

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

William Jeffrey Young, Circuit Court Judge

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S.C. Supreme Court

WILLIE E. DOW,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000933

APPENDIX

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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	
COUNTY OF CLARENDON)	THIRD JUDICIAL CIRCUIT
)	
The State)	
)	
Plaintiff	)	2008-GS-14-0013
)	
versus)	
)	
Willie E. Dow)	
	)	January 29, 2008
Defendant)	
_____)	

BEFORE
THE HONORABLE R. FERRELL COTHRAN, JR.

Amy Land, Esquire
Attorneys for The State

Debbie Koon, Esquire
Attorney for the Defendant

Pamela Ozment-Cartee
Circuit Court Reporter

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No Exhibits Offered

The State v Willie E. Dow - 2008-GS-14-0013

3

1 (Whereupon, a Motion Hearing was held to substitute
2 counsel beginning at 3:20 p.m. on January 28, 2008.)

3 Ms. Land: Your Honor, this is Willie E. Dow,
4 Indictment Number 2008-GS-14-13. He is indicted for
5 criminal sexual conduct with a minor in the second degree.
6 He was assigned Harry Devoe, which I never got a letter of
7 representation for. Harry has a conflict. Debbie has
8 agreed to take his place. Harry wanted to do it on the
9 Record, in front of you.

10 The Court: Okay. Do you understand that Mr. Dow?

11 Mr. Dow: Yes, sir.

12 The Court: So, now Ms. Koon is going to be your
13 attorney?

14 Mr. Dow: Yes, sir.

15 The Court: All right. I will grant your Motion Mr.
16 Devoe. You are relieved from this case.

17 Mr. Devoe: Your Honor, I was representing in Family
18 Court the victim in this case.

19 The Court: Now.

20 Mr. Devoe: I am the Guardian of the victim.

21 The Court: Is your office taking a position as to
22 whether one person has a conflict both does?

23 Mr. Devoe: No. We don't maintain the same office.
24 We have separate offices, enough --

25 The Court: -- You do now.

1 Ms. Koon: I spoke to, Mr. Dow about that this actual
2 issue, and there has been no --

3 The Court: -- Resolution to that?

4 Ms. Koon: From that. If you want to hold off, I can
5 speak to Mr. Dow.

6 The Court: That is going to be a circuit wide
7 problem, and I guess ultimately he is going to have to make
8 that determination, but right now, you are his attorney. If
9 a conflict arises that takes your whole office out then you
10 will have to come back before me or whatever judge is here
11 to resolve that issue. But right now, and I understand that
12 that is a potential problem throughout the circuit, because
13 of the whole legal mechanism of the Public Defender's Office
14 has changed. But, if that becomes available then y'all need
15 to figure out, and at least make a note somewhere that Mr.
16 Devoe had a conflict, and that conflict may resolve in the
17 Family Court matter, and it may go away. But, right now Ms.
18 Koon is his attorney, until we hear otherwise.

19 Ms. Land: Okay. And, I think that that issue is
20 resolved in the Family Court, any way.

21 The Court: Good.

22 (Whereupon, this Motion, was concluded at 3:23 p.m. on
23 Monday, January 28, 2008.)

24 -- End of Transcript --

The State versus Willie E. Dow

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1 (Whereupon, The Court comes to order at 2:29 p.m. on
2 Tuesday, January 29, 2008.)

3 Ms. Land: Willie Dow. Your Honor, this is Willie E.
4 Dow, Indictment Number 2008-GS-14-0013. He is pleading
5 guilty to criminal sexual conduct with a minor in the second
6 degree. There are no negotiations or recommendations. And,
7 he is represented by Debbie Koon.

Whereupon Willie E. Dow

After Being Duly Sworn Testifies as Follows

8
9
10 Mr. Dow: I do.

11 The Court: Ms. Koon, you represent Mr. Dow?

12 Ms. Koon: I do, Your Honor.

13 The Court: Have you explained the nature of the
14 charges against him, the possible punishment he could
15 receive, and his constitutional rights?

16 Ms. Koon: I have.

17 The Court: And, does he understand those?

18 Ms. Koon: He does.

19 The Court: He tells you he wants to plead guilty?

20 Ms. Koon: That's correct.

21 The Court: Based on your evaluation of this case, do
22 you agree with his decision?

23 Ms. Koon: I do.

24 The Court: Mr. Dow, your lawyer tells me you want to
25 plead guilty; is that right, sir?

1 Mr. Dow: Yes, sir.

2 The Court: Have you had enough time to talk with her
3 about this decision?

4 Mr. Dow: Yes, sir.

5 The Court: Has she done everything for you, you think
6 she should have done or could have done?

7 Mr. Dow: Yes, sir.

8 The Court: Do you have any complaints against her at
9 all?

10 Mr. Dow: No, sir.

11 The Court: Do you have any complaints against anybody
12 in the Solicitor's Office, or law enforcement?

13 Mr. Dow: No, sir.

14 The Court: All right, sir. Are you today under the
15 influence of any alcohol or drugs?

16 Mr. Dow: No, sir.

17 The Court: Has anybody promised you anything or
18 threatened you in any way, to get you to plead guilty?

19 Mr. Dow: No, sir.

20 The Court: Have you ever been diagnosed with a mental
21 illness?

22 Mr. Dow: No, sir.

23 The Court: Do you have any physical or mental
24 infirmities that would keep you from understanding what you
25 are doing here today?

The State versus Willie E. Dow

1 Mr. Dow: No, sir.

2 The Court: All right, sir. By pleading guilty you
3 have given up certain constitutional rights.

4 You have the right to, remain silent and not
5 incriminate yourself under the Fifth Amendment. But, when
6 you plead guilty you have given that right up, because you
7 are going to tell me you are guilty; do you understand that,
8 sir?

9 Mr. Dow: Yes, sir.

10 The Court: You also have a right to a jury trial, and
11 in that trial you would be presumed innocent. The State
12 would have the burden of proving you guilty beyond a
13 reasonable doubt to all twelve jurors.

14 You would be able to, confront the witnesses against
15 you on this witness stand. Your lawyer would be able to
16 cross-examine The State's witnesses. She could subpoena
17 witnesses to testify in your own behalf. But, when you
18 plead guilty you give all that up. Do you understand that?

19 Mr. Dow: Yes, sir.

20 The Court: All right, sir. And, any appeal that may
21 come out of that trial you are also giving up by this guilty
22 plea. Do you understand that?

23 Mr. Dow: Yes, sir.

24 The Court: All right, sir. How about listen to the
25 facts that Ms. Land is going to tell me about, and I am

1 going to come back and ask you about them, as well as some
2 other questions.

3 Ms. Land: Your Honor, on April 17, 2007, Law
4 Enforcement was called to Black River Health Care where Dr.
5 Garma was taking care of a twelve-year-old child. This
6 twelve-year-old girl came in and indicated to Dr. Garma that
7 she was having some stomach problems that she wasn't feeling
8 well, and Dr. Garma thought some things were strange, and
9 that a pregnancy test on this young girl was positive. He
10 then inquired to her if anybody had molested her. And she
11 indicated, at that time, that her adoptive father, who is
12 Willie Dow, had molested her when she was younger. However,
13 at this time an uncle named Maurice Daughtry (phonetic)
14 raped her.

15 Incidentally, Willie Dow who is her adoptive father is
16 the one standing here, and is the one who brought her to the
17 doctor that day. It is our belief that on the way to the
18 doctor they discussed that pregnancy may be a possibility,
19 and that he indicated that if you are, you are to blame this
20 on another person, which she did.

21 Anyway, she had this baby in October of 2007. The
22 results of the paternity test indicated that Mr. Dow was the
23 father of this child. The probability of paternity was
24 greater than 99.999%.

25 Obviously this little girl has suffered greatly as a

The State versus Willie E. Dow

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1 result of having this child. She was taken that day into
2 the custody of The Department of Social Services.

3 Mr. Dow is pleading guilty today to criminal sexual
4 conduct with a minor in the second degree, because she was
5 twelve at the time she got pregnant.

6 He was served with a Warrant this morning for criminal
7 sexual conduct with a minor in the first degree, for that
8 time between the time she was seven and ten that he molested
9 her, and she went to her mother and told her of the
10 situation. Mr. Dow was removed from the home for a while.

11 Ms. Kirkpatrick is here from The Department of Social
12 Services to speak on the young girl's behalf. Her
13 counselors indicated that it probably would not be a great
14 idea for her to go through this process at this time; so she
15 is not here, but Ms. Kirkpatrick is here to speak on her
16 behalf.

17 Ms. Kirkpatrick: The child, of course, remains in
18 Foster Care, in a Therapeutic Foster Home. She is
19 undergoing therapy on a regular basis, and her therapist Dr.
20 Michael West has written an Affidavit as to the
21 retraumatization of this child every time she is involved in
22 any kind of Court hearing at this point.

23 Previous court hearings, in Family Court the child and
24 Mr. Dow have been separated with a listening device between
25 rooms, because it is so traumatizing to the child to be in

1 his presence.

