied. His text message: one word. “Recently.” (see attached text logs) His refusal to be specific made it impossible to know the deadline for filing any motion or notice of appeal.

9. As in *Maples*, this Applicant was “left without any functioning attorney of record.”⁴

10. Attorney Shaffer’s refusal to reply to the Applicant’s letter asking him to file a notice of appeal and his subsequent failure to file a notice are emphatic evidence of abandonment. “A lawyer who disregards a defendant’s specific instructions to file a notice of appeal acts in a professionally unreasonable manner [citation].”⁵

²This pattern is similar to that of the attorney in *Holland v. United States*, 130 S.Ct. 2549 (2010).

³*Mackay v. Hoffman*, 682 F.3 1247 (9th cir. 2012).

⁴*Maples v. Thomas*, 132 S. Ct. 912 (2012).

⁵*Strickland v. Washington*, 466 U. S. 668

11. The U.S. Supreme Court held that attorney abandonment is an “extraordinary circumstance” that may excuse a procedural default caused by the abandonment during the state habeas proceedings.⁶

14. Due to repeated failed attempts to contact attorney Shaffer, on November 10, 2014 the Applicant filed a *pro se* Motion to Relieve Counsel. It was ignored by the Court.

15. When a friend noticed on the Public Index that the Court’s Order of Dismissal was filed on December 19, 2014, the Applicant panicked. He knew the clock was ticking for any motion that might be filed. Yet he could not get a response from attorney Shaffer.

16. On January 2, 2015 the Applicant filed a second Motion to Relieve Counsel, adding the label, “Emergency.” It was an emergency because, unless his *pro se* status was restored, the Applicant would be denied his right to access the courts. The Court ignored this motion, as well.

17. On January 7, 2015 attorney Shaffer filed his Motion to be relieved. When it, too, appeared to be ignored, the Applicant sent a letter directly to Judge Burch, as chief administrator for the Fourth Circuit, requesting that he act on the Motion to Relieve Counsel. He also asked for the Order to be back-dated so that the *pro se* Motion to Alter or Amend (served on January 7 and filed on January 9, 2015) would be accepted. It did not occur to him to ask for equitable tolling.

18. Finally, on January 21, 2015, the Court consented to the requested relief but did not back-date the order. And it did not occur to the Court to extend equitable tolling *sua sponte*.

19. It should be obvious that this is not hybrid representation. The Applicant was not represented.

20. Once the Applicant was officially *pro se*, hoping to prevent the loss of his rights he again served and filed the Motion to Alter or Amend and also served and filed a Notice of Appeal.

⁶*Maples v. Thomas*, 132 S. Ct. 912 (2012).

21. The Applicant requests this court to consider equitable tolling of his *pro se* pleadings. “A ‘petitioner’ is ‘entitled to equitable tolling’ if he shows ‘(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way’ and prevented timely filing.”⁷

22. The equitable principles recognized in *Maples*, *Holland* and *Mackay* warrant relief based on attorney abandonment.

II. TIMELINESS

1. The *pro se* Motion to Alter or Amend, served on January 7, 2015, was timely. “A motion under Rule 59(e) is timely if it is ‘served not later than 10 days after receipt of written notice of the entry of the order.’”⁸

2. The Respondent’s timeliness argument ignores the fact that weekend and holidays when courts are closed do not count. Therefore, ten days after the December 19, 2014 filing of the Order is January 9, 2015. Add two days for delivery of the notice of filing to attorney Shaffer, and the Motion to Alter or Amend, served on January 7, clearly meets the deadline.

3. But attorney Shaffer did not notify the Applicant. Nor did he make any effort to comply with the requirements of appointed counsel described in *Dennison*, *supra*.

4. Similar to *Martinez v. Ryan*, this Applicant “has been denied fair process and the opportunity to comply with the State’s procedures and obtain adjudication on the merits of his claim.”⁹

5. The denial of fair process pervades this entire case. There are constitutional

⁷*Holland*, *supra*, n.2, citing *Pace v. DiGuglielmo*, 544 U. S. 408, 418.

⁸*USAA Property and Casualty Insur. Co. V. Clegg*, 377 S.C. 643 (2008), 661 S.E.2d 791.

⁹132 S.Ct. 1309 (2012).

violations throughout, from the defective arrest warrant to the illegal extradition from North Carolina, to the attorney general's office refusing to appoint counsel for the PCR, despite knowing he had been denied a direct appeal and qualified for an Austin appeal. Then it took three requests and notice of intent to file for mandamus relief before an attorney was appointed. Unfortunately, the PCR attorney was Tristan Shaffer.

