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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-40-5384

Willie Ritter,
SCDC#00337044

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 MS. SHIPLEY: May it please the Court, Your Honor.

2 THE COURT: Yes.

3 MS. SHIPLEY: Your Honor, I'm Vanessa Shipley with
4 the Richland County Solicitor's Office. Standing before
5 you is Willie Ritter. He is represented by Jan Strifling
6 from the private bar.

7 Your Honor, Mr. Ritter was charged back on May 18,
8 2007 with homicide by child abuse. The State was prepared
9 to call his case for trial today. His attorney has
10 indicated he wishes to plead guilty at this time.

11 THE COURT: Thank you, Solicitor.

12 Mr. Ritter, I need your age.

13 THE DEFENDANT: Yes, sir. I'm 65.

14 THE COURT: And where are you from?

15 THE DEFENDANT: Here in Columbia, South Carolina.

16 THE COURT: You're a resident of Richland County?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Your education?

19 THE DEFENDANT: Master's degree in Education;
20 Commanding General Staff, United States Army.

21 THE COURT: And with that said, you are retired
22 military?

23 THE DEFENDANT: Yes, sir.

24 MR. STRIFLING: Retired Colonel.

25 THE COURT: Mr. Ritter, have you discussed the charge

1 that the State has presented against you with your
2 attorney and also discussed with him your jury trial
3 rights?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand all of his advice at
6 this time?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. I'm going to go over these
9 charges with you. If you have any questions, please ask
10 me to pause, and we'll let your attorney respond to any
11 questions you have. Then if you have any questions of me,
12 you just let me know.

13 The indictment alleges that in Richland County on or
14 about May 18th, 2007 that you caused the death of a child
15 under the age of 11, that is Javon Simpson, ten months
16 old, while committing child abuse or neglect, and that the
17 death occurred under circumstances manifesting an
18 extreme -- extreme inference to human life in violation of
19 South Carolina code section 16-3-85(A)(1)(B)(1) of our
20 code of laws, 1976 as amended.

21 For that particular offense, the maximum possible
22 penalty is up to life imprisonment with a minimum sentence
23 of 20 years. However, that is not what we term a
24 mandatory minimum sentence.

25 The -- we will have further discussion about that in

1 a few minutes, but for right now I'm advising you of --
2 when I say it's not a mandatory minimum sentence, that
3 means that that minimum sentence portion of the statute
4 can be suspended, as I understand the law.

5 Now, have you got any questions about this charge?

6 THE DEFENDANT: No, sir.

7 THE COURT: And how do you plead to this charge?

8 (Pause)..

9 THE DEFENDANT: I'm guilty.

10 THE COURT: Do you understand by entering a plea of
11 guilty that you waive your constitutional right to a jury
12 trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you had a jury trial, the State would
15 have to prove your guilt beyond a reasonable doubt and
16 convince 12 jurors unanimously of your guilt. In other
17 words, all 12 would have to vote to convict you in order
18 to find you guilty. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you have a trial, you could
21 cross-examine the State's witnesses and put up your own
22 defensive witnesses. Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: You also understand that you could
25 testify at your own defense, but you would also have a

1 constitutional right not to testify. If you didn't, it
2 couldn't be held against you, and I would even tell the
3 jury that. That's your fifth amendment right under the
4 United States Constitution. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that you are presumed
7 innocent and that presumption would stay with you
8 throughout any trial? It would only end if a jury
9 convicted you.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And if a jury did convict you, you would
12 have a right to appeal, just as you can appeal a guilty
13 plea, as long as you file a notice of appeal within ten
14 days of sentencing?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Of course, you've got -- it's a little
17 more difficult nowadays to appeal a guilty plea because
18 you have got to meet further requirements, but the basic
19 bottom line rule about that is you have got to file a
20 notice of appeal within ten days of sentencing.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You understand that you're giving up your
23 right to remain silent by entering this plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you satisfied with your attorney's

1 advice and services in this matter?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has he answered all of your questions?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has he contacted everybody you asked him
6 to contact, if any?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Any problem with representation?
9 We need to talk about it now.

10 THE DEFENDANT: Yes, sir, I understand.

11 THE COURT: You're satisfied with his service?

12 THE DEFENDANT: I -- I'm satisfied.

13 THE COURT: Has anybody promised you anything, held
14 out any hope of reward or threatened you in any way in
15 order to get you to enter this plea?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you under the influence of any drugs,
18 alcohol or medication whereby it could be affecting your
19 understanding at this time?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you have any mental or physical
22 problems or conditions that might be affecting your
23 understanding in any way?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you ever been found mentally

1 incompetent by any authority?

2 THE DEFENDANT: No, sir.

3 THE COURT: You presently understand what you're
4 doing?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You understand me up to this point?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you entering this plea of your own
9 free will and accord?

10 THE DEFENDANT: Yes, I am.

11 THE COURT: And do you have any questions at this
12 time?

13 (Pause).

14 THE DEFENDANT: Not for you, sir.

15 THE COURT: I find that this plea is freely,
16 voluntarily and intelligently entered into, and you have
17 had the services of a competent attorney with whom you
18 tell me you're satisfied. Therefore, the plea is
19 accepted.

20 MS. SHIPLEY: May it please the Court, Your Honor.

21 Your Honor, just for the record, I wanted to
22 introduce you to the mother of Javon Simpson. Her name is
23 Sophia Simpson, if you could please stand.

24 She is present in the courtroom today, Your Honor.
25 Also seated at the State's table are the investigators

1 that investigated the case with the Columbia Police
2 Department, Investigator Thomas and Investigator Reese.

3 Your Honor, this incident happened back on May 18th,
4 2007. Ms. Simpson was -- had just enrolled her
5 ten-month-old baby into the Ritter Daycare Center. The
6 center is located at 1833 Columbia College Drive here in
7 Richland County.

8 On the third day that the baby was picked up by the
9 defendant, who was driving a van through his daycare
10 company, and he was the operator and director for the
11 daycare, it was about 7:20 that morning that Ms. Simpson
12 remembers the defendant coming to her house.

13 She loaded her child into a car seat. We have the
14 car seat here, into the backseat of the defendant's van
15 directly behind the driver's side.

16 She indicated that the way she had enrolled her child
17 was through the A.B.C. program of D.S.S. for indigent
18 mothers.

19 Your Honor, that is a voucher system program which
20 basically allows the defendant to be compensated at a
21 higher rate for taking these type of parents, children,
22 in.

23 Your Honor, the defendant -- the routine was for him
24 to then go back, pick up some more infants of that same
25 age, take them back to the daycare center and then leave

1 to go pick up another load of children. He would go,
2 break it down by neighborhoods, according to his
3 employees.

4 This load was -- of children was at approximately
5 7:20 a.m., and we believe that he would have then arrived
6 at the Ritter Daycare Center about ten minutes later. In
7 fact, he indicated to law enforcement that he had picked
8 up one more child and then driven to the daycare center.

9 According to the witnesses that worked for him, all
10 eight that we had subpoenaed to testify pretty much
11 indicated that there was no set individual with --
12 assigned with the duty to assist him in unloading
13 children.

14 It was sort of as if he would pull up and honk the
15 horn for the infants, whoever was available would go and
16 assist him.

17 D.S.S. regulations are very clear that the driver of
18 the vehicle is at no time allowed to be counted as one of
19 the individuals required to unload children.

20 In this case, we -- we don't know who assisted the
21 defendant in unloading the children. Regardless, Your
22 Honor, after this load of children were picked up,
23 infants, the defendant was the driver and responsible for
24 the van and ended up parking the van in the parking lot
25 directly in front of the daycare and it -- no shade or

1 anything like that, and according to the D.S.S.
2 regulations, a sweep is supposed to be conducted of the
3 vehicle to make sure there are no more children left in
4 the vehicle after they had been transported.

5 Also, a log is supposed to be kept anytime a child is
6 picked up, the date and time of that pickup is supposed to
7 be documented by the driver. There is also a requirement
8 that the date and time be written down on the same log
9 when the children are taken to the daycare and dropped
10 off.

11 Your Honor, in this case, that was not done. We
12 interviewed every daycare worker that worked there. One
13 of them even indicated that the logs were available, the
14 forms were available in the -- in the facility. They just
15 were never used.

16 The defendant does have a history of infractions for
17 this, violations of this, where D.S.S. wrote him letters
18 citing him for these kind of violations and ordering him
19 to correct them or else they threatened to revoke his
20 license.

21 Your Honor, at that point what happens is from about
22 7:30 that morning, the defendant's routine is then just to
23 remain at the premises until it's time to go pick up the
24 after school children, the school age children.

25 About two o'clock in the afternoon, that was his

1 routine. He would leave the daycare center to go pick up
2 the school age children.

3 I've got a map right here, Your Honor. If you need
4 any assistance, I'm going to just mark a couple of
5 addresses.

6 The first school -- we know that the defendant left
7 his daycare center, which is located right over here on
8 Columbia College Drive. We know that he picked up one
9 child by the name of Marcus Callahan about 2:20 in the
10 afternoon.

11 Your Honor, this is about ten -- a ten-minute drive
12 away from the daycare center. The John P. Thomas school
13 address, just for the record, is 6001 Weston Avenue.

14 Marcus Calhoun, Your Honor, indicated that when he
15 got on the van, there was another child, school age child,
16 on the van, and that child said something to the effect
17 of, "Oh, what a pretty baby."

18 At that point, Marcus Callahan indicates -- and he's
19 eight years old, Your Honor, indicated that the defendant
20 came to a -- a fast halt in the parking lot, jumped out of
21 the driver's side of his van, opened up the driver's side
22 of where the child was, and I've got a photograph to --
23 I'll just bring you all three, Your Honor, opened up the
24 rear of his van.

25 You'll note on that van it's a 2002 Ford Windstar.

1 The doors on the -- for the rear of the vehicle open on
2 both sides.

3 Your Honor, that is not the van in question. This is
4 a similar van, and that is the actual car seat that was
5 used in the case. This was for demonstrative purposes for
6 trial.

7 Your Honor, you'll see how clearly evident it is that
8 there is a car seat there, and there is a third photograph
9 that you'll look at is the actual vision of the driver.

10 If you were to be seated in the driver's seat, what
11 you would see when you look into the rearview mirror right
12 behind you, you can see about -- almost a half of a car
13 seat in the back right behind the driver's seat.

14 Anyhow, Your Honor, the defendant -- it was brought
15 to his attention that the child was there in the van
16 because of another school age child indicating, "What a
17 beautiful baby".

18 According to Marcus Callahan, the eight year old, the
19 defendant gets out, removes the baby from the car seat and
20 puts the baby up to his ear to hear if he's breathing.

21 Mr. -- the child also indicated that he saw the
22 defendant check for pulses. Then he put the baby back
23 into the car seat, and Marcus Callahan indicated that
24 instead of going straight to the Richland Memorial
25 Hospital which is located right there, they go pick up

1 another child by the name of De'Andray over at the Arden
2 Elementary School, which is just very close proximity,
3 Your Honor.

4 From there, rather than calling 911, all the
5 employees would testify the defendant carries his cell
6 phone at all times.

7 At no time is there a record of the defendant calling
8 911. At no time does he go to the hospital with this
9 child. Rather, he goes and picks up this other child and
10 then takes Marcus and the other child and the dead baby in
11 the car to the Ritter Daycare Center, which is located,
12 again, on Columbia College Drive.

13 According to the E.M.T.s, when eventually they are
14 called, it's about a three-minute drive from this location
15 to the Ritter Daycare Center to the Richland Memorial
16 Hospital. So it was just close, close proximity. We
17 would have presented this evidence to go to his state of
18 mind as an extreme indifference towards human life.

19 Your Honor, at that point when the defendant arrives
20 at the school, it's nap time for the infants, and the
21 routine is you don't honk the horn. You might wake up all
22 the infants. So typically, the school-age kids get off of
23 the van by themselves. They're old enough, and they go up
24 to the daycare center, ring the doorbell, and the daycare
25 worker comes and opens the door for them.

1 In this case, Your Honor, that particular occasion
2 the defendant honked his horn. So at that time, a woman
3 by the name of Kim Phillips happened to be around the
4 vicinity.

5 She was actually waiting on the school-aged children,
6 and she opens the door, and the defendant apparently just
7 comes up to her and says, "We have a situation."

8 She follows him to the van, which is parked right
9 outside, and she sees the school-aged kids getting off and
10 she talks to them.

11 The next thing she knows, she is walking back into
12 the building, and the defendant hands her Javon Simpson
13 and says, "You check and see if he's okay."

14 At that point, Kim Phillips is just totally
15 distraught to see a dead infant in her arms unexpectedly.
16 She takes the child to another daycare worker by the name
17 of Katherine Brown-Bush, who is familiar with performing
18 C.P.R. on infants.

19 At that point, Ms. Bush immediately starts C.P.R.,
20 first in Mr. Ritter's office and eventually takes him to
21 the infant room and puts him on the changing table so she
22 could perform C.P.R. there.

23 As she is performing C.P.R., she instructs Wendy
24 Glenn, another daycare worker, to call 911, and that is
25 done. That's the first time anyone calls 911. That's at

1 like 2:45 in the afternoon, some 45 minutes after
2 Mr. Ritter gets into the van to go pick up the school aged
3 kids.

4 Your Honor, at that point E.M.S. advises them to
5 continue C.P.R. and the ambulance is en route. As I
6 indicated earlier, it took the ambulance three minutes to
7 get to the Ritter Daycare Center from the hospital.

8 When they arrived, they tried everything they could
9 for this child. I want to bring to your attention that
10 the child had been in air conditioning in the defendant's
11 vehicle since about 2:20, 2:00, 2:20.

12 When they brought him into the daycare center, it's
13 air conditioned inside of the daycare center. Wendy Glenn
14 says that after efforts to resuscitate the child were
15 fruitless, she was trying to confront him and changed his
16 clothing and even put a cold wet towel on him because he
17 was so hot, and his cloths were drenched in sweat. That
18 would have cooled him off a little bit, as well.

19 When he is presented to the Richland Memorial
20 Hospital, about ten minutes of -- of three o'clock that
21 afternoon, his core temperature was 104.6 degrees.

22 Dr. Nathaniel Jonathan Stewart, John Stewart, was the
23 doctor that was the attending for that day. He indicated
24 that the child -- they had no idea what was wrong with
25 this child.

1 They hadn't gotten the full history of what was wrong
2 with this child. In fact, when the ambulance leaves, law
3 enforcement arrives. At first an employee tells law
4 enforcement that they found the baby in the crib.

5 Well, apparently that was because the defendant had
6 told this employee to lie to the police and say that they
7 found the baby in the crib.

8 Of course, that didn't take long for the medics to
9 realize it was not possible or the ambulance -- or the --
10 the police that arrived. Eventually, Your Honor, the
11 staff is separated by all of law enforcement when they
12 arrive, and it's very chaotic.

13 All of the daycare workers are extremely distraught,
14 and they began -- their -- the police come and begin their
15 investigation.

16 Your Honor, the defendant had -- when he dropped the
17 child off, he leaves to go pick up more kids. He does not
18 remain on the premises.

19 When he does return to the premises, he makes contact
20 with Investigator Thomas -- or rather Mr. Thomas makes
21 contact with him. When he makes contact with Investigator
22 Thomas, he indicates to him that he was not there at the
23 incident location when it occurred; that it happened at
24 the daycare, but he was not there.

25 He also indicated to a Corporal Howell with the

1 Columbia Police Department that he was not there when it
2 happened. Again, insinuating that this took place at the
3 daycare center when it happened in the van, and that he
4 was not there. Well, it's his van.

5 Eventually, Your Honor, another investigator by the
6 name of Ida Menendez was -- the defendant left again
7 during the investigation to go do payroll and then was
8 instructed by Investigator Kevin Reese to come back; that
9 he was not allowed to leave.

10 When he comes back, Investigator Reese asks
11 Investigator Menendez to keep an eye on him so he won't
12 leave again, and she sits with him in his office.

13 He has a wall in his office with a bunch of Army
14 awards and certificates. So she just starts engaging him
15 in conversation about his military background because she
16 is retired Army, as well.

17 She indicated that he seemed extremely proud of his
18 accomplishments. She asked him a little bit about his
19 daycare, and he indicated -- told her about the history of
20 the daycare, how he had founded the daycare. Then the
21 last thing he said, and the only time he got emotional,
22 Your Honor, is when he says something to the effect of,
23 "No one will remember me for all the good that I've done
24 because of this."

25 Eventually, Your Honor, Investigator Reese introduces

1 himself to him at his office and asks him what exactly,
2 you know, happened today. That is the time that
3 Mr. Ritter says, "I picked the child up at 7:20. His
4 mother put him in the car. The baby was asleep, wasn't
5 making any noise. I drove the baby -- I picked up another
6 child, then drove to the daycare center, and I don't
7 know -- I don't remember removing the child from the van,
8 nor do I remember anyone else removing the child from the
9 van." That is the first time law enforcement hears that
10 the child had, indeed, been left in the van.

11 The other employees, Your Honor, did tell the police
12 that at one point Mr. Ritter asked Investigator Thomas if
13 he could have a moment with his staff because they were so
14 distraught so he could calm them down.

15 Well, Investigator Thomas allowed that, and
16 apparently what occurred, according to all of the daycare
17 workers, is the defendant shuts the door behind him and
18 tells them not to speak to the police.

19 So when the investigators were trying to conduct
20 their investigation, they -- they encounter a little bit
21 of a problem, but eventually, all of the daycare workers
22 came forward and were very truthful and honest with the
23 fact that the baby had, indeed, been left in the van all
24 day.

25 Your Honor, the degree of temperature out there that

1 day, at about two o'clock in the afternoon, was 75
2 degrees, and according to Dr. Clay Nichols, the forensic
3 pathologist in this case, the core temperature inside of a
4 vehicle, interior temperature, increases 40 degrees after
5 about an hour. This child had remained in there for
6 approximately seven hours.

7 So as I indicated earlier, when the child is
8 presented to the hospital, his core temperature is 104.6.
9 Eventually, the child -- basically, he was declared dead
10 moments after he was admitted at the emergency room, and
11 Javon then had an autopsy scheduled the next day.

12 Dr. Nichols' findings are that the child suffered
13 from cardiac arrest due to hyperthermia after being left
14 unattended in the vehicle.

15 I beg the Court's indulgence, Your Honor.

16 (Pause).

17 Other statements, Your Honor, that Mr. Ritter made,
18 according to the witnesses, is Madeline Thompson indicated
19 she worked in the one- to two-year-old section, and she
20 overheard the defendant say around 8:15, 8:30, "I'm
21 missing a baby."

22 Tammy Brown, who actually was the infant daycare
23 worker that day, asked the defendant where Javon was
24 because it was his third day. According to Ms. Brown, he
25 ignored her. Other statements that I think that are

1 relevant -- I believe I've covered all of them, Your
2 Honor.

3 Your Honor, we met extensively with D.S.S. in this
4 case. In fact, this is a case where D.S.S. tried to do
5 the right thing. They tried to shut him down on two
6 separate occasions prior to this.

7 The defendant was able to win appeals and get back
8 into operation. The State would have asked the Court to
9 consider admitting only prior violations that he was cited
10 with that day.

11 There's several more, a box, five volumes of
12 notebooks, but in -- for purposes -- we didn't want to
13 insult the Court's intelligence by seeking just random
14 prior violations.

15 We thought that the relevant ones were the five that
16 he was cited for that day. One of them would have been
17 D.S.S. regulation 114-504, and that's dealing with,
18 "Children shall be supervised at all times by qualified
19 personnel."

20 The prior violations, just for that one, was
21 November 2nd, '99, a child was found unresponsive in the
22 bathroom; August 16th, 2002, a child was left alone in the
23 office area; three infants were left alone in the
24 classroom area, and a caregiver was observed sleeping in
25 the infant room.

1 The defendant did acknowledge these deficiencies in a
2 letter written, responding to them that he would correct
3 them, on December 17th, 2002.

4 The next violation for which he was cited that day
5 was, "A child shall not be left unattended in a vehicle."

6 On August 14th, 2001, the defendant -- there was an
7 infant found unsupervised in a van, and he was cited for
8 that, as well. Barbara Stevenson was prepared to testify
9 to that.

10 Another regulation that he violated that day is
11 failing -- that children shall be supervised directly
12 during the boarding and unboarding of children entering
13 and exiting vehicles.

14 On May 25th, 2004, the defendant was cited with not
15 maintaining ratios while transporting children. He failed
16 to have at least two staff members on the van when there
17 were nine more kids.

18 The next regulation that he violated that day was
19 114-505, and it was the one that requires a written
20 transportation log to account for the loading and
21 unloading of children at every location.

22 Your Honor, on January 20th of '98, he was cited for
23 failing to maintain a log; June 23rd, '98, another
24 citation for failing to keep a log, and lastly, July 24th,
25 2003, cited for not having a log. Then again, all of the

1 daycare workers indicated that he -- that was not his
2 practice at the time of this incident.

3 Lastly, the last violation was failing to notify
4 D.S.S. for the death or injury of a child. Your Honor,
5 the defendant failed to notify D.S.S. in this case,
6 obviously, but also in the past he had failed to notify of
7 injury to the children requiring medical attention, which
8 requires the same notification procedures.

9 The A.B.C. program, as I indicated to you, Your
10 Honor, the defendant voluntarily enrolled to be an A.B.C.
11 participant at an enhanced level. They referred to it as
12 level (b). As a result, he is compensated at a higher
13 rate.

14 According to their calculations, since 2001 when he
15 enrolled to be a member of the A.B.C. program, he has
16 earned \$496,000.

17 I bring that to your attention because it's the
18 State's position that for him, this was a business. Javon
19 Simpson was merely inventory that he forgot, didn't give
20 this child the benefit of -- even what Budweiser delivery
21 people at least document what inventory they were dropping
22 off and logging off. That was not done for Javon Simpson,
23 Your Honor. That's why I wanted the Court to be aware
24 that this was a business for this man.

25 Your Honor, as indicated in chambers, he has a

1 bounced check, and that is the extent of his prior record.
2 And, Your Honor, we're going to allow -- or ask the Court
3 to allow the mother of the child to speak at sentencing,
4 if that's okay with the Court.

5 THE COURT: That will be fine.

6 MS. SHIPLEY: Thank you, Your Honor. That's all the
7 State has at this time.

8 THE COURT: I'll be glad to hear both now and then.

9 MR. STRIFLING: Thank you, Your Honor. Let me
10 just -- since we're just at the plea stage at this point,
11 some of the -- some of the material that Ms. Cooper has --
12 has stated, we agree with. Some of it we don't agree
13 with. Some of it we think is relevant. Some is not
14 relevant, we think.

15 Some of it may be relevant at sentencing but not
16 during a trial, but we do -- we do -- we do agree,
17 however, that for what it's worth, Mr. Ritter does
18 acknowledge, obviously, that he picked little Javon up,
19 and that when he brought the child to the daycare center,
20 the other three children got off the van. Javon did not
21 get off the van.

22 I think that -- again, this goes to mitigation, so I
23 don't really want to get into that. I think that it was a
24 mistake by Mr. Ritter. I think he felt that the other
25 people who came to open the door -- the door doesn't open

1 from the outside, which is why they have to lock so --
2 which is why they have to honk.

3 So somebody had to come out. I think he -- he was --
4 he misapprehended what happened. Clearly, that's -- that
5 is enough to meet the test of the statute, in my judgment.