2 The child has relinquished her rights to the baby.

3 The Court: Okay. Thank you, ma'am.

4 Ms. Land: Your Honor, just last week --- There are
5 very very few times that I come in front of The Court and
6 ask for the maximum sentence. This certainly is one of
7 them. This is as bad as it gets. This little girl has lost
8 her innocence. She has lost her father, the person who is
9 suppose to love and support her, and take care of her, and
10 whom she did love in return. She has had a child at the
11 young age of twelve. During this time she was in the sixth
12 grade in the Manning Public Schools. The rumors going
13 around school were, that she was going to have a little
14 baby. I think she has no idea on what kind of effect this
15 will have on her reputation for as long as she lives, and
16 she did nothing wrong. But, he took more from her than you
17 could ever give him in return. But, we ask in this case
18 that you give him the full thirty years. Your Honor, I
19 would, like to correct that, that is twenty-years.

20 The Court: Yes, that is a Felony-C, and a max of
21 twenty-years.

22 Ms. Land: Okay. Twenty, I'm sorry.

23 The Court: You heard those facts Mr. Dow, are they
24 correct?

25 Mr. Dow: H'm, yes, most definitely. Yes, sir.

The State versus Willie E. Dow

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1 **The Court:** As far as you having sexual relations with
2 this minor child?

3 **Mr. Dow:** Yes, sir.

4 **The Court:** And, you understand that this does carry
5 twenty-years in prison.

6 **Mr. Dow:** Yes, sir.

7 **The Court:** It is a non parolable offense; you
8 understand that?

9 **Mr. Dow:** Yes, sir.

10 **The Court:** And, you have to serve at least 85% of
11 whatever time I give you?

12 **Mr. Dow:** Yes, sir.

13 **The Court:** It is also a most serious offense, and if
14 you get another, most serious offense in your life, then you
15 are looking at life without the possibility of parole under
16 the two strike law; do you understand that?

17 **Mr. Dow:** Yes, sir.

18 **The Court:** And, you still want to plead guilty?

19 **Mr. Dow:** Yes, sir.

20 **The Court:** I find that there is a substantial factual
21 basis for your plea. I find that it is freely and
22 voluntarily entered into. That you have had the advice of
23 competent counsel whom you tell me you are satisfied with,
24 and I will accept your plea. Ms. Koon.

25 **Ms. Koon:** Thank you, Your Honor. Your Honor, Mr. Dow

1 is forty-seven-years-old. He has a ninth grade education.
2 He has been employed all of his adult life mostly as a
3 carpenter. He has been a very productive member of our
4 society. He has a family. He has Ms. Kimberly Dow, his
5 wife, and together they have three young children. They
6 have been married for a little better than eleven years.

7 I have spoken extensively with Mr. Dow. He appears
8 competent. He is very regretful about this. He admits to
9 these charges, and he is aware of the severity of them. He
10 would like for The Court to know that this act was not
11 committed in an aggressive manner. Mr. Dow has told me that
12 he had been drinking one night. He admits that he was
13 drunk, and the young girl approached him in a half-dressed
14 manner. He does not state this to blame the child. He just
15 wanted The Court to be aware that it was not an aggressive
16 act. He admits he did have sex with her. He realizes that
17 was very wrong.

18 Your Honor, one thing I would like for The Court to
19 know, Mr. Dow denies telling this child to blame it on the
20 uncle. I have spoken with DSS. They tell me that they
21 believe that the child stated the last person she had sex
22 with, and apparently both of these adults had had sex with
23 this young child.

24 Your Honor, given the age of Mr. Dow and the victim, he
25 takes full responsibility for these actions.

The State versus Willie E. Dow

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1 And, again he would just like for The Court, to take
2 into account, not only his drunken state, but that he is
3 forty-seven-years-old, and he has no prior record.

4 He is the father of three children whom he has
5 supported. We would ask that The Court to fashion a
6 sentence Your Honor that punishes Mr. Dow for his actions,
7 yet takes these factors into consideration.

8 His wife, Kimberly Dow is here. She would like to say
9 a few words on his behalf.

10 **The Court:** Yes, ma'am.

11 **Mrs. Dow:** Yes, sir. Like Ms. Koon said, we have been
12 married eleven years. He has always been a good provider,
13 you know, a caring man. And, you know, it is just, not him
14 to do this. I mean I know that he admitted it, but it is
15 not in his character to do this. I have two younger
16 children that are out of my home now. And, I chose to
17 separate myself from him, you know, for the best interest in
18 getting them back. But, I just wanted to say that.

19 **The Court:** I understand.

20 **Mrs. Koon:** Your Honor, one reason Mr. Dow did want to
21 plead to this, is that he wants to save the child any
22 further trauma. He says that he realizes how difficult this
23 has been on her, and he does not want to cause her any more
24 harm. And, I believe Mr. Dow would like to say a few words
25 also.

The State versus Willie E. Dow

15

1 Ms. Land: Thank you, judge.

2 -- End of Transcript --

3 (Whereupon, this hearing was concluded at 2:43 p.m. on
4 Tuesday, January 29, 2008.)

Certificate of Reporter

16

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 a complete transcript of record of all the proceedings had, and evidence introduced in the trial of the captioned case, relative to appeal, in The Court of General Sessions, Clarendon County, South Carolina, on the 28th day of January 2008.

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

March 21, 2009

Pamela Ozment-Cartee

Pamela Ozment-Cartee
Circuit Court Reporter

17 MW

FORM 5

Case # 2008-CP-14-668

STATE OF SOUTH CAROLINA)
County of CLARENDON)

IN THE COURT OF COMMON PLEAS

Willie E. Dow #326446)
Full name and prison number (if any) of Applicant)

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 12/29/08

Beverly S. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

v.)

APPLICATION FOR

State of South Carolina)
)
)
)
)

POST-CONVICTION RELIEF

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 Prery Correctional Inst.
2. Name and location of Court which imposed sentence CLARENDON COUNTY
General Sessions
3. Name(s) of co-defendant(s) (if any) Reginal Doughty
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-65-14-0013

FILED
CLERK OF COURT
CLARENDON COUNTY, SC
DEC 29 2008
11:10 AM

- (b) _____
- (c) _____

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

- (a) January 29, 2008 18 years 85%
- (b) _____
- (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?

WAS TOLD By Attorney Not TO APPEAL

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) _____

(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) Involuntary Plea

(c) DUE Process Violation

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

(a) _____

(b) _____

(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?

No

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) Its my first PCR and these grounds
- (b) can only be raised in a first PCR
- (c) _____

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

- (a) your arraignment and plea? ✓
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (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. Debra Koon
Appointed Attorney from Clarendon County
 - 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:

VACATED PLEA Remand for New Trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of CLARENDON)

VERIFICATION

I, Willie E. Dow, 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.

Willie E Dow

SWORN to and subscribed before me this 23rd day of December, 2008.

Steven M. Melanby (S.S.)
Notary Public

My Commission Expires: January 7, 2016

15 01 23 11 23 51

ESF70
EE

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

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

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

X Willie E Dow
Applicant

SWORN or affirmed to and subscribed before me this
9th day of December, 2008.

Steven M. Uraly
Notary Public

My Commission Expires: November 7, 2016

2008 DEC 22 11:10:51

FILED
CLERK
COURT

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON)	
)	
	)	2008-CP-14-0668
)	
Willie E. Dow, #326446,)	
)	
Applicant,)	
)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 29, 2008, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the January 2008 term of the Clarendon County Grand Jury for Criminal Sexual Conduct with a Minor, 2nd Degree (2008-GS-14-0013). He was represented by Debbie Koon, Esquire. On January 29, 2008, the Applicant pled guilty before the Honorable R. Ferrell Cothran, Jr., and was sentenced to eighteen (18) years imprisonment. Applicant did not appeal his conviction and sentence.

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

II.

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

1. "Ineffective assistance of counsel."
2. "Involuntary plea."
3. "Due Process Violation."

Applicant has failed to set forth any specific facts in support of his claims. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50. See also Rule 71.1, SCRPC. Any claims not specifically laid out in the PCR application or amendments well in advance of a hearing will be opposed by the State at an evidentiary hearing.

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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by

showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

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

V.

The Applicant further alleges that he was denied due process of law. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v.

State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

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

IX.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on those issues upon which Applicant makes amendments in keeping with S.C. Code §17-27-10 et seq. requiring specific facts in support of claims. If such amendments are not made, Respondent would request summary dismissal.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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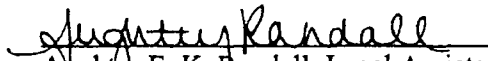
April 13, 2009

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON)	
)	
	)	2008-CP-14-0668
)	
WILLIE E. DOW, 326446)	
)	
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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

William Ceth Land, Esquire
Land, Parker & Welch, PA
Post Office Box 138
Manning SC 29102

DATED this 14th day of April, 2009.