Then the refusal of the court to relieve the Applicant of this faux representation and, finally, an Order of Dismissal, rife with errors of law.

III. ALL OTHER ALLEGATIONS

Cut-and-paste was used by this court when it stated, "As to any allegations raised in the application or at the hearing not specifically addressed by this Order, this Court finds that the applicant failed to present any evidence regarding such allegations."¹⁰

Not only was evidence presented—exhibits filed in August 2013 with the Motion for Summary Judgment—but the South Carolina Supreme Court has repeatedly chastised courts for the use of this paragraph as a substitute for addressing issues. Too often the justices must remind courts, "This paragraph does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law. This language should not be included in a PCR order unless there are allegations contained in the application and/or mentioned at the PCR hearing about which absolutely no evidence is presented."¹¹

This court should amend its order to address all allegations and evidence in the Motion for Summary Judgment. The PCR counsel was derelict at the hearing, as well as afterward. The Applicant's future should not be determined by the acts and omissions of an attorney who has

¹⁰*Marlar v. State*, 375 S.C. 407 (2007), 653 S.E.2d 266.

¹¹*Id.*

demonstrated the pattern of behavior summarized here.

If this court is willing to revise and reissue the final judgment, while doing so kindly attend to the errors of law. This will save time and resources for the courts as well as the Applicant.

If this is not done, it would be prudent to expect remand from the Supreme Court, demanding specific rulings from the PCR judge.¹²

IV. ERRORS OF LAW

To paraphrase federal Judge Robert Holmes Bell, “This is what happens when you take judging, which is a judge’s job,” and you give it to prosecutors to write the judge’s opinions.¹³ If the court chooses to amend its Order to address the ignored issues and exhibits, it should take time to correct these errors of law, which do prejudice the Applicant.

The Order drafted by the prosecutor states that the court reviewed Applicant’s *pro se* filings. That’s it. One sentence (p.3, p1). And the Order claims—falsely—“the Applicant failed to present any evidence regarding such allegations.” This is on p.13, in the paragraph entitled “All Other Allegations.”

Let’s begin with the arrest warrant. The court cites *U.S. v. Ventrusca* to support the conclusion “no facial deficiencies.” The warrant in *Ventrusca* is far more detailed than Exhibit B of the Motion for Summary Judgment. Moreover, *Ventrusca* requires “an affidavit [that] must recite the underlying circumstances, and not mere conclusions as to probable cause, the affidavit must be tested in a common sense way.”¹⁴ Does this appear to meet those requirements?

SGT. JOHN SPECHT, A HARTSVILLE POLICE INVESTIGATOR STATES TO THE AFFIANT

¹²*Id.*

¹³*U.S. v. Grossman* _____ (W.D. Mi. 2007).

¹⁴*U.S. v. Ventrusca*, 380 U.S. 102, 108-9 (1965).

THAT THE DEFENDANT, TIMOTHY MICHAEL FARRIS, DID IN THE CITY OF HARTSVILLE, DARLINGTON COUNTY, ON OR ABOUT THE DATE OF MAY 17, 2008, COMMIT THE OFFENSE OF CRIMINAL SOLICITATION OF A MINOR IN THE FOLLOWING PARTICULARS: THAT THE DEFENDANT (TIMOTHY MICHAEL FARRIS) DID KNOWINGLY CONTACT AND COMMUNICATE, VIA THE INTERNET, WITH A PERSONAL REASONABLY BELIEVED TO BE UNDER THE AGE OF SIXTEEN. WITH THE INTENT OF PERSUADING, INDUCING, ENTICING OR COERCING THE PERSON TO ENGAGE OR PARTICIPATE IN SEXUAL ACTIVITY. THIS PERSON WAS AN UNDERCOVER OFFICER, USING A DECOY ACCOUNT OF A THIRTEEN YEAR OLD FEMALE NAME "ALLIE", WHICH WAS SET UP AND OPERATED BY LAW ENFORCEMENT. THIS INCIDENT OCCURRED AT 626 NORTH FIFTH STREET.¹⁵

Now examine this affidavit through *Giordenello*, cited in the Motion for Summary Judgment, which found "the arrest warrant was defective on any of several grounds." *Giordenello* denounced an affidavit based on "*suspensions of petitioner's guilt derived entirely from information given him by law enforcement officers and other persons in Houston, none of whom either appeared before the Commissioner or submitted affidavits.*"¹⁶ (Italics added)

How could attorneys Little and Swilley (and the PCR court) believe the arrest warrant was valid in North Carolina? Upon what authority does this court approve the extradition of an unindicted suspect from his North Carolina home to a jail in Darlington, South Carolina? The Respondent's reply repeats that *Spiker v. Com.* is an excuse for illegal extradition.¹⁷ To shore up that defense, the Reply suggests looking at other jurisdictions cited in *Spiker*. But the other states

¹⁵Copied with errors from Exhibit B, filed with the Motion for Summary Judgment.