6 Some of the other stuff, the after -- after situation
7 where he was taking the children back, we dispute some of
8 the issues -- some of the testimony with regard to the
9 pick up, but by and large that's accurate.

10 I will say, Your Honor, that we have engaged a
11 forensic psychiatrist, Dr. Harold Morgan, who has
12 diagnosed my client as being schizoid, and without going
13 into a whole lot of detail, we don't think it's a mental
14 defense. We didn't -- we don't suggest that it is.

15 We didn't bring it as a mental defense but -- and not
16 even by way of excuse but maybe by way of explanation.
17 Schizoid personality people are the equivalent of mildly
18 autistic children.

19 They don't interact with people very well. They
20 don't -- they have the same -- they don't have the same
21 expression of emotions that you and I and Ms. Cooper,
22 people in this courtroom have.

23 So some of what he did seems pretty cold and
24 calculating, and as Ms. Cooper points out, delivering of
25 a -- delivering of a case of beer to an establishment was

1 simply his way of dealing with things. Again, I don't
2 want to get into a dispute about that.

3 I see Ms. Cooper is taking notes over there. If she
4 wants to challenge that, that's certainly fine, but I
5 think it's for sentencing.

6 I'm just pointing out at this juncture we believe
7 that what we -- what we do concede is that the evidence
8 that we believe is not controverted, that we do not intend
9 to controvert, the evidence that there is no way to
10 controvert, would be enough for a jury to find extreme
11 indifference to human life. That being said, that's why
12 we're entering the plea. So I would certainly hope that
13 we can get him back in all of these issues again when the
14 sentencing comes.

15 I did request, and I think Your Honor has agreed to
16 the presentence report on Mr. Ritter before -- before he
17 is sentenced.

18 We have discussed the bond situation. As I
19 understand it, the Court is willing to allow Mr. Ritter to
20 stay out pending sentencing so long as the bonding company
21 agrees to that.

22 I have spoken to someone named Tommy at the A.B.C.
23 Bonding Company. He says that that's -- that's correct,
24 he will do that. I didn't ask him to come over here. I
25 just did that within the last five or ten minutes.

1 If we could -- I'll be glad to get him on the
2 telephone for Your Honor or clerk or however you want to
3 do that to confirm that, that part of it.

4 So we -- we also enter this plea, Your Honor, with
5 the understanding that the Court, as you have stated,
6 believes that the statute under which my client is
7 pleading is a suspendible statute.

8 In other words, he's facing 20 to life, and Your
9 Honor can give him a suspended sentence, you know, give
10 him some committed sentence which you can suspend all or
11 part of it.

12 Now, that's not to say that there has been any
13 discussion of a sentence. In other words, as to what, if
14 any, suspended sentence you give.

15 There is no agreement with the Solicitor's Office.
16 There is no agreement with your Honor. We have not
17 discussed it, and so while -- while the conditions that I
18 stated seem to be what we have agreed to, there is no --
19 we did not discuss with Mr. Ritter in his plea that if he
20 did this, he would get this.

21 So it's simply that ability is there for Your Honor,
22 and I think that's the -- that's his understanding, and I
23 think that he would agree that -- that there is sufficient
24 evidence for a jury to find an extreme indifference, and
25 therefore, convict him under the statute, and the rest, of

1 course, is simply my understanding of the -- would be the
2 terms of this plea agreement.

3 Thank you. Thank you, Ms. Cooper, as well.

4 THE COURT: Thank you.

5 MS. SHIPLEY: Your Honor, and what I was jotting down
6 is I didn't want to forget to ask the Court that the State
7 reserves the right to refute the schizoid defense that he
8 says he alluded to earlier.

9 MR. STRIFLING: Sure.

10 MS. SHIPLEY: Thank you, Your Honor.

11 THE COURT: Okay. Counsel, I'll need you to assist
12 the Clerk's Office. We need to, at least, verbally
13 confirm with the bondsman that he will continue on until
14 sentencing can be completed.

15 Do we have anybody from Probation and Parole?

16 MS. SHIPLEY: No, sir. I can run and get them,
17 though.

18 Thank you.

19 MR. STRIFLING: Well, Judge, Elizabeth Cook, who is
20 an investigator, a former police officer, is here to help,
21 if that would be all right.

22 MS. SHIPLEY: Your Honor, would you like Ms. Tull to
23 call the bonding company right now while we wait?

24 (His Honor nods in the affirmative).

25 MR. STRIFLING: I think a person named Tommy is

1 there.

2 (Pause).

3 THE CLERK: Yes, sir.

4 THE COURT: All right. Counsel, let's discuss this
5 at the time of sentencing.

6 I will be back in the circuit on August 31st for
7 Kershaw General Sessions, over in Camden, and then I will
8 be back here on September 21st for another term of General
9 Sessions here in Columbia, so that's our two options.

10 MS. SHIPLEY: Out of an abundance of caution, Your
11 Honor, probably the latter date just to make sure that the
12 report is concluded.

13 MR. STRIFLING: That's fine with me, Judge.

14 MS. SHIPLEY: Okay. September 21st. Well, I'm not
15 going to give your client any more notice.

16 MR. STRIFLING: No.

17 MS. SHIPLEY: If he doesn't show up, there will be a
18 bench warrant.

19 MR. STRIFLING: We'll be in court that Monday, I
20 guess.

21 MS. SHIPLEY: Monday the 21st.

22 THE COURT: Should there be a schedule change, I'll
23 get back with both of you.

24 MR. STRIFLING: Thank you, Your Honor.

25 THE COURT: We'll decide where we have to go.

1 MS. SHIPLEY: Thank you very much, Your Honor.

2 MR. STRIFLING: Thank you, Your Honor.

3 THE COURT: Thank you all. Anything else before
4 we...

5 MS. SHIPLEY: No, sir. That's all from the State,
6 Your Honor.

7 MR. STRIFLING: Your Honor, I filed and have given
8 Ms. Cooper a --

9 MS. SHIPLEY: It's Shipley.

10 MR. STRIFLING: Sorry.

11 MS. SHIPLEY: That's all right.

12 MR. STRIFLING: -- a sentencing memorandum, and I'll
13 forward one to you, if that would be all right that I've
14 done. I may -- I may actually do some more --

15 THE COURT: If you'll provide that, also, to
16 Probation and Parole.

17 MR. STRIFLING: Yes.

18 THE COURT: Do we have them?

19 THE BAILIFF: She's coming. She's coming.

20 MR. STRIFLING: I don't have a copy of it, but I'll
21 deal with it.

22 THE COURT: Mr. Ritter.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have a passport?

25 THE DEFENDANT: No, sir.

1 THE COURT: Okay.

2 MS. SHIPLEY: They're upstairs finishing paperwork
3 for Judge Cooper. Ms. Tull has agreed to forward all
4 paperwork.

5 THE COURT: That would be fine. If the Clerk's
6 Office will just notify them we need a presentence
7 investigation and also any sentencing recommendation they
8 have.

9 MR. STRIFLING: Thank you.

10 MS. SHIPLEY: Thank you very much, Your Honor.
11 That's all from the State.

12 MR. STRIFLING: Thank you, Ms. Shipley. You did a
13 good job.

14 THE COURT: All right. Mr. Ritter, stay in touch
15 with your attorney because we may have schedule changes as
16 things develop.

17 THE DEFENDANT: Yes, sir.

18
19 (Whereupon, the proceedings were concluded.)
20
21
22
23
24
25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Karen Tracy, Official Court Reporter for the 5th 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 in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 20 day of July, 2009.

July 23, 2009

Karen Ambrogiate

Karen Tracy, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Richland	)	2007-GS-40-4465
	)	
THE STATE,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
WILLIE RITTER,	)	
	)	
DEFENDANT,	)	

September 21, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE PAUL BURCH, JUDGE.

APPEARANCES:

VANESSA C. SHIPLEY, ASSISTANT SOLICITOR
Attorney for the State

JAN STRIFLING, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

CERTIFICATE OF REPORTER

38

1 THE COURT: You may be seated.

2 WILLIE RITTER,

3 after being duly sworn, testified as follows:

4 MS. SHIPLEY: May it please the Court, Your Honor.
5 Standing before you is Willie Ritter on indictment
6 2007-GS-40-4465. It is an indictment for homicide by
7 child abuse.

8 Your Honor, just for the record, this was a plea
9 that was held before you on July 20th of 2009. Your
10 Honor, you ordered the sentencing to be deferred, and
11 we're now here for purposes of sentencing.

12 Your Honor, the --- for the record, I am here
13 with Investigator Kevin Reese from the Columbia Police
14 Department and Investigator Arthur Thomas from the
15 Columbia Police Department.

16 Also, standing is Sofia Simpson, the mother of
17 Javon Simpson. At the appropriate time, she would
18 like to address the Court. We did already relay all
19 the facts to Your Honor on July 20th, and you did want
20 to hear from the defense.

21 THE COURT: I'll come back to the victim's family.

22 MS. SHIPLEY: Thank you, Your Honor.

23 THE COURT: I always hear from them last.

24 MS. SHIPLEY: Thank you, Your Honor.

25 THE COURT: Counsel.

1 MR. STRIFLING: Thank you, Your Honor. May it
2 please the Court. We have a number of people who are
3 here on behalf of Mr. Ritter, people who are here on
4 behalf of Mr. Ritter.

5 If you could stand please, briefly. Most of them,
6 Your Honor, would like to address the Court about what
7 they know of Mr. Ritter's character. I told them to
8 please try to be brief.

9 I realize that kind of strains the --- strains
10 the Court, but nevertheless, all of them are very
11 insistent on doing it. I have a list. I'd like to
12 call one at a time of to speak to the Court.

13 THE COURT: You may proceed.

14 MR. STRIFLING: Thank you, Your Honor.

15 First Reverend --- stand right up here and tell
16 us your name and tell us what you'd like to say for
17 the record.

18 PASTOR: MY name is (unintelligible).

19 THE COURT REPORTER: I'm sorry. What? Your name
20 is what?

21 PASTOR: Jay Walter Hills, H-I-L-L-S.

22 THE COURT REPORTER: Thank you.

23 PASTOR: I've known Mr. Ritter for the past
24 ten-plus years, mainly in the capacity of pastor. He
25 was a member of the Second Nazareth Church where I

1 pastored beginning in 1999.

2 I've known him on a personal level. He and his
3 mother and my wife and I were friends. I frequent
4 both his home and the day care center. I know him to
5 be a man of impeccable character, one who has a heart
6 for the youth of our community, the church and that
7 the individual that was very conscious about the
8 welfare of the community at large.

9 MR. STRIFLING: Thank you, Reverend.

10 Ms. Ruth Hill.

11 MS. HILL: I'm Ruth Hill. I'm first director for
12 the youth center. During that time, Mr. Ritter and I
13 organized a cotillion for young men to be able to go
14 to college. He has always been a giving person.
15 Never taking.

16 He is a man of integrity, and he loves children.
17 He loves the youth. He has worked hard in the
18 community with the youth, and Mr. Ritter and I, we
19 took children, the youth, on trips to Washington, D.C.
20 where he took care of their affairs, the housing for
21 them, the transportation. He's just a giving person.

22 MR. STRIFLING: Thank you. Thank you.

23 Barbara Conwright.

24 MS. CONRAD: My name is Barbara Conwright, and
25 I've known Mr. Ritter for about 20 years, and

1 through --- basically, through my son.

2 As a single parent, he put upon himself to handle
3 the cotillion, and for years he had a number of young
4 men that he would sponsor, help them with their
5 character, help them with self-esteem. They wrote
6 essays and so forth.

7 As a result, my son went to WestPoint, graduated
8 from there, and Mr. Ritter was very instrumental, not
9 just in the initial part of him going, but throughout
10 his four years, he was always calling and checking on
11 him and saying, "Do you need anything?"

12 He has been one of impeccable character and a
13 very giving person, a very loving person. He loves
14 children. Also, a church I was attending at the time
15 used his facility.

16 We didn't pay him not one penny, but he poured
17 into the church. The church has now moved to a larger
18 facility, and he helped to build that. The church is
19 still going forward. He is that kind of person.

20 I've seen him take little children and even teach
21 them, and I'm talking about the very young, before
22 they were school age. So I know him as a very caring,
23 loving person, and never, ever have I seen anything
24 other than that kind of character exhibited. He was
25 also a member of that particular church at the time.

1 MR. STRIFLING: Thank you, ma'am.

2 Mr. Pinkney.

3 MR. PINKNEY: My name is Michael Pinkney. I have
4 known Mr. Ritter for a little over 20 years, and in
5 those years, I worked at the day care.

6 I have seen kids go for years there without even
7 paying, you know. He also sponsored my baseball team
8 where he supplied all of my kids cleats, equipment for
9 them over, you know, a number of years.

10 We had --- what we had for the kids, we had all
11 the kids in tuxedos that he paid for. You know, over
12 the twenty years that I have known him, he's just
13 always been a giving person, you know, for the kids in
14 the community.

15 MR. STRIFLING: Bobby Taylor.

16 MR. TAYLOR: Excuse me. I'm his first cousin.
17 I've been knowing him my entire 60 years of living,
18 and he hadn't been anything but a person of kindness.

19 (Crying)

20 That's all.

21 MR. STRIFLING: Dr. Ray.

22 UNIDENTIFIED MAN: I'm not a medical doctor. I'm
23 a former television anchorman in Washington, D.C. My
24 purpose is my calling. I was a weather man.

25 When I left television as an anchor, I went into

1 business, and 25 years ago I started a federal credit
2 union, one of the first to step up with \$1,000 was
3 Colonel Ritter. All I gave him was a card. That was
4 25 years ago.

5 I relocated to North Carolina, and I watched him
6 save this teenage world. When the sponsors didn't
7 have enough money, Colonel Ritter took his credit card
8 out for \$7,000 and put that to make sure that they got
9 those dollars.

10 Over the 25 years that I've known him, I watched
11 him give and give and give without looking for
12 anything in return. I've never seen a man give so
13 much and never had an ulterior motives to get
14 something out of it.

15 Now, he never got nothing back from the \$1,000 he
16 gave me 25 years ago other than a card saying he was a
17 member. The \$7,000 he put up for this --- that
18 teenager girl, he never got that back.

19 I started working for Bentley Products (phonetic).
20 Every Christmas for 25 years this man bought baskets,
21 spent at least \$1,000 or more every year for his
22 entire staff at the day care center. He never asked
23 me for nothing in return.

24 I don't know many people like that, and if I was
25 anchoring the news today, he would be one of the first

1 people that I would spend my time to cover.

2 He's a great statesman. I'm pleased to be here
3 from Kernersville, North Carolina today to show my
4 association with him. Thank you.

5 THE COURT: Thank you, sir.

6 THE COURT REPORTER: Could I get his name again,
7 please?

8 MR. STRIFLING: John Ray, R-A-Y.

9 THE COURT REPORTER: Thank you.

10 UNIDENTIFIED MAN: R-A-Y-E, John Raye.

11 MR. STRIFLING: Ms. Smith, Rosie Smith.

12 MS. SMITH: Good evening. I'm Rosie Smith. I'm
13 from Kernersville, and I've known Colonel Ritter for
14 20 years. I met him when he first got out of the
15 service.

16 He used to take young men to Washington, D.C. on
17 different runs. In other words, he tried to help the
18 community. Not only was he dedicated to his community,
19 he was dedicated to his country.

20 I know that deep in his heart, he regrets
21 everything that happened, and he's a good man. Thank
22 you.

23 MR. STRIFLING: Thank you, ma'am.

24 Joe Dudley.

25 MR. DUDLEY: I'm Joe Dudley, the founder of

1 Dudley Products. Colonel Ritter, we had a group of
2 kids we worked with and helped them in North Carolina
3 in Greensboro, North Carolina.

4 This group was so powerful that President Bush
5 gave him the Point of Light Award for what we've done
6 and Colonel Ritter was there to help support it.

7 He went to the school, and they had talked to the
8 kids and he made a difference. Again, just to let you
9 know the credibility of Dudley Products, I'm the only
10 African American that have ever been inducted into the
11 Hall of Fame with direct sales, along with Mary Kay
12 and some of the rest of the people, but Colonel
13 Saunders [sic] I done --- Colonel, I always call him
14 Colonel, but it's Kerner (phonetic), for 20-some years
15 that we have worked together, some form or fashion, so
16 with this pageant, I worked close with that.

17 He brought these kids, and we always gave them
18 scholarships. We did a lot of things, so Colonel, to
19 me, is a man of great integrity, a man that is really
20 about helping and making a difference. Thank you.

21 MR. STRIFLING: Thank you.

22 Daniel Arthur.

23 MR. ARTHUR: Yes. My name is Daniel Arthur. I
24 knew Mr. Ritter for 13 years. He's been my boss, my
25 mentor and to me, the biggest father figure I ever had

1 in my life.

2 When I first met Mr. Ritter, we had a basketball
3 team, and our coach only had one car that was like a
4 four-seater. He used to let us hold the vans from the
5 day care so we could go get to our games, go back and
6 forth.

7 Later on, he gave me a job, so after I went
8 through high school, he paid for every --- every
9 tuxedo I ever wore for homecoming, all my senior dues,
10 my cap and gown. I got a scholarship to college, and
11 it was a full basketball scholarship.

12 I --- it was in Alabama, and I didn't know how I
13 was going to get to Alabama. Mr. Ritter rented a
14 truck and took me all the way there and then gave me
15 some money.

16 Every time I needed to come back for home, he
17 made sure that that was possible. Just like I told
18 him, he's the biggest father figure I ever had in my
19 life, and I am an inner city child.

20 Thank you.

21 MR. STRIFLING: Wilma Hills.

22 MS. HILLS: My name is Wilma Hills, and I have
23 also knew Mr. Ritter for the past ten years, working
24 with him on several capacities as consultant with the
25 day care on a lot of projects.

1 I worked with him to establish minds that was
2 instrumental in helping to get scholarships for
3 children from the day care and also for other youth
4 that he had identified in the community that he wanted
5 to help.

6 I also publish a Christian magazine that we
7 featured Mr. Ritter as one of the feature stories, and
8 in that magazine, I was able to interview several
9 people from the community, several people that he had
10 helped and touched in the past in order to do research
11 for the article.

12 What I found out from that magazine interview and
13 from that research was that a lot of people held him
14 in high esteem. A lot of people looked at him as a
15 means by which he was the last resort for them getting
16 help.

17 While I was there, I also witnessed several
18 people calling him, asking him to help them pay their
19 light bill, help them to pay different things that was
20 going on with them at the time, and even though
21 Mr. Ritter may not have had the money in my presence,
22 he never said no.

23 As a matter of fact, one of the things he would
24 say is that he would have to go pick up some cans, and
25 he would get back with them. I would venture to say

1 that he picked up many cans for me.

2 MR. STRIFLING: Thank you, ma'am.

3 Robin Schick (phonetic).

4 MS. SCHICK: Your Honor, I've known Colonel
5 Ritter since 1980, September of 1980, as a matter of
6 fact. I'm retired now, but my responsibility when I
7 was working was to assist inmates to return to the
8 community as a successful citizen.

9 At that time, they would come in. They had
10 children, male and female. One or the other had no
11 job or no money and no day care.

12 He set aside specific beds in the day care just
13 for the inmates if they needed assistance. They
14 didn't have transportation, so he arranged for a van
15 to go to their homes and pick them up.

16 He had transportation when transportation wasn't
17 really legal or in --- a popular thing, as you say,
18 because they needed his help.

19 He wasn't in it for the money, because he knew
20 they could not pay him. He knew I could not pay it.
21 I had a job. I was just a volunteer coordinator
22 trying to get some assistance.

23 He never let us down. There were days when I
24 would take the bill, and we could --- owed him a lot,
25 financially and morally. He is a man of deep, very,

1 very deep emotion.

2 All he wants to do is help to improve his
3 community and his surroundings, and since I've known
4 him, it has been totally professional. That's all he
5 has ever done. Thank you.

6 MR. STRIFLING: Thank you, ma'am.

7 Darin Foster.

8 MR. FOSTER: My name is Darin Foster. I knew
9 Colonel Ritter from the military. We crossed paths
10 several times.

11 I first met him in 1970. In the late '80s, he
12 was my battalion commander. I worked directly for him.
13 I saw how he interacted with people. I saw how he
14 took responsibility for things.

15 I had to deal with him every day, dealing with
16 him and stuff. He was always there. He was always
17 listening. He took responsibility.

18 Since I've been out of the military, he and I
19 have gotten together on several ventures. We've been
20 to D.C. numbers of times, Alabama.

21 I had a small daughter. He would take her with
22 him. He would pay for her school responsibilities,
23 her financial. We didn't have to pay for anything.
24 He took care of everything.

25 I was with him when he left the first battalion.

1 He helped set that up. We would go running; I'm a
2 runner. We went to D.C., went to Virginia. I mean,
3 he paid for the whole thing. So he has always been
4 caring. He took responsibility, and he gave back to
5 the community.

6 Thank you.

7 MR. STRIFLING: Thank you, sir.

8 Lee Carroll.

9 THE COURT REPORTER: I'm sorry, what was the name
10 again?

11 MR. STRIFLING: Lee Carroll.

12 (There was no response.)

13 Woodrow Wilson.

14 MR. WILSON: My name is Woodrow Wilson. I am ---
15 I've known Willie Ritter since my first memories in
16 life. He is the same age as my older brother, and one
17 of the people that all of us as children in the
18 community look to as a big brother and a mentor ---
19 I'm talking about a lifetime here --- was Willie
20 Ritter.

21 He was one of the few guys of my brother's
22 generation that graduated from high school. He was
23 one of the few guys from my brother's generation who
24 went on to college or started college.

25 He always gave back to the community. He would

1 look us up. He never forgot a name. He was a fine
2 fellow. He made sure we were still in school, made
3 sure we were doing well in school.

4 So the fact that I went to school and got
5 multiple degrees, that was the guy that I looked to.
6 As a young adult, I was in Washington, D.C. one time.
7 He was working at the Pentagon.

8 I spent a day with him in Washington. He
9 probably doesn't even remember that. I came back to
10 Columbia. I started a business for myself, and I've
11 been running into Mr. Ritter.

12 He asked to me consult with him. I consulted
13 with him, and the things that he wanted me to do was
14 things that would help with a program that he had
15 called a Job-a-thon.

16 I was writing grants and doing things to try to
17 assist him in that. He helped people every day. I
18 see parents come in there who couldn't afford to pay
19 for him. He never harassed people. He never went
20 down the road or door-to-door collection.

21 I saw mothers who came in there needing help with
22 things like light bills and things that has nothing to
23 do with coming. I saw him give and give and give.

24 I thought about saying two things: The first
25 being this morning when I spoke with Mr. Ritter, he

1 said, "Woody, I don't know what is going to happen
2 today, but I want you to get with a group that I have
3 and make sure that we do that Job-a-thon." That was
4 today, okay?

5 The last thing I'll say is simply this: That if
6 bad things can happen to good people, we're all
7 evidence of that as we sit in this room today.

8 Thank you.

9 THE COURT: Thank you.

10 MR. STRIFLING: (Unintelligible).

11 THE COURT REPORTER: I'm sorry, what name?

12 MR. STRIFLING: Luella.

13 THE COURT REPORTER: Luella?

14 MR. STRIFLING: Nelson.

15 MS. NELSON: My name is Luella Nelson, and I'm
16 here today to speak for my good friend. We grew up
17 together, Mr. Ritter and I. We're the same age.

18 He's the only one out of my neighborhood that
19 went to college. He was the only one really going to
20 high school until he tried to get the children the
21 right way in the right world because they were led
22 astray.