 Anghty E. K. Randall, Legal Assistant
 For Respondent

1 State of South Carolina

2 County of Clarendon

3

4

5 Willie E. Dow,
6 Plaintiff

PCR Hearing
2008-CP-14-00668
2013-CP-14-00278

7 vs.

8

9 The State of South Carolina,
10 Defendants

September 21, 2012
Manning, S.C.

10

11

12 Before the Honorable W. Jeffrey Young, Judge.

13

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

15 Mr. James O'Connor,
16 Attorney for Plaintiff

17 Ms. Harrigan,
18 Attorney for Defendants

18

19

Margaret T. Sullivan,
Court Reporter

20

21

22

23

24

25

1	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
2	Willie Dow				
	by Mr. O'Connor	4		21	
3	by Ms. Harrigan		15		23
	Deborah Butcher				
4	by Ms. Harrigan	24		33	
	by Mr. O'Connor		29		
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1 MS. HARRIGAN: The next case is Willie Dow,
2 versus the State of South Carolina. Docket No.
3 2008-CP-14-0668. The applicant was true billed
4 indicted during the January 28th term of the Clarendon
5 County Grand Jury for criminal sexual conduct with a
6 minor in the second degree. He was represented by
7 Deborah Butcher who is present in the courtroom today.
8 On January 29th 2008, he pled guilty as indicted before
9 the Honorable R. Ferrell Cothran, Jr. And was sentenced
10 to 18 years imprisonment. He did not appeal his
11 conviction or sentence.

12 He filed a timely application for
13 post-conviction relief on December 28th 2008. The
14 State made its return on April 13th 2009. And
15 he's represented in this present action by Jim
16 O'Connor.

17 THE COURT: Mr. O'Connor, are you ready to
18 proceed?

19 MR. O'CONNOR: Thank you, Your Honor, yes,
20 sir. May it please the court, I'd call
21 Mr. Willie Dow.

22 Willie Dow, being
23 first duly sworn, testified as follows:

24 THE CLERK: State your full name and spell
25 your last for the record.

Willie Dow-Direct by O'Connor

1 A My name is Willie Edward Dow. D-O-W.

2 Direct Examination by Mr. O'Connor:

3 Q Mr. Dow, did you hear everything that the
4 Attorney General's Office just read into the
5 record?

6 A I think most of it, yeah, I did.

7 Q And well you heard everything was
8 accurate?

9 A Sir?

10 Q Everything was accurate?

11 A I think so. Yes.

12 Q Who was your attorney during your plea?

13 A At the present time her name was
14 Ms. Debbie Koon. She now is Ms. Debbie Butcher.

15 Q How long had she been your attorney for?

16 A About 10 minutes before she in before the
17 judge.

18 Q And prior to her representing you, who
19 represented you?

20 A The court appointed Mr. Harry Devoe.

21 Q And how long was he your attorney for?

22 A Well I didn't know he was my attorney
23 until I went to court on January 28th 2008. And
24 when I got there, I didn't know -- I had already
25 talked to her. But I had no appeal attorney. I

Willie Dow-Direct by O'Connor

1 had no appointed attorney. But after I got there,
2 Mr. Devoe came in like a few hours afterwards.
3 And that's when he said, he saw me, and he said,
4 oh, I can't represent you. And he said, because
5 it's a conflict of interest. So he said he wanted
6 to go before the judge, to let the judge know that
7 he couldn't represent me because he was guardian
8 of the victim. And that he couldn't represent me,
9 it was a conflict.

10 So at the time, we went before the judge.
11 And he -- I don't know whatever he explained to
12 the judge. But anyway, we went before the judge.
13 And they said since Ms. Butcher was there, said
14 did I had problem Ms. Butcher representing since
15 Mr. Devoe was asking to be removed from my case.
16 And I told him yeah. And anyway, so after that,
17 and after we did that, court was adjourned for
18 that day. Ms. Butcher asked me my name and phone
19 number, and that was it. We left the courtroom.
20 And I went home.

21 Q When was the next time you went to court?

22 A Sir?

23 Q When was the next time you went to court?

24 A That was the next day. That following day
25 was Tuesday, January 29th 2008.

Willie Dow-Direct by O'Connor

1 Q Is that day you pled?

2 A Yes. And so---

3 Q And did you talk did you talk to
4 Ms. Butcher in between the time you left court
5 prior to today, until the day you went back and
6 pled.

7 A No, that Tuesday morning I didn't -- I
8 wanted to make the court's role call. But I had
9 already talked to an attorney about representing
10 me in trial. That's how I wanted to go to trial.
11 And that Tuesday morning I got up and my wife
12 asked me, she said, did I have to go to court.
13 And I told her I didn't so. Ms. Boone, Ms.
14 Butcher didn't call me and say nothing.

15 So I looked up her number in the phone
16 book, and I called her at her house. And she got
17 pretty upset with me for calling her at her
18 house. And I told her I didn't know how else to
19 get in touch with her. But I told to try -- that
20 I had to be in court again that day for roll call.
21 And she said a few words. She was upset. And she
22 told me said well meet her at courthouse.

23 So sure enough I went to the courthouse.
24 I stayed there. I waited on her probably about 45
25 minutes to an hour. And she came and motioned for

Willie Dow-Direct by O'Connor

1 me to come into the stairway. And I went to the
2 stairway and me her talked for about 10 or 15
3 minutes. And she left me and she said okay. She
4 left me. I went and sat back in the audience.
5 She went in the back. I don't know who she went
6 and talked to. I think she went and talked to the
7 solicitor. So anyway maybe about 20 minutes, 20
8 minutes after that, she came and motioned for me
9 again. And she said Mr. Dow we're going before
10 the judge. I told her no. I didn't come to go to
11 court to go before the judge. I went and came for
12 roll call, because I was out on bond.

13 And she said, well no, we're going before
14 the judge and you will plead guilty. And I told
15 her no, I am not pleading guilty. I didn't come
16 to plead guilty. I come only for roll call,
17 because I was going to trial. She left me again.
18 And she came back. When she did come back, she
19 told me said, that I didn't had no other choice.
20 Which the DNA test said, that I didn't had no
21 other choice but to plead guilty; to plead guilty,
22 admit to the crime, and accept the 20 years to the
23 second degree. I told her no, I wasn't going to
24 plead guilty, because I didn't come to plead
25 guilty, I was going to trial.

1 Q So we've read the transcript together.
2 And it indicates very clearly that you understood
3 the plea. You agree with the plea. And you've
4 discussed the plea with your attorneys, why are
5 you telling us now that is different?

6 A Okay, well, first of all, because it was a
7 conflict. When we was getting there, the thing
8 straight about Mr. Devoe, the conflict, the judge,
9 Mr. judge -- Judge Cothran stated on the
10 transcript on page 3 or 4, he said, because of
11 that conflict that would be a circle wide call.
12 And he knew it would be a circle wide call. Since
13 then, it's been four years ago. Almost 5 years
14 ago, I have had five continuances. This is my
15 sixth time.

16 Q I ask you just answer the question of
17 what's different now from that time.

18 A I pled guilty on the advice of
19 Ms. Butcher.

20 Q And what was that advice?

21 A Because the last time she told me she said
22 the prosecutor say I didn't have no other choice
23 but to plead guilty. Admit to the crime, and
24 accept the 20 years for second degree criminal
25 sexual conduct. I told her no. She left me then.

Willie Dow-Direct by O'Connor

1 And court was about to go -- during the recess.
2 We was about to leave the courtroom, me and my
3 niece. And the officer in the court asked me,
4 said, hold on for a minute. And I asked him, I
5 said, what's wrong. And he said just hold on for
6 a few minutes.

7 So I stood there. I waited maybe about
8 20, 25 minutes. Then a deputy came in the
9 courtroom, had a paper. He said Mr. Dow, I said
10 yes. He said, I have a warrant for your arrest.
11 I said for what. And he said for first degree
12 criminal sexual conduct with a minor. I said how.
13 He said, yes. So they handcuffed me; took me
14 down to county jail. We stayed there. We had
15 lunch, we came back. And the officer put me in
16 the back room. So when Ms. Koon came in, Ms. Koon
17 came in. She came in the back. I said what's
18 going on. She said well they have a warrant for
19 your -- a first degree warrant for your arrest,
20 for criminal sexual conduct with a minor. I told
21 her, I said, there ain't no first degree criminal
22 sexual conduct with a minor.

23 I said, what's going on. She said, well,
24 said the solicitor said, you didn't have no other
25 choice but to plead guilty, plead guilty to the

Willie Dow-Direct by O'Connor

1 second degree criminal sexual conduct with a
2 minor. Admit to the crime, and accept the 20
3 years. Or if not, you will be charged with the
4 first degree criminal sexual conduct with a minor,
5 and you will be looking at a life sentence. And
6 you will never even see your children again.
7 Because at the time, my children was in DSS
8 custody.