¹⁶*Giordenello v. United States*, 357 U.S. 480 (1958).

¹⁷711 S.E.2d 228, Va. Ct. App. 2011).

similarly address counties within their own state—not an invalid arrest warrant that limits the officer to his own state, not the kidnapping of an unindicted suspect from another state. If federal law allowed such seizures, every person who lived near the border of a neighboring state would be at perpetual risk.

Ironically, *Spiker* is an excellent reference—but not for the reasons the Respondent advances. Contrast the Applicant with George Spiker, a 55-year-old man who solicited minors. For this purpose, he used the internet name “Mustangman.” The *Spiker* court had proof the defendant “groomed” the decoy with offers of gifts, and sent photos of his genitals. George Spiker proposed meeting with the person he believed to be a 13-year-old girl, and was nabbed by the police when he went to the meeting place. Each of these elements is missing from the case against the Applicant.

At sentencing the jury learned that George Spiker had a previous conviction in another state for second degree sexual assault of a minor. George Spiker is a villain. He needed to be locked away.

Unlike Spiker, the Applicant was a 20-year-old who had never been indicted anywhere. The police officer acted on suspicion, but never had evidence of a crime.¹⁸ There was no evidence in the chats that he claimed to be thirteen, no plans to meet, etc.¹⁹ How could this court choose to ignore the complete lack of evidence, unless denying post-conviction relief was a foregone decision?

The failure of attorneys Little and Swilley to investigate—words uttered in self defense and contradicted by evidence (i.e., the arrest warrant, the empty spaces on the Fugitive Waiver, the two dozen-plus IP addresses used by the Yahoo account, etc.)—did this prejudice the Applicant?

¹⁸See, *State v. Barksdale*, 428 SE 2d 498 (Ct. Appeals, 1993). (“The State is required to prove every element of the crime for which an accused is charged. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787, 61 L.Ed.2d 560 (1979); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed.2d 368 (1970). Mere suspicion alone is insufficient to send the case to the jury. There must be substantial evidence which reasonably tends to prove the guilt of the accused. [citations]”)

¹⁹Exhibit O, Motion for Summary Judgment is a print from of the video screen shots PCR counsel did not introduce.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

Was the Applicant prejudiced by the failure of any public defender to contact him for more than a year after his arrest? Was he prejudiced by their failure to explain his rights to him? Was he prejudiced by their warning that if he did not appear for all court dates he would be re-arrested? Was he prejudiced by their failure to challenge personal jurisdiction? Was he prejudiced by their failure to investigate?

Was he prejudiced by their failure to discuss the case with him, ask about and thus learn he had alibi witnesses? Was he prejudiced by their philosophy that every defendant is guilty, therefore it is sufficient to "meet 'em and plead 'em"?

How could a judge who takes time to consider the issues conclude that lawyers such as Tonya Copeland Little and Matthew Swilley were not only above reproach but "very competent"? Would any judge want lawyers such as these to represent their own children?

To presume the Applicant waived his rights by appearing at court when ordered to do so by his lawyers is sheer naivete. The first arrest dragged him from his bed in North Carolina and brought him to jail in Darlington. The Applicant had no reason to think this could not happen again. It never occurred to the Applicant to challenge personal jurisdiction—because it never occurred to his lawyers.

Respondent's repeated dependence on *State v. Adams* is inappropriate for five reasons.²⁰ (1) Unlike Adams, the Applicant was a suspect, not a fugitive; (2) *Adams* is based on Interstate Agreement on Detainers, not Extradition law;²¹ (3) Adams had some legal knowledge (he was, after

²⁰354 S.C. 361, 580 785 S.E.2d (Ct. App.003).

²¹Numerous courts have held the rights created by the IAD are statutory in nature and do not rise to the level of constitutionally guaranteed rights. Extradition Law *does* protect constitutionally guaranteed rights.

Respectfully submitted,

Timothy Michael Farris

Timothy Michael Farris, Applicant *Pro Se*

Please direct any reply to me at:

██████ Hilanby Court, Waxhaw, NC 28173

████████████████████

ATTACHMENT

NOTE: These pages of text messages were sent from the Smartphone to a computer, in order to be printed. Dates did not print. [REDACTED] were added by hand.