23 He was always a mentor. I knew he was going to
24 be a leader, but by and larger, I didn't know. I've
25 been to the care home different times. I've been to

1 the day care different times.

2 Every holiday his mother would cook, and he would
3 say, "Come and get some free food." Whoever was out
4 of character would be welcome. He was a gentleman, a
5 fine person. Has never done anybody any harm that I
6 know of. Please have mercy on him, please.

7 Thank you.

8 MR. STRIFLING: Flora Boyce (phonetic).

9 THE COURT REPORTER: I'm sorry. I didn't hear
10 that one.

11 MR. STRIFLING: Flora Boyd.

12 THE COURT REPORTER: Maura?

13 MR. STRIFLING: Flora.

14 THE COURT REPORTER: Boyce?

15 MR. STRIFLING: Boyd.

16 THE COURT REPORTER: Thank you. Boyd.

17 MS. BOYD: Good afternoon. My name is Flora Boyd.

18 I am from the Golden Acres community, the community
19 which the day care was located, and the day care was
20 located adjoining my property.

21 It was on Columbia College Drive, and I was on
22 Isabel Street. I would often see Mr. Ritter in the
23 yard with the children when the play time or whatever.
24 He was always looking out for the children.

25 Our meeting for the Golden Acres community is

1 every third Monday in the month. He has attended that
2 meeting wanting to know what he can do to help us in
3 the community.

4 Instead of asking what the community can do to
5 help him, he was always trying to help us. We would
6 have fish fries in the community. We would be right
7 there at that day care in the yard. If it's raining,
8 we would go in the kitchen or sit out at the back door.
9 He was just a wonderful man, and please have mercy.

10 MR. STRIFLING: Thank you, ma'am.

11 Rosie Smith; Rosie Smith.

12 MS. SMITH: I've gone already.

13 MR. STRIFLING: Oh, sorry.

14 Ms. Briggs. Ms. Briggs.

15 MS. BRIGGS: My name is Mary Briggs, and I've
16 known Colonel Ritter for approximately 20 years. He
17 has always been a respectful citizen and wanted to
18 help people and has never looked for anything in
19 return.

20 I know nothing positive that --- I know nothing
21 negative of Mr. Ritter, and Mr. Ritter would not
22 intentionally do anybody harm to anyone.

23 MR. STRIFLING: Thank you, ma'am.

24 Mr. Trapp?

25 MR. TRAPP: Good evening. My name is Aaron Trapp.

1 I'm the head men's baseball coach at Eau Claire High
2 School.

3 I'm here today to support Mr. Ritter. I've been
4 knowing Mr. Ritter for approximately 20 years. I
5 started coaching in --- I want to say for Mr. Ritter,
6 he was a sponsor for me in 1994, basically gave me my
7 first head coaching job coming out of college. Also,
8 he gave me my first job coming out of college.

9 UNIDENTIFIED WOMAN: Yes.

10 MR. TRAPP: He's been a good man to me, all the
11 kids in the community. He makes sure all of the kids
12 always had what they needed, as Ms. Pinkney was saying,
13 make sure that they was dressed nice, looked nice,
14 made sure they played right, made sure we coached
15 right.

16 He always wanted the best. He also was there for
17 me when I became the head men's baseball coach when I
18 first got my head coaching job at Eau Claire. I just
19 wanted to let you know he's a good man and thank you.

20 MR. STRIFLING: Lee Carroll.

21 MR. CARROLL: Good afternoon. My name is Lee
22 Carroll from Saving Our Kids. I've now been knowing
23 Mr. Ritter for about 20 years.

24 I can say that this is an accident, and this is a
25 good man. Whatever you can do for him, I appreciate

1 it. Thank you.

2 UNIDENTIFIED WOMAN: Amen.

3 MR. STRIFLING: Ms. Carter?

4 (There was no response.)

5 Dorothy Bright.

6 MS. BRIGHT: I've been knowing Colonel Ritter for
7 about 20 years, and being a single parent, I had to
8 have a job to do as a mother. I needed a place for my
9 daughter. She was she was very little at the time.

10 When someone told me about Ritter's day care
11 service, they said that, "You can bank on this one,"
12 so I decided to give it a try and I did.

13 My daughter, she attended for a couple of years
14 until she went to a public school. Mr. Ritter, he
15 sponsored a trip to Washington, D.C., and my daughter
16 was there. She was a part of that trip, too.

17 When I got to asking if we needed to pay anything,
18 he said, "No, no, no, no." I said, "What do you mean
19 no, no, no, no?"

20 I said, "Well, if she is going on a trip, I got
21 to be able to pay for it." So he said, "Well, no.
22 I'll take care of it."

23 I said, "Really?" So I said it was okay.

24 But Mr. Ritter is a great, honorable and honest
25 man I've ever met. When you entrust your child to

1 someone that while you're working, you don't never
2 have to worry about your child, your child is in the
3 greatest hands.

4 And Mr. Ritter, I've been knowing him all these
5 years. He also --- I looked Mr. Ritter up after my
6 daughter graduated from high school. I told him about
7 the college she was going to.

8 He said he wanted to help her since she was one
9 of the members of his day care, so I said okay. Her
10 dad died before she graduated from high school, so
11 whenever she needed books or a little financing
12 towards her tuition, Mr. Ritter was right there.

13 When it was time for me to get a tax refund, I
14 said, "Mr. Ritter when I get that, I will pay you
15 back."

16 He said, "No, I can't take it. I'm just doing it
17 that she would get a good education."

18 UNIDENTIFIED WOMAN: Amen.

19 MS. BRIGHT: And my daughter attends South
20 Carolina State University. She was a freshman at the
21 time. Now she is a rising senior about to graduate
22 next May.

23 UNIDENTIFIED WOMAN: All right.

24 MS. BRIGHT: And Mr. Ritter had put money in her
25 hand when I couldn't do it. When her --- her dad

1 wasn't there to help me being a single mother, he said,
2 "Ms. Bright, don't worry about it. We'll make sure
3 that she gets to college."

4 She is about to graduate. She is an accountant
5 major at South Carolina State.

6 UNIDENTIFIED WOMAN: Amen.

7 MS. BRIGHT: And she has got a 2.83 average, and
8 because of Mr. Ritter's integrity of wanting to help
9 her, she even says that. He is a great man.

10 She says, "Mama, I wish my daddy could see him
11 helping me, because I'm about to make it to
12 graduation." He --- he said --- he was like, "Just as
13 long as me and you work together, she will get that."
14 She got that, and she is a senior at this time until
15 graduation.

16 UNIDENTIFIED WOMAN: Amen.

17 MS. BRIGHT: So we hope that the Lord can bless
18 this trial today because Mr. Ritter is a good man, a
19 man of integrity, honor, and respect.

20 UNIDENTIFIED WOMAN: Amen.

21 UNIDENTIFIED MAN: Amen.

22 MULTIPLE SPECTATORS: Amen.

23 MR. STRIFLING: Judge, I'd also like to
24 acknowledge Mr. Ritter's daughter. She is here with
25 her two children. Perhaps she wants to speak, and

1 then Mr. Ritter, if you could.

2 DAUGHTER: Good afternoon. My name is Sakina
3 (phonetic) Ritter. I am Mr. Ritter's only child,
4 these are his only two granddaughters, and I really
5 wasn't expecting to speak today, but I just know him
6 as my father.

7 I've always known him to work in the community.
8 I've always known him to help others, encourage people
9 to do the right things. Education is always number
10 one.

11 I remember coming to the day care when I was
12 younger. I lived in Texas, but in the summertime, I
13 would have to come to South Carolina to stay with my
14 dad, worked at the day care, played at the day care,
15 worked in the kitchen.

16 There's always great workers, great people around
17 him. It's really all I can say. He's an honorable
18 man. I remember a lot about the military. I just
19 can't say anything except that's my dad, and I wish
20 you would have mercy.

21 THE COURT: All right.

22 DAUGHTER: Thank you.

23 MR. STRIFLING: Judge, thank you for your
24 indulgence. I'd like for you to hear from Mr. Ritter
25 in this matter.

1 THE COURT: Yes, sir.

2 THE DEFENDANT: I'm almost at a loss for words
3 coming here. The concept --- I never thought in my
4 wildest dreams that I would end up in a situation
5 where the thing that I loved the most would have been
6 harmed, but I'd like to say to the mother of the child
7 that I am sorry beyond.

8 UNIDENTIFIED WOMAN: Amen.

9 THE DEFENDANT: All of my understanding.

10 UNIDENTIFIED WOMAN: That's right.

11 THE DEFENDANT: I have a special sympathy every
12 day for this young girl, because I was born when my
13 mother was 16.

14 My father died before I was two years old. I
15 know what it means to live in poverty and strain with
16 a single parent. I didn't know then, but I know now.

17 I am an only child, and I think that this young
18 lady only had one son. For two years almost every day,
19 for almost two years, I sympathized and empathized
20 with this young lady because I could draw a parallel
21 between her and her son and my mother and myself.

22 UNIDENTIFIED WOMAN: Amen.

23 THE DEFENDANT: I'm 66 years old. My mother and
24 I had a great life. We came out of abject poverty,
25 and we walked on faith.

1 When I think that this young lady has lost even
2 the potential to do that, it pains me tremendously and
3 continuously.

4 Nobody on the face of this earth will ever
5 understand how deeply sorry and grieved I am for the
6 loss of the child.

7 Most of my adult life has been centered on
8 helping the disenfranchised. I have a special,
9 special love for the children, not only the ones in my
10 day care center and in my care, but all of the
11 children that I come ---

12 UNIDENTIFIED MAN: Amen.

13 THE DEFENDANT: --- in contact with.

14 Being a soldier and having fought two wars,
15 seeing other countries in their poverty.

16 UNIDENTIFIED WOMAN: Thank you, Jesus.

17 THE DEFENDANT: --- and the way they treated
18 their children and how their children came up. I know
19 that the children of this country at some point will
20 be this country, and the fact that we have that level
21 of tragedy in our place is a pain. It creates a pain
22 for me that I can't seem to shake.

23 The only thing that's close to comparable, being
24 comparable to the fact that the child lost his life in
25 our care is the recent death of my own mother from

1 cancer ---

2 UNIDENTIFIED WOMAN: Oh, oh, oh.

3 THE DEFENDANT: --- on the 18th of June. That
4 was the day I was supposed to go to some type of
5 hearing or trial. I decided not to. Less than eight
6 days later, she died.

7 UNIDENTIFIED WOMAN: Lord Jesus.

8 UNIDENTIFIED WOMAN: Jesus.

9 THE DEFENDANT: I don't have any clue as to
10 what's going to happen to me today, but I do know that
11 there is a future ---

12 UNIDENTIFIED WOMAN: Amen.

13 THE DEFENDANT: --- and there is a God.

14 UNIDENTIFIED WOMAN: Yes, Jesus.

15 THE DEFENDANT: And I believe ---

16 UNIDENTIFIED WOMAN: Yes.

17 THE DEFENDANT: --- in our future, in this
18 country, and I believe in God Almighty.

19 UNIDENTIFIED WOMAN: Yes; yes, Jesus.

20 THE DEFENDANT: With that, I would like to
21 re-express my complete sorrow ---

22 UNIDENTIFIED WOMAN: Jesus.

23 THE DEFENDANT: --- for what happened at my day
24 care center, and with that, I thank you for your
25 indulgence for my speaking now.

1 UNIDENTIFIED WOMAN: Amen.

2 MR. STRIFLING: Judge, would you like to hear
3 from me now, or would you like to hear from the
4 attorneys now or proceed?

5 THE COURT: You may proceed.

6 MR. STRIFLING: Thank you, Your Honor.

7 Judge, I don't know, frankly, what I can say that
8 hadn't been said here, Your Honor. The community came
9 out in force with Mr. Ritter.

10 This was a spontaneous gathering of guests coming
11 forward, and I think that the issues that we've raised
12 in the brief and the solicitor's brief and certainly
13 stated all of the facts that needed to be stated.

14 They painted a --- I think a picture of
15 Mr. Ritter, that was not available to the Court at his
16 plea. This, of course, does not take away from the
17 fact that a young child died needlessly.

18 Mr. Ritter has accepted responsibility for that.
19 He has said that had he followed the DSS guidelines,
20 the child would be alive today. Javon would be with
21 us, and we would not be here today.

22 So certainly, he accepts responsibility as a good
23 soldier should. He realizes that he must pay
24 atonement for what he has done.

25 I simply ask the Court at this time --- well, I

1 will say, Judge, that it would be simple to say that
2 this was such a terrible accident that he should get a
3 substantial punishment, and anything substantial is
4 going to be a life sentence for Mr. Ritter with his
5 age and health.

6 I would ask the Court for a reasonable sentence
7 that will allow him to reflect on what has happened,
8 which is now the situation that he has put in place
9 failed. Of course, with that he accepts
10 responsibility, but I would ask the Court to give him
11 a light at the end of the tunnel.

12 Because --- not only for what he has done with
13 that, but what he could mean to the community in the
14 future. Certainly, he deserves to be punished, but
15 with all due respect, I, members of the community that
16 have come forward and Mr. Ritter, asks the Court for
17 some light at the end of the tunnel, some ability to
18 come back, be a member of this community again.

19 I think if he's allowed to do that, he will
20 continue to be a help to the community. Thank you.

21 THE COURT: Counsel?

22 MS. SHIPLEY: Your Honor, if I may just respond
23 and allow Ms. Simpson --- her name is Sophia Simpson.
24 That is the name of --- the mother of this child, and
25 the child's name is Javon Simpson. They have names.

1 Your Honor, if I could let her to speak last,
2 because of course, her opinion is the most important
3 opinion in this entire courtroom. She is the one that
4 has suffered the greatest loss of anyone in this
5 courtroom.

6 Your Honor, I was listening to Mr. Strifling talk
7 about how I painted a picture to Your Honor when he
8 pled guilty. I just want Your Honor to know that I
9 don't know Mr. Ritter. I'm simply relaying to the
10 Court the facts of case. That is exactly what I did
11 on July 20th when I explained to you that when he
12 discovered this child, he continued to drive with the
13 baby in his car, after he had taken the baby out of
14 his car --- car seat, put the baby up --- Javon, up to
15 his ear to hear if the baby was breathing.

16 He then puts the baby back in the car seat and
17 continues to drive to pick up other children while he
18 was three minutes away from Richland Memorial Hospital.

19 He also carries his cell phone with him. Not at
20 any time did he call 911, nor did he take the baby to
21 the hospital.

22 Instead, he takes the baby to the day care center.
23 He is a Lieutenant Colonel in the Army. He is
24 supposed to be a leader.

25 Instead, he abandoned Javon with the coworkers or

1 the staff of Willie Ritter Day Care Center. He left
2 it to them. In fact, he told one of the witnesses,
3 one of the ladies that worked there, Ms. Katherine
4 Brownly, that, "Here, you take care of this
5 situation." He said that to one of the ladies that
6 worked there, and then he leaves.

7 That is not an example of leadership. That is
8 not an example of remorse. That is an example of
9 trying to get away from something you know you did
10 wrong.

11 Your Honor, he then returns to the day care
12 center and makes contact with one of the officers and
13 tells the officer that he wasn't there when the
14 incident happened, trying to make it sound like it
15 happened at the day care center, inside of the day
16 care center.

17 He instructed a --- or told an employee, another
18 staff member, "You tell the police you found Javon in
19 the crib in the infant room," to try to cover-up that
20 the baby had been left for seven hours in the van.

21 He also then --- not only did he lie by saying he
22 wasn't there during the incident, he instructed his
23 staff not to cooperate with these investigators,
24 Investigator Reese and Investigator Thomas. He told
25 them not to talk to the police.

1 Those are actions of a culpable state of mind,
2 Your Honor, a state of mind that does reek of extreme
3 indifference to human life.

4 As a result, Ms. Simpson has suffered a loss that
5 no one in this courtroom, not even Your Honor, can
6 replace, but you can give her justice, Your Honor. We
7 would respectfully request that you sentence him to 20
8 years.

9 Ms. Simpson, please read your statement to the
10 Judge.

11 THE MOTHER: I just would like to say that it's
12 --- it's been two years, four months, three weeks, and
13 three days since the last time I held my baby. It's
14 been really hard these last couple of years, a lot of
15 decision making.

16 I just also would like to thank everybody that
17 had everything to do with today, all your sweat and
18 tears in this. I just want to appreciate --- I just
19 want to say that I appreciate that.

20 Javon will be missed by family and friends, but
21 most of all by his mother.

22 And to Mr. Ritter, I do forgive you because God
23 forgave me ---

24 UNIDENTIFIED WOMAN: Amen.

25 THE MOTHER: --- so I forgive you, and I just

1 wanted to --- just an apology.

2 I appreciate that. That's all I really wanted.

3 UNIDENTIFIED WOMAN: You got it.

4 THE MOTHER: That's all I really wanted. If you
5 had showed any type of sympathy that day, you probably
6 wouldn't even be here, because it's not about the fact
7 that he's not here.

8 What you did to why he's not here, it's no help,
9 but God does everything for a reason. So I also would
10 like to say that God doesn't make no mistakes, and
11 hopefully he won't make one today.

12 MS. SHIPLEY: Thank you, Your Honor.

13 THE COURT: Anything from law enforcement?

14 THE INVESTIGATOR: No, Your Honor.

15 THE INVESTIGATOR: No, Your Honor.

16 THE COURT: First of all, I want to thank all of
17 you that came today taking part in this sentencing
18 procedure, both for Colonel Ritter and also the
19 victim's family.

20 I appreciate you're coming and the comments that
21 you have given to me. I don't mind telling you in all
22 my years on the bench, this is probably one of the
23 most difficult matters that I've been faced with
24 handling.

25 I also want to thank counsel, both for the State

1 and the defense in their presentations to the Court,
2 including the follow-up briefs. It gave me some
3 guidance on this hearing. I also want to thank
4 Probation and Parole for the intensive presentence
5 investigation that they completed for the Court.

6 I want all of you to understand the particular
7 law that is involved in this case, this hybrid type of
8 law compared to what most of us attorneys and judges
9 are used to, having practiced and presided over the
10 years.

11 Our law of homicide, of course, evolved from the
12 old English common law, was divided, basically, into
13 three different areas: That of murder, which we all
14 know in most states is the premeditated homicide where
15 plans were made.

16 In this State, it's a homicide that involves
17 malice aforethought. A lesser-included offense of
18 that is voluntary manslaughter where you have homicide
19 that involved heat of passion, heat of anger, and then
20 the lesser of the three was involuntary manslaughter
21 where you have the death by negligence, as it is
22 sometimes said, carelessness.

23 The legislature has drawn up this particular law,
24 pretty well disregarded the old law as we know it, and
25 I --- from what I've researched about it, it seems

1 like the justification for their enhancement of this
2 particular law is because of the innocence and
3 vulnerability of a child that becomes a victim, as
4 well as child advocacy groups met with the various
5 panels over at the legislature coming up with this
6 very strict law that has unusual teeth to it as far as
7 punishment.

8 We all know what the law is about suspended
9 sentences, but I also know what the legislature came
10 up with in stating their minimum sentence.

11 Colonel Ritter, I know probably in the past ---
12 well, I don't know that, but I would --- I would think
13 that you have probably been involved in the
14 court-martial panel in proceedings where you possibly
15 had to sit as a judge or possibly as a witness or
16 whatever.

17 I want you to know that if you had that
18 experience, then you know the dilemma I find myself in
19 trying to figure out an appropriate punishment.

20 We all have to remind ourselves, whether we are
21 the judge or whether we are the jury, it's a standard
22 principle of law we have to go by.

23 We don't go by what we think the law should be.
24 We have to go by what the law is. I'm going to be
25 very open and honest with you. I came in here from

1 these initial reports from both sides after I reviewed
2 this situation in total whereby Colonel Ritter, you
3 ignored several warnings by the State about the way
4 you were handling those children in that van.

5 If you had just used the check-off list which you
6 had available, this wouldn't have come about. As in
7 the military --- and you should know better than any
8 of us in here. --- that if our military is going to be
9 successful in defending this country, you got to
10 follow the rules and regulations and follow orders.
11 You should have done that here, because as I said, if
12 anybody should have known to follow the rules, it was
13 you.

14 I realize on the mitigating side of that
15 situation, you probably got in the business after your
16 retirement. It was a lot more complicated than you
17 originally thought maybe was there. Anytime you're
18 dealing with other people's welfare and livelihood,
19 especially children, you've got to follow the rules.

20 I also took notice of the fact that you didn't
21 immediately respond to the child's needs when you
22 discovered there was a crisis at hand, and worst of
23 all, you tried to pass it on to the other workers.

24 So I'm going to tell all of you up front: I am
25 going to give a lesser sentence than I first thought

1 that I would today because I wanted to hear everybody
2 involved.

3 The fact that all of you came, and especially the
4 victim's mother that we all ---

5 UNIDENTIFIED WOMAN: Amen.

6 THE COURT: --- paid strict attention to and
7 taking into account her forgiveness, her presentation.

8 I'm coming off of what I was going to originally
9 do, but I'm going to follow the recommendation of the
10 State. The sentence is that Mr. Ritter be confined to
11 the State Department of Corrections for a period of 20
12 years.

13 UNIDENTIFIED WOMAN: Jesus.

14 THE COURT: He's going to get credit for any jail
15 time he had. Also, because of his health and age, I'm
16 going to recommend specialized placement for him.

17 Hopefully, the Department of Corrections has a
18 place for him where he will be able to assist the
19 State in some ways that will be beneficial.

20 I thank everybody for being here and taking part,
21 those that did, and good luck to you, Colonel.

22 MS. SHIPLEY: Thank you, Your Honor.

23 MR. STRIFLING: Thank you.

24 (Whereupon, the proceedings were concluded.)

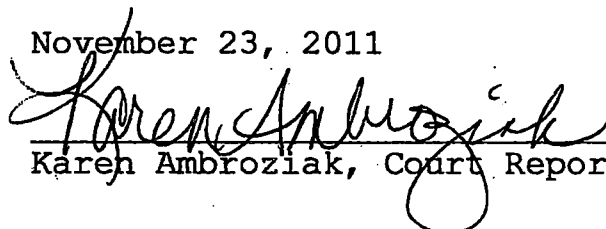
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th 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 in the trial of the captioned case, relative to appeal, in the General Sessions Court for Richland County, South Carolina, on the 21st day of September, 2009.

November 23, 2011


Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS
2007-GS-40-04465

STATE OF SOUTH CAROLINA

-vs-

WILLIE RITTER

:
:
:
:
:

TRANSCRIPT OF RECORD

MONDAY, OCTOBER 31, 2011
SUMTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

LUCK CAMPBELL, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

WILLIAM B. VON HERRMANN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

I N D E X

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3 Certificate of Court Reporter 18

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E X H I B I T S

8 No.

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9 C-1 Sentence Sheet and Transcript of Plea 17

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1 MS. CAMPBELL: May it please The Court.

2 THE COURT: Okay.

3 MS. CAMPBELL: Your Honor, we're here today with The
4 State versus Willie Ritter. He was charged in Richland
5 County with homicide by child abuse. He came before you
6 for trial, Your Honor. He ended up pleading guilty back in
7 2007, September 2007. At that time he was sentenced to 20
8 years for homicide by child abuse by you at that time.
9 Subsequent to that his counsel then filed a motion to
10 reconsider the sentence. And we are here for purposes of
11 that this morning.