9 And that's, I felt, I did not want to lose
10 my children. I did not want to lose seeing them
11 again.

12 Q So let me clarify. You were charged with
13 criminal sexual conduct in the second degree.

14 A Right. Yes.

15 Q You went to roll call.

16 A Yes.

17 Q They -- you did not plead guilty.

18 A Correct.

19 Q And you said no.

20 A I told her no, I was going to trial.
21 Because that's what I wanted, to go to trial.

22 Q Okay. When you were leaving the
23 courthouse, you were rearrested for criminal
24 sexual conduct in the first degree?

25 A Yes. We were about to go on a lunch

Willie Dow-Direct by O'Connor

1 break.

2 Q And what did Ms. Butcher indicate to you
3 at that time.

4 A What I just said. She told me, when I saw
5 her, she didn't say nothing to me when I got --
6 after I came back. And she came in the back. And
7 I asked her what was going on. I said what's
8 going on. She said the warrant says they have a
9 warrant for a first degree for criminal sexual
10 conduct with a minor. I told her it's not, I am
11 not guilty of that. She said well the solicitor
12 said you don't have no other choice but to plead
13 guilty to the second degree and admit to the
14 crime, accept the 20 years. Or if not, you're
15 going to charged in the first degree.

16 Q And you and I have discussed everything in
17 regards to what happened in a PCR. And you're
18 aware that if successful today, that you go back
19 and have everything to reevaluated, reaccessed,
20 recharged and resentenced.

21 A Yes.

22 Q You understand all that.

23 A Yes. Yes.

24 Q Was it your understanding that if you
25 pled guilty to the second degree CSC, that you

Willie Dow-Direct by O'Connor

1 wouldn't be charged with the criminal sexual
2 conduct in the first degree?

3 A From that's the understanding of what she
4 told me.

5 Q And it's your understanding right now that
6 you are still charged with an open charge in
7 criminal sexual conduct in the first degree.

8 A Okay. See after I got sentenced for the
9 second degree, my sisters, I asked one of my
10 sisters to connect to Ms. Butcher's office and ask
11 her; said well now what about the first degree.
12 My sister said Ms. Butcher told her, said, well
13 since they charged him with the second degree,
14 don't worry about the first degree. So by the
15 time I finished doing 18 years, they done forget
16 about it.

17 So after I got locked up at Perry and the
18 classification lady in the computer, that's when
19 she told me, said you've got a detainer on you.
20 I said for what. And she said for a first degree
21 criminal sexual conduct. And as far as this was
22 like last year. And so far as I know, it's still
23 pending charge for first degree criminal sexual
24 conduct. But anyway, after I got charged with the
25 second degree in January, in January of 2008,

Willie Dow-Direct by O'Connor

1 2009, I think this was about 2000, I mean 2009, in
2 January or February that they took me back to
3 Clarendon County to court. And I went there, and
4 Ms. Butcher, when I walked in there, Ms. Butcher,
5 she was there. And I asked her, I said, what's
6 going on. Because I had got that letter from her
7 that I wrote back to her. I didn't know she had
8 changed her name at the time. So I got a letter
9 here that she wrote me, six months after I got
10 sentenced and she advised me to plead guilty. I
11 got a letter her that she wrote me, saying that
12 she was appointed to be my attorney.

13 Q Six months after you pled guilty.

14 A Six months after I was already sentenced.
15 This letter here, I got here from her, saying that
16 she was appointed to be my attorney. And she was
17 advising me that if anybody asked -- if anybody
18 tried to get me to plead guilty or anything, then
19 don't do nothing until I talk to her. This is the
20 letter right here.

21 Q How much time did you and Ms. Butcher
22 actually spend time talking about your case?

23 A About 10 minutes. Maybe 10 minutes.
24 Just standing in the stairway.

25 Q Are you asking the judge for new trial

Willie Dow-Direct by O'Connor

1 today and grant your PCR application?

2 A Yes. Because just like as I say, I didn't
3 go to court for to go in front of a judge, you
4 know. And then, just like I say, after this
5 happened in 09, when I went back to court about
6 the first degree, and Ms. Butcher was there then.
7 And that's when I asked her then what was going
8 on. She said well Mr. Darrell said, said we want
9 you to plead guilty to the first degree. And I
10 told her no, there wasn't no first degree. I am
11 not guilty of that. She said well when you plead
12 guilty to the first degree, we'll write it up as
13 give you 10 years for the first degree, and we'll
14 run concurrent with the second degree to 18 years
15 you are doing now. And I thought about it.

16 THE COURT: Is that one before me today?
17 Is that sentence before me?

18 MS. HARRIGAN: The CSC first, Your Honor?

19 THE COURT: Right.

20 MS. HARRIGAN: That one is still pending.

21 THE COURT: That's not before me.

22 MS. HARRIGAN: No.

23 A And I told her, I said no I am not
24 pleading guilty to that, because I am not guilty
25 of a first degree. And she said well, she said,

Willie Dow-Cross by Harrigan

1 either if you don't plead guilty to it, we either
2 have to take to you to trial. And she said if we
3 take you to trial, we have to bring the victim
4 in, and your wife and all this. And I told her,
5 yeah, that's what I want.

6 And she said well I'm either going to take
7 you to trial or they'll dismiss it. And this was
8 09. And I haven't heard nothing since.

9 MR. O'CONNOR: Please answer any questions
10 the attorney general may have.

11 THE COURT: Ms. Harrigan.

12 MS. HARRIGAN: Thank you. May it please
13 the court.

14 Cross Examination by Ms. Harrigan:

15 Q Mr. Dow, your first attorney in this case
16 was Harry Devoe, correct?

17 A Ma'am?

18 Q Your first attorney in this case before
19 Ms. Butcher, you were assigned another public
20 defender, correct?

21 A Yes. Yes.

22 Q And then you were assigned Ms. Butcher
23 before your plea, correct?

24 A That's what did they did in the courtroom
25 that day, we went before the judge and Mr. Devoe

Willie Dow-Cross by Harrigan

1 asked to be removed.

2 Q Because he had conflict, correct?

3 A Excuse me?

4 Q Because he had a conflict, correct?

5 A Yes. Yes.

6 Q He was representing a victim in this case
7 in a Family Court matter, correct?

8 A Yes. Yes.

9 Q And he explained that to you?

10 A He just told me -- he said, see he came to
11 visit me one time at the county jail. And he did
12 not -- he told me said, I think he find out who I
13 was. He said I can't represent you.

14 Q So you were aware there a conflict, and
15 you had to be appointed another attorney in the
16 case, correct?

17 A Yeah, in the courtroom that particular
18 day, yeah.

19 Q And Ms. Butcher was appointed to represent
20 you due to that conflict, correct?

21 A Yes.

22 Q How many times did you meet with her
23 before your guilty plea?

24 A She came about -- the first time me and
25 her talked about 10 minutes. Then she came back

Willie Dow-Cross by Harrigan

1 one more time since then telling me that I had no
2 choice but to plead due to the DNA tests.

3 Q According to your recollection, you met
4 with her at least twice before your guilty plea.

5 A Yes.

6 Q Do you recall going over the discovery
7 file in this case with either of your court
8 appointed attorneys?

9 A No. I didn't want to put none of my case
10 -- my case with no attorney.

11 Q You've never discussed your case with
12 either your first court appointed attorney or Ms.
13 Butcher.

14 A Tell Mr. Harvey Devoe and Ms. Butcher, no.

15 Q You never discussed the facts of your
16 case with either of them.

17 A No.

18 Q And during your plea, do you recall if the
19 solicitor went over the facts of the case on the
20 record? During your guilty plea, do you recall
21 the solicitor doing that?

22 A Yes. What do you mean, explaining?

23 Q Going over the facts that lead to these
24 charges. What had happened in this case. Do you
25 remember that happening on the record?

Willie Dow-Cross by Harrigan

1 A I think so, yes.

2 Q And you agree with the solicitor's
3 recitation of the facts, correct?

4 A Yes.

5 Q In fact your words were yes, most
6 definitely, correct.

7 A I am not sure.

8 MS. HARRIGAN: Court's indulgence.

9 THE COURT: Yes, ma'am.

10 Q Mr. Dow, do you have a copy of the guilty
11 plea transcript in front of you?

12 A Yes.

13 Q Would you mind opening that up and turning
14 to page 10, please?

15 A What number? What page you said?

16 Q Page 10, sir.

17 A 10?

18 Q Yes, sir.

19 A Okay.

20 Q And if you will read for me to yourself,
21 line 23 through 25 please.

22 A Yes.

23 Q So you will agree that you told the court
24 yes, to most definitely you agree to the facts in
25 this case.

Willie Dow-Cross by Harrigan

1 A Yes.

2 Q Did you ever deny your guilt in this case
3 to your attorney?

4 A Yes.

5 Q But during the plea you said you were
6 guilty of these things, correct?

7 A You said, say that again now.

8 Q But during the plea, you told the court
9 you were guilty of the facts arising to these
10 charges, correct?

11 A Yeah, after I gave -- after the advice
12 that Ms. Koon gave me, the erroneous advice she
13 gave me or lies whatever, that's why I said what I
14 said before the court.