The original text messages remain on the Smartphone, with dates, and will be available if the court needs authentication.

Michael doesn't want to relieve you as concil. But you haven't notified him for 5 months. Michael wanted to know if you were prepared to appeal if necessary. He wanted to know what the judge asked attorney general to be ready to file. The judge said he would rule in 2 months. 5 months later Michael just needs some questions answered but he hasn't gotten any response. If you could send michael a response. rick Michael's grandfather

12-8-14

Call my office tomorrow afternoon

12-8-14

What time

12-8-14

We called you were not available. Any thing going on with p c r

12-11-14

Have you been able to find out why it has. Taken so long. Are they staling if so why. I gave ypur associate Michaels address so you could send him letter to update him on progress In 5 months

12-16-14

Michael Farris p c r. Decision has been filed. What you going to do now in ways of an. Appeal. Would you please send Michael a copy of filing ASAP. So he can read and look for errors. Yes he wants to appeal. The filing list you as his. Attorney

12-23-14

Are you still Michael attorney

12-23-14

This is rick Mc whorter. Michael grandfather. A friend of the family is preparing a motion to alter or amend will you file it this is critical to Michael's chance for an appeal please give me your answer. Asap

12-24-14

The attorney general filed dec. 19 we are running out of time. Michael. Will send you a motion to file to file for him. Please contact me to let me know. You understand how critical this is

12-24-14

I cant do that I have not received the order yet and I cant file motions he sends me. I will file the appeal or appropriate post trial motions depending on whats in the prder

12-24-14

Please stay on top of this we were told that the 10 days started when it was filed in the court not when you received it we are just worried about when time start thank you for your response. Michael wants to appeal

12-24-14

Have you received the order from court or. A. G. If so what have you done. Have you mailed michael a copy

1-5-15

Have you received the order of dismissal on Michael p c r if so what was date it was mailed

1-22-15

I know you are busy but you owe Michael a answer to his questions.

Rick

1-22-15

Recently I was just relieved.

1-22-15

I am inquiring about Michael Farris pcr hearing. Has there been any progress made if not when could we expect a ruling

9-23-14

Rick Mcwhorter

michael grandfather

I have not received anything from the court yet I would expect doon but I dont have it yet

9-23-14

Michael preliminary hearing is October 1 if anything happens about pcr

please contact us asap

Rick 9-25-14

Still. Waitin

9-29-14

Yes

9-29-14

With the time it has taken a good sign?

10-23-14

You told Michael if pcr was denied the state would write opinion. What chance state would apeal when we win 10-6-14

Hearing postfoned til October 29 let us know as soon as anything happens in darlington

10-8-14

Anything new on pcr

10-16-14

Anything new on pcr

10-18-14

Any new on pcr

10-24-14

Not yet

10-24-14

THANKS

10-24-14

MICHAEL WANTS TO KNOW IF THE JUDGE ASKING THE A G TO FILE A MOTION. A GOOD. THING OR A BAD THING AND SHOULD WE BE PREPARING AN APEAL

10-29-14

IF IT'S NOT TO MUCH TROUBLE. COULD YOU GET IN TOUCH. WITH MICHAEL TO LET HIM KNOW THE STATUS. OF P C R HIS ADDRESS IS MICHAEL. FARRIS. L C D C. PO BOX 908 LANCASTER. S C. 29721 Nov 11-4-14

WOULD YOU PLEASE GET IN TOUCH WITH MICHAEL PER MY LAST TEXT I WILL NOT BOTHER. YOU. ANY MORE. THANK YOU FOR HELPING MICHAEL. 11-7-14

Has there been any movement yet

Nov 11-13-14

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DARLINGTON)

FOURTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-16-814

TIMOTHY M. FARRIS,)

APPLICANT,)

vs.)