12 THE COURT: All right. Counsel.

13 MR. VON HERRMANN: Thank you, Your Honor, Bert Von
14 Herrmann for the defendant.

15 Your Honor, I provided a copy of several things to
16 both the state, as well as The Court. First of all, there
17 is a sentencing sheet where Mr. Ritter was sentenced to 20
18 years in the Department of Corrections, along with a motion
19 for reconsideration filed by the former counsel, Jan
20 Strifling, of the Richland County bar. It was properly
21 before The Court at that particular time.

22 Your Honor, I have also provided a copy of a
23 transcript of the record for the guilty plea that occurred
24 on that particular day, which was July 20 of 2009.

25 Your Honor, as part of the motion for reconsideration,

1 obviously, he has asked for a motion to reduce sentence or
2 a change in the sentence or alter the sentence.

3 What we are asking for, Your Honor, is in fact that
4 exactly, and that is to vacate the plea and send everyone
5 back in a position for which they would now be entitled to
6 -- they would be entitled to be in, had some of the law
7 been a little bit clearer at the time.

8 As The Court is quite aware, I'm sure, and having been
9 a prosecutor for quite some years and tried many of these
10 cases, it was our position or at least an unchallenged
11 position that we believe that the homicide by child abuse
12 statute could be suspended in spite of the fact that it did
13 carry the potential life in prison without parole.

14 There is, Your Honor, a statute -- statute 24-21-410
15 that in fact was pertinent and has actually prohibited the
16 suspended sentence. And while I'm not aware of any appeal
17 -- with regards to that, it does clearly state that
18 potential penalties with life in prison are not
19 suspendible.

20 Your Honor, to go one step further, the court
21 eventually -- somebody on the court did try to suspend the
22 sentence or actually was requested to suspend the sentence
23 and declined to -- in that particular case, Your Honor,
24 Judge Childs was appealed and the final court -- or Supreme
25 Court ruled in July 25, 2011 that in fact any case that

1 carries life in prison without parole or the death penalty
2 is a non-suspendible sentence.

3 And that really comes back to -- and there are rival
4 cases out here. Ms. Campbell handed me several of them,
5 I'm sure she handed to The Court several of them.

6 When The Court was taking the plea -- and I would
7 point The Court's attention to page 4 of the transcript,
8 The Court indicated to the defendant, for the particular
9 offense the maximum possible penalty is up to life in
10 prison with a minimum sentence of 20 years. However, that
11 is not what we mean as mandatory minimum sentence. We will
12 have further discussion about that in a few minutes. But
13 for right now, I'm advising you that when I say it's not a
14 mandatory minimum sentence, that means that the minimum
15 sentence portion of this statute can be suspended as I
16 understand the law.

17 Now, do you have any questions about this charge?

18 And The Court further indicates to him that it was a
19 suspendible sentence.

20 His attorney in fact, on page 27, indicates that, so
21 we also enter this plea, Your Honor, with the understanding
22 that The Court as you have stated believe the statute under
23 which my client is pleading is a -- excuse me -- is a
24 suspendible statute. In other words, he's facing 20 to
25 life, and Your Honor can give him a suspended sentence,

1 but now the guidance -- excuse me, by the legislature, but
2 also by the guidance we've been provided by the South
3 Carolina Supreme Court, that was an impossibility. He
4 could not have received a suspended sentence.

5 He is not -- Your Honor, certainly at 65 years old
6 would not have plead guilty knowing that there was no
7 chance that he could get less than 20 years. He expected
8 -- or at least expected the opportunity or a chance, and
9 didn't understand the consequences was that he was going to
10 get at least 20 years.

11 To ask this Court -- and this Court right now is bound
12 in my opinion -- and I believe as The Court indicted, at
13 least we talked about briefly in chambers, is bound now by
14 the most recent case which says it can't be suspended.

15 So the motion for reconsideration would essentially be
16 void. It would be of no value if we were not able to ask
17 you to vacate the sentence, which is essentially what we're
18 asking you to do, vacate the sentence, which would in turn
19 vacate the plea and allow us to go forward with his
20 chances.

21 You also have to understand, Your Honor, this man was
22 also engaged in a number of plea offers -- or a number of
23 plea negotiations and a plea offer to voluntary
24 manslaughter, for which he understood he could get zero to
25 30 years, while not suspendible, he could get the zero

1 give him some committed sentence for which you can suspend
2 all or part of it. Now, that's not to say there's been any
3 discussion of a sentence or any words as to what if any
4 suspended sentence you give.

5 Your Honor, it's our position that under every bit of
6 the case law that I have located -- and Robbie (phonetic)
7 versus the State of South Carolina, I believe, is
8 pertinent, it does quote the U.S. Supreme Court -- says,
9 that in order for a defendant to knowingly and voluntarily
10 plead guilty, he must have a full understanding of the
11 consequences of the plea. And it says to ensure the
12 defendant understands the consequence of the plea, the
13 Trial Court usually asks the questions of the defendant
14 about the facts and the punishment that can be imposed.

15 And they also, Your Honor, further quote some federal
16 law. And I've provided that in Boykin v. Alabama, that he
17 has to have a full understanding of the law, and that has
18 to be an accurate understanding of the law.

19 In his mind, he was 65 years old at the time. He
20 reasonably believed that there was an opportunity -- and
21 The Court had at least entertained and explained to him
22 that he had the possibility of getting a suspended
23 sentence.

24 In this particular case we know not only by the
25 statute that we have that has been provided by The Court,

1 years.

2 His mother was sick at the time and he rejected that.
3 Ultimately this plea came about on the eve of trial.

4 Your Honor, I just suggest that out of fundamental
5 fairness, out of the case law, and out of the fact that he
6 was, you know, obviously, inadvertently -- I don't believe
7 that there was any intent to be -- to be, I guess, misled
8 by The Court at all. I think it's something that was
9 routinely done. However, the problem is, that's not what
10 the law is. That's what a lot of us believed the law to
11 be, and I don't think he should be the one prejudiced by
12 maybe our misinterpretation of the law at this point.

13 Your Honor, we do respectfully request that this Court
14 allow him a bond, allow this plea, the sentence be vacated.
15 He's now spent 2 -- over 2 years in jail on charges, quite
16 frankly, Your Honor, that are a little suspect in nature
17 any way. But that's neither here nor there. I don't think
18 we even need to get into the facts. I think that the facts
19 can be dealt with at a later time. What we need to do is
20 deal with the fact that he did not fully understand the
21 consequences of his action. And if Your Honor needs, Mr.
22 Ritter is here. He is fully willing to testify to his
23 understanding of the plea.

24 And I appreciate Your Honor, and I would respectfully
25 request an opportunity to respond to the state and any

1 argument that they have.

2 THE COURT: Solicitor.

3 MS. CAMPBELL: Thank you, Your Honor. May it please
4 The Court, Your Honor. If I may approach. Having handed
5 up a copy of the sentencing sheet. This is a plea that
6 took place over 2 days. You took the voluntariness plea on
7 the first day. And then the second day you actually did
8 the sentencing.

9 In addition to that, Your Honor, I have a copy of the
10 motion that was filed by Jan Strifling back then to
11 reconsider the sentence. I also hand up State versus
12 Rickard, State versus Morton, and State versus Wolf, which
13 all address, I believe the issues in this case if you were
14 to entertain them.

15 First of all, Your Honor, we have a motion before you
16 today pursuant to the filings in the clerk of court's
17 office -- any motions that are out there are a motion to
18 reconsider the sentence. So then to ask in the alternative
19 to vacate the guilty plea itself, I do not believe would be
20 appropriate.

21 However, even if you were to entertain that motion and
22 consider it, Your Honor, the case upon which he relies
23 which I just was handed this morning and I just had an
24 opportunity to review briefly is a whole different
25 scenario. In that case it was a sentence that was promised

1 to this defendant. He was promised a negotiated sentence
2 of 15 years; that was what was held out to him, and the
3 judge deviated from the negotiations in that case, which is
4 not what is here.

5 If the record is clear, Your Honor, we would ask to
6 make the transcript -- if it's appropriate, Your Honor. I
7 just received it this morning. I haven't had a chance to
8 review it. However, in my little bit to review it, Your
9 Honor, the transcript, you went through this defendant's
10 entire -- all his rights, whether or not his plea was
11 voluntary is not a question, Your Honor.

12 You went through the fact that, yes, you thought it
13 could be suspendible, but you also represented to him very,
14 very clearly that he was facing 20 to life and that was the
15 sentencing range.

16 He acknowledged that.

17 There is nowhere in his argument that you didn't go
18 through all his rights with him.

19 In the cases that I've handed up to you, both in
20 Rickard and Morton, a defendant cannot just wipe the slate
21 off because he doesn't like the sentence he gets, if he's
22 not promised anything. If you will look at this
23 transcript, Judge, it's very clear that there were no
24 promises made to this defendant, that he's pleading guilty
25 straight up. And the sentencing could be suspended by you

1 was put in the record, however, he was facing 20 to life.
2 You fell well within those guidelines.

3 In addition to that, Your Honor, in the case of State
4 versus Wolf, that's the case which addresses the fact that
5 defense counsel represented to the defendant that he could
6 get less time than he actually could. They're saying it
7 wasn't an issue in that case as in this case, because he
8 was aware of the actual penalties that did exist in this
9 case.

10 Respectfully, Your Honor, we ask that you deny the
11 motion. We do not feel it is appropriate here to entertain
12 the motion. We find that there's no basis other than they
13 don't like the sentence, which clearly has been addressed
14 by the Supreme Court and the Court of Appeals, Your Honor,
15 to say that this plea was not voluntary.

16 And defense counsel cannot point out anything in the
17 transcript that would render it involuntary. Thank you.

18 THE COURT: Yes, sir.

19 MR. VON HERRMANN: Your Honor, just briefly. And I
20 don't think we need to belabor it. But State v. Wolf is
21 when defense counsel in and of itself misrepresented a
22 potential sentence. It was not on the Judge effectively or
23 inadvertently misrepresented or did represent to a
24 defendant that there is an alternative sentence that could
25 be offered.

1 In this particular case, quite frankly -- I mean,
2 certainly, we've got -- he was told on the record by the
3 Judge that it was a suspendible sentence and he could
4 potentially walk out of the courtroom that day.

5 We have his attorney doing it.

6 My assumption is that we also have a prosecutor who
7 has a duty to justice, that if she knew that that was not
8 the case -- and I know Ms. Shipley (sic) very well. And I
9 would whole-heartedly agree that if she knew or believed to
10 be any different from what this court said to Mr. Ritter,
11 she would have brought it to The Court's attention. No
12 question in my mind about that.

13 So we essentially have 3 people that have represented
14 or at least acknowledge that there is a potential that you
15 could walk out of here today at 65 years old, as opposed to
16 what we're faced with right now is 20 years.

17 You know, to mince words with vacating the plea or
18 vacating the sentence, Your Honor -- that in and of itself
19 allow the plea to be vacated. If we're going to mince
20 words over trying to get to justice -- and that's really
21 what we're talking about here is getting to justice. We're
22 not talking about mincing words as to whether or not
23 because he filed a motion to reconsider whether you can
24 then vacate his plea.

25 Your Honor, having been a law clerk and sat by a

1 judge, a judge can do an awful lot. And it's always in the
2 interest of justice. And, quite frankly, what we're asking
3 right now for, Your Honor, is something that this court has
4 the authority to do and absolutely, we believe, the
5 responsibility saying -- again, there is no -- we're not
6 saying that The Court intentionally ever misrepresented
7 anything. But that's not the question. He's still
8 prejudiced by the fact that the proposed potential penalty,
9 the consequences of his plea, which is what every case
10 she's handed up and I handed up was not the potential
11 consequences for which he pled.

12 And in our particular case, Your Honor, we believe
13 that the only proper thing to do is to set aside the plea.
14 If he comes back and he pleads later, then we know what the
15 plea is. We know what the consequences are.

16 If it goes to trial, he knows what the consequences
17 are.

18 But that day when he made that plea, he did not know
19 what the consequences were. He believed that it could be a
20 suspended sentence, that could potentially allow him to
21 walk out at 65 years old.

22 And I would point out, Your Honor, just as an aside,
23 that you were absolutely cognizant of his condition. They
24 put forth that he was diagnosed by a mental health expert
25 having some schitzofroid issues.

1 But even your recommendations were that he be
2 specially placed with health needs and history -- medical
3 history. So it's not that you weren't cognizant of his
4 situation in things -- although they were not raised as a
5 defense, those were just mitigating factors or issues.

6 But The Court was cognizant of his rights and
7 everything. And I believe The Court did do everything that
8 they could in their power to. Unfortunately, it is a
9 mistake. It is a mistake that is materially prejudicial to
10 my client. And we should go back to square-one, allow him
11 the opportunity to make the decision whether knowing that
12 this 20 years to life and there's no suspended sentence.
13 Let him make that decision, Your Honor. And that's all
14 that we are asking. Thank you, sir.

15 THE COURT: Yes.

16 MS. CAMPBELL: Respectfully, Your Honor, he makes his
17 argument for me. I mean, you did seek justice that day.
18 You rendered it. I ask you to take into consideration
19 everything put forward.

20 You went through his rights, to make sure it was
21 voluntary. He made a knowing and intelligent waiver of his
22 rights and he pled guilty to this.

23 We just ask that you abide by your decision you took
24 into consideration.

25 THE COURT: All right. There's no misrepresentation.

1 I mean, there's not a mistake as far as the transcript;
2 that was the understanding of most judges at that time that
3 that was what the law was. I remember that very well
4 because The State paper did a survey -- even attempted to
5 call several jurist to get their opinion on it. And I
6 mean, there wasn't any question about it at that time.

7 Of course, the law is all over the board. I don't
8 remember the particular statute. But I remember years ago
9 there's an obscure statute out there somewhere that I was
10 told that says that no matter what any other statute says,
11 the circuit judge still has the authority to suspend a
12 sentence. But I don't know whether that's true or not. I
13 just remember somebody making that statement at a class one
14 time.

15 But if I had suspended the sentence down somewhat -- I
16 don't think there's any question about that. The
17 Department of Corrections would have gone along with it,
18 whatever that particular sentence was, would probably not
19 even be questioned here today.

20 MR. VON HERRMANN: Your Honor, if I may, I actually
21 brought that issue up to Ms. Campbell on Friday. She
22 indicated that her circuit always would review those cases.
23 And had it been a suspended sentence, it would in fact been
24 appealed.

25 Now, I've known Ms. Campbell quite some time, and I

1 know that she would not misrepresent that. So, in fact, we
2 would have been here and perhaps the decision would have
3 been made different.

4 And, Your Honor, respectfully -- and, of course, not
5 to interrupt The Court. But, again, 24-21-410 speaks
6 clearly to if the potential sentence is life in prison. We
7 might have all been ignoring it or potentially we just
8 haven't been appealing it, because I've had it happen when
9 I was on the state's side. We did not appeal the judge's
10 decision. But had we done so, we might have had this
11 decision on February 25. Quite frankly, we'd have had this
12 hearing we're having a motion to reconsider 2 years later.
13 Had we had a year later or a year ago and they didn't
14 appeal it, then this Court would have had the opportunity
15 to reduce the sentence if they saw fit.

16 THE COURT: Well, I can't speak for them. I know what
17 was common practice back then. And there's been a lot of
18 discussion across the board about it. And I know -- I do
19 remember that The State paper was very actively involved in
20 researching that matter.

21 All right. If you all want to do proposed orders
22 within 10 days, please.

23 MS. CAMPBELL: Thank you.

24 MR. VON HERRMANN: Thank you, Your Honor.

25 THE COURT: Good seeing you all.

1 (Sentence Sheet and transcript of plea were marked
2 Court's Exhibit No. 1 at the conclusion of the hearing.)

3 --- End of transcript of record ---
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1 I, the undersigned Dianne A. Rutledge, official court
2 reporter for the Fifth Judicial Circuit of The State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate, and complete transcript of the record of the
5 proceedings had and evidence introduced in the hearing of the
6 captioned case, relative to appeal, in the Circuit Court for
7 Richland County, South Carolina on the 31st day of October
8 2011.

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

11

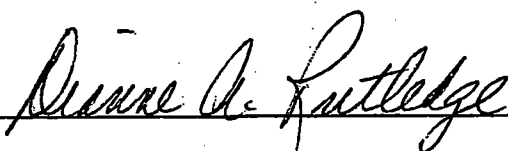
12

August 16, 2012

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15

A handwritten signature in cursive script, reading "Dianne A. Rutledge", is written over a solid horizontal line.

16

Court Reporter

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WILLI RITTER #0337044,

Plaintiff(s)

vs.

State of South Carolina,

Defendant(s)

Submitted By: William B. von Herrmann
 Address: 216 Elm Street
 Conway, SC 29526

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP-28-10-384

RECEIVED
 SEP 11 2014

SC Bar #: 15675
 Telephone #: 843-488-1030
 Fax #: 843-488-1035
 Other:
 E-mail: bvhlaw@aol.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | | |

Submitting Party Signature: 

Date: 8/29/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

WILLIE RITTER #0337044)

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

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 Kirkland Correctional Institute
2. Name and location of Court which imposed sentence Court of General Sessions
Richland County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-40-4465: Homicide by Child Abuse
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) On September 21, 2009, Mr. Ritter was sentenced to 20 years incarceration by the

RICHLAND COUNTY
FILED
2014 SEP 10 AM 10:33
JEANNETTE W. MCBRIDE
C.O.P. & G.S.

Revised 3/2003

Hon. Paul Burch

- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (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?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Sentence Affirmed in unpublished opinion No. 2014-UP-232
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 18, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No. 2014-UP-232
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

Revised 3/2003

custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Involuntary Guilty Plea
- (c) _____

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

(a) Mr. Ritter was incorrectly advised by both his attorney, Jan Strifling, and his sentencing judge, the Hon. Paul Burch, of the potential sentencing range during his guilty plea. Specifically, Mr. Ritter was incorrectly advised that he could receive a suspended sentence for homicide by child abuse, a charge which, in fact, carries a mandatory minimum 20 year sentence. Counsel's conduct in failing to properly advise Mr. Ritter so undermined the proper functioning of the guilty plea process that the plea cannot be relied upon to have produced a just result. Mr. Strifling was deficient in his representation as measured by reasonable norms. Mr. Ritter, who was 65 years old at the time of sentencing, would not have plead guilty to a charge which carried a mandatory minimum 20 year sentence but for this deficient advice. Further, Mr. Strifling failed to object to the sentence so that the error would be preserved for review by the appellate court. Finally, Mr. Strifling failed to file a motion to vacate the sentence in a timely manner thereby foreclosing Mr. Ritter's opportunity to have this issue heard on appeal.

(b) As a direct result of counsel's deficiencies in advising Mr. Ritter of the appropriate sentencing range, Mr. Ritter was deprived of a full understanding of the consequences of his plea. Counsel's representation fell well below an objective standard of reasonableness and there is a real probability that but for trial counsel's errors, Mr. Ritter would not have plead guilty but would, rather, have insisted upon going to trial. This was exacerbated when the trial judge also failed to inform Mr. Ritter of the correct sentencing range. One cannot enter into a guilty plea freely and voluntarily where he is unaware of the potential minimum and maximum sentence of the crime for which he is charged. It was Mr. Ritter's erroneous belief that he could receive a probationary sentence which induced the plea itself where that sentence was, in actuality, never available to him.

(c) * See attached appellate brief and unpublished opinion

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

Revised 3/2003

- (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 "yes" 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?
Yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. Involuntary Guilty Plea
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. Motion for Reconsideration
- ii. Appeal- argued but not heard as issue was not raised by trial counsel in a timely manner.
- 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) N/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? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:

- i. Jan Strifling, 1116 Blanding St., Columbia, SC 29201
- ii. William B. von Herrmann, 216 Elm St. Conway, SC 29526
- iii. _____

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

- i. Jan Strifling, Esq represented Mr. Ritter during arraignment, plea, sentencing, and filing of post-sentencing motion.
- ii. William B. von Herrmann, Esq. argued the motion to reconsider sentence and filed the appeal.
- iii. _____

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

Mr. Ritter would like to have sentence vacated and/or set aside.

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

No

STATE OF SOUTH CAROLINA

County of RICHLAND

VERIFICATION

I, WILLIE RITTER, 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 Ritter

SWORN to and subscribed before me this 09
day of Aug, 2014.

John D. [Signature] (L.S.)
Notary Public

My Commission Expires: April 16, 2017

RICHLAND COUNTY
FILED
2014 SEP 10 AM 10:33
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

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

I, _____, 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 Bitter

Applicant

SWORN or affirmed to and subscribed before me this

17 day of Aug, 2014

[Signature]

Notary Public

My Commission Expires: Sept 16, 2017

RICHLAND COUNTY
FILED
2014 SEP 10 AM 10:33
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Willie Ritter, Appellant.

Appellate Case No. 2012-210570

Appeal From Richland County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2014-UP-232
Submitted May 1, 2014 – Filed June 18, 2014

AFFIRMED

William Bertram Von Herrmann, of Von Herrmann Law
Firm, of Conway, for Appellant.

Assistant Deputy Attorney General David A. Spencer, of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: Rule 29(a), SCRCrimP ("Except for motions for new trials based on
after-discovered evidence, post-trial motions shall be made within ten (10) days
after the imposition of the sentence."); *State v. Warren*, 392 S.C. 235, 240, 708

S.E.2d 234, 236 (Ct. App. 2011) (holding the trial court only had authority to consider the issue raised in a timely filed post-trial motion and lacked authority to consider the issue in a motion to amend filed more than three years later).

AFFIRMED.¹

HUFF, THOMAS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Court of General Sessions

Paul Burch, Circuit Court Judge

Case No. 2012-210570

THE STATE

vs.

Respondent,

WILLIE RITTER

Appellant.

SECOND AMENDED FINAL BRIEF OF APPELLANT

William B. von Herrmann
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(843) 488-1030
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Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. The Trial Judge erred in denying Appellant's Motion to Vacate Guilty Plea where the plea was not knowingly and voluntarily given.

STATEMENT OF THE CASE

This action was filed formally on or about September 21, 2009 as a Motion to Vacate Guilty Plea and Motion to Reconsider, pursuant to SCRCrimP 29.

The matter was heard by motion before the Honorable Paul Burch on October 31, 2011. The Appellant made an argument that he was not fully informed when he entered his guilty plea and therefore it was not voluntary.

On March 5, 2012 the Honorable Paul Burch denied the relief requested by the Appellant.

Thereafter, Appellant filed a timely Notice of Appeal.

The Appellant was represented by Jan Strifling, of the Richland County Bar, at the plea hearing. Jan Strifling continued the representation of the Appellant at his sentencing hearing.

The Appellant was sentenced to a period of 20 years incarceration. Mr. Ritter appeals to this Court for the reasons contained in this brief.

This appeal follows.

STATEMENT OF THE FACTS

On July 20, 2009, the Appellant entered a guilty plea to the crime of homicide by child abuse. (R.pp. 8-39). While informing Appellant of the potential sentence, the trial court advised, "[f]or that particular offense, the maximum possible penalty is up to life imprisonment with a minimum sentence of 20 years. **However, that is not what we term a mandatory minimum sentence.**" (emphasis added) (R. p.11). The court further clarified this statement. (R. pp. 11-12). The court stated, "we will have further discussion about that in a few minutes, but for right now I'm advising you of when I say it's not a mandatory minimum sentence, **that means that that minimum sentence portion of the statute can be suspended,** as I understand the law." (emphasis added) (R. p.12).