15 Q But you're alleging here today that you're
16 not guilty of these acts, correct?

17 A No.

18 MS. HARRIGAN: Court's indulgence.

19 THE COURT: Yes.

20 Q And at the time of your guilty plea,
21 Mr. Dow, you were currently in the own county jail
22 for a CSC with a minor in first degree charge,
23 correct?

24 A I never did see and had no warrant. I
25 never was charged with no CSC first degree until I

Willie Dow-Cross by Harrigan

1 was in court January 29th 2008. I never knew
2 nothing about that until the officer came and
3 bring that in the door. After I refused to plead
4 guilty to the second degree, that's when I find
5 out that there was a first degree. Before that, I
6 knew nothing about a first degree. I never was
7 charged with it.

8 Q But you acknowledge today you do have a
9 pending charge for CSC with a minor in the first
10 degree, correct?

11 A That's what the case worker said. But she
12 was saying -- well my case worker said that was
13 from 2005. I told her I've never been in trouble
14 in 2005.

15 Q Did you ever discuss this CSC in the first
16 degree with a minor with your attorney
17 Ms. Butcher?

18 A No. We just like I said, as far as I
19 knew, it never existed until I refused to plead
20 guilty to a second degree. And then the person
21 the warrant is the same number. It's just the
22 same warrant, it just enhanced the charges on it
23 from a second to a third. The warrant numbers are
24 the same. It's only one warrant. It's not two
25 warrant.

Willie Dow-Redirect by O'Connor

1 Q So your testimony before the court is you
2 never discussed this other pending charge with
3 Ms. Butcher.

4 A I never even knew it was a pending charge.
5 I never discussed no nothing with Ms. Butcher.
6 We never discussed my case at all. She never did
7 investigate my case or nothing. We only talked
8 for 10 minutes.

9 Q Okay, sir. And one of your allegations of
10 ineffective assistance of counsel is that she
11 threatened you that you would receive a life
12 sentence if you did not plead guilty, correct?

13 A She said that's what the prosecutor said.

14 Q But in the guilty plea when you were
15 before the court, the court advised you that the
16 maximum sentence was 20 years, correct?

17 A Yes.

18 MS. HARRIGAN: No further questions.

19 THE COURT: Okay.

20 MR. O'CONNOR: One follow up, Your Honor.

21 Redirect Examination by Mr. O'Connor:

22 Q You indicated that yes that when you did
23 the guilty plea that it indicated that it was up
24 to 20 years. But would you explain what Ms.
25 Butcher and you discussed about the life sentence?

Willie Dow-Redirect by O'Connor

1 A When I refused to plead guilty to the
2 second degree, and I asked her what about -- I
3 asked her what about -- I asked her what was going
4 on about the warrant for the first degree. And
5 that's when she told me then said the prosecutor
6 said I didn't had no other choice but to pled
7 guilty to the second degree, admit to the crime,
8 and accept the 20 years for a second degree. Or
9 if not, she was going to charge me with first
10 degree.

11 Q And you had just been arrested for first
12 degree, correct?

13 A Yeah, in the courtroom that same day.

14 Q And you plead guilty to the second degree,
15 correct?

16 A Yes.

17 Q That first degree still exists as far as
18 you know.

19 A As far as I know, it still exists.

20 MR. O'CONNOR: No further questions, Your
21 Honor.

22 MS. HARRIGAN: Just briefly, Your Honor.

23 THE COURT: My clerk has checked the files
24 on that and he has found that that case has been
25 nol-prossed.

Willie Dow-Recross by Harrigan

1 MR. O'CONNOR: Has been nol-prossed.

2 MR. HARRIGAN: Thank you, Your Honor.

3 MR. O'CONNOR: Thank you, Your Honor.

4 MS. HARRIGAN: Briefly, Your Honor.

5 Recross Examination by Ms. Harrigan:

6 Q Your testimony when I was asking questions
7 before was that you no knowledge of the CSC with a
8 minor in the first degree, until you went to the
9 Department of Corrections and your case worker
10 notified you of this, correct?

11 A I didn't had no knowledge of it until the
12 deputy bring it in the courtroom in 2008, January
13 29th 2008. When I refused to plead guilty to the
14 second, that's when he came and said that he had
15 a warrant for a first degree. And that's why I
16 asked for what, it wasn't no first degree.

17 MR. HARRIGAN: No further questions, Your
18 Honor.

19 THE COURT: Thank you. You may step down.

20 MR. O'CONNOR: The plaintiff rests, Your
21 Honor.

22 MR. HARRIGAN: The State calls Deborah
23 Butcher to the stand.

24 Deborah Butcher, Being first duly
25 sworn, testified as follows:

Debbie Butcher-Direct by Harrigan

1 THE CLERK: State your full name and spell
2 your last for the record.

3 A Deborah Butcher. B-U-T-C-H-E-R.

4 Direct Examination by Ms. Harrigan:

5 Q Good morning, Ms. Butcher. How long have
6 you been practicing law?

7 A 05.

8 Q And practically what percentage would you
9 say is criminal defense?

10 A I'd say half.

11 Q Had you had any experience with criminal
12 sexual conduct cases prior to Mr. Dow's
13 representation?

14 A I believe I have several.

15 Q And you were appointed in this case?

16 A Yes.

17 Q Do you recall when you were appointed to
18 this case?

19 A The date, no, I do not.

20 Q Do you recall meeting with Mr. Dow to
21 discuss the charges against him?

22 A Yes. We met at least three times. This
23 was a case, Harry Devoe and I both shared in the
24 Clarendon County Public Defender case load. This
25 is a case that had been appointed originally to

Debbie Butcher-Direct by Harrigan

1 Mr. Devoe. He came to me that week in the term
2 and stated that he had a conflict. I don't know
3 if he had discovery or not. I remember when I
4 took the case and spoke with Mr. Dow, I used the
5 solicitor's file. There was a note in the filed
6 policy. And we met and went over the file
7 together. I recall that there was no further
8 evidence that I needed, you know, to advise him
9 on. I do recall that he was already incarcerated
10 when I met him. And I believe that was for the
11 criminal sexual conduct first degree that he had
12 been charged with.

13 Q And to your recollection, did your plea
14 discussions, strike that. You represented him on
15 the CSC with a minor in the second degree,
16 correct?

17 A Correct.

18 Q Did you advise him of potential sentences
19 for CSC with a minor in the second degree?

20 A Oh, yes.

21 Q Did you ever did that advise him that he
22 could receive a life sentence for that specific
23 charge?

24 A No. We did discuss the criminal sexual
25 conduct in the first degree, because he had

Debbie Butcher-Direct by Harrigan

1 already been served that, and was already
2 incarcerated or, you know, detained for that.
3 And that's the one we did discuss up to the first
4 degree. I mean up to life.

5 Q Do you -- did Mr. Dow ever indicate that
6 he didn't understand that the CSC with a minor in
7 the first degree was the one that carried a
8 potential life sentence?

9 A No, they were two distinguished things.

10 Q And you advised him of the CSC in the
11 second, the potential sentence for that?

12 A Yes.

13 Q And what is that sentence?

14 A Up to 20.

15 Q Did you enter plea negotiations with the
16 State?

17 A I cannot recall if this was a negotiated
18 or recommended sentence. I think it was
19 recommended. And I'm basically basing that on 18
20 years, because it was carries up to 20. But I
21 cannot recall.

22 Q If the record reflects that there were no
23 recommendations or negotiations, would you excuse
24 that?

25 A No, I wouldn't dispute.

Debbie Butcher-Direct by Harrigan

1 Q Did you review the constitutional rights
2 that your client would be waiving if he pled
3 guilty?

4 A Yes, I always do.

5 Q Did you advise him of potential sentences
6 whether it be 85 or the consequences of his plea?

7 A What I tell my clients are that they
8 consider day for day. I tell them I don't know
9 exactly what it's going to be. Well often they'll
10 tell me, and I'm like, you know it's -- I've been
11 through the sentencing guidelines. I know it
12 changes on things once they get in there,
13 depending on conduct and everything else. And so
14 I just don't do it.

15 Q Your general practice is not to advise on
16 potential sentence or not calculate.

17 A Right.

18 Q Could you briefly share with the court the
19 extent of the evidence against Mr. Dow in this
20 case?

21 A There were statements. I honestly I
22 cannot recall everything there was, it's just been
23 so long. And I don't want, you know, disclose my
24 discussions with him. I just know that I can say
25 that I felt comfortable with him pleading to this.

Debbie Butcher-Direct by Harrigan

1 Q Do you recall if there was any DNA
2 evidence in this case?

3 A I don't believe there was at the time with
4 it. I don't know, I am sorry.

5 Q I know it's been quite a few years. Do
6 you feel in your professional opinion that you
7 spent sufficient time with your client discussing
8 the case before his plea?

9 A Yes, we sat down. And at one time we sat
10 in the back corner of -- they meet in the grand
11 jury room with the solicitor's. We sat there and
12 discussed it at length. And two other times I
13 don't recall where we were sitting. And we went
14 over things. And yeah, I mean, I did.