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

ORDER**DENYING APPLICANT'S
RULE 59(e) MOTION**

2015 JUL -1 AM 11:29

FILED

SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

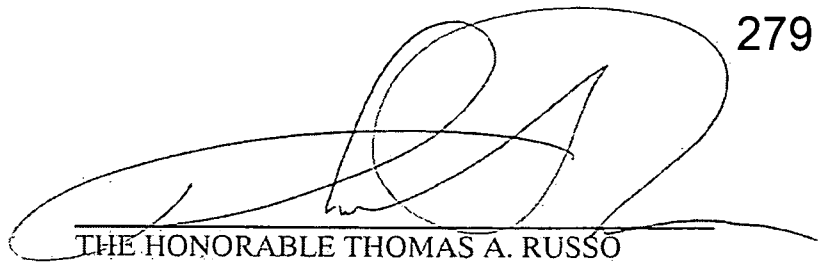
THIS MATTER came before me pursuant to Applicant's Notice of Motion and Motion to Alter or Amend Order Pursuant to Rule 59(e). Applicant moves to alter and amend the Court's Order dismissing this Post-Conviction Relief action. In the Motion, Applicant raises a number of arguments. However, Applicant has raised nothing new in the Motion that could not have been raised previously in Applicant's Application for Post-Conviction Relief. *See Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (S.C. App. 2009), rehearing denied, certiorari granted, affirmed as modified 405 S.C. 359, 747 S.E.2d 757 ("A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not.") Further, Applicant has failed to raise any issue not already considered by the Court. Applicant's Motion merely restates the same grounds and arguments considered and denied in the Court's Final Order in this case.

THEREFORE, IT IS ORDERED that Defendant's Rule 59(e) Motion to alter or amend the Court's Order is hereby denied, and this Court's Order of Dismissal remains in effect.

AND IT IS SO ORDERED.

TRUE CERTIFIED COPY,

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC



THE HONORABLE THOMAS A. RUSSO
PRESIDING CIRCUIT COURT JUDGE
FOURTH JUDICIAL CIRCUIT

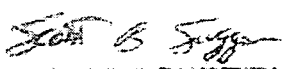
Florence, South Carolina
June 26th, 2015

FILED

2015 JUL -1 AM 11:28

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,


CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

SC Commission of Indigent Defense
Office of the Fourth Circuit
Public Defender
313 West Hampton Street
Post Office Box 28
Dillon, South Carolina 29536

A.C. Michael Stephens, Chief Circuit Public Defender

J. Richard Jones, Deputy Chief Public Defender
Emily M. Crayton, Assistant Deputy Chief Public Defender
William E. Grove, Assistant Public Defender

Matt S Switley, Assistant Public Defender
Tiffany Gibson, Assistant Public Defender
Christa Calnes Lane, Circuit Administrator

February 24, 2011

Office of the Solicitor
William B. Rogers, Jr.
Fourth Judicial Circuit
Darlington County, South Carolina

RE: Notice of Assignment of Attorney
Timothy Michael Farris
J 087214; J 087215; J 087216

::

Dear Solicitor:

Please be advised that the Fourth Circuit Public Defender Office has assigned the above referenced case.

Matt Switley is the Public Defender representing the above client in this matter.

Fourth Circuit Public Defender
313 West Hampton Street
Dillon, South Carolina
877-225-2922



A.C. Michael Stephens
Chief Circuit Defender

16A08-00000786

EXHIBIT

A

CHESTERFIELD

DARLINGTON

DILLON

&

MARLBORO

COUNTIES

DOCKET NO. 2008-GS-16- 1555

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

Defendant

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

Defendant

Witness:

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

TRUE CERTIFIED COPY
Sgt. B. Jagger
CLERK OF COURT/HNC
DARLINGTON COUNTY, S.C.

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

December 2008 TERM

THE STATE

vs.

TIMOTHY MICHAEL FARRIS

W/M

D.O.B. [REDACTED]

Indictment for

CRIMINAL SOLICITATION
OF A MINOR

SC Code: 16-15-0342
CDR Code: 2999

WITNESSES

Det. Sgt. John Specht - Hartsville Police Dept.

[Signature]

ARREST WARRANT NUMBER

J-087214

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date:

TRUE VERDICT

Foreperson of Petit Jury
Date:

803-734-0917
DEC 4 2008
CLERK

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF DARLINGTON)

INDICTMENT

CRIMINAL SOLICITATION OF A MINOR

At a Court of General Sessions, convened on December, 2008, the
 Grand Jurors of Darlington County present upon their oath:

That Timothy Michael Farris, on or between the dates of May 17, 2008 and July 24, 2008, did willfully and knowingly commit the crime of criminal solicitation of a minor. To wit: Timothy Michael Farris, a person eighteen years of age or older, did knowingly contact and communicate with a person located in Darlington County he reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5), or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person reasonably believed to be under the age of eighteen. This is in direct violation of Section 16-15-0342, of the South Carolina Code of Laws (1976), as amended.

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

OFFICE OF THE ATTORNEY GENERAL


 HENRY McMASTER (SMR)
 ATTORNEY GENERAL

TRUE CERTIFIED COPY

 CLERK OF COURT/RMC
 DARLINGTON COUNTY S.C.