Appellant's attorney, Jan Striffling, stated, "[s]o we-we also enter this plea, Your Honor, with the understanding that the Court, as you have stated, believes that the statute under which my client is pleading is a suspendible statute." (R. p.34). Appellant's attorney further stated, "[i]n other words, he's facing 20 to life, and Your Honor can give him a suspended

sentence, you, give him some committed sentence which you can suspend all or part of it." (R. p.34).

On September 21, 2009 the sentencing hearing was held before the Honorable Paul Burch. During the sentencing hearing, several individuals spoke on Appellant's behalf. At the conclusion of the hearing, the trial court ordered that the Appellant be confined for a period of 20 years within the South Carolina Department of Corrections. (R. p.50).

On September 25, 2009, Appellant's attorney, Jan Strifling, filed a timely Motion to Reconsider. (R. p.70). The matter was taken before the court on October 31, 2012. (R. pp.52-69). Appellant was represented by new counsel, William B. von Herrmann. (R. p.54). At the hearing, Appellant also moved to Vacate the Plea. (R. pp.54-55).

On March 5, 2012, the Honorable Paul Burch denied both the Motion to Reconsider and the Motion to Vacate the Plea. (R. p.1-7). Thereafter, a timely Notice of Appeal was filed by Appellant.

ARGUMENT

I. The Trial Court created reversible error when it denied Appellant's Motion to Vacate his Guilty Plea.

The controlling issue in this case is whether the plea entered by Appellant was knowingly and voluntarily given. The Supreme Court of the United States has held any plea taken must be made knowingly and voluntarily. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969).

The South Carolina Supreme Court has held, "[i]n order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea." *Roddy v. State*, 339 S.C. 29,34 (2000) (citing *Dover v. State*, 304 S.C. 433, (1991) (citing *State v. Hazel*, 287 S.C. 392 (1980)). A plea is involuntary if the Judge does not tell the defendant of the maximum and mandatory minimum sentence. The Court has further held, "[a]lthough the trial court is not required to direct defendant's attention to each right and obtain a separate waiver, the record should indicate the defendant was fully aware of the consequences of the guilty plea." *Id.* (citing *State v. Lambert*, 266 S.C. 574 (1976).

"The test for determining the validity of a guilty plea is: (1) whether counsel's advice was within the range of competence demanded of attorneys in criminal cases; and (2) whether there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty." *Ray v. State*, 303 S.C. 374, 376 (1991) (citing *Hill v. Lockhart*, 474 U.S. 52 (1985)).

Under current South Carolina law, "[a]fter conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation." S.C. Code Ann. §24-21-410(2011) (emphasis added). The legislature clearly mandated that crimes which carry a possible life sentence cannot be suspended. *Id.*

Appellant pled guilty to, and was sentenced under, SC Code Ann. §16-3-85 (A)(1)(B)(1)(2011). The sentencing range for this statute reads as follows, "[h]omicide by child abuse is a felony and a person who is convicted of or pleads guilty to homicide by child abuse: (1) under subsection (A)(1) may be imprisoned for life but not less than a term of twenty years." (emphasis

added).

This Court has held, "[m]oreover, words should be given their plain and ordinary meaning, and we should not look for or try to impose another meaning." *State v. Johnson*, 343 S.C. 693, 695 (Ct.App.2001) (citing *State v. Smith*, 330 S.C. 237, 240 (Ct.App.1998)).

As the South Carolina Supreme Court stated in *Roddy*, Appellant did not enter into a voluntary plea because he did not have a full understanding of the consequences. As stated above, the Appellant believed his sentence could be suspended if so desired by the court. It was error by the court in this instance to inform Appellant of the possibility of a suspendible sentence which was not, in actuality, available to him. This false belief in the potential sentencing range induced the defendant to enter into a plea which he would not otherwise have entered into. The South Carolina Legislature has made clear that any sentence punishable by death or a life sentence could not be suspended. At the Appellant's age, a 20 year sentence equates, in all likelihood, to a life sentence.

In Appellant's mind at the time of the plea, there was a real possibility of his receiving a suspended sentence. The

absence of that possibility negates his ability to knowingly and intelligently enter into the plea. The fact that the sentence is a "legal" sentence has no bearing on the subjective determination of the defendant to voluntarily and knowingly give up his right to a trial and enter a guilty plea. But for the incorrect information with regard to sentencing, the defendant would not have entered into the guilty plea.

During the plea, the Appellant was incorrectly advised by the trial court. Both the trial court and Appellant's attorney believed that his sentence could be suspended and advised the defendant of the same. Clearly, the defendant relied on the information provided to him by the trial court in his decision to go forward with the plea. At the same time, it is clear that the trial court was incorrect in his belief as to the sentencing range as the statute specifically excludes crimes in which the defendant can be sentenced to life in prison. As such, there was no possibility of defendant receiving a suspendible or even split sentence although the judge told him that he could. Again, voluntariness is subjective and in this case was based upon a false belief as to the potential sentencing range due to the judge's error.

Furthermore, as the Supreme Court of South Carolina stated in Ray, there are two questions that must be answered. First, was the Appellant's counsel at his plea hearing competent? In this case, he was not. The Appellant was advised by his counsel and the trial court that any sentence he received could be suspended. (R.pp.11-12; p.34). It was this belief which caused him to plead guilty. Second, but for the error, would the Appellant have pled guilty? In this case, Appellant would not have pled guilty. On the date of his plea, Appellant advised the court he was 65 years old. Because Appellant believed his sentence could be suspended, he decided to plead guilty. If Appellant believed he would receive a mandatory minimum of 20 years, he would never have pled guilty. As stated above, the Appellant was 65 years old at the time of sentencing. The sentence received by Appellant equates, functionally, to a life sentence without the possibility of parole. The trial court recognized this fact when it stated, "Also, because of his health and age, I'm going to recommend specialized placement for him." (R. p.50).

Appellant did not enter into a voluntary plea after being made aware of all the consequences. Furthermore, Appellant's

counsel was ineffective. Counsel was incompetent when he failed to advise Appellant that his sentence could not be suspended. This failure resulted in a plea of guilty that would not have occurred if Appellant was aware of the full consequences of his plea.

The State argues that this matter should be brought in a post-conviction relief application and not on direct appeal. This is contrary to past rulings of the Supreme Court of South Carolina. The Supreme Court has held an error, which could be reviewed on direct appeal, should be brought forward at that time and not in an application for post-conviction relief. *Peeler v. State*, 283 S.E.2d 826 (S.C. 1981). In this instance, the error was committed by the trial court and compounded by Appellant's attorney's affirmation of that error. As the error was made by both trial judge and counsel, this appeal is proper.

The State next argues that this matter is not properly before this Court because no objection was made. While Mr. Ritter was entering his plea, counsel advised the trial court, "[s]o we-we also enter this plea, Your Honor, with the understanding that the Court, as you have stated, believes that the statute under which my client is pleading is a suspendible

statute." (R. p.11). After the trial court sentenced Mr. Ritter on September 21, 2009, Mr. Ritter's attorney filed a Motion to Reconsider on September 25, 2009. (R. p.93). The trial court listened to arguments based on this motion on October 31, 2012. (R.pp.75-92). Mr. Ritter advised the trial court that he was seeking a reduction in his sentence or asking for the court to vacate his sentence. (R. p.78). The State is incorrect in its contention that no objection was made. As the Supreme Court of South Carolina has held, the word objection is not even required to place the court on notice of error. *State v. Byers*, 710 S.E.2d 55, 59 (S.C. 2011). The Court stated, "[t]he rationale behind the requirement of a contemporaneous objection is to 'enable trial judges to make reasoned decisions by appropriately developing issues by way of argument, both for or against any particular legal proposition.'" *Id.* at 58 (quoting *State v. Torrance*, 406 S.E.2d 315, 327 (S.C. 1991)).

Mr. Ritter timely made his objections in this case. (R. 93). Furthermore, Mr. Ritter is only required to place the trial court on notice of error and allow an opportunity to correct said error. In this instance, Mr. Ritter placed the trial court

on notice and the trial court had ample opportunity to correct the error.

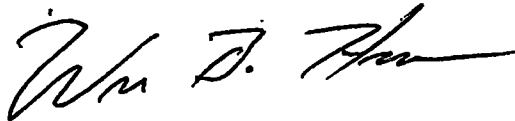
In this case, the trial court was advised that Mr. Ritter did not enter into his plea voluntarily and knowingly. The trial court, the State, and previous defense counsel along with the defendant all believed this sentence could be suspended. The false information as to the sentencing range provided to Appellant induced him into a plea which he would not have entered into had he been properly informed of the consequences. A plea cannot be voluntarily, knowingly and intelligently made where a defendant is not correctly informed of the potential consequences of the plea.

CONCLUSION

Appellant hereby requests this Court reverse the Order of the Trial Court. Furthermore, Appellant requests that the Court reverse his conviction and remand this matter consistent with the law and facts contained herein and all other relief or orders as this Court deems appropriate.

Respectfully Submitted,

William B. von Herrmann



William B. von Herrmann

216 Elm Street
Conway, SC 29526
(843) 488-1030 Office
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Oct 21, 2013

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County
Court of General Sessions

Paul Burch, Circuit Court Judge

Case No. 2012-210570

THE STATE

vs.

Respondent,

WILLIE RITTER

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 208.



William B. von Herrmann
216 Elm Street
Conway, South Carolina 29526
(843) 488-1030
Attorney for Appellant

Date: OCT 21, 2013

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNT
Court of Common Pleas

Paul Burch, Circuit Court Judge

WILLIE RITTER

Appellant,

vs.

STATE OF SOUTH CAROLINA

Respondent.

PROOF OF SERVICE

I, William B. von Herrmann, certify that I have served the Final Brief of Appellant on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

David Spencer, Assistant Attorney General
Post Office Box 11549, Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This 23 day of Oct, 2013



William B. von Herrmann
216 Elm Street
Conway, SC 29526
(843) 488-1030

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Willie Ritter,)
S.C.D.C. No. 337044,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No. 2014-CP-40-5384

RETURN

In response to the post-conviction relief application filed September 10, 2014, the Respondent would show this Court:

I.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted Applicant at the September 2007 term of General Sessions for Homicide by Child Abuse (2007-GS-40-4465). Jan S. Strifling, Esquire represented the Applicant.

On July 20, 2009, the Applicant pled guilty as indicted. Sentencing was deferred until September 21, 2009, where the Honorable Paul M. Burch sentenced the Applicant to twenty (20) years imprisonment. On September 25, 2009, the Applicant filed a motion to reconsider the sentence. The Court denied the motion on October 31, 2011 and also denied Applicant's motion to vacate the guilty plea.

A notice of appeal was filed at the South Carolina Court of Appeals. William B. Von Herrmann, perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and

sentence on June 18, 2014. State v. Ritter, Op. No. 2014-UP-232 (S.C. Ct. App. filed June 18, 2014). The Remittitur was sent on July 3, 2014.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the appellate records.

II.

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

1. Ineffective assistance of trial counsel.
 - a. Failed to advise Applicant of potential sentencing range during Applicant's guilty plea
 - b. Incorrectly advised Applicant that Applicant could receive a suspended sentence by pleading guilty
 - c. Failed to object to the sentence imposed
 - d. Failed to file a motion to vacate the sentence in a timely manner
2. Involuntary guilty plea.
 - a. Applicant was misinformed as to the potential sentencing range of his offense and would not have pled guilty but for the incorrect advice he received from his attorney
3. Judicial Misconduct
 - a. Sentencing judge failed to adequately inform Applicant of the incorrect sentencing range

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant 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 Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant

entering a guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant’s plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issue of ineffective assistance of counsel.

(signatures on following page)

Respectfully submitted,

ALAN WILSON
Attorney General

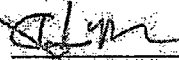
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Columbia, S.C. 29211

By:



Attorneys for Respondent

March 10, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WILLIE RITTER, #337044

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-40-5384

AFFIDAVIT OF SERVICE BY MAIL

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

W. Bertram Von Herrmann, Esquire
Von Hermann Law Firm
216 Elm St.
Conway, SC 29526

DATED this 10th day of March, 2015.



Sara B. Moore, Legal Assistant
For Respondent

I N D E X

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

Jan Strifling

Mr. Von Herrmann 5

43

Mr. Mitchell

28

Willie Ritter

Mr. Von Herrmann 47

Mr. Mitchell

58

Certificate of Reporter 64

THE COURT: You, Mr. Von Herrmann?

MR. VON HERRMANN: Yes, Your Honor.

THE COURT: Approach the bench please
counsel.

MR. VON HERRMANN: Your Honor, thank you for
the option to talk to my client. We have no
objection at all, Your Honor.

THE COURT: All right, let's proceed then.
Let me -- all right, go ahead, Mr. Attorney General,
I'll ask my question in a minute.

MR. MITCHELL: May it please the Court, this
is Willie Ritter vs. The State of South Carolina
2014-CP-40-5384. Mr. Ritter was indicted in
September of 2007 homicide by child abuse. He was
represented on these charges by Mr. Jan Strifling.
He pled guilty before Judge Burch July 20th of 2009.
Sentencing was deferred until September 21st of
2009, where Mr. Ritter was sentenced to 20 years
imprisonment.

A motion to reconsider was filed in this
case by Mr. Strifling. Mr. Von Herrmann was then

substituted as counsel, argued that motion before the general session's court. That motion was denied in October of 2011.

There was a direct appeal taken in this case. Court of appeals affirmed Mr. Ritter's conviction. At that point he filed a application for post-conviction relief September of 2014, where he has alleged ineffective assistance -- involuntary guilty plea in that Mr. Strifling's advice on whether homicide by child abuse was suspendible, whether the mandatory minimum 20 year sentence was suspendible, so that's the issue we're going forward on today. And I think a related issue to that is ineffective assistance of counsel for moving to vacate a plea. At which time after he was -- after the judge had gone through all this with the judge -- with Mr. Ritter. It would have been -- it's Mr. Ritter's position that he should have moved to vacate at that point.

THE COURT: It's the vacate at the original sentencing?

MR. MITCHELL: Yes, sir, vacate at the original sentencing back in 2009. Mr. Ritter is present in the courtroom today for the record and he's represented by Mr. Willie Von Herrmann. And I'll turn it over.

THE COURT: Let me ask you has an amended application been filed?

MR. MITCHELL: The application was filed by Mr. Von Herrmann, so it's detailed pretty specifically in there.

THE COURT: Let me make sure I have it.

MR. MITCHELL: First page is the civil cover sheet.

THE COURT: All right. I got it. Okay.

Mr. Von Herrmann.

MR. VON HERRMANN: Thank you, Your Honor. We would call Attorney Jan Strifling to the stand.

THE COURT: Mr. Strifling, come around please. Do you solemnly swear or affirm the testimony given before this hearing be the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: Please have a seat in the witness box and state your full name for the record.

THE WITNESS: My name is Jan Strifling.

THE COURT: You may proceed.

MR. VON HERRMANN: Thank you, your Honor.
WHEREUPON,

Jan S. Strifling,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VON HERRMANN:

Q Mr. Strifling, can you please tell the Court did you represent Mr. Willie Ritter in that charge of homicide by child abuse?

A I did.

Q And that was in 2009 I believe?

A 2008 and 2009, sir.

Q And at some point back Mr. Ritter requested a jury trial and you representing -- was going to represent him before a jury?

A Yes, sir.

Q And was the jury venire qualified on that particular day?

A They were qualified that day.

Q Were you ready to go to trial on that particular ---

A I was.

Q And was it Mr. Ritter's position

throughout this that he was going to go to trial?

A Well, let me -- no, I don't think that's actually the case. Going back to 2008 when I represent -- when I began the representation, I provided him with all of the discovery. I organized it. He spent an hour or two in the office looking at it, reviewing it. As time went on, there was a -- I think there had been a plea offer to the public defender who represented him before I did of voluntary manslaughter with a cap of ten years, but I never could be sure there was a cap. After that, we talked and we had some exchange of letters and some conversations. And at some point in time, Mr. Ritter had agreed to a plea of straight up voluntary manslaughter. This was to take place in February to start with because of some other homicide by child abuse cases that were very prominent in the newspaper. We ask for a continuance. I just thought it would be better to wait because a great deal of furor about that. The case was postponed until May 20th. At May 20th, Mr. Ritter had intended to plead guilty to the manslaughter charge, voluntary manslaughter and I think that was on May 18th. He was ordered back on the 18th. We started discussing it with him and sometime during a two or three-day period there his mother was put in the hospital. I

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remember trying to discuss -- he and his mother were very close. They live together. He supported her and talked about her a good bit very close. And as I recall he was talking on his cell phone to people in the hospital who were there caring for his mother and I think just couldn't concentrate on plea. At some point I went to the solicitor's office and I asked them to please postpone it again. They had been very adamant about not postponing it again or this manslaughter plea was out. And I told him we had the ability to go to the hospital and get medical records to prove this just wasn't a delay tactic or anything like that. I tried to explain to them about that. Mr. Ritter really needed a moment unobstructed by all of this and they simply wouldn't do it.

THE COURT: You all please get settled. You may continue.

A Thank you, Your Honor. And I thought Mr. Ritter, who was always a perfect gentleman, got indignant and I don't blame him. And he just said, you know, I can't do it. And we were notice back for June 20 -- for July 20th sorry.

Q So in other words and just paraphrasing because it's kind of a long story.

A Sure.

Q And I appreciate you sharing with the Court.

His mother was terminal obviously?

A Yes, I think she passed in August of '09.

Q And but up until the plea that you all did every sentence or every charge that he could have pled to had no mandatory minimum at all; is that correct?

There's no mandatory minimum for voluntary manslaughter or no mandatory minimum for involuntary manslaughter; is that not correct?

A Voluntary manslaughter is two to 30.

Q So would have been a mandatory of two?

A Correct.

Q Would it be your position that two years could be suspended or not suspended?

A I think it was suspendible.

Q Okay. Let's get to the case we have here today which is of course the plea.

A Sure.

Q Did you in his conversation with you with regards to whether or not the plea to the homicide by child abuse -- did you indicate to him that it was a suspendible sentence?

A That sort of is a longer story than just a yes or no if you don't mind.

Q But if you don't mind, sir, and I hate to cut you off, can we just start with a yes or no and then you explain it all you want?

A I told him that I believe it was suspendible and there were other basis for the belief. I think he understood very -- I think understood ---

Q I'm going to have to object. Please stick to what you told him and not what you think he believed.

A No, no, I'm sorry. I told him in a way that suggested that there were other opinions.

THE COURT: Other what?

A Other opinions about suspendibility of it.

Q Now, you're familiar with section 24-21-410; is that not correct?

A I am.

Q And under that statute if the sentence is potential life in prison, it's not a suspendible sentence, is it?

A Well, it was not used until Able Jacobs.

Q Sir, I'm going to have to ask you to please answer the question, then feel free to explain.

A Thank you.

Q Is that section say that it is not a suspendible sentence?

A It does.

Q So we're in agreement and if not tell me you're not, but we're in agreement at the time that he did his plea that while it may have been done that 20 year sentence could not be suspended?

A No, I'm saying that that statute existed and had not been applied to homicide by child abuse until Able Jacobs, that's what I'm saying.

Q Now, Jacobs was a burglary case; is that not correct?

A Same thing.

Q So burglary case is the same thing?

A Same idea, sir, it has a mandatory life sentence.

Q But in fact the law as we read it black letter law. And if you'll like, I'll hand you the statute. The 20 year mandatory minimum sentence is not suspendible by law. I'm not talking about practice. I mean, again, the speed limit is 55 a lot of people drive 65. Doesn't make it right.

A Which statute are you referring to now, sir?

Q 24-21-410 I'll be happy to hand it to you. The one that says -- we agree that homicide by child abuse carries potential life?

A The statute speaks for itself. We're not disagreeing about that.

Q Okay. And there's no question that he could receive life in prison ---

A Absolutely.

Q --- under the statute?

A Absolutely.

Q Okay. And in fact you represented to the Court and if you have a copy of the transcript I'm not sure if you do?

A I do.

Q And I don't mind reading and kind of saving time.

THE COURT: Tell me where it is so I can follow.

MR. VON HERRMANN: Page four, Your Honor.

THE COURT: Of the sentencing or the resentencing?

MR. VON HERRMANN: Of the guilty plea, the transcript of the guilty plea.

THE COURT: Page four, I got it.

BY MR. VON HERRMANN:

Q Mr. Strifling, this is the Courts colloquy with the defendant in this case line 21.

A Okay.

Q For this particular offense the maximum possible penalty of life imprisonment with a minimum sentence of 20 years. However, this is not what we termed a mandatory minimum sentence. We discussed about that in the future or in a few minutes, but I'm advising you when I say it's not a mandatory minimum sentence means that the minimum sentence portion of this

statute can be suspended as I understand the law. And you have any questions about this charge. Is that read properly?

A Yeah.

Q And in fact that's not correct, is it by law I'm not talking about by practice?

A Well, no. Now, you give me the opportunity I don't think that was the law at the time. As I pointed out, sir, 24-21-410 had not been applied to HCA or burglary prior to Able Jacobs in 2011.

Q But it did exist?

A The statute existed.

Q And it was good law in South Carolina?

A You know, that's a definition that I can't answer that question.

Q It was standing law. There's no reason to believe that it wouldn't be applied?

A Well, I'm not a prognosticator, sir, I don't know why it would have or wouldn't have, but it hadn't been.

Q Well, you say it hadn't been, but it certainly was challenged under Jacob's, correct? So presumably had they challenged -- had the judge suspended the sentence because you're saying they're Jacobs in this case. Jacobs says that this statute applies. So presumably had the judge suspended the sentence and

the State appealed, he would have gotten a 20 year mandatory minimum; is that not correct?

A You talking about after Jacob's?

Q If this case -- if he had suspended?

A I can't predict what the Supreme Court would have done at that time, sir.

Q Okay. But it would make sense because you just told me Jacob's and this case are the same, so it would make sense to you?

A No, it wouldn't, sir.

Q Okay. The -- but we all agree that that was the law of the land whether it was in practice or not, it was the law of the land?

A Do you mean did 24-21-410 exist?

Q Yes, sir.

A Yes.

Q Okay. And you didn't object to correct the judge, did you?

A No.

Q And you had advised your client, Mr. Ritter, that he couldn't receive less than 20 years?

A I advised Mr. Ritter, sir, that the judge thought that HCA was suspendible, that's what I advised him.

Q Let me ask you this, how did know the judge thought that?

A There was a pretrial conference with all people present prior to this plea.

Q Who is all people?

A Well, the Solicitor, myself and I don't know who else.

Q And did he indicate that he was going to get a potential sentence?

A No, he indicated that it was suspendible, that was the question.

Q That's not ---

A Well, if you go further into this plea agreement

Q But you didn't correct the judge?

A I don't think that was my place to do that, sir.

Q Okay. And in fact on page 27 you indicate that he's facing 20 years. This is line eight I believe. In other words, he's facing 20 years to life, Your Honor. You can get him a suspended sentence, you know, give him some committed sentence what you can suspend all or part of it. And you go on to say not that there's been any discussion of a sentence and other words. So you did tell the judge ---

A No, I didn't, sir. If you read the paragraph above that, it says so we also enter this plea, Your Honor, with the understanding that the Court as you have stated believes that the statute under which my

client is pleading is a suspendible sentence. So I think you have to read that photograph into it. Again, I'm not advising Mr. Ritter that it is. I am advising him what the Court said was his opinion as to the law.

Q Mr. Strifling, with all due respect, you been practicing law a long time. You're telling me that you would allow a defendant to plead guilty before the Court and not advise him of potential penalties?

A We talked about potential penalties. As I tried to tell you a moment ago, sir, we talked about whether or not this was suspendible or whether there was a question to it.

Q And ultimately as you indicated earlier in your testimony, you too believe that it was suspendible?

A I did.

Q But it wasn't?

A Well, I disagree with that, sir.

Q That's fine. Now, you entered the -- or you stood by Mr. Ritter when he pled guilty and this was without any negotiation or recommendation; am I not correct?

A Well, that's correct, but let me backup and tell you, sir, at this point we were prepared to go to trial. I had filed a 13 or 14 page voir dire. We had the motions prepared. We had the jury charges

ready, but the jury itself, which I think was qualified by Judge Manning, and Mr. Ritter sitting there with me and the investigator. It was about as bad a jury as you could have imagine. I got the venire there. There are at least 40 teachers because all these people were postponing their jury service until summer. They were ---

Q Let me ask you about that.

THE COURT: Let him finish his sentence please.

MR. VON HERRMANN: I apologize. I didn't mean ---

BY MR. VON HERRMANN:

Q I'm just wondering how he would know whether it's a bad venire because it had teachers on it.

A Well, let me finish, sir, if you don't mind. There were at least 40 teachers. There were people who were asking -- the judge says is there any problems with any of you serving. A number of people stood up and said, Judge, I've got a child in day care how am I going to go get him. So right away I had at least 30 or 40 teachers. I had ten or 12 nurses. I had the usual compliment of very conservative businessmen looking people. And because of the way the jury was struck, we had a bad jury.

Mr. Ritter and I talked about that as well as the investigator. And we talked about it and I said, Mr. Ritter, if you want, I will go back and try to revive the voluntary manslaughter plea and he agreed to that. They wouldn't do it. And so we talked about whether he would plead guilty and he said he would.

Q Okay. But I guess my question is just -- you went to great detail of telling us. I mean the judges are here to make sure that juries are fair and impartial and the selection process is correct where he would have received a fair trial; is that not correct?

A Sure.

Q And teachers necessarily because they're teachers aren't bad jurors?

A Mr. Von Herrmann, you and I both know what we looking for in juries. We felt it was a bad jury plain and simple. Mr. Ritter felt it was a bad jury.

Q We'll see what he says about that. You felt like it was a bad jury. Okay. Now, so again my question kind of got thrown off is you pled without recommendation or negotiation?

A Correct.

Q When the sentencing came along, did you object to the fact that the Court indicated and this would be on page 37 of the sentencing number nine where the

Court says I'm going to follow the recommendation of the State. Did you object to point out to the Court that the State had no recommendation or had they subsequently made a recommendation?

A Mr. Von Herrmann, there was a -- there were written sentencing memorandum filed by both parties. And they had made a recommendation in the written sentencing memorandums.

Q So the sentencing sheet where it indicates without negotiation or recommendations; isn't correct is that fair to say?

A No, I think the Solicitor's recommended a 20 year sentence. I recommended a suspended in my sentencing memorandum, but I hadn't seen the sentencing sheet.

Q Let me show you the sentencing sheet. I just want to make sure that we're all on the same page. Is the box marked without recommendations or negotiations?

A Well, certainly no negotiations.

Q But the box is marked without negotiations or recommendation?

A The sentencing memorandum speak for itself, sir. I don't know whether that makes it incorrect or not.

Q Well, no, sir, I'm just asking if the box is checked?

A The box isn't checked. Is checked.

Q Is checked.

MR. VON HERRMANN: Your Honor, I don't know if you have a copy.

THE COURT: I've got it.

MR. VON HERRMANN: Okay. Thank you.

BY MR. VON HERRMANN:

Q But you made no comment about the fact that there was no sentence -- to your knowledge up until this point that there was no recommendation?

A We were both aware of each others sentencing memoranda. They were filed and served on each over. I knew that the government was seeking the 20 years.

Q Let me just make sure that I'm correct in this. You as we look at it today incorrectly believed it was a suspendible sentence?

A I don't think I'm incorrect, sir. You ask the question, I like to respond.

Q Go right ahead.

A Able Jacobs is not retroactive. Their plenty of cases on that. You can't have an retroactive constitutional issue. If you did, everybody that's got less than that in prison right now would be resentence to a minimum of 20 years, so it wasn't retroactive. So at the time it was an open question

and I think what Judge Burch did was perfectly proper.

Q Okay. So you disagree with me that Judge Burch was incorrect when he said on the record that he was eligible for a suspended sentence of 20 years?

A Yes, I agree.

Q Even in light of 24-21-410, which is clear that it's not suspendible?

A Well, there's a good many other reasons why I thought that a suspendible HCA sentence was available, if you like to hear them I'll tell you.

Q No, sir, what I want to hear is whether or not you believe in light of 24-21-410 by itself precluded a suspended sentence under this?

A I believe it now after Able Jacobs. I don't believe that it had been -- ruled to be applicable.

Q Okay. And when did you file your motion to reconsider?

A Within about four days of the sentencing.

Q And in that you filed your motion, but you did not ask the Court to vacate the sentence?

A That's correct.

Q And that was in -- do you remember what year?

A '09.

Q What efforts did you make to go back before Judge Burch and have that heard, that motion heard?

A Well, I was out of the case within about a month, so I didn't make any.

Q You filed the motion. How did you get out of the case?

A You took it over.

Q I took the case over in 2011?

A No, sir, you were representing him in 2009.

Q I'll check to make sure, but I believe I took over representation ---

A I sent you the box of documents in 2009. We substituted counsel in 2009, sir.

Q But you would agree with me for at least three months there was nothing done on this motion to reconsider; correct?

A That's correct.

Q And there was never a motion to vacate the sentence filed?

A No, and I'll be glad to discuss that with you, sir, if you like.

Q No, I mean the question ---

A Well, the question is why did I do that I'll be glad to tell you.

Q No, sir, the question was did you do that?

A No.

Q And ultimately are you aware that was appealed to the Court of Appeals?

A I am.

Q And are you aware of the outcome of that?

A Yes.

Q And can you tell the Court what the outcome was?

A The outcome was that the motion for reconsideration was denied. And the reason it stated that in the record is that when -- that nothing further was presented with regard to any changes or anything the Court might have not understood or brought forth and apparently at the hearing that you represented him in, that's right in Judge Burch's order. With regard the other, sir, the -- I thought that the appropriate way of handling this was by a motion for reconsideration particularly since Judge Burch believed in the suspendibility of it. The standard for that is whether or not Judge Burch abused his discretion. So I thought discretionary would be a lot better than virtually no way to win on a withdrawal of your guilty plea because, of course, the case law says that if circuit judges give a sentence within quote the limits prescribed by law the Supreme Court has no jurisdiction to review it as excessive State vs. Fogle, State vs. Vast, State vs. Hall. There just wasn't a shot at that at all.

Q You would have filed a motion to reconsider or in the alternative vacate the plea, couldn't you

before Judge Burch?

A I suppose.

Q And you said all this stuff kind of went on and on. There's really only two sentences in the entire thing. Please show or tell the Court where that opinion says all these things that you're talking about about providing additional information?

A Well, none of that says that in here, sir. I filed a motion.

Q So that be incorrect?

A I filed a motion. You took the case over within a couple months and apparently nothing was presented in addition to -- with regard to anything Judge Burch misapprehended or didn't hear.

Q This right here the ruling of the case is that it wasn't filed within ten days because ---

A No, no, the ruling of the Court is that the motion for consideration was filed within ten days, but a variance motion was not or a motion to withdraw was not.

Q Okay. We agree to disagree and the judge will figure that out. How old was Mr. Ritter when he pled guilty?

A Sixty-five.

Q And you pled without negotiations or recommendations. You allowed him to plea or

recommended he plea because of this jury that wasn't good?

A No, sir, it was the evidence against Mr. Ritter was pretty overwhelming in my judgment. This was sort of the icing on the cake.

Q But isn't 20 years really a life sentence to him?

A You know, let me say to you, sir. I was as disappointed as he was, well perhaps not as disappointed but very disappoint. I thought and I made that very clear to the judge. I thought that it was as you say a life sentence. Mr. Ritter, if I may, was a very nice man. He has done a tremendous amount for this community. You can see it by an outpouring of support that he has right here and now. I thought that one terrible day didn't deserve that.

Q And please show me in the transcripts where you told the judge all about how disappointed you were in his sentence, that you didn't think it was fair and all that?

A That, sir, was as I say that was -- he sentenced him at the last of it. So I mean you've read my motion, my sentencing memorandum where I detailed 80-page sentencing memorandum where I detailed all of his accomplishments and they were a many. He was a great attribute to this county and city. He did a

lot of things for young disadvantage people. He was trying his best and I put all of that in there.

Q I understand, but you testified before the Court that you expressed how deeply concerned and how unfair it was and how disappointed you were in the sentence.

A No, no, I didn't say that. I'm saying that I was concerned. I was concerned and I expressed in my memorandum why I thought he should get a 20 year sentence.

Q Okay. A few minutes ago what you testified was that you expressed to the judge how disappointed you were in a 20 year sentence?

A No, no.

Q So you didn't do that?

A No.

Q Okay. Thank you.

A That's all right.

Q But you would agree and you been doing this longer than I have. You've done -- handle a lot of trials. I mean, there's no question about that. You're well thought of in the bar. In the event that there's a 20 year sentence, let's just agree to disagree that it's suspendible. Let's just -- we know that the statute says it's a mandatory excuse me -- it is a minimum sentence of 20 years. Let's just

agree to disagree about the suspension. You got a client now facing 20 years to life, that's 65 years old. Do you recommend trying that case or pleading that case?

A In this circumstance, sir, now let me get your scenario again whether or not we agree or disagree that it's suspendible?

Q Let's just say it's not suspendible. Let's just say that I'm right. I like to say that I'm right.

A Sure.

Q Let's just say that I'm right and it's not suspendible, never was suspendible. He's either given 20 years or any number up to life in prison. He is 65 years of age knowing what we know about the mortality table and I know you're familiar with those. Would you roll the dice and just have a chance to let 12 people make a decision? Wouldn't that be preferable over pleading guilty and just taking life in prison?

A Well, I can't really answer that question, sir, because, of course, as I say the judge was under the impression it was suspendible. I felt it was suspendible. I thought -- here's what I thought.

And I think I'm right if you look at the sentencing memoranda or the sentencing transcript, I think you would have to be here like many of these people were

to understand what went on. We had 20 people who commended Mr. Ritter, who thought very highly of him. And at the end, at the very end the mother of the child, Mrs. Simpson, forgave Mr. Ritter, that was probably one of the most dramatic moments I have ever seen in the courtroom in my life. It sucked the air out of this courtroom. If you look at what he said in the sentencing, he said Mr. Ritter when I took the bench today, I was going to give you more than 20 years, but because of Mrs. Simpson's forgiveness and because of the people who came forward, I'm going to give you 20. Now, is that a big deal or not, I don't know. I'm sort of at that age too and I'll be interested to see who of us would have survived that 20 years or that 17 years. But I'll say to you, sir, that if we have gone to trial with all of the autopsy exhibits, with all of the other information that was going to come in about Mr. Ritter's conduct in the afternoon some of which -- I believe some which I don't necessarily believe. And Mrs. Simpson had sat through that, I can't imagine that she would have forgiven him. So I think there are more considerations here than you think, that's my answer.

Q You indicated and I think rightfully so, that he was well thought of in the community obviously. Those all would have been good, that would have been

good evidence at trial, wouldn't it?

A Sure.

Q And in fact we don't know what she would have said?

A We have no way of knowing any of that, sir. And you and I both know that we work on what we think is going to work.

Q Correct. You and I both don't expect anybody to walk out of the penitentiary at 85 years old, do you?

A This was trial strategy, sir, plain and simple.

Q So your trial strategy was to subject your client for 20 years to life because you didn't like the fact that there were teachers and nurses on your jury?

A I've explain my answer, sir, and that's just argumentative, I'm not gone answer that.

MR. VON HERRMANN: I have no further questions at this point.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Good morning, Mr. Striffling.

A Good morning.

Q Thanks for being here today.

A You're welcome.

Q Just for the record can you give us a quick run down of your background?

A I been practicing law since 1969. Practice in the Army for a number of years, came to Columbia and practice law in Columbia since 1973.

Q Have you handled a number of criminal cases in that time?

A Yes, sir.

Q How did you become involved in Mr. Ritter's case?

A Mr. Ritter had been represented by the public defender's office I think since the inception of this case, which could have been May of 2007. And I don't know how he was referred, but it was sometime in the fall of 2008, September I think of 2008.

Q I want to ask you if you could run through a little bit of evidence that the State hoped to present at trial or at least give us a little bit of factual background for the Court?

A Well, first of all, let me say that I'm not sure what documents the Court will have in this, but there's a pretty good run down by the Solicitor in

the plea. She went to great lengths to indicate what this was about. Mr. Ritter in addition to doing a lot of other things for young people having battalion and what not had a day care center in Columbia. He got out of the Army as a retired lieutenant colonel, respected colonel and began running a day care center. In the day care center, it was for disadvantage youth and he was paid by DSS to do that. And as a result, his -- he was subject to a number of DSS regulations. So when the case came to me there was the usual interviews, police interviews that type of stuff as well as about 3,000 pages of DSS documents having to do with their reports of deficiencies and how they were handled. But you go back to the day in question, Mr. Ritter drove a van sort of Astro van looking thing with a door that open. And he picked up children in the morning along with a larger van that was driven by another individual. On the morning of the 18th, he picked up a four year old and a three year old as well as a 18 month old and Javon Simpson, who is the child in this matter. Javon Simpson was placed in a car seat directly behind the driver. There was another child. The four year old was in the back, three year old was in the front and the 18 month old was also in the back. Mr. Ritter told me that he came to the door,

which was a sliding door, would honk the horn and people would come out. There was suppose to be two people that came out. He named them and said that they were responsible for that and then he left to go into the kitchen and either eat breakfast and or get a list of groceries he had to pick up. At that point, he had already violated a number of DSS regulations. The first of which being that he was suppose to remain with the vehicle and do a sweep of the vehicle following the unloading of children. Secondly that there was suppose to be a list log-in-log-out list that wasn't used. Police said later that they found those forms in the day care center, but they were never used. And he was also required as a driver to do a sweep of the vehicle afterwards, which apparently, I guess, was not done. I my investigator spoke to and the material from the police indicate that the ladies who he said helped him unload did not unload the vehicle. No one would admit to unloading the vehicle. So that left Mr. Ritter unfortunately. There's no one else would own up to that situation. Later that morning, he left with one of the witnesses whose name is -- he left with a young man who had been one of his young men who he had helped came to see him. They left about nine o'clock to go get some paper -- to go to

the post office to get some bread and perhaps make another stop before they came back. There was also evidence that Mr. Ritter had knowledge that a baby was missing, so tying that all together would have meant that Mr. Ritter left the premises when he knew that a child was missing.

Q When did that evidence come to light?

A That came in pretty late.

Q That was near when trial was about to get going the State started to put together more and more incriminating ---

A Well, it was either later than that. I knew about the fellow that took him away, but did not know about that until the plea colloquy, so the latter part. So that simply re-enforced what I thought was going to be a real problem. In any event in the afternoon -- and part of this is some of my conversations with Mr. Ritter, he also indicated that when he came back from the trip to the post office and whatnot, he went in his office. And I got in my notes now so I didn't know whether or not anybody would know that, might have looked into the room or something like that. In any event, he went out on the afternoon run about two o'clock pick people up in that same van, picked up Marcus Callahan, who I think was either eight or nine at the time was one of the

first couple pick ups maybe the first one. Marcus went into the van area the sliding door window and said, oh, what a beautiful baby and Mr. Ritter screeched to a halt, according to Marcus who was a very young witness, put the baby up to his ear, then tried to listen to his chest and listen to his ear. And then according to Marcus went and picked up another child. And then as the State pointed out Richland Memorial was three minutes away from where they were. He went back to the day care center and went handed the child to Kim Phillips, who is a witness, and said we have a situation, see if he is okay. Mr. Ritter then leaves the premises to pick up other children and all of this is corroborated police investigation. Kim Phillips, Ms. Phillips takes the child to Catherine Bush because she knows Ms. Bush has CPR experience. And they try to do CPR on the child someone -- there's some dispute about the day, the hour and time of death, but it seems to be about 11 o'clock. At some point, I think they called 9-1-1 about 2:38. At that point Mr. Ritter returned and again these are according to police. One of the police officers says that Mr. Ritter said we -- I was not at the day care when the incident occurred. There were a couple of other times when Mr. Ritter said to various police officers all the good I have

done in this community, this is all they will remember. In another instance, he said I picked up the child at 7:30 his mother put him in the car and the baby was asleep wasn't making any noise. I drove to the back. I picked up another child and drove to the daycare center and I don't know -- I don't remember removing the child from the van. I don't remember anyone else removing the child from the van. Now, these were the statements. He then -- these are all in the sentencing -- I'm sorry the plea colloquy. Obviously, he was Mirandized. When they finally arrested him, so certainly there were some issues there about the admissibility of those statements.

Q Were there some other statements that Mr. Ritter attempted to interfere with the investigation when they arrived at the scene?

A Yes, Mr. Ritter according to the police said he needed a moment to speak to his staff and the staff were assembled. Police officers said that was all right and then heard -- they never explained quite how they heard that Mr. Ritter was in there telling them not to talk to the police. He also told someone again according to police that they should say that the child died in the crib where they found it.

Q And I go through all that just to kind of lay a basis. This was the evidence that you were facing if

you were to go to trial; is that correct?

A That is correct.

Q It was numerous statements from numerous people who worked at the day care?

A Correct.

Q The State also would have attempted to admit a previous DSS violation; is that right?

A Yes, sir. And there were as I say about 3,000 pages of DSS regulations, which I had attempted with the Solicitor to say can we meet and tell me which ones are these are relevant, which just never happened. But again as you'll know in the sentencing colloquy of the Solicitor one of them was that a child had been left in a van unattended. Now, this was a toddler not as best I could tell not a child in a day care and this was in 2001. There was also the fact there had been a child who was left alone in a bathroom with a sleeping caregiver there. And these were the violations, previous violations. I think there was one more.

Q These are fairly serious violations not like nick picky certain ---

A Well, there were certainly something to be concerned about. I had planned obviously -- the State suggested that they were Lyle and I sort of disagreed with that. And I filed maybe an eight page

motion attacking those from the standpoint of records because, of course, they weren't what I thought would be appropriate records. And they would at least have to get the -- get a witness in there which I doubted that they could do.

Q All right. Let's turn to the issue at hand the suspendability. You believed it was suspendible. You believed homicide by child abuse the mandatory minimum of 20 years was suspendible, right?

A I did.

Q And you based that off of how judges were handling other cases; is that correct?

A Well, I think, sir, that the idea was what the community standard was. As I say, I'm not on the Supreme Court and I don't have the authority to apply 24-21-410 to anything, but what I saw was in fact in March 15th of 2007, there was a memorandum sent to the solicitor's office which was circulated to the practicing bar in Richland County indicating that based on State vs. Thomas that burglary first were suspendible and burglary first carries life imprisonment just like HCA does. Thereafter, and certainly in preparing for this case, I read the two McKnight cases State vs. McKnight. The McKnight cases were the cases from Greenwood where Ms. McKnight was unfortunately a cocaine addict and her

fetus died from cocaine abuse. She was tried and convicted of homicide by child abuse, given a sentence of 20 years suspended on 12, that case was directly appealed to the South Carolina Supreme Court. Now, on a number of issues including an eighth amendment issue, which I think could have brought forth something on the issue of suspendability. Supreme Court just went passed it. They said nothing about it. Didn't touch that sentence at all. In addition, the McKnight case came back on a PCR in May of '08. They decided the PCR and again said nothing. Now, I've seen enough cases in the Supreme Court that and I don't take that as a holding. I take that may be as dicta, but maybe what I've seen the Supreme Court do on many occasions is say this is to warn the bench and bar that we think X, Y and Z and there was nothing in there. So as best I could tell the Richland County bar said this is okay. The Supreme Court didn't bother to tell us anything different. Mr. Von Herrmann very candidly in his hearing said we use to do this all the time when I was the solicitor. It's in the record, that he did it. So apparently it was done in Horry County. So I feel like that that was the standard and it wasn't for me to judge.

Q There's no doubt the judges were doing it here

in Richland County?

A Absolutely.

Q And they were doing it on burg first, homicide by child abuse, charges that carried life?

A Yes.

Q It had mandatory minimums?

A Yes.

Q You obviously researched that thoroughly; is that right?

A I did.

Q Now, with Judge Burch through this pretrial conference, you were able to determine that he would consider or that he had in the past or that he believed that sentence could be suspendible?

A That's correct.

Q Okay. And due to that, you advised Mr. Ritter that the sentence that Judge Burch indicated to you that he has suspended these types of sentences?

A That's correct. And by inference and I wish I had obviously a better recollection on this point. By inference, I believe that Mr. Ritter understood that it was a question. He has a degree, bachelor's degree. He has a master's degree in education. I felt that he understood completely the chance we were taking. Frankly, sir, I wonder if I wouldn't be here any way if I had picked a judge who

believed that it wasn't suspendible. I be here for another question, but I be here nonetheless.

Q Be the opposite question then you would be ineffective for not seeking the suspendible sentence; correct?

A Exactly.

Q Your advice to Mr. Ritter there were no promises made by the Solicitor, right?

A No.

Q There was no negotiation to where they agreed this is the number and here's the number, right?

A No, that had been long gone. I mean, that was the public defender and they kind of quit with all that.

Q So the plea offers at this point were off the table?

A Absolutely.

Q On the day of the plea day?

A Yes.

Q He had opportunities to plea prior to that? We been through that very extensively?

A Yes, sir.

Q You also advised Mr. Ritter that he be -- the statute says 20 to life; is that right?

A That's correct.

Q So you advised him of the plain language of the

statute which it also advised him it's a possibility this judge suspend it and that he has done that in past; is that correct?

A I think that's accurate, yes, sir.

Q What you're really doing is arguing for him to interpret this to benefit your client?

A Yes.

Q I mean mandatory minimum is 20 and you're kind of suggesting that it's suspendible and you take that into consideration. We know there's no promises, but it's an option for Your Honor to do this; is that right?

A Well, I wasn't suggesting it, sir. I was simply telling him that this judge had that option or felt that he had that legal option to do that.

Q Now, at this point Mr. Ritter decided to plead guilty and not go to trial; is that right?

A That's correct.

Q You believe -- and this was after you advised him of what was going to happen that day. They were going to pick a jury with this pool and that a trial was going forward; is that correct?

A Well, I think his decision was made after we pick the jury, the actual jury itself not what we saw in the venire. I mean, we ended up picking a jury with Judge Burch. And then reviewing who we got and

unfortunately the luck of the draw put us with a number of as I say the very conservative looking businessman. Some of the as I remember some of the mom's with children in day care. And I don't remember whether nurses or what not, but I knew there was enough people on there who would sort of have a personal stake in this thing worrying about what perhaps they might be looking at themselves.

Q You testified to this a bit earlier, but at that point you tried to revive this plea to voluntary; is that right?

A That's correct.

Q And that was to no avail?

A No, exactly.

Q So the plea agreement that Mr. Ritter ultimately entered into was an open plea. There was no official recommendation. You see these recommendations and they say, well, what's the State's position and they'll say upper range low point something like that?

A Absolutely nothing. As I pointed out in the plea colloquy a couple of times, it could have been totally suspended. It could have been life and he understood that.

Q And the judge also spoke to Mr. Ritter about that; is that correct?

A Yes.

Q I'm going to be pretty brief on this though. You didn't move to vacate the sentence because you felt that was highly unlikely that would happen?

A Highly unlikely and the ---

THE COURT: Vacate the sentence or vacate the plea?

MR. MITCHELL: To move to vacate the plea.

THE COURT: All right.

A No, as I pointed out earlier, the case law that I see on vacating a plea, that's within legal limits and I point out to you that this as I understood it was a motion to vacate the sentence, but the point was if it had not been 20 years, if it had been suspended on 15 and I thought it should have been suspended to five, that's a different matter. But the case law is pretty specific that says if a judge sentences within legal limits, the Supreme Court basically is not going to hear it. So I thought that was just going to be if I had my alternatives and I thought it be best to do an alternative situation I wanted to do the motion to reconsider the sentence. I think looking at the plea situation -- I'm sorry looking at the sentencing as it was there were a number of things that I think could have been argued at the hearing on that including I almost felt like

that the sentencing judge was holding Mr. Ritter to a higher standard based on his military background. In fact, to start with as I recall he didn't even say as a former colonel. He says as a colonel. And sure you're more attune to rules and regulations as a criminal than a civil. So I thought that there were a number of issues that could have been raised on a motion to reconsider. I thought this was obviously a community case that took a lot of energy from the community and despite Mr. Von Herrmann's suggestion otherwise, I thought it was appropriate to wait awhile so the thing calm down and could be done sort of in a more quieter manner without a lot of goings on on either side. I'm not being critical of Mr. Von Herrmann at all, but I had some particular ideas of what I thought the weaknesses in the sentencing were and I thought that was a viable sentence.

Q But you made the choice to file the motion for reconsideration instead of the motion to vacate?

A Exactly, yes. And I thought it had legs, I really did and it's been pointed out to me. And frankly at my age, I don't need it pointed out to me 20 years a long time. And I thought it was more than Mr. Ritter deserved. I still think that, I'm sorry we're here. And let me also while I was doing research on part of all of this, if you consider Ms.

McKnight's case who might got 12 years, it's the same. It's just an accidental horrible situation. In the federal system, the rest of all that was nothing but obstruction of justice. In the federal system, that would have been a two-level increase which probably would have been a couple of years. So that was sort of what I was going to argue along with where the judge misapprehended some stuff.

Q The judge indicate at the end of sentencing that after hearing from the two dozen or so witnesses in mitigation, that he came down on what he'd originally plan to say?

A Absolutely. And I think best I can recognize some of them are in the courtroom today and so you see Mr. Ritter has a very loyal following and deservedly so. I think this was a good man that had a bad day.

MR. MITCHELL: No further questions.

THE COURT: Redirect.

MR. VON HERRMANN: I just have a couple questions.

REDIRECT EXAMINATION

BY MR. VON HERRMANN:

Q Mr. Strifling, you seem to rely heavily on State vs. McKnight?

A Yes.

Q And that was tried in Greenwood?

A I think so. Rock Wise was the lawyer. I'm not sure where it was tried.

Q Would it surprise you that it was tried in Horry County?

A No.

Q And would it surprise you that there was an objection made at the time of sentencing by the State?

A Had no idea, sir. All I know is what I saw in the Supreme Court.

Q Yes, sir. I tried that case, so I am familiar with it and there was an objection made. So you wouldn't disagree with me that there was an objection made?

A I have no idea, sir.

Q And you would agree with me that nowhere in the appeal of Regina McKnight did the State appeal the sentence?

A So what's your point?

Q My question is -- I'll get to the point. My question is you would agree with me that the State didn't appeal the sentence?

A That's correct. I pointed in my other cross.

Q So maybe if the State had taken the position and appealed it and may be we would have gone ---

A Well, I already responded to that, sir. I mean, the point is it was an illegal sentence according to you. The State choose not to appeal it and it went right through. But my point is ---

Q Well, if it does not ---

THE COURT: Hold please let him finish his -- I want to hear his answer.

MR. VON HERRMANN: Yes, sir, I apologize.

A So I mean the point is isn't that the same thing we're talking about here. This wasn't going to be appealed if he was sentenced to a suspended sentence, but what I had -- certainly that's new information to me and thank you for it. But from my perspective, I've seen the Supreme Court issue warnings don't do that again. This is bad. So I can't say it was a holding. I'm not sure I can even say it's dicta, but it's certainly on a practical note saying that's okay. They didn't apply 24-21-410. As Judge Burch pointed out, it would be retroactive to do it now. I think if Mr. Ritter can be resentenced now, that's still the law.

Q Okay. You indicated that it wouldn't be appealed. Would it surprise you to know that -- have

you read the transcript from the motion to reconsider?

A My motion to reconsider?

Q No, my motion when I represented Mr. Ritter in the motion to reconsider?

A Yes.

Q You've read that. Did you know that Luck Campbell one of the deputy solicitor's here, I believe is a deputy solicitor. If not, she's certainly one of the highers been here for 17 or 18 years or so indicated to the Court that had it been a suspended sentence she would have appealed it?

A Well, sir, I did see that and I don't know whether that's true or not. I have no idea. I've never seen anything come out of the Supreme Court in Richland County before Able Jacobs. So all I know from the Richland County standpoint is that there was a memorandum signed by the chief judge at the time indicating that any cases that were not less than including burglary which carries life were suspendible. So I have not seen anything different in the Supreme Court.

MR. VON HERRMANN: I have no further questions, Your Honor.

MR. MITCHELL: Nothing further, Your Honor.

THE COURT: You may come down, sir. Thank

you very much.

MR. VON HERRMANN: Your Honor, may we take a short break please?

THE COURT: Can this witness be excused.

MR. MITCHELL: Yes, Your Honor.

MR. VON HERRMANN: Yes, Your Honor.

THE COURT: You are excused, Mr. Strifling.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Approach the bench please.

(WHEREUPON, a bench conference was held.)

(WHEREUPON, a break was taken.)

THE COURT: Come to order please.

MR. VON HERRMANN: Mr. Ritter is going to be my next witness, Your Honor.

THE COURT: Put him on the witness stand. Just go on up to the witness stand, stay standing for a minute. Solemnly swear the testimony you're about to give in this hearing to be the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: I do.

THE COURT: All right, sir. Have a seat state your full name for the record.

THE WITNESS: Willie Ritter.
WHEREUPON,

Willie Ritter,

after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VON HERRMANN:

Q Mr. Ritter, don't want to go into expansive detail because you got quite a past as far as military career and things like that. Can you give the Court highlights of your career and what brought you up to the day in question just kind of give us an overview?

A Yes, sir. Briefly, I was born in Allendale County, came to Columbia went to public schools, graduated in 1962, went to Virginia State University on a football scholarship, graduated in 1967, taught school in Richmond public schools for a year and was draft in 1968, went into the military as a private, stayed in for 24 years. Finally retired in 1992 as a lieutenant colonel. Had assignments number places in the United States and several overseas. One went to Saudi Arabia and National Guard, last one was Saudi Arabia National Guard with a budget 5.6 billion dollars. After that assignment, I retired. In the

interim, 1984 I bought a building for a preacher who needed a church, so took the building, stayed there for about a year. They advised me they was leaving, had a building didn't have any way to pay for it. A friend of mine decided that a day care center would be appropriate, so we started day care center in 1986. We incorporated it in 1988. I'm still in the military, retired in 1992. Stayed home until about 1997 when I lost my daycare director and I went there as a fill in as a director and kept it until the accident happened in 2007.

Q Thank you, Mr. Ritter. And I don't want to belabor the point because quite frankly the evidence as you know in this particular situation may be down the road in a hearing will be more important, but Mr. Strifling told us about what was presented by the State and what the State would attempt to prove. Is it fair to say you disagreed with that evidence?

A Yes, disagree.

Q How old are you today?

A Seventy-one.

Q You been in the penitentiary for roughly six years?

A Yeah, pretty close to six years.

Q And again I don't want to belabor the point, but with regards to resuscitations of the facts that he

gave which was read from the State at your plea. You would say that those were inaccurate evidence would refute that; is that correct?

A What Mr. Strifling said?

Q Yes, sir.

A Some were inaccurate, some that he read out of the records were fairly accurate.

Q Let's talk specifically with you about your plea because that's really what we're here today to find out whether Mr. Strifling was ineffective in representing you. Tell me or tell the Court really what conversations you had about pleading guilty or not plead guilty and what the sentence range should be?

A This is on the day that we went to trial went to court?

Q That's correct.

A Okay, real fine. I was going to go to court after being advised about the end of effective efficiency -- can't think of a good word for it now, but the jury it didn't look like we're going to have a good chance of getting a fair verdict. And with that in mind and with the hopes that I would get a shorter sentence, we discussed a plea.

Q Did Mr. Strifling discuss with you any particular number of years that he expected or that

you were going to get?

A Not at that point.

Q At what point did he?

A I don't think Mr. Strifling ever discussed any sentencing other than at one point he told me he would try to get my sentence capped at seven years, but he didn't say what the maximum was. He said he was going to make a recommendation to cap it at seven years. And I saw in some of the papers that I read just recently that he did ask for a five-year cap or a suspended sentence but never said anything to me about 20 years to life until we -- I think I had already rendered the plea.

Q Did he ever mention to you that that sentence was not suspendible? In other words, you couldn't get any less than 20 years?

A Okay, give me that again?

Q Did he ever indicate to you that the minimum or the minimum you could get was 20 years in jail?

A He never said that that was the minimum that I could get by law. He said that he would ask for something less than that, and I was under the impression I could get less than 20 years. What I was trying to preclude when I agreed to plea was a long sentence because at the time I was 65 pretty close to 66 when I signed into the penitentiary in

May on my 66th birthday. And I really thought that I was going to get a whole lot less than 20 years. Even when they talked about the sentence minimum being 20 years or 20 years to life, I thought that there was a way that it could be reduce through suspension. And when he suggested sometime later on that we go to the hearing to -- for reconsideration, I thought that that would be the time that we could get the sentencing reconsidered and reduced.

Q Okay. At the time that you pled guilty, would you have pled guilty had you known that you were going to get 20 years or that was the minimum you could get?

A No, I wouldn't have pled guilty if I knew that the crime that I was pleaing to was going to carry a minimum of 20 years and I had to stay in the penitentiary for 20 years, no, I wouldn't have taken a plea.

Q And did your lawyer indicate at the plea or the plea we've read it, so I mean it's a answer. He indicated before Judge Burch that the sentence could be suspended sentence, correct?

A I heard the conversation between the judge, myself and the attorney that the sentence was suspendible, but before that at the actual plea, there was even another set of instruction. And I

remember that and I took heed it to and it kind of pleased me. And since the plea, all of the records that I see, I see no evidence or no record of what the judge told me that day at the plea. And he was talking about sentencing and that day he told me that I could give you zero to 30 years and I could suspend some of it or I could suspend all of it. Now, I don't know what happened to the record of that, but I can't find it any place in any of those documents, but that's what I heard at the plea.

Q And your lawyer gave you advice to plead guilty and it was a suspendible sentence. You could get from zero to life?

A No, I don't think he ever spelled out what I could get, but he did say that the sentence was suspendible. And I was under the impression that some of it could be suspendible or all of it could have been suspendible.

Q Was that the basis of the reason that you accepted the plea?

A Yes.

Q And absent that representation by your lawyer and the judge, would you have accepted the plea and accept the 20 year sentence?

A If I'd known that the minimum was 20 years when they were talking about it even in the plea, which we

didn't discuss it at the plea. We discussed that at the sentencing.

Q My question is would you have accepted the plea if you'd known that your only option was 20 years?

A No.

Q Were you prepared and could have gone to trial that day?

A I was prepared and I think my lawyer was fairly prepared with one exception. On the morning of the incident, there was some talk and some records about my not having a log. Well, I been associated with that day care center for about 20 years at the time.

MR. MITCHELL: Objection. I don't think it's relevant to the allegation whether he pled voluntary.

THE COURT: Well, I'm going to let him answer it. There's no jury. Go ahead.

BY MR. VON HERRMANN:

Q Continue, Mr. Ritter.

A As I was saying, I had owned that day care center for 20 years and I never took a child off of the van. Now, there was some question about rosters. On that day and for period of time before that, we had no rosters. We had a computer failure and it lost all of our information. And we didn't have any

rosters at the center. And I had a choice of closing down the center not doing anything or operating without rosters. So to enhance the fact that we didn't have the rosters, I insisted that two people come to the van to unload the children. That morning when I left the van, there were two children in the van and there were two well paid, well trained, well respected child caregivers at the van with both the doors open with two children left in there when I walked away from the van. I took it that with two grown people well paid and well trained, took it that they could take two children off of a minivan and that's why I left the van.

Q Did Mr. Strifling ever show you or give you a copy of the statute for which you were tried or you were indicted for?

A No. As a matter of fact, I never saw one of those until I was in prison for about two years. And they explained to me what the elements of the crime was and what it meant. I had no clue as to what an element of the crime was and what -- how it affected the court system and what had to be done by the prosecution in order to find me guilty. I found that out after I was in prison.

Q Did he ever discuss with you a section and I'm going to read the section in the headline South

Carolina code section 24-21-410 power to suspend sentence and impose probations, exception, search and seizure. Did he ever discuss that with you?

A No.

Q Did he ever discuss the fact that that might prohibit a suspended sentence?

A No, I never even heard of that.

Q Did you in entering your plea did you do it knowingly? Did you know what you were doing?

A Let me caveat that with this, I thought I did, but found out subsequently that I hadn't been given enough information to make that kind of decision that I needed to make at that time. There was some things missing like the possibility of going to jail for 20 years. Didn't know that when I pleaded, didn't know that even after we talked to the judge because the judge kept telling me that it was suspendible and that we would discuss it sometime later on, but we never discussed the details or how it was or how it was not suspendible. So I thought that it was a suspendible sentence, that's why I agreed to go to the hearing that Mr. Strifling set up for me and I thought that at that time I would have an opportunity to or my attorney would have an opportunity to present evidence that would have given me an opportunity to receive a lesser sentence.

Q When was the first time you found out you couldn't receive a lesser sentence?

A I think it was July of '11 when you came to the penitentiary and told me that the sentence was not suspendible, but we had already made arrangements to go to the hearing to ask for a reconsideration in hopes that we would get a lesser sentence. And it was you on July of '11 I think that told me that the sentence was not suspendible and give me the details on why it wasn't.

Q And I'm going to ask you did you -- and I think the answer is probably going to be the same, but I've got to ask these questions. Did you intelligently make your plea of guilty?

MR. MITCHELL: Objection, he's asking a legal conclusion.

MR. VON HERRMANN: I'm asking if he intelligently made a plea.

MR. MITCHELL: That's your interpretation.

THE COURT: Go ahead.

BY MR. VON HERRMANN:

Q Do you feel like you intelligently made that plea?

A Couldn't have done that because didn't have all information that I needed. Based on the information

that they gave me, it was correct, but if I had the other information that is this sentence is not suspendible, I would not have gone on with the plea.

Q And I just want it clear this up last question.

When you say they gave me, are you talking about Mr. Strifling or are you talking about Mr.

Strifling and the judge?

A Both of them Mr. Strifling and the judge.

Q So there's no question as you're sitting on that stand today under oath that Mr. Strifling led you to believe that the -- your sentence could be suspended?

A Mr. Strifling along with the judge had me convinced that it could be suspendible. And I listen to the judge that said it is suspendible more so than Mr. Strifling because he was the one who said it the most.

Q But you were taking their advise on not going to trial and what the sentence was from your lawyer?

A Yes.

Q And that's what made you decide to plead guilty because didn't you hear from the judge until after you pled guilty?

A Right.

Q So determination -- all the judge -- and if I'm not saying it correctly, you fix it. The judge just re-enforced what your lawyer been telling you?

A Yes.

MR. VON HERRMANN: I have no further questions. Mr. Ritter, please answer questions the attorney general might have for you.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Good morning, Mr. Ritter.

A Yes.

Q I'll start with the evidence because that's where we started with on direct there. I know you would have challenged a lot of this evidence, right, but the State did have statements from people at the day care center that would have implicated you in the crime fair to say?

A You could say that, but the evidence gathered by the State was gathered from folks that work at the day dare center that had no idea as to what had happen that day. There's only three people in all of this world that knows exactly what happened in this incident. As of right now, none of them to include me have any statements on record as to what happened that morning.

Q Okay. So the State was going to introduce DSS violations of your previous violations, right?

A Yes.

Q They were going to attempt to. They were going to bring up that you left a child in a room before -- and some other violations like that; is that correct?

A Incorrect. I read the statement and it said something to the effect that a child been found unresponsive in one of my bathrooms never happened.

Q Now, DSS wrote you letters, citations for these violations, right?

A They wrote citations and I answered all the ones that I received from them. And they had no further comments, no further actions on any of the violations that they sited me for and I rendered answers to it.

Q Okay. The State also had statements from the younger boy who was in the van and said something along the lines that that's a nice baby; is that correct?

A Yes, sir, they did.

Q They had the statement, right?

A They had statement from the five year old. I think it was said he was nine at the time. The kid was a five year old who had just left my day care center going into public schools. He was a five year old.

Q Okay. You also had a statement from ---

THE COURT: Mr. Mitchell, we're not here to retry this case. The evidence was stand at the time to me is irrelevant. The issue seems to be more of a legal issue as to what Mr. Strifling advised Mr. Ritter to do. I just don't want to go back. I think it's redundant to start with to go back through all the evidence, so if you will let's try to move it along. We got a full day.

MR. MITCHELL: Yes, sir.

BY MR. MITCHELL:

Q All right. So moving to Mr. Ritter's excuse me -- Mr. Strifling's advice to you. He never advised you of the maximum or the minimum of any of these charges that you were charged with?

A No.

Q So he never went over the elements of the charges with you?

A No.

Q He never went over the voluntary manslaughter charges or the homicide by child abuse charges?

A No.

Q He never advised you of any of this stuff before? Did he ever send you a letter advising you

of these maximum minimums and what you're charged with?

A No.

Q And the elements of the crime?

A No. If he did, I didn't get them.

MR. MITCHELL: Your Honor, may I approach the witness?

THE COURT: Sure.

BY MR. MITCHELL:

Q Mr. Ritter, can you identify this document of what it seems to be.

A Can you take my glasses out of my pocket, I can't see that?

Q That's a letter dated December 28th 2008; is that correct?

A December the 26th 2008.

Q That's a letter to you from Mr. Strifling; is that correct?

A Yes.

Q So it's your testimony you never received that letter?

A I don't remember reading anything like that.

Q So it's possible he sent you this letter and you just didn't read it?

A If I didn't read it, means I didn't get it.

Q Okay. Now, we talked about the maximum minimum -- you kept saying judge that they never advised you whether you would receive -- never advised you of the range at the sentencing or the plea excuse me, right?

A Yes. Well, what listen to me, what he told me and I've read the record since then what the judge told me at the plea was that he could sentence me from zero to 30 years. And he could suspend some of it or all of it. That's not what showed up in the transcript.

Q Okay. So the allegations now the transcript is inaccurate?

A I don't know what the transcript is, but I'm telling you what the judge told me the day of the plea.

Q Okay. So that's not what's reflected in the transcript that we have before us though, right?

A That is probably not because I read the transcript while over in the penitentiary.

Q So it's your testimony that after the jury was picked, you decided to plead guilty; is that right?

A Yes, after I received the information from my attorney about how bad the jury was and what little chance I had of getting a fair trial.

Q So you took his advice and took a chance with pleading guilty; is that right?

A I took his advice because I didn't want a long sentence, prison sentence and it looked as if I hadn't gone to a plea, there was a possibility that I wouldn't have got a long sentence. A long sentence to me at that time was ten years.

Q So you just got a longer sentence than what you had expected; is that correct?

A I got a longer sentence than I expected based on what I had been told was going to be recommend on my behalf.

MR. MITCHELL: No further questions. Thank you.

THE COURT: Any redirect?

MR. VON HERRMANN: No redirect.

THE COURT: You may come down. Thank you very much.

(WHEREUPON, the witness leaves the witness stand.)

THE COURT: Next witness.

MR. VON HERRMANN: Your Honor, that will be our showing.

THE COURT: From the State?

MR. MITCHELL: The State has no witnesses.

THE COURT: All right. Thank you very much counsel. I'll expect proposed orders in 30 days.

MR. VON HERRMANN: Yes, sir.

MR. MITCHELL: Thank you, Your Honor.

END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 64, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Richland County, South Carolina, on the 15th day of July, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 24th day of July 2015.

Keshia Reed, Court Reporter

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

Willie Ritter

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP4005384

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 29 October 2015 to attorneys of record or to parties (when appearing pro se) as follows:

William Bertram Von Herrmann

Megan Harrigan Jameson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Willie Ritter, #337044,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-05384

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 10, 2014. Respondent made its Return on March 12, 2015, requesting an evidentiary hearing be convened. William Bertram von Herrmann, Esquire, was retained by Applicant.

An evidentiary hearing was held on July 15, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel von Herrmann. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying were Applicant's plea counsel, Jan S. Striffling, Esquire. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, the guilty plea and sentencing transcripts, and the motion for reconsideration hearing transcript.

I. PROCEDURAL HISTORY

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted Applicant at the September 2007 term of General Sessions for Homicide by

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JEANETTE W. McBRIDE
C.C.J. & C.S.
RICHLAND COUNTY



Child Abuse (2007-GS-40-4465). Counsel Striffling represented Applicant.

On July 20, 2009, the Applicant pleaded guilty as indicted. Sentencing was deferred until September 21, 2009, where the Honorable Paul M. Burch sentenced Applicant to twenty (20) years' imprisonment. On September 25, 2009, Applicant filed a motion to reconsider the sentence. The court denied the motion on October 31, 2011, and also denied Applicant's motion to vacate the guilty plea.

A notice of appeal was filed at the South Carolina Court of Appeals. Counsel von Herrmann perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence on June 18, 2014. State v. Ritter, Op. No. 2014-UP-232 (S.C. Ct. App. filed June 18, 2014). The Remittitur was sent on July 3, 2014.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Unintelligent and involuntary plea in that counsel misadvised Applicant as to the sentence he would receive.
2. Ineffective assistance of counsel in that counsel failed to file a motion to vacate the guilty plea.

II. APPLICABLE LAW

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcripts, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive



on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

Applicant argues he did not plead guilty knowingly and voluntarily. This Court finds otherwise and concludes that Applicant's guilty plea was entered knowingly, freely and voluntarily. Applicant alleges he was advised that a sentence under homicide by child abuse could be suspended. He further alleges that if he was aware that the charge carried a minimum twenty (20) year sentence, then he would have gone to trial. This Court finds Applicant's testimony not credible.

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

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At the hearing, Counsel testified as to the background of the case. He testified he was prepared to go to trial on the charge of homicide by child abuse. Counsel discussed the plea negotiations he entered into with the prosecuting solicitor. Applicant was first offered a plea to voluntary manslaughter without any negotiations or recommendations as to sentence. This offer was made to Applicant's public defender at the time. The offer was made in July 2008 and was on the table until May 20, 2009. Applicant rejected that offer. Counsel explained Applicant did not want to plead guilty because his mother was very ill and was hospitalized. The State then revoked the offer, and the case was set for trial on July 20, 2009.

Counsel testified he advised Applicant that the sentence for homicide by child abuse could be suspended as was routinely done. Counsel testified he thoroughly researched the issue and believed a suspended sentence for homicide by child abuse to be legal. Applicant testified Counsel failed to advise him that the minimum sentence was twenty (20) years, thus rendering his guilty plea involuntarily entered. This Court finds this testimony not credible. This Court finds Counsel's testimony credible and persuasive on the issue. Counsel properly advised Applicant that the sentence could be suspended and that the statutory minimum was twenty (20) years' imprisonment. Counsel also credibly testified that he met with Judge Burch as part of a pretrial conference where Judge Burch indicated that he believed the sentence could be suspended. Counsel, acting on Judge Burch's position, properly advised his client of the judge's position on the legality of suspending the sentence. Counsel also emphasized that he requested a suspended sentence with little to no active time in his Second Sentencing Memorandum. Notably, this Court finds persuasive Counsel's testimony that circuit court judges were routinely suspending sentences that carried life imprisonment. Counsel von Herrmann also noted that while he was a prosecutor, it was his position that a homicide by child abuse sentence could be

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suspended. (Reconsideration Tr. p. 4, lines 8-13). It was therefore, very reasonable for Counsel to advise Applicant that Judge Burch could suspend the sentence and that he would request a suspended sentence.

It is clear that Judge Burch believed the sentence could be suspended but chose not to do so.

THE COURT: For that particular offense, the maximum possible penalty is up to life imprisonment with a minimum sentence of 20 years. However, that is not what we term a mandatory minimum sentence . . . when I say it's not a mandatory minimum sentence, that means that that minimum sentence portion of the statute can be suspended, as I understand the law.

(Plea Tr. p. 4, line 21 – p. 5, line 9). Judge Burch also acknowledged that judges were routinely suspending sentences on charges that carried up to life imprisonment: "I mean, there's not a mistake as far as the transcript; that was the understanding of most judges at that time that that was what the law was." (Reconsideration Tr. p. 15, lines 1-3). It is also clear from the record that Applicant knowingly pled guilty with the full understanding of the sentencing range. Applicant advised Judge Burch that he was not promised anything in exchange for his plea. (Plea Tr. p. 7, lines 13-16). This Court finds Applicant's testimony that he was promised the sentence would be suspended to be not credible. Applicant was fully aware that Judge Burch would determine the sentence.

Applicant further argues Counsel was ineffective in light of State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011) which held that S.C. Code Ann. § 24-21-410 does not give trial judges the authority to suspend sentences for crimes punishable by death or life imprisonment. Homicide by child abuse carries up to life imprisonment. S.C. Code Ann. 16-3-85(C)(1). This argument is without merit. While Jacobs was a statutory construction case, Counsel cannot now be deemed ineffective for advocating a sentence that would have benefitted Applicant and that was routinely

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ordered.¹ On that point, Counsel cannot be deemed ineffective for advising Applicant of Judge Burch's view on the legality of suspending the sentence. When Applicant pled, circuit judges were routinely suspending sentences that carried life imprisonment. It was therefore very reasonable for Counsel to advise Applicant of the possibility that the sentence could be suspended and to advocate for its suspension. However, this Court finds Counsel did not promise the sentence would be suspended. Our supreme court has maintained that criminal defense attorneys are not expected to be clairvoyant. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993) ("This Court has never required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial."). See Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 371 (1997).

This Court finds Applicant has failed to show any resulting prejudice. Applicant's testimony that he would have gone to trial if he was advised that the sentence would not be suspended is not credible. Counsel's testimony, on the other hand, is credible and persuasive on the issue. Counsel's testimony that he advised Applicant of the sentencing range and noted that while the law was unclear, judges routinely suspended sentences and that it would be up to the plea judge whether to suspend the sentence. Importantly, when imposing the sentence, Judge Burch noted he was going to sentence Applicant to *less* time than he originally thought. (Sentencing Tr. p. 36, line 24 – p. 37, line 12). This is persuasive evidence that while Judge Burch believed the sentence to be suspendable, he did not believe the facts warranted such a sentence. The record reflects that Applicant was further advised by the plea court of the maximum and minimum sentence he could receive on the charge. (Plea Tr. p. 4, lines 21-24);

¹ This Court notes that it is unlikely that the State could successfully challenge any sentence that carried life which had been suspended without running afoul of the *ex post facto* clause. See U.S.C.A. Const. art. 1 § 10; Bouie v. City of Columbia, 378 U.S. 347 (1964) (holding that "an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an *ex post facto* law").

See Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about sentence length cured by colloquy at guilty plea hearing). Therefore, Applicant cannot prove that he was prejudiced.

This Court finds the record reflects Applicant was advised of the waiver of his constitutional rights by the plea court. This Court finds very credible Counsel's testimony regarding his preparations and advice concerning the case and the amount of time Applicant was facing. The record reflects Applicant admitted his guilt to the plea court. This Court finds Applicant's testimony regarding a promise of a particular sentence not credible. Applicant was fully informed of the nature and consequences of his plea. Further, Applicant chose to plead guilty on the advice of counsel in part because of the jury panel composition. Counsel testified that there were a number of school teachers, nurses, and working mothers with young children on the panel. Counsel testified he did not believe it was likely that Applicant would be acquitted. Applicant chose to plead guilty. He also agreed with Counsel that they did not draw a favorable panel. Correspondingly, this Court finds Applicant's testimony regarding his potential sentencing range to be neither credible nor supported by the record.

This Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. This allegation is denied and dismissed with prejudice.

Failure to File a Motion to Vacate the Guilty Plea

Applicant also alleges that Counsel was ineffective for failing to file a motion to vacate Applicant's guilty plea on the grounds that it was not entered voluntarily. Counsel properly filed a motion for reconsideration on September 25, 2009. Counsel von Herrmann was then retained by Applicant. A hearing was held on October 31, 2011, where Applicant argued that the conviction should be vacated in light of Jacobs and because the plea was not entered freely,

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knowingly, and voluntarily.² Applicant did not present arguments consistent with the filed motion to reconsider. Applicant appealed Judge Burch's decision. The court of appeals affirmed Applicant's conviction and ruled that Applicant's arguments to vacate the sentence were not timely raised as required by Rule 29(a), SCRCrimP.

Applicant now argues Counsel was ineffective in failing to properly file a motion to vacate Applicant's sentence. This allegation is without merit. Applicant presented no evidence to support this contention. This Court finds Counsel filed the appropriate motion under Rule 29(a), SCRCrimP, rather than a motion to vacate the sentence. The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion State v. Smith, 276 S.C. 494, 498, 280 S.E. 2d 200, 202 (1981). A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant given the crime committed. Wasman v. United States, 468 U.S. 559, 563 (1984). This Court finds Counsel's performance was objectively reasonable under the prevailing professional norms.

This Court finds Applicant failed to meet his burden in proving prejudice. Applicant has failed to prove that a motion to vacate the conviction and sentence would have been successful either at the circuit level or the appellate level. The record before this Court and testimony provided at the hearing firmly convinces this Court that Applicant would have been no better off in filing a motion to vacate the sentence. This Court further finds Applicant failed to show how the denial of a motion to vacate would have been successful on appeal. See State v. Fogle, 256 S.C. 149, 155, 181 S.E.2d 483, 485 (1971) (holding an appellate court has "no jurisdiction to

² This Court finds Applicant has waived any challenge to Counsel von Herrmann's performance at the motions hearing by having said counsel represent him in this action.

correct a sentence alleged to be excessive when it is within the limit prescribed by law,") (internal citations omitted). This allegation is denied and dismissed with prejudice.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of October, 2015.


G. THOMAS COOPER, JR.
Presiding Judge

Camden, South Carolina

Deterred sentence by judge

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATEVS. Willie RitterAKA: B Race: M Sex: M Age: 65DOB: SS#:Address: City, State, Zip: DL# SID#In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Homicide By Child Abusein violation of § 16-3-85(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2356☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ Recommendation by the State, (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: James Stripes Willie Ritter DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, SC Bar # 5393for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,

which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPSRecipient:

*Fine:

\$14-1-206 (Assessments 107.5%) \$ \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \$56-5-2995 (DUI Assessment) \$12 \$ \$35.13 (Public Def/Prob) \$500 \$ \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ \$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \$50-21-114(BUI Breath Test Fee) \$50 \$ \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ \$80.11 TP (SCCJA Surcharge) \$5 \$ TOTAL \$ Jeanette McBride Clerk of Court/ Deputy ClerkCourt Reporter: K. TracySCCA/217 (07/2008) Karen Ambroziak 1083 Langford Rd. 208 Blythenwood SC 29016INDICTMENT/CASE#: 2007-GS-40-4465
A/W#: K266297
Date of Offense: 5/18/07
S.C. Code §: 16-3-85(A)(1)
CDR Code #: 2356

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Homicide By Child Abusein violation of § 16-3-85(A)(1) of the S.C. Code of Laws, bearing CDR Code # 2356☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ Recommendation by the State, (defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: James Stripes Willie Ritter DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, SC Bar # 5393for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,

which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPSRecipient:

*Fine:

\$14-1-206 (Assessments 107.5%) \$ \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \$56-5-2995 (DUI Assessment) \$12 \$ \$35.13 (Public Def/Prob) \$500 \$ \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ \$33.7, 1B TP (Drug Court Surcharge) \$100 \$ \$50-21-114(BUI Breath Test Fee) \$50 \$ \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ \$80.11 TP (SCCJA Surcharge) \$5 \$ TOTAL \$ Jeanette McBride Clerk of Court/ Deputy ClerkCourt Reporter: K. TracySCCA/217 (07/2008) Karen Ambroziak 1083 Langford Rd. 208 Blythenwood SC 29016PRESIDING JUDGE Judge Code: 48Sentence Date: 9/21/2009Voluntariness of plea accepted on July 20, 2009 by

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

GENERAL SESSIONS

STATE OF SOUTH CAROLINA

CR. NO. 2007-GS-40-4465

MOTION FOR
RECONSIDERATION OF
SENTENCE

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 SEP 25 AM 11:24

RICHLAND COUNTY
FILED

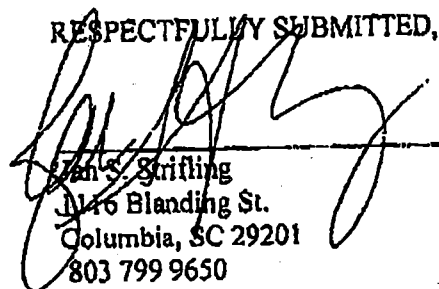
V

WILLIE RITTER

The defendant, by and through the undersigned attorney, pursuant to Rule 29(a) of the South Carolina Rules of Criminal Procedure, hereby moves the court for the reconsideration of the sentence imposed on the defendant on September 21, 2009.

This motion is based on the instant motion, subsequent matters to be presented, and matters to come before the court at a hearing on the motion.

RESPECTFULLY SUBMITTED,


Jan S. Griffling
1146 Blanding St.
Columbia, SC 29201
803 799 9650

September 25, 2009

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The Court heard Defense's Motion to Reconsider Sentencing on October 31, 2011. At the hearing, the Defendant also moved to vacate the guilty plea. A Motion to Vacate the Guilty Plea was never submitted in writing. Rather, the motion was made on the record at the October 31, 2011, hearing.

Defendant's Motion to Reconsider

Sentencing was imposed by Judge Burch on September 21, 2009. The Motion to Reconsider was timely filed by Defendant on September 25, 2009.

The authority to change a sentence rests exclusively with the sentencing judge and is within his or her discretion. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 2010 (1981). A judge or other sentencing authority is to be according very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed. *Wasman v. United States*, 468 U.S. 559, 563, 104 S.Ct. 3217, 82 L.Ed.2d 424 (1984).

Defense has failed to present any new or enlightening information regarding sentencing. The Court has once again considered all information that may determine proper sentencing, and finds that, given the facts and circumstances and lack of any new perspective, the original sentence of twenty years was appropriate. Thus, Defendant's Motion for Reconsideration is DENIED.

Defendant's Motion to Vacate Guilty Plea

The Defendant failed to file a Motion to Vacate the Guilty Plea in writing within ten (10) days after the imposition of sentence. Instead, the Defendant made its Motion to Vacate during the hearing for the previously filed Motion to Reconsider at the October 31, 2011, hearing in open court with a court reporter present.

Rule 4(a) of the SC Rules of Criminal Procedure is as follows: "An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion." Rule 4(a), SCRCrimP.

Also, "Except for motions for new trials based on after-discovered evidence, post trial motions shall be made within ten (10) days after the imposition of the sentence... The time within which to make the motion shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term..." Rule 29(a), SCRCrimP.

Defendant's motion was not a motion for new trial based on after-discovered evidence. Defendant's post-trial motion was not made within ten (10) days of September 21, 2009. The motion to vacate was not timely filed, and thus the Court does not have the authority to decide Ritter's motion to vacate.

In *State v. Warren*, Appellant Warren appealed guilty pleas to burglary in the first degree and attempted armed robbery. *State v. Warren*, 392 S.C. 235, 236, 708 S.E.2d 234, 235 (2011). After sentencing, Warren filed a timely motion to withdraw her pleas. *Id.* She then later amended her post trial motion to request reconsideration of her sentence, specifically abandoning the motion to withdraw her plea. *Id.* Warren argued to the SC Court of Appeals that the circuit court erred in finding it was without authority to consider her untimely motion to reconsider the sentence. *Id.* The Court of Appeals affirmed the circuit court's finding that her motion to reconsider was not timely filed, and found that her motion to reconsider her sentence, like the motion to withdraw a guilty plea, was subject to the ten day time period prescribed in Rule 29. *Id.* 392 S.C. at 240, 708 S.E.2d at 236. The Court of Appeals concluded that because the motion was filed more than three years after imposition of the sentence, Warren's motion was not timely, and thus was denied. *Id.*

The case at hand is distinguishable from *Warren* in that here, Defendant never filed a motion to vacate or amended its motion to reconsider. Rather, Defendant's motion to vacate was made October 31, 2011. In *Warren*, the Defendant filed a timely motion to withdraw pleas and, over three years later, moved to amend to seek a reconsideration of sentence. Per *Warren*, both motions to reconsider and motions to vacate are subject to the ten day time period in Rule 29. *Id.* Defendant obviously did not comply in the case at hand. Further, the Court in *Warren* concluded that despite efforts to amend, supplement, or convert her original post trial motion, because it was filed more than three years after imposition, her motion was not timely. *Id.* Similarly, Defendant's motion was filed over two years after the imposition of sentencing. Regardless of any assertions to withdraw the motion to reconsider and replace it with the motion to vacate, to amend the motion to reconsider,

or to simply move to vacate in addition to reconsider, Defendant's motion to vacate is clearly untimely, leaving the Court without authority to hear it.

Even if the Court were to entertain Defendant's motion to vacate, it would still be denied:

"The withdrawal of a guilty plea is generally within the sound discretion of the trial judge." *State v. Riddle*, 278 S.C. 148, 150, 292 S.E.2d 795, 796 (1982). A trial judge should not accept a guilty plea without an affirmative showing that it was intelligent and voluntary. *Boykin v. Alabama*, 395 U.S. 238, 241, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). Also, to intelligently and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understand of the consequences of his plea and the charges against him. *Simpson v. State*, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1996). The record in a guilty plea proceeding must establish the factual basis for the plea. *LoPiano v. State*, 270 S.C. 563, 569, 243 S.E.2d 448, 451 (1978); *State v. Armstrong*, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975). When a trial judge accepts a guilty plea, he "is free to use any appropriate procedure for determining the accuracy of the guilty plea. The judge must be certain that the defendant understands the charge and the consequences of the plea and that the record indicates a factual basis for the plea." *Armstrong*, 263 S.C. at 598, 211 S.E.2d at 891. "All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." *Rollison v. State*, 346 S.C. 506, 511, 552 S.E.2d 290, 292 (2001).

State v. Rikard, 371 S.C. 295, 300-301, 638 S.E.2d 72, 75 (2007).

Ritter argues that his guilty plea should be vacated. This argument is based on the recent S.C. Supreme Court decision *State v. Abel Jacobs*, handed down July 25, 2011, in which the Supreme Court affirms the circuit court's decision that a sentence for burglary in the first degree cannot be suspended under the language of S.C. Code 24-21-410. *Jacobs*, 393 S.C. 584, 713 S.E.2d 621 (2011). In *Jacobs*, Appellant pled guilty to burglary in the first degree. *Id.* The circuit court found that a sentence for burglary 1st was not suspendable under S.C. code 24-21-410 and sentenced Appellant to fifteen years. *Id.* On appeal, Appellant argued that a sentence for the conviction of first degree burglary is suspendable because the burglary statute does not expressly prohibit suspension. *Id.* The Supreme Court held "the trial court lacked the authority to suspend the sentence for first degree burglary; state gave the trial judge the discretion to suspend a criminal sentence in favor of probation unless the seriousness of the crime warranted a penalty of death or life imprisonment..." *Id.*, 393 S.C. at 587, 713 S.E.2d at 622.

§ 24-21-410 states:

After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of the sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. Probation is a form of clemency.

S.C. Code Ann. § 24-21-410 (Supp. 2010). Ritter argues that like burglary 1st, the penalty for homicide by child abuse is punishable by death or life imprisonment, and thus, per *Jacobs*, a sentence for homicide by child abuse is not suspendable.

The *Jacobs* case does not change the characterization of Ritter's guilty plea as freely, voluntarily, or intelligently made. The record clearly reflects that both Ritter and his attorney understood the nature of the charge, the consequences of the plea, and the constitutional rights he was waiving, and that a factual basis was made by the Solicitor. The following exchange occurred between Judge Burch and defendant:

The Court: The indictment alleges that in Richland County on or about May 18th, 2007 that you caused the death of a child under the age of 11, that is Javon Simpson, ten months old, while committing child abuse or neglect, and that the death occurred under circumstances manifesting an extreme—extreme indifference to human life in violation of South Carolina code section 16-3-85(A)(1)(B)(1) of our code of laws, 1976 as amended. For that particular offense, the maximum possible penalty is up to life imprisonment with a minimum sentence of 20 years. However, that is not what we term a mandatory minimum sentence. The—we will have further discussion about that in a few minutes, but for right now I'm advising you of—when I say it's not a mandatory minimum sentence, that means that the minimum sentence portion of the statute can be suspended, as I understand the law. Now, have you got any questions about this charge?

The Defendant: No, sir.

Moreover, shortly thereafter, Defendant's lawyer, Jan Striffling, confirmed Ritter's understanding at the plea when he stated to the court:

Attorney Striffling: So we—we also enter this plea, Your Honor, with the understanding that the Court, as you have stated, believes that the statute under which my client is pleading is a suspendible statute. In other words, he's facing 20 to life, and Your Honor can give him a suspended sentence, you know, give him some committed sentence which you can suspend all or part of it. Now that's not to say that there has been any discussion of a sentence. In other words, as to what, if any, suspended sentence you give. There is no agreement with the Solicitor's Office. There is no agreement with your Honor. We have not discussed it, and so while—while the condition that I stated seem to be what we have agreed to, there

is no—we did not discuss it with Mr. Ritter in his plea that if he did this, he would get this...

The Court: Thank you.

The clarification of sentencing for burglary 1st in *Jacobs* does not change the status of Ritter's plea. "The correct penalty is the one in effect at the time of sentencing, even if the penalty is repealed while the appeal is pending." *State v. Varner*, 310 S.C. 264, 265, 423 S.E.2d 133 (1992). "Thus, a criminal defendant receives the benefit of punishment mitigated by legislative amendment only when the amendment becomes effective before sentence is pronounced." *Id.* Clearly, the *Jacobs* decision was handed down well after the imposition of sentencing for Ritter. As of September 21, 2009, the Court had yet to speak on the possibility of a suspended sentence on crimes punishable by death or life imprisonment. Therefore, the subsequent clarification of the law does not affect sentencing.

At sentencing, Ritter had a full understanding of the consequences of his plea. He was advised of the mandatory minimum, the maximum, and the possibility of suspension. The Court considered a suspended sentence at Ritter's sentencing, as *Jacobs* had yet to be decided. Still, the Court did not impose a suspended sentence. Sentencing is not and was not affected by the subsequent decision that a penalty involving death or life imprisonment is not suspendable.

Ritter also argues that the Court should grant his motion to vacate based on *State v. Roddy*. *Roddy*, 339 S.C. 29, 32, 528 S.E.2d 418, 420 (2000). However, *Roddy* is distinguishable from the case at hand. In *Roddy*, Respondent entered a guilty plea and instead of receiving the negotiated plea, he received one that was more severe. *Id.*, 339 S.C. at 32, 528 S.E.2d at 420. Roddy appealed, argued that he thought the plea negotiations were binding and was unaware the judge could deviate. *Id.* The Supreme Court held "Defendant's guilty plea was knowing and voluntary, where plea judge explained the maximum sentence for each offense and defendant acknowledged that he understood the maximum sentence for each charge, defendant admitted that his guilty plea was not induced by any promises from his attorney that he would get concurrent sentences, defendant knew that his negotiated plea was not binding, defendant acknowledged that judges had option of sentencing him to either concurrent or consecutive time, and respondent's counsel stated that they merely 'hoped' the plea judge would accept the state's recommendation." *Id.* 339 S.C. at 34, 528 S.E.2d at 421.

The respondent in *Roddy* entered his guilty plea with negotiations. Even with the negotiations, his plea was deemed knowing and voluntary. Ritter's plea was entered without negotiations or recommendations, and

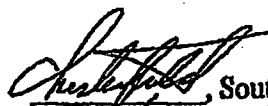
according to the record, he understood this fact. Further, in accordance with *Roddy* and in review of the record, even if it had been negotiated, his plea was still voluntarily and knowingly made. Ritter acknowledged at the plea hearing that he had been made no promises as to sentence.

As Ritter's plea was voluntarily, knowingly, and intelligently made, the motion to vacate would be denied.

Defendant's Motion to Vacate Guilty Plea is DENIED.

Defendant's Motion to Reconsider Sentencing is DENIED.

AND IT IS SO ORDERED.

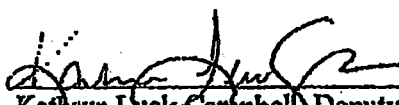


South Carolina
This 5th day of March, 2012



The Honorable Paul Burch
Presiding Judge, Fourth Judicial Circuit
Court of General Sessions

I SO MOVE:



Kathryn Luck-Campbell, Deputy Solicitor
Fifth Judicial Circuit

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Willie Ritter, Appellant.

Appellate Case No. 2012-210570

Appeal From Richland County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2014-UP-232
Submitted May 1, 2014 – Filed June 18, 2014

AFFIRMED

William Bertram Von Herrmann, of Von Herrmann Law
Firm, of Conway, for Appellant.

Assistant Deputy Attorney General David A. Spencer, of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: Rule 29(a), SCR CrimP ("Except for motions for new trials based on
after-discovered evidence, post-trial motions shall be made within ten (10) days
after the imposition of the sentence."); *State v. Warren*, 392 S.C. 235, 240, 708

S.E.2d 234, 236 (Ct. App. 2011) (holding the trial court only had authority to consider the issue raised in a timely filed post-trial motion and lacked authority to consider the issue in a motion to amend filed more than three years later).

AFFIRMED.¹

HUFF, THOMAS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.