15 Q Do you feel the plea was in his best
16 interest?

17 A Very much so.

18 Q Ultimately whose decision was it to plead
19 guilty?

20 A His.

21 MS. HARRIGAN: No further questions, Your
22 Honor.

23 THE COURT: Mr. O'Connor:

24 Cross Examination by Mr. O'Connor:

25 Q Ms. Butcher, isn't it true you were

Debbie Butcher-Cross by O'Connor

1 appointed to represent Mr. Dow on the morning of
2 his plea?

3 A I don't recall. It seems to me that he
4 was brought back over. It doesn't -- I do not
5 believe it was the same day.

6 Q Okay.

7 A It seems like we came back and we talked.

8 Q According to the transcript on page 3, is
9 the first time where Harry Devoe made the motion
10 to go ahead and be relieved as counsel and you to
11 take his place. So is that possible that that's
12 the first time that you were appointed?

13 A It would not. If it's in the same
14 transcript, it would not been. And Harry made the
15 motion of being appointed---

16 Q No, for him to be relieved. For him to be
17 relieved was his motion.

18 MS. HARRIGAN: Your Honor, for clarity in
19 the record, it does say on page 3 that this
20 happened the day before the plea on the top of
21 page 3.

22 Q So you spoke to Mr. Dow three times in
23 between the day he was relieved and the day he
24 pled?

25 A Uh-huh. (affirmative.) He was in

Debbie Butcher-Cross by O'Connor

1 custody. He was in the grand jury room.

2 Q Okay. And you don't have a file in this
3 case?

4 A I used the solicitor's file.

5 Q Now the conflict of interest, we
6 understand that there is a conflict of interest
7 with Mr. Harry Devoe, because you represented the
8 victim. But was there also a conflict of interest
9 between you and Mr. Devoe being in the same
10 office?

11 A I don't believe there would be.

12 Q It was addressed by the court and that it
13 could be a county wide problem. And to your
14 recollection at that time, did you guys share an
15 office, you and Mr. Devoe?

16 A No.

17 Q Did have an opportunity to review the
18 statements made by the witnesses?

19 A If there were things in the file, we went
20 over all of it. And I went over everything with
21 Mr. Dow. And just backing up, both Harry and I
22 are contract with the public defender's office.
23 We are under contract. We're not full time
24 employees, so to speak.

25 Q Okay. And you didn't Mr. Dow on the

Debbie Butcher-Cross by O'Connor

1 criminal sexual conduct in the first degree.

2 A No, he was -- had just been served that
3 prior to my speaking with him.

4 Q But you did indicate the possibility of
5 the consequences of the first degree. And was it
6 possible that if he plead guilty to the second
7 degree, he wouldn't get the first degree.

8 A I didn't. From what I recall, I told him,
9 you know, that they, I don't think said they were
10 going to nol-pros. This was first time I heard
11 that it had definitely been nol-crossed. But if
12 he went for one and he's got on the other one
13 coming to. If took a trial on one, he's got the
14 trial on both of these. That's, you know.

15 Q To your recollection, did he refuse to
16 plead guilty in the second degree originally?

17 A I cannot -- he never told me he wanted to
18 go to trial. But I cannot recall if he said I am
19 not pleaing. We talked. I cannot recall what he
20 initially said when I first talked to him.

21 Q Do you recall why you sent the letter in
22 July saying you had been appointed to represent
23 him? Was it was an error? You said he had
24 already plead guilty in January of that year.

25 A Can I see the letter?

Debbie Butcher-Cross by O'Connor

1 Q Yes.

2 MR. O'CONNOR: Your Honor, may I approach?

3 THE COURT: You May.

4 Q Is that your signature down at the bottom?

5 A I do not know if this was actually before
6 the second warrant, but with the same number as
7 the first, I have no idea.

8 Q Okay. So you don't -- do you currently
9 represent Mr. Dow?

10 A No. All the cases that I represented him
11 on that is in Clarendon County, were transferred
12 to Scott Robinson, two or three years ago.

13 Q Okay. Then you never had a file for this
14 case?

15 A No. I may have had like a folder with
16 nothing in it. With this one. So evidently if I
17 sent a letter, it came up on my computer as a case
18 that was appointed to me. And then I will go in
19 and I'll the computer generates a letter and
20 discovery, and I'll send it out. And I do not
21 recall if the date on that was just prior to Scott
22 Robinson taking over the cases. That's when I
23 went to Lee County. Because I at the time lived
24 in Camden.

25 MR. O'CONNOR: Thank you, Ms. Butcher, no

Debbie Butcher-Redirect by Harrigan

1 further questions.

2 MS. HARRIGAN: Just briefly, Your Honor.

3 Redirect Examination by Ms. Harrigan:

4 Q In regards to any potential conflict
5 between you and Mr. Devoe, do you and Mr. Devoe
6 maintain the same office space?

7 A Not at all.

8 MS. HARRIGAN: No further questions, Your
9 Honor.

10 THE COURT: You may step down.

11 MS. HARRIGAN: I have no further witnesses
12 to call.

13 THE COURT: I will take this under
14 advisement and I will give you my ruling in the
15 next 15 days.

16 MR. BROOKS: Thank you, Your Honor.

17 MS. HARRIGAN: Thank Your Honor.

18 --End of Requested Transcript of Record--

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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 September 21, 2012, in the Common Pleas Nonjury Court PCR, Clarendon County, Manning, South Carolina.

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

6-29-15
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA)
 COUNTY OF CLARENDON)
 Willie E. Dow, #326446)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2008-CP-14-0668

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE

DATE 1/16/13
Bellah G. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC

2012-001-9 PM 5:01
 CLARENDON COUNTY, SC
 BELLAH G. ROBERTS
 CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed on filed December 29, 2008. The Respondent made its Return on April 13, 2009. An evidentiary hearing into the matter was convened on September 21, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by James O'Connor, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted during the January 2008 of the Clarendon County Grand Jury for Criminal Sexual Conduct with a Minor in the Second Degree (2008-GS-14-0013). He was represented by Deborah Butcher, Esquire. On January 29, 2008, Applicant entered a guilty plea before the Honorable R. Ferrell Cothran, Jr., who sentenced Applicant to eighteen years imprisonment. Applicant did not appeal his convictions.

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

1. Ineffective Assistance of Counsel; and
2. Involuntary Plea; and
3. Due Process Violations.

In its Return, the Respondent interpreted Applicant's first two allegations to be ineffective assistance of counsel. These two allegations were both presented as ineffective assistance of counsel at the evidentiary hearing. Therefore, this Court will address these allegations as ineffective assistance of counsel.

TESTIMONY PRESENTED

At the evidentiary hearing, the Applicant testified on his own behalf. The State presented testimony from plea counsel, Deborah Butcher, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Clarendon County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he was originally represented by Harry Devoe, Esquire, a fellow public defender for Clarendon County, and was appointed Deborah Butcher shortly prior to his guilty plea. Applicant testified that he met with Counsel on at least two occasions prior to his guilty plea. Applicant testified that he felt coerced into pleading guilty and that Counsel told him that he would receive a life sentence if he did not plead guilty. Applicant did admit that he was arrested and charged with Criminal Sexual Conduct with a Minor in the First Degree¹ shortly before his guilty plea, a charge that carries up to life imprisonment.

Applicant did acknowledge that he told the plea court that he was satisfied with the services of Counsel and that he had no complaints against her at all. Trial Tr. 6 ln. 5-10. Applicant also acknowledged that he agreed with the recitation of the facts on the record,

¹ A review of the Clarendon County Clerk of Court Public Index shows that this charge has been dismissed.

responding "H'm, yes, most definitely. Yes, sir," and replying in the affirmative when the plea court asked him if he had sexual relations with the minor child. Trial Tr. 10 ln. 23 – 11 ln. 3.

Following Applicant's testimony, Counsel testified before the Court. Counsel testified that she has been practicing law since 2005 and approximately 50% of her practice is comprised of criminal defense work. Counsel stated that she had been appointed to Applicant's case shortly before his guilty plea due to a conflict, as his former public defender, Harry Devoe, was representing the minor child victim in a family court matter. Counsel testified that as she and Devoe do not share any office space, there was no conflict in her representing Applicant. Counsel testified that although she only represented Applicant for a short time prior to his guilty plea, she met with him at least two or three times and discussed his case thoroughly with him. Counsel testified that she was given full access to the Solicitor's file in this case and that she completely reviewed all of its contents with Applicant prior to his guilty plea.

Counsel testified that she did inform Applicant of potential sentences he faced, including up to twenty years imprisonment for the present charge, as well as up to life imprisonment for the Criminal Sexual Conduct with a Minor in the First Degree charge that was eventually dismissed. Counsel testified that Applicant understood that he was only entering a guilty plea for the Criminal Sexual Conduct with a Minor in the Second Degree charge and that he understood he could receive up to a twenty year prison sentence for this charge. Counsel stated that there was extensive evidence that would be presented by the State if the matter proceeded to trial. Counsel testified that she believed a plea was in her client's best interest, as he acknowledged his guilt to her and did not indicate that he wished to proceed to trial. Counsel elaborated that ultimately, it was Applicant's decision to enter a guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant. Counsel met with her client on two to three separate occasions and fully discussed the charges against the Applicant, the State's evidence, and Applicant's version of the facts. Additionally, Counsel fully reviewed all discovery materials and the entire Solicitor's file with Applicant, which included strong evidence of guilt that would be presented if the Applicant proceeded to trial. Following her discussions with Applicant, Counsel advised her client that it was in his best interest to plead guilty rather than proceed to trial. Counsel properly advised her client of potential sentences that he may receive for not only this charge, but his pending Criminal Sexual Conduct with a Minor in the First Degree charge that was also pending at the time of his plea. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from plea counsel's alleged ineffective assistance of counsel. Applicant acknowledged his guilt both to the plea court and this Court during the evidentiary hearing and received a less

than the maximum sentence for this charge. Therefore, this Court finds that the application must be denied and dismissed.

Due Process Violations

Applicant alleges in his application for post-conviction relief that he was in custody unlawfully due to a "due process violation." In its Return, Respondent moved to dismiss this allegation for failure to make even a *prima facie* showing that he is entitled to relief.

No testimony or evidence was presented at the evidentiary hearing regarding this allegation. This Court finds that as the Applicant failed to present any probative evidence regarding such allegation, the Applicant has waived this allegation and failed to meet his burden of proof regarding it. Accordingly, this allegation is denied and dismissed with prejudice.

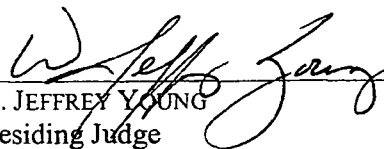
CONCLUSION


Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1 day of Nov, 2012.


 W. JEFFREY YOUNG
 Presiding Judge
 Third Judicial Circuit

, South Carolina.

FORM 5

STATE OF SOUTH CAROLINA)

County of CLARENDON)

IN THE COURT OF COMMON PLEAS

Willie E. Dow # 326446)
Full name and prison number (if any) of Applicant)

CASE # 2013-UP-14-271

v.

State of South Carolina

CERTIFIED TRUE COPY APPLICATION FOR
OF ORIGINAL FILED IN THIS OFFICE

DATE 7/3/2013 POST-CONVICTION RELIEF

Beulah M. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

2013 JUL -3 AM 10:46

BEULAH M. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Perry Corr. Inst.
2. Name and location of Court which imposed sentence Clarendon County General Sessions
3. Name(s) of co-defendant(s) (if any) Reginal Doughty
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-65-14-0013

(b) _____

(c) _____

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

(a) January 29, 2008 18 yrs 85%

(b) _____

(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?

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) _____

- (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 PCR Counsel
 (b) _____
 (c) _____

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

- (a) After requesting an Appeal from my PCR
 (b) hearing he failed to file my Appeal
 (c) * See Attached Brief *

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

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

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. I file a PCR on 12-29-08 Case # 2008-CP-14-668
 ii. I went to a hearing but it was denied
 iii. And my attay did not file an appeal on
 iv. my behalf.

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

- i. Clarendon County Common Pleas on 12-29-08
 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?

No this is requesting a belated Appeal under Austin v. State 409 S2d 395 (1991)

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? _____
- (c) your sentencing? _____
- (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? yes PCR

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. Law offices of Jim O'Connor
P.O. Box 97
 - ii. Lexington S.C. 29071
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. My PCR hearing
 - ii. _____
 - iii. _____

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

To Reverses A full bite of the Apple including my appeal that I did not get under *Acce v. State*, 409 SE2d 392 (1991)

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Charleston)

VERIFICATION

I, Willie E. Dow, 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.

Willie Dow

SWORN to and subscribed before me this 28th day of June, 2013.

Nancy C. Murchat (L.S.)
Notary Public

My Commission Expires: 1-23-2023

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

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

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

Willie Dow
Applicant

SWORN or affirmed to and subscribed before me this
28th day of June, 2017.

Nancy C. Mink
Notary Public

My Commission Expires: 1-23-2023



Exhibit 1

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

June 6, 2013

Mr. Willie Dow, #326446
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

RE: *Dow v. State*, 2008-CP-14-00668a

**CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE**

DATE 7/3/2013

Brenda F. Shealy

CLERK OF COURT
CLARENDON COUNTY, SC

Dear Mr. Dow:

This responds to your letter dated June 3, 2013. This Court can find no record of any notice of appeal being filed in the above matter. Therefore, there is no appeal to be reinstated.

To commence appellate review in a post-conviction relief case, a notice of appeal must be timely served on the opposing counsel and filed with this Court. Rule 243 of the South Carolina Appellate Court Rules (SCACR). Please note that the time to serve the notice of appeal is limited and that time may not be extended. Rule 263(b), SCACR.

To the extent you may be seeking relief under *Austin v. State*, that relief will need to be sought in the circuit court by filing another application for post-conviction relief. See *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (discussing appellate procedure to be followed depending on findings of PCR judge on the Austin claim).

Sincerely,

Daniel E. Shearouse

Applicant, Willie E. Dow, contends he was denied a "Full Bite at the Apple" pursuant to § 17-27-100 of the Post-Conviction Relief Statue.

A applicant is entitled to seek Appellate review of the denial of relief see § 17-27-100 (1985).

Applicant went to PCR on September 21, 2012 in front of the Honorable Jeffery Young. He was represented by Jim O'Connor of Lexington. Applicant Dow made it clear that if the Judge ruled against him he was to file on appeal on his behalf. Applicant's attorney failed to file his appeal.

In *Dennison v. State*, 371 S.C. 221, 639 S.E.2d 35 (2006), the State Supreme Court held that it is appointed counsel's (Jim O'Connor) duty to file an appeal on Applicant's behalf.

Applicant Dow does not have an appeal pending. (see exhibit 1) letter from Mr. Daniel Shearouse.

Applicant, Willie Dow respectfully ask this Honorable PCR Court to grant him a belated appeal so he can have "one full Bite at the Apple". See *Austin v. State*, 409 S.E.2d 395 (1991); *Aice v. State*, 409 S.E.2d 392 (1991); and § 17-27-100 (1985).

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 7/3/2013

W. H. Roberts

CLERK OF COURT
SOUTH CAROLINA COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	2013-CP-14-271
)	
Willie E. Dowe, #326446,)	
)	
Applicant,)	
)	
v.	)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post-conviction relief filed July 3, 2013 would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the January 2008 term of the Clarendon County Grand Jury for Criminal Sexual Conduct with a Minor- 2nd Degree (2008-GS-14-0013). Debbie Koon, Esquire, represented Applicant. On January 29, 2008, the Applicant pled guilty before the Honorable R. Ferrell Cothran, Jr. and was sentenced to eighteen years imprisonment. Applicant did not appeal his conviction or sentence.

Subsequently, Applicant filed a timely application for post-conviction relief on December 29, 2008. Applicant alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. Due Process violation

The Respondent made its return on April 14, 2013 requesting that an evidentiary hearing be held. On September 21, 2012 an evidentiary hearing was convened at the Sumter County

Courthouse. The Applicant was present and represented by James O'Connor, Esquire. By Order dated November 1, 2012, the Honorable W. Jeffrey Young denied and dismissed the Applicant's post-conviction relief application with prejudice.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and Applicant's previous post-conviction records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of PCR counsel.
 - a. "After requesting an Appeal from my PCR hearing he failed to file my appeal."

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

III.

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel

was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation..." Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. The Respondent lacks sufficient information to admit or deny this allegation. The Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.; Austin, 305 S.C. 453, 409 S.E.2d 395.

IV.

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

[signature block on following page]

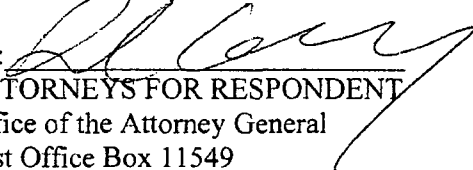
V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of whether PCR Counsel failed to file a Notice of Appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

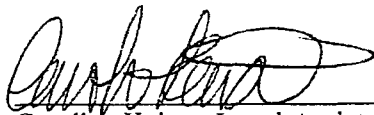
September 11, 2013

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON)	
)	
	)	2013-CP-14-271
WILLIE E. DOWE, 326446,)	
)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lisa L Bagnal Anderson, Esquire
PO Box 812
Manning, SC 29102

DATED this 10th day of September, 2013.



 Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CLARENDON)

COURT OF COMMON PLEAS

WILLIE E. DOW)
 326446)
 APPLICANT,)

v.)

TRANSCRIPT OF RECORD
 13-CP-14-0271

STATE OF SOUTH CAROLINA,)
)
 _____)
 RESPONDENT.)

December 16, 2014
 Sumter, South Carolina

BEFORE :

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

APPEARANCES:

WILLIAM H. JOHNSON, ESQ.
 Attorney for the Applicant

DANIEL GOURLEY, ESQ.
 Attorney for Respondent

FRANCES BAKIS-RAY, RPR
 Circuit Court Reporter

I N D E X

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E X H I B I T S

COURT'S:

No.	Description	I.D./EVD.
1	Letter of 11/26/12	5/5
2	Letter of 5-06-13	5/5

1 MR. GOURLEY: This is Willie Dow versus
2 the State of South Carolina, docket number
3 2013-CP-14-0271. He's presently confined to State
4 Carolina Department of Corrections pursuant to
5 orders of commitment of Clarendon County Clerk of
6 Court. He was indicted at January 2008 term of
7 Clarendon County Grand Jury for criminal sexual
8 conduct with a minor in the second degree.
9 Mr. Butcher (ph) represented him. On January 29th,
10 2008 he pled guilty before the Honorable R. Ferrell
11 Cothran, Jr. and was sentenced to 18 years
12 imprisonment. He did not appeal his conviction or
13 sentence. Subsequently filed a application for PCR
14 in December 29th, 2008. Evidentiary hearing was
15 heard on September 21st, 2012. He was represented
16 by Mr. O'Connor. By order dated November 1st, 2012
17 the Honorable W. Jefferey Young denied him,
18 dismissed the Applicant post-conviction relief
19 application with prejudice. Mr. Dow filed a second
20 application for PCR on July 3rd, 2013, alleging that
21 he was being held in custody for ineffective
22 assistance of PCR counsel for failing to file his
23 appeal. The State filed its return on
24 September 10th, 2013, and he's represented in this
25 matter by Mr. Johnson.

1 Your Honor, I've consulted with Mr.
2 Johnson. It does appear that Mr. Dow has a couple
3 of letters that he wrote to Mr. O'Connor within the
4 timeframe necessary for him to file a notice of
5 appeal. I've spoken with Mr. O'Connor. He claims
6 he did not receive the letters, or would not dispute
7 the fact that Mr. Dow wrote him those letters. I
8 think Mr. Johnson has a copy of those letters that
9 we'd like to make a court exhibit; and on that
10 basis, Your Honor, we would consent to the notice of
11 appeal of Mr. Dow's denial of his PCR application.

12 THE COURT: Okay. Is that correct?

13 MR. JOHNSON: That's correct, Your Honor,
14 yes, sir.

15 THE COURT: Okay. So basically you're
16 gonna do an order that would allow him —

17 MR. GOURLEY: Allow him to file an appeal
18 based off his denial of his original PCR
19 application.

20 THE COURT: Okay. If that's the agreement
21 then I don't think he needs to even agree to it.
22 Y'all just send me an order, okay?

23 MR. GOURLEY: And Your Honor, if it's
24 possible I'd just like to make a copy of the letters
25 a court exhibit for the record on appeal.

1 THE COURT: Any objection to these letters
2 being made a Court —

3 MR. JOHNSON: No, sir, we agree to that.
4 (Court's Exhibit Numbers 1 and 2 were
5 marked and made a part of the record.)
6

7 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)

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

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

Witness my hand at Florence, South Carolina, this 25th day of July, 2015.

S/Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

Willie E. Dow, #326446,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS)
FOR THE THIRD JUDICIAL CIRCUIT)

2013-CP-14-271)

CONSENT ORDER GRANTING)
APPEAL PURSUANT TO AUSTIN)
STATE)

2015 MAR 20 4 07 PM 2-1/8

DELAWARE COUNTY CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed July 3, 2013. The Respondent made its Return on September 10, 2013, requesting an evidentiary hearing solely on the issue of whether Applicant was entitled to an appellate review of his first post-conviction relief action pursuant to Austin. An evidentiary hearing on the matter was convened on December 16, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and represented by William H. Johnson, Esquire. Assistant Attorney General Daniel Courley of the South Carolina Office of the Attorney General represented the Respondent. Also present was James O'Connor, Esquire.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was indicted at the January 2008 term of the Clarendon County Grand Jury for Criminal Sexual Conduct with a Minor - 2nd Degree (2008-GS-14-0013). Debbie Koon, Esquire, represented Applicant. On January 29, 2008, the Applicant pled guilty before the Honorable R. Ferrell Cothran, Jr., and was sentenced to eighteen years imprisonment. Applicant did not appeal his conviction or sentence.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

CERTIFIED COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/6/15
Beulah S. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Subsequently, Applicant filed a timely application for post-conviction relief on December 29, 2008. Applicant alleged he was being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea
3. Due Process violation

The Respondent made its return on April 14, 2013, requesting that an evidentiary hearing be held. On September 21, 2012, an evidentiary hearing was convened at the Sumter County Courthouse. The Applicant was present and represented by James O'Connor, Esquire. By Order dated November 1, 2012, the Honorable W. Jeffrey Young denied and dismissed the Applicant's post-conviction relief application with prejudice.

ALLEGATIONS

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

1. Ineffective assistance of PCR counsel.
 - a. "After requesting an Appeal from my PCR hearing he failed to file my appeal."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application. Prior to the start of the evidentiary hearing, the State indicated to this Court that they would be consenting to the grant of an Austin appeal. The State explained that they were consenting based off of their discussion with prior PCR Counsel, a review of various letters written to prior PCR Counsel by Applicant, and discussion with Applicant's current PCR

Counsel. The State introduced various exhibits showing Applicant wrote prior PCR Counsel on various occasions requesting an appeal be filed on his behalf.

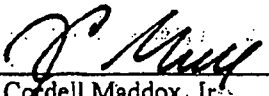
After review of the facts and circumstances surrounding the waiver of the Applicant's right to appeal the denial of his post-conviction relief application, this Court finds that the Applicant is entitled to appeal the denial of his first post-conviction relief application (2008-CP-14-0668) pursuant to Austin v. State. This Court finds that Applicant did not voluntarily waive his right to appeal the post-conviction relief court's denial and dismissal of his prior post-conviction relief action.

Based upon the foregoing, this Court finds that the granting of an appeal of the Applicant's first post-conviction relief action (2008-CP-14-0668) pursuant to Austin v. State is warranted.

IT IS THEREFORE ORDERED:

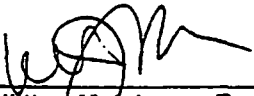
1. That the Applicant be granted an appeal of case 2008-CP-14-0668 pursuant to Austin v. State; and
2. That the Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 12 day of March, 2015.

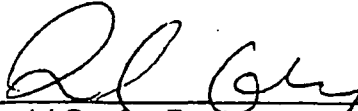

 J. Cordell Maddox, Jr.
 Presiding Judge
 Third Judicial Circuit

Anderson, South Carolina.

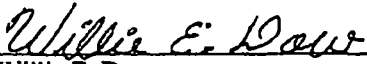
WE CONSENT:



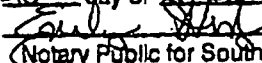
William H. Johnson, Esquire
Attorney for the Applicant



Daniel Gourley, Esquire
Assistant Attorney General
Attorney for the Respondent



Willie E. Dow,
Applicant

SWORN to and subscribed before me this
20th day of Feb 2015.
 (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS

WILLIE E. DOW, #326446

Applicant,

v.

STATE OF SOUTH CAROLINA,

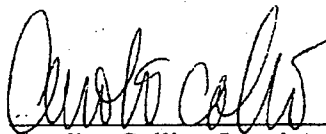
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the **Consent Order Granting an Appeal Pursuant to Austin v. State** has been served upon the applicant by mailing one (1) copy in the United States mail, postage prepaid, addressed to:

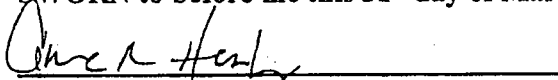
**William H. Johnson, Esquire
Law Office of William H. Johnson, LLC
Post Office Box 137
Manning, South Carolina 29102**

This 31st day of March, 2015.



Caroline Collins, Legal Assistant
For Respondent

SWORN to before me this 31st day of March, 2015.



Notary Public for South Carolina,
My Commission Expires: 7/18/2017

WITNESSES

Dan Cuttler-CCSO

DOCKET NO. 2008-GS-14- 2013

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

JANUARY TERM 2008

THE STATE

vs.

WILLIE E. DOW

ARREST WARRANT NUMBER

J124376

ACTION OF GRAND JURY

Dan Cuttler

RECEIVED BY THIS OFFICE
JAN 14 2008
CLARENDO COUNTY

Dan Cuttler
Foreperson of Grand Jury

Date: 1/24/08

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR,
2ND DEGREE

Foreperson of Petit Jury

Date:

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR,
2ND DEGREE

At a Court of General Sessions, convened on January 24, 2008, the Grand Jurors of CLARENDON COUNTY present upon their oath:

That WILLIE E. DOW did in Clarendon County between February 1, 2007 through April 17, 2007, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree by engaging in sexual battery with a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to-wit: **Minor** (Date of Birth:) in violation of Section 16-3-655(2) of the Code of Laws of South Carolina (1976), as amended.

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

E. Kelly Zaino

SOLICITOR

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 7/3/2013

Beverly H. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC