

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Michael G Nettles, Circuit Court Judge

Case No 2007-CP-22-476

ORIGINAL

ROBERT TROY TAYLOR, 315084,

PETITIONER,

v

STATE OF SOUTH CAROLINA,

RESPONDENT

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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1 STATE OF SOUTH CAROLINA ; COURT OF GENERAL SESSIONS
2 COUNTY OF GEORGETOWN ; INDICTMENT # 04-CS-22-44
3 05-CS-22-523
4 06-CS-22-361

5 THE STATE OF SOUTH CAROLINA,)
6)
7 PLAINTIFF,)
8 -VS-) TRANSCRIPT OF RECORD
9)
10 ROBERT TROY TAYLOR,)
11)
12 DEFENDANT)
13 _____)

April 20, 2006
Georgetown, S C

14 B E F O R E

15 HONORABLE EDWARD B COTTINGHAM, JUDGE

16 A P P E A R A N C E S

17 ROBERT B BRYAN, ESQUIRE
18 Assistant Solicitor, Fifteenth Judicial Circuit
19 Attorney for the State

20 R SCOTT JOYE, ESQUIRE

AND

21 DELTON W POWERS, JR , ESQUIRE
22 Attorneys for the Defendant

23 LINDA W MCCALL
24 OFFICIAL REPORTER
25

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THURSDAY, APRIL 20, 2006

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4

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29

GUILTY PLEA

4

THURSDAY, APRIL 20, 2006

1

2

GUILTY PLEA

3

THE COURT Good morning, ladies and gentlemen Please be

4

seated

5

Alright, Solicitor Call your first case, please

6

MR BRYAN Thank you, Your Honor

7

If it please the Court, the State calls The State v Robert

8

Troy Taylor

9

THE COURT Which is the defendant?

10

MR JOYE He's right here

11

THE COURT Okay, and who is this who stands with him?

12

MR JOYE Your Honor, he's an uncle Some nephews also

13

THE COURT Alright Identify though I know who you are,

14

identify yourself for the record, please

15

DEFENDANT I'm Robert Troy Taylor

16

THE COURT Counsel, identify yourself for the record

17

MR JOYE Oh, yes, sir I'm sorry

18

Scott Joye

19

MR POWERS Delton Powers, Your Honor

20

THE COURT Alright, sir

21

And, Solicitor, who is this who stands with you first to your

22

left?

23

MR BRYAN If it please the Court, Your Honor, this is

24

Investigator George Smith with the Georgetown County Sheriff's

25

Office

GUILTY PLEA

5

1 THE COURT I know Mr Smith I just wanted to identify
2 him for the record

3 Yes?

4 MR BRYAN *victim 1* who is a victim and *victim 2*
5 who is a victim

6 There's also another victim who is seated out in the
7 courtroom

8 THE COURT Alright, sir

9 MR BRYAN There's several members of their family also
10 seated on the front two rows

11 THE COURT Let me say this to the victims

12 You know, in our system we always read about all the
13 defendant's rights in the courtroom but I want you to know and
14 appreciate the fact that in our system of justice, and properly so,
15 victims too have equal rights, and this Court appreciates your
16 presence here under these certain circumstances I want to thank
17 you for it

18 Call the case

19 MR BRYAN Thank you, Your Honor

20 The State calls Indictment 04-GS-22-44 charging Troy Taylor
21 with a lewd act, 05-GS-22-523 charging Robert Troy Taylor with a
22 lewd act and 06-GS-22-361 charging Troy Taylor with criminal sexual
23 conduct, second degree The last indictment 06-361 has not been
24 presented to the Grand Jury He signed a waiver on the indictment
25 as well as having indicated on the Sentencing Sheet that he waives

GUILTY PLEA

6

1 presentment

2 THE COURT Is, ah, are we going forward on all four
3 indictments?

4 MR BRYAN Three indictments, that's three indictments,
5 Your Honor

6 THE COURT Didn't you call four?

7 MR BRYAN I believe I called three I repeated the last
8 number because it had not been presented to the Grand Jury

9 THE COURT Alright, sir

10 And the waiver is upon which indictment?

11 MR BRYAN For criminal sexual conduct with a minor,
12 second degree I think it's 361 is the indictment

13 THE COURT Alright, sir

14 So we are dealing with issues said to have occurred, one in
15 1988, and that involves 22-44 Is that correct?

16 MR BRYAN Yes, sir

17 THE COURT And we are dealing with an indictment where the
18 incident is said to have occurred in 1989 Is that correct?

19 MR BRYAN Yes, sir, Your Honor

20 THE COURT And we are dealing with an incident that is
21 said to have occurred in 1999 Is that correct?

22 MR BRYAN Yes, sir, Your Honor

23 THE COURT The reason that I specifically want the record
24 to reflect that these incidents as atrocious as they are occurred
25 over ten or fifteen years ago, the reason I say that Last evening

GUILTY PLEA

I picked up The Sun News, and I read in bold and capital letters the following statement

'Taylor was out of jail on bond and awaiting trial on the first two charges when he was arrested late last year and charged with molesting another child "

To the lay-reader that would indicate that the judicial system of this county put him in jail letting him out on bond He commits another and puts him back in jail and lets him out on bond and even commits another

You agree with me that that did not occur Do you not?

MR BRYAN Yes, sir, Your Honor

He was, ah - - -

THE COURT I'm not saying that the author deliberately attempted to mislead anyone but that statement in bold letters misleads the reading public of The Sun News

Now, having said that, that doesn't subtract from the very seriousness of these charges but the public is entitled to know that the judicial system did not continue to let this individual out on bond so that he could molest another child

As a threshold matter, this individual, as I understand it, has been indicted by true-bill by the Grand Jury of Horry County of Georgetown County You agree with that, Mr Joye?

MR JOYE Yes, Your Honor On two indictments, Judge

THE COURT Okay

As to the third indictment he was entitled to presentation to

GUILTY PLEA

8

1 the Grand Jury I note on the face of this indictment that he has
2 signed a waiver of those proceedings As his attorneys as those -
3 - is that waiver freely, intelligently, knowingly and voluntarily
4 made

5 What say you, sir?

6 MR JOYE Yes, sir

7 THE COURT Mr Powers?

8 MR POWERS Yes, sir

9 THE COURT And you understand that under our system a
10 Grand Jury comprised of eighteen people are entitled to hear the
11 charges against you, twelve of whom must unanimously find at least
12 probable cause

13 You understand that?

14 MR TAYLOR Yes, sir Yes, Your Honor

15 THE COURT An individual under our proceedings cannot
16 proceed to trial until that is done unless he waives presentment to
17 the Grand Jury You have signed an instrument indicating that you
18 waive that procedure Is that correct?

19 MR TAYLOR Yes, Your Honor

20 THE COURT Alright, sir

21 As we begin, give me the factual basis for these proceedings,
22 and I will look into the voluntariness of his plea

23 MR BRYAN Thank you, Your Honor

24 If it please the Court, just by way of background to this
25 Court in the nature of the relationship between this defendant and

GUILTY PLEA

9

1 these victims, they were essentially eleven, twelve years boys when
2 this conduct began. Although they were incidents who were in '88
3 and '89, the victims in '88 and '89 were around twelve when it
4 happened, and ten years later when the other victim was molested,
5 he was twelve years old as well ten years later, and the
6 relationship between the defendant and the victim is between the
7 victims standing behind me who these incidents occurred in '88 and
8 '89, Troy was a cousin to Victim 2 as well as his youth
9 pastor, and he had a little clique that involved these two victims

10 They would go to worship on Saturday nights together, and
11 after the youth services or youth programs, Troy would invite a
12 group of boys to come back to his house to watch movies. Sometimes
13 they would go on rafting trips, camping trips, take them to the
14 beach, take them to movies, take them to play laser tag, developed
15 a nice little clique, a nice little unit of these twelve year old
16 boys and invite them back to his house to spend the night after
17 youth services

18 And during one of these incidents where he had - - and they
19 tell me that sometimes they would stay over there for Friday night
20 through Sunday night, and that they would then, um, some Saturday
21 night, spend Saturday night. Go to church, and then they would go
22 back over for lunch and go back over to his house after that

23 THE COURT Which church was this?

24 MR. BRIAN This was Low Country?

25 It was called South Carolina Baptist. It's the same building

1 - - -

2 THE COURT Located where, please?

3 MR BRYAN Murrells Inlet

4 THE COURT Okay

5 MR BRYAN It was South Carolina Baptist at the time and
6 then became Low Country Three which Troy Taylor became the pastor
7 of When the incident in '99 happened, he was actually the pastor
8 of the church which the victim in '99 attended, and he had a
9 similar relationship with him

10 During one of these incidents, ah, in the calendar year of
11 1988, he went back to his residence along with ' Victim 1 who
12 was born July 2, 1976 Victim 2 went to sleep, and when he woke
13 up to his surprise and shock had his hand inside of the pants of
14 Troy Taylor who they frequently shared the same bed together

15 It was common practice for him to sleep with these two along
16 with other members of the youth group while he was the youth
17 leader, and one night Victim 1 - - I'm sorry Mr , ah, Victim 2
18 wakes up He's got his hand in his pants, and he kind of - - in
19 the defendant's pants, and he - - when he was so shocked by it, and
20 he was half awake, and he went - - he just kind of was half awake
21 and asleep

22 Ten minutes later he kind of came to and tried to process it
23 and, ultimately, just kind of disregarded Just kind of pretended
24 it didn't happen until this defendant was getting married we're
25 dealing with 1995 Actually, this victim was on his way to a

1 function surrounding the wedding of Mr Taylor, and Mr Taylor said
2 re wanted to speak to the victim about what he had done to him and
3 confessed to the fact that he had inappropriately touched him back
4 in 1988, and after that this victim kind of went on a downward
5 spiral

6 He did a lot of self-destructive things, and I believe I
7 think it is important for the Court to know that I believe he was
8 at the time he was studying at North Greenville College to enter
9 the seminary, to be a preacher, and after he found out that his
10 mentor, role model, someone he idolized who was his youth minister
11 had molested him, he dropped out school, and he began to engage in
12 a lot of self-destructive activity until he got his life together
13 I think, apparently, recently, I think at the age of twenty-six he
14 joined the army He's now serving his country proudly He
15 actually flew back to participate in the trial of this case which
16 was scheduled this week from Iraq where he is currently serving in
17 the United States Army

18 With respect to the other victim who stands behind me, he is
19 a cousin of the defendant He is the reason this stuff basically
20 came forward He was involved with a counselor because he had some
21 self-destructive activity

22 After the incidents that occurred with Mr Taylor and this
23 victim, unfortunately, occurred ten or more times, and he said that
24 he would frequently wake up with his hand in Mr Taylor's pants and
25 Mr Taylor's hand in his pants while he was approximately twelve

GUILTY PLEA

12

1 years old in the year 1989, and this kind of action continued It
2 happened in this county It happened in Horry County It
3 happened at his - - Troy's parents house, an apartment Troy has in
4 Horry County - - -

5 THE COURT Did you say Horry or Georgetown County?

6 MR BRYAN This happened in Georgetown County and Horry
7 County

8 And Victim 2 embarked on a similar journey of self-
9 destructive conduct where he was bad drug addict and had a lot of
10 self-destructive behavior where he, ultimately, decided to get his
11 life together within the last few years He sought counseling In
12 the course of his counseling he revealed to himself and he revealed
13 to his counselor the fact that he - - you know, what is the root of
14 this? What - - what do you think might be the problem or the root
15 of this problem here? Why are you a self-destructing individual?

16 And they spoke about the fact that he had been molested when
17 he was twelve years old by his cousin who was his youth minister,
18 and he revealed that to the counselor who reported to DSS and
19 reported to the Sheriff's Office and from there the other victim
20 came forward and, ultimately, a third victim came forward, and that
21 victim is present in the courtroom I won't mention his name but
22 that he did come forward

23 And I think that - - that's his right but he was the victim of
24 a criminal sexual conduct that actually occurred ten years,
25 approximately ten years after these incidents occurred That was

1 in Georgetown County

2 All of these incidents that he's pleading guilty to occurred
3 in Georgetown County where he inappropriately touched or forced a
4 minor to touch him while he was under the age of eighteen - - -

5 THE COURT When was the last incident?

6 MR BRYAN The last incident was in 1999 That was as a
7 result of a sanctioned church event where Troy Taylor was the head
8 pastor These boys went to the beach I believe it was at Pawleys
9 Island but they went to the beach in Georgetown County They were
10 waiting on a shower after coming out of the beach at one of these
11 public showers, and Mr Taylor kindly offered to not make Mr - -
12 the victim wait in line for a shower So he invited him to come
13 back to his house where he could shower, and while in the shower
14 Mr Taylor came into the shower with him and sodomized him and
15 that's the last victim, Your Honor

16 I think I basically covered the fact that there was a live
17 witness who was a Dennis W , also a cousin in North Greenville
18 There's no charges that I'm aware of in that count He was also
19 going to come testify to the fact that in 1988 and 1989 that he
20 woke up with Mr Taylor's hand in his pants so that, clearly, that
21 there was no mistake or accident occurred here

22 I don't believe the defendant has any prior, ah, criminal
23 convictions The State is not making a recommendation in this
24 case He's facing fifteen years for each lewd act, twenty years
25 for criminal sexual conduct He'll have to register as a Se

GUILTY PLEA

15

1 Offender, and he'll serve eighty-five percent of whatever the Court
2 gives him. We would ask for a significant period of incarceration
3 inasmuch as we believe that he's a danger to the children of our
4 community and any community he resides in.

5 THE COURT Thank you, Solicitor. That was an excellent
6 presentation and a detailed presentation, and the facts are such
7 that we needed such as that for the records of this Court and to
8 let the good folks of Georgetown County understand what atrocious
9 type of conduct this was.

10 Alright, sir.

11 As a threshold matter, Mr. Joye, you and Mr. Powers represent
12 this defendant?

13 MR. JOYE We do, Your Honor.

14 THE COURT The Solicitor has explained the indictment
15 number and allegations in these documents asserting that he can
16 prove these allegations to a jury's satisfaction beyond a
17 reasonable doubt.

18 How does this defendant plead guilty to an incident said to
19 have occurred in 1989 involving the defendant Victim 2? How does he
20 plead to that, sir?

21 MR. JOYE Guilty, Your Honor.

22 THE COURT And with regards to an incident said to have
23 occurred in 1988 involving the defendant Victim 1, how does he plead
24 to that charge?

25 MR. JOYE Guilty, Your Honor.

GUILTY PLEA

15

1 THE COURT With regards to an indictment involving an
2 incident in 1987 involving a victim Victim 3 now does he
3 plead to that indictment?

4 MR JOYE Your honor, I believe that should be 1999 I
5 believe you said 1987

6 MR BRYAN August 7 , Your Honor Between August 5 and
7 August 7th

8 THE COURT Well, this, ah, let's see

9 I'm sorry, 1999 I got you Alleging that was the date of
10 his birth He was twelve years old at the time How does he plead
11 to that indictment?

12 MR JOYE Guilty, Your Honor

13 THE COURT Alright, sir

14 Now, how old is this defendant?

15 MR JOYE Thirty-six, Your Honor

16 THE COURT What is his marital situation?

17 MR JOYE Divorced, Your Honor

18 THE COURT Okay

19 Does he have any children, any family?

20 MR JOYE Yes, sir, Your Honor He has - - he has three
21 children, two by - - two that are his children, his biological
22 children He also has a third child which was adopted in Romania

23 THE COURT Okay

24 Have you and Mr Powers fully advised him of his
25 constitutional rights to trial by jury?

1 What say you, Mr Powers?

2 MR POWERS We have, Your Honor

3 THE COURT Does he fully understand that process?

4 MR POWERS He does, Your Honor

5 THE COURT Does he fully understand that even at this
6 moment if this defendant said, "Judge, I've changed my mind I
7 wish to plead not guilty and let a jury of twelve folks hear these
8 facts," that I would stand him aside with no prejudice to him, and
9 we would try him Monday morning in Georgetown County Does he
10 fully understand that?

11 MR JOYE Yes, he does, Your Honor

12 THE COURT Is there any question of his right to trial by
13 jury?

14 MR JOYE No, Your Honor

15 THE COURT Does he fully understand that in pleading
16 guilty he is absolutely giving up that right freely and
17 voluntarily?

18 MR JOYE Yes, sir, Your Honor

19 THE COURT Alright, sir

20 Mr Taylor, your mind clear today?

21 MR TAYLOR Yes, sir

22 THE COURT You freely understand these proceures?

23 MR TAYLOR Yes, Your Honor

24 THE COURT If you have any questions, now, this is a most
25 serious matter It's serious for you It's serious for the State

GUILTY PLEA

17

1 of South Carolina, our judicial system, and it's certainly serious
2 for these unfortunate young men here. If you have any questions,
3 now let me know.

4 MR. TAYLOR Yes, sir.

5 THE COURT The Solicitor has called these indictments for
6 trial against you. Do you understand these indictments and the
7 serious allegations?

8 MR. TAYLOR Yes, sir.

9 THE COURT Are you guilty of these charges?

10 MR. TAYLOR Yes, sir.

11 THE COURT Is your plea freely and voluntarily made?

12 MR. TAYLOR Yes, sir.

13 THE COURT Is your plea of guilty made without any
14 reservations whatsoever?

15 MR. TAYLOR Yes, sir.

16 THE COURT I understand that there are many members of
17 your church group who are here in support of you, and I appreciate
18 their presence to

19 MR. TAYLOR As do I.

20 THE COURT I want you to say to me in their presence, "I
21 am guilty."

22 Do I hear you say that?

23 MR. TAYLOR I am guilty.

24 THE COURT Do you understand that you are presumed
25 innocent, and the State of South Carolina would have to prove you

1 upon trial guilty beyond a reasonable doubt? Do you understand
2 that?

3 MR TAYLOR Yes, sir, I understand that

4 THE COURT I understand that these are old accusations,
5 some of them going back to 1988, but they are still provable and
6 they are still atrocious allegations against you You understand
7 that?

8 MR TAYLOR Absolutely

9 THE COURT I don't know what, if any, your defenses would
10 be but I tell you as a matter of law in pleading guilty you are
11 giving up forever any defenses that you may have had You
12 understand that?

13 MR TAYLOR Yes, sir, I do

14 THE COURT Is anybody forced you to plead guilty in any
15 way?

16 MR TAYLOR No, sir, there's not

17 THE COURT Has anybody threatened you in any way to get
18 you to plead guilty?

19 MR TAYLOR No, sir

20 Excuse me My mouth is dry Forgive me if I speak too loud
21 but no, sir

22 THE COURT I understand Get him a glass of water
23 You are asserting - - have you sworn this witness?

24 DEPUTY CLERK OF COURT No, sir

25 THE COURT Swear this witness

GUILTY PLEA

17

1 (Deputy Clerk of Court swears defendant)

2 THE COURT Alright, Mr Taylor, you are under oath, sir,
3 and you are asserting to me that under your oath that the answers
4 previously given to me are true and correct?

5 MR TAYLOR Yes, Your Honor

6 THE COURT And under your oath you are saying without
7 hesitation, "I am guilty "

8 Do I hear that?

9 MR TAYLOR Yes, sir

10 THE COURT And you are saying that you fully understand
11 that you are entitled to a trial by jury, and we would avail you of
12 that opportunity Monday morning at 9 30 Do you understand
13 that?

14 MR TAYLOR Yes, sir, I do Thank you

15 THE COURT You are saying to me that your plea is without
16 coercion?

17 MR TAYLOR Yes, sir

18 THE COURT Without threat?

19 MR TAYLOR Yes, sir

20 THE COURT Without promise?

21 MR TAYLOR Yes, sir

22 THE COURT Free and voluntarily made?

23 MR TAYLOR Yes, sir, I do

24 THE COURT You are represented by Mr Joye and Mr Powers,
25 two distinguished attorneys - -

GUILTY PLEA

20

1 MR TAYLOR I'm very thankful

2 THE COURT - - both of whom I've known for a number of
3 years Are you satisfied with their services?

4 MR TAYLOR Absolutely

5 THE COURT Have they done everything you've asked them to
6 do?

7 MR TAYLOR Most definitely

8 THE COURT Called all the witnesses you wanted?

9 MR TAYLOR Yes, sir

10 THE COURT Is there anything further that you think they
11 should or could do at this time that they have not done?

12 MR TAYLOR No, sir, I do not

13 THE COURT Is there any - - do you have any questions
14 about these matters that I have propounded to you?

15 MR TAYLOR No, sir, I do not

16 THE COURT I have gone into great detail with you, sir,
17 for several reasons One, to make no question about the fact that
18 you are guilty

19 MR TAYLOR Yes, sir

20 THE COURT And I want these unfortunate victims to hear
21 you say that in open court and in the presence of some of your
22 congregation who love you very much You understand that?

23 MR TAYLOR Yes, sir, I do Thank you

24 THE COURT Would the Investigator care to make some
25 remarks

GUILTY PLEA

1 MR BRYAN No, sir, Your Honor

2 THE COURT Alright

3 Let me hear from the victims at this time if they care to It
4 is not necessary They have come forward under extreme
5 circumstances I tell you that these events occur quite frequently
6 and, fortunately, there are brave young men like you who are
7 willing to come forward and say, "This is what happened to me, and,
8 hopefully, we can keep it from happening to somebody else "

9 And I can't tell you how much I appreciate your braveness in
10 coming forward

11 I'll be glad to hear from either one of them

12 MR BRYAN Thank you, Your Honor

13 I know that Victim 2 would like to address
14 the Court

15 THE COURT Victim 2 I thank you, sir, for being here

16 Victim 2, Your Honor, I just want to say that these
17 things really did happen to me I didn't make this up It's
18 ruined my life It's ruined my friend's life, and I didn't know
19 I knew one victim The other victim I didn't even know until this
20 happened, and we kind of came together

21 Um, I know that some people think that I made this up because
22 I'm out to get Mr Taylor for some reason but that's not true, and
23 that's very hurtful that people would think that I would do that

24 THE COURT That's why and I thank you for bringing that
25 up That's why I insisted in your presence and in the presence of

part of the congregation that he look you in the eye and say, I am
guilty "

You understand?

Victim 2 Yes, Your Honor

THE COURT And that's been done That's an important part
of his plea in my judgment

Victim 2 Thank you, Your Honor

THE COURT He has said it publicly in your presence

"I am guilty "

So, everybody will believe you

Proceed if you care to but I thank you

Victim 2 Ah, I just can't imagine how different my life
would have been had I never even met him It would have been a
whole lot better I know that I would not have gone down the path
that I did I didn't do drugs to party You know, I did it to
escape, and it was because of him

He did these things, and I believe that - - that he deserves
to be punished for it It's not fair because he had an awesome,
you know I've had a horrible life You know, mine's been a
wreck, and he's been, you know, leading churches and having
everybody look up to him and believe him It's all lies

But nobody wants to believe me because I do drugs

That's all I want to say, Your Honor

THE COURT And I thank you for that, Victim 2

Officer

1 Let me say this, too I understand and appreciate the fact
2 that you have recently returned from Iraq Is that true?

3 Victim 2 Yes, Your Honor Actually, I'm scheduled
4 to go back

5 THE COURT First, let me say to you that we all appreciate
6 your magnificent service to our country

7 Victim 2 My pleasure, Your Honor

8 THE COURT Be glad to hear from you

9 Victim 2 I, too, had my stint on the dark side as
10 I like to call it with drugs and alcohol because of what Troy did
11 to me and dealing with the pain and the suffering that came with
12 that but I decided when I had a child, I had a beautiful five year
13 old little boy who doesn't deserve to have a father who is a drug
14 addict because I know I'm better than that, Your Honor

15 So, I quit that life style and joined the military and have
16 prospered since, Your Honor, and every time I look in my son's eyes
17 I know the reason why I stand here today before you and before Troy
18 is so that this cannot happen to him

19 It - - it's a shame that he was using Christianity and the
20 church as a fertile hunting ground to appease his sexual nature,
21 and it bothers me that this happened so much but this is my turn to
22 stand up to what I believe in, and I stand before you today saying
23 that this happened to me, too

24 Troy abused me, and it's something that happened to me but it
25 does not define me, Your Honor I'm stronger than that, and I will

1 live my life proud of what I've done here, of my service to the
2 United States in the military, and I hope that my son is one who
3 can look up to me now

4 And that's it

5 THE COURT Splendid statement Thank you

6 Alright, sir Is there anything further from the State at
7 this time?

8 MR BRYAN This last victim just real briefly, maybe

9 Is it okay if he speaks from here?

10 THE COURT Yeah, that's fine, and I, again, as I have
11 these two young men, I thank you for your service Your action
12 today is, indeed, one of bravery, and this community and this state
13 is in your debt, and we thank you for what you've done for us

14 Victim 3 I just wanted to say that thank you for your
15 time and that it always is really hard to deal with this stuff,
16 and, you know, I've had my share of drugs and alcohol and stuff
17 like that, you know, but since making it clear I didn't do this
18 stuff, you know I did it to get away from what happened I
19 wasn't doing it when I was - - when it was done, you know, I wasn't
20 hallucinating I wasn't dreaming You know, this really happened
21 to me, and it has been really hard to deal with, and I just
22 appreciate the Court's time and everybody that's helped out with
23 it

24 Thank you very much

25 THE COURT Thank you

Investigator, do you have anything further to add?

INVESTIGATOR SMITH No, sir, Your Honor

THE COURT Alright, sir

Anything further?

MR BRYAN No, sir, Your Honor Thank you

THE COURT Alright

Mr Joye, Mr Powers, I'll be glad to hear from you and the gentleman who stands with you, and I'll be glad to hear from this defendant if he cares to or anybody else that you care to speak on his behalf I'll be glad to hear from you

MR JOYE Thank you, Your Honor

THE COURT Who will start first, you or Mr Powers?

MR POWERS Your Honor, we've got some family members We want them to come on up Just not to disrupt the presentation

THE COURT Yes, sir We want a full hearing

MR JOYE Your Honor, as they speak, I will identify each and every one of them and allow them to approach

THE COURT Alright

MR JOYE Your Honor, I appreciate everything that the victims have said here today, and each one of them addressed what Troy himself has been through

Troy has preached and told and witnessed to many people about the abuse that he suffered as a young man, and I say that is somewhat mitigation At a very young age Troy was abused by his grandfather and others and some more, other folks in his family

1 The grandfather it's my understanding abused a number of
2 people

3 Your Honor, that sent Troy down a path I don't believe he
4 would have taken just as these young men went down a path that I
5 don't believe they would have taken had they not had - - suffered
6 abuse

7 Your Honor, it's important to me to let you know that in the
8 last two and a half years that I have represented Troy, I've come
9 to know this family, and Troy comes from a good immediate family
10 The abuse that he suffered was at the hands of his grandfather and
11 cousins

12 That type of abuse tends to perpetuate itself Your Honor,
13 Troy is a father, and for the next however long the Court deems
14 appropriate, he's not going to be there to be a father to his
15 children

16 He's lost to a great degree his children He's lost a wife
17 He's lost a church and a church family that he believes in, that he
18 loved and cared about

19 Your Honor, what we're asking here today is that this Court
20 show mercy

21 We understand that these are very bad allegations that he has
22 pled to However, we also appreciate that two of these allegations
23 were when he was eighteen and nineteen years old He's a thirty-
24 six year old man standing here today

25 Your Honor, there a number of people who want to speak on his

GUILTY PLEA

2-

1 behalf I would point out and would ask all those who are here in
2 support of Troy to please stand

3 (Members of audience stand as requested)

4 THE COURT Some of these - - are some of these church
5 members?

6 MR JOYE Yes, sir These are church members, family
7 and friends

8 THE COURT You may be seated, and I want to thank you for
9 your presence

10 MR JOYE Your Honor, I want to pass up several letters,
11 two from his young children and also there are 'a couple more
12 letters there I'll give Your Honor a second to look over those,
13 and then I'll continue

14 (Letters are passed to the Court for review)

15 THE COURT You care to summarize these four letters for
16 me First, you may summarize the one from his daughter, Logan
17 T.

18 MR JOYE Your Honor, unfortunately, I left my glasses in
19 the car, and I didn't have an opportunity to read them Mr Powers
20 did However, I didn't - - I couldn't see to read them

21 THE COURT Well, I can tell you This is, Dear Judge,
22 Please do not send my dad away I beg you Please Do not put
23 him in handcuffs to send him away "

24 Here's a letter from - - do I have your permission to use
25 these names publicly?

1 MF JOYE Yes, Your Honor

2 THE COURT Here's a, 'My name is Tracy Perritt '

3 She states she and her family spent countless hours traveling
4 with him throughout the state

5 "The Taylors have always had a home filled with love and
6 laughter "

7 Have you read this letter, Mr Powers? This is quite
8 lengthy

9 MR POWERS I have, Your Honor, and, basically - - -

10 THE COURT Would you want to summarize it?

11 MR POWERS The sum total, Your Honor, is that in all of
12 their dealings with him have always been positive, that they have
13 not suffered in any manner such as this, ah, and that he has
14 conducted himself with them and with their family members as pretty
15 much a perfect gentleman and a great leader as far as his
16 spirituality

17 THE COURT I'm going to make - - without objection, then,
18 I would make both of these documents a part of the record

19 Any objection to that?

20 MR JOYE No, Your Honor

21 THE COURT Alright I have a letter here to whom it may
22 concern executed by Norman McQueen Would you summarize that for
23 the record, please?

24 MR POWERS Your Honor, Mr McQueen is Assistant Principal,
25 I think, at Saint James High School, and is a resident here at

1 Pawleys Island His wife, I think, is also an attorney They,
2 are a very prominent family They have dealt with Mr McQueen and
3 they support him very strongly Of course, having those feelings,
4 they feel that he is suffering, and I think they are asking that
5 you tender anything that you handle with this with any mercy that
6 you feel possible

7 THE COURT That is specifically made a part of the record,
8 and, ah, here is one from another child, a Griffin T

9 In that, "Dear Judge, I love my daddy very much Please don't
10 sent him away He has many people who dearly love him as I do "

11 That is made a part of the record

12 (Court Reporter accepts four letters outlined by the Court as
13 Court's Exhibits #1 - Logan T , #2 - Tracy Perritt, #3 -
14 Norman McQueen and #4 - Griffin T.)

15 THE COURT Alright, sir You may proceed

16 MR JOYE Your Honor, I truly believe that this - - that
17 Troy will use this whole experience to turn into something to help
18 people because that's what his life has always been about, and I
19 believe that when Troy will use what he's gone through, what he's
20 suffered from to spin it to try to help people who have been what
21 he's been through

22 I believe Troy will be stronger for this, and I don't believe
23 Troy will be a threat to anyone in the future

24 Your Honor, with that, his parents, Linda and Tony Taylor are
25 here, and they would like to address the Court

GUILTY PLEA

36

1 THE COURT Let me ask you this Where has this defendant
2 been employed in the last ten years or so?

3 MR SCOTT Your Honor, after this first allegation, after
4 this allegation came up, he resigned from the church He's been
5 employed, ah - - -

6 THE COURT This the same church here in Murrells Inlet?

7 MR SCOTT Yes, sir, and I believe you've seen the sign
8 when you're going back, LC3, Low Country Community Church

9 MR TAYLOR I am We started a business, and I have a
10 residential home builders license, and my father and I have been
11, doing that

12 THE COURT Alright, sir

13 MR JOYE Mrs Linda and Mr Tony Taylor

14 THE COURT These are the parents?

15 MR JOYE Yes, sir, Your Honor

16 THE COURT I know this is very disheartening for you to be
17 in this climate and in these proceedings but I appreciate your
18 coming forward

19 MRS TAYLOR Your Honor, I stand beside my son today as Tony
20 and I have always stood beside him I hope when I die and stand
21 before my maker that there will be as many people that will be in
22 heaven that I've been a part of them being there as my son That's
23 what counts That's why I'm so proud of him

24 He came to that - - to LC3 when the building was about to go
25 the bank There were twenty to twenty-five people That church

GUILTY PLEA

31

1 grew not because of Troy but because of Troy's availability to God,
2 and Troy knows that God's hands, a blessing was on him

3 That flock of people grew to over 700 in less than three
4 years Many ministries, many out-reaches, many home Bible studies,
5 it was a phenomenal growth of a church and a big pillar in the
6 community Today it doesn't flourish quite that well but God's
7 blessing will go with Troy

8 I know as Troy goes through this part of his life, he will do
9 like he's always done When he was a little boy seven we took a
10 family vacation to Disney World Troy gets two little kids that
11 had no food to eat, and they're sitting around our picnic table

12 He did - - he's been youth counselor at Christian Camp He
13 spent his whole life serving God He'll continue to do that
14 This is just another mission for Troy

15 This system where ever he goes will never be the same He'll
16 be like Paul was He'll be as fruitful as Paul He'll be as bold
17 as Peter, and in the end he'll be like Joseph He'll be just as
18 forgiven

19 Thank you for any mercy Not for me I'm strong I've been
20 through a lot I can handle it Troy can handle it but he has a
21 seventeen year old Romanian adopted son whom who you will hear
22 from G is nine L is seven He has been and always
23 will be the Rock of Gibraltar to those children

24 Thank you, sir

25 THE COURT I appreciate your comments knowing how

1 difficult it may be

2 Yes, sir You have a comment to make?

3 MR TONY TAYLOR I'm very short, Your Honor

4 Troy was my twenty-sixth birthday present He was born on my
5 birthday I've been proud of him since that day He's done a lot
6 of good things

7 He may have slipped here and there but we've traveled the
8 country from Michigan to Georgia singing gospel music for three or
9 four years He went - - decided to go to school He went to
10 school He studied to be a minister

11 He came home He worked and grew with the church to what it
12 was two, three years ago, a wonderful church, a loving church No
13 one walked in that wasn't loved No one walked out that didn't
14 have felt the love that the people in the church had

15 I stand by my son I think he's a wonderful man, and I
16 honestly, if you would give me the opportunity, I would take his
17 place for him where ever you send him for as long That's how much
18 I love my son

19 Thank you

20 MR JOYE Your Honor, only one of his sisters will speak
21 but all three would like to come forward Sonya Brown, Tonya
22 Morton and Michelle Callagor

23 THE COURT Yes, ma'am

24 MS BROWN Your Honor, I would just like to tell you just
25 a little bit about our family

1 We have a very close and very loving family but we also have
2 a very sick family, and in our extended family I have first-hand
3 knowledge of the abuse at the hand of our grandfather and at some
4 of our uncles

5 We have an uncle that has done atrocious things to his sister
6 We have a grandfather that has molested at least five grandchildren
7 that we know of but we've weathered those storms, and I stand
8 before you a person who is - - has never gone down dark paths
9 because of my abuse I know that people can be abused and can be
10 upstanding citizens So I know that's possible

11 And I know that the abuse that Troy has suffered has shaped
12 his life just the way that the abuse I suffered shaped my life and
13 the victims' also, and we know that

14 And the hardest thing that it is for us as a family to
15 understand and get through with this whole thing is that the sins
16 of three generations of a family, it feels like they are being
17 placed on one man, and that may not be true but that's what it
18 feels like in our hearts, that we have three generations of sin,
19 and there was sin in each one of those generations and that that
20 will be placed on his head in the eyes of the State, not in God's
21 eyes but in the eyes of the State, and we beg you for mercy for our
22 brother, and you'll hear what an outstanding citizen he is He
23 really is It's not people saying that He has been a very big
24 help to a lot of people

25 And I thank you for your time

GUILTY PLEA

34

1 MR JOYE Your Honor, his nephew, Trevor Morton, would
2 like to address the Court

3 THE COURT Alright, sir

4 MR MORTON Your honor, I just want to come up to you on
5 behalf of all of his nephews and nieces and let you know how great
6 a person Troy Taylor is He's always been there for every single
7 one of us anytime that I needed, and I couldn't tell you one bad
8 thing that he's every - - that I've ever had any bad experiences
9 with him at all, and I can't - - we sit here and we have people
10 saying things to try to make him look like a bad person I just
11 wanted to let you know that he's not that person everybody's making
12 him look like He's a great person that's always been there for
13 everybody He's helped out so many people, and I just wish I could
14 touch as many lives as he has

15 I look at him - - up to him for that because there's very few
16 people in this world that actually make a difference in this world,
17 and he's one of them

18 And that's all I really want to say

19 MR JOYE Your Honor, his uncle, Gary Wells, would like
20 to address the Court

21 MR GARY WELLS. Thank you, Your Honor

22 THE COURT I want to thank you for being here, too

23 MR GARY WELLS Appreciate it

24 I served as an Administrator for North Greenville College for
25 ten years During that time is wher Troy began officially

1 studying for the ministry, and it took some effort to keep him
2 there He wanted to go about doing other things He was too
3 excited to do hard work on ministry

4 But I got him to stay, and he finished it, and I remember when
5 he came to me, and he told me he was going to go down to the church
6 in Murrells Inlet, and I told him I said, "Troy, pray hard,
7 brother A prophet is never welcomed at home "

8 And I saw in Troy something special When he was at North
9 Greenville College, there was never a problem He was a leader on
10 campus, one of the strong leaders not only just in the spiritual
11 realm but also in the government process of the campus He
12 provided a strong asset to the community there

13 Ah, he's been a big asset with my family I have two
14 daughters and a cousin just a few years younger than him who was
15 also involved in molestation by another cousin, not by Troy, and my
16 son is the youngest of the group

17 I also dealt with the molestation in my life

18 I wish there was an excuse and a place to end all this but I
19 know that - - the only thing you can ask for is mercy and to ask it
20 some way that you be able to see and feel how all of this has
21 opened up on all of us at this time You hide things as long as
22 you can and then eventually they come out

23 Troy is a good man, and I - - all of us deserve some of it

24 THE COURT Thank you

25 MR JOYE Your Honor

1 THE COURT Yes, sir

2 MR JOYE This is Drex Nixon who is a family friend who
3 would like to address the Court

4 THE COURT Alright, sir

5 Thank you for being here

6 MR NIXON Thank you, sir

7 Your Honor, I come here with a - - with a very heavy heart
8 I've known this man since he started this church I was there when
9 he first started, and the man that I know is a man that walks to a
10 different beat of a drum He is a man that is a positive man He
11 is a man that truly cares about people

12 The people that he has touched in this community this
13 courthouse could not even hold, and what's so amazing for the past
14 two and a half years that I have been with him through this every
15 step of the way, and I look you dead in your eye He cares about
16 you He cares about your life

17 And I call this man a friend I call him a brother, and he
18 has a kindred spirit, and this man will do well where ever he goes
19 He will always prosper, and the people that are around him will
20 prosper

21 I have seen him give of his resources, seen him give of his
22 time The people that are even sitting here to my right, I have
23 seen him help them time and time and time again

24 This is a man that truly cares for people

25 Thank you

GUILTY PLEA

37

1 THE COURT Thank you

2 MR JOYE Your Honor, we'll wrap it up

3 Marus T , Marus, Marius T , this is his adopted son

4 MR MARIUS T Thank you for the opportunity, Your Honor

5 Thank you for the opportunity when you give me the chance to
6 speak today

7 Ah, I - - I was not here when all these things and dates that
8 I heard today happened I'm just here to tell you that my dad has
9 been my father for three years, and I had - - I've had a rough past
10 in my life My mother died when I was a little kid My dad was
11 alcohol So I had to go to an orphanage That's where I met my
12 dad

13 I did not have any hopes I - - it's nothing hope It's one
14 of the worst countries in the world My dad came into my life, and
15 he gave me hope, and he gave me something that I can know what
16 happened, something that a lot of kids in this world will not have
17 the opportunity to have

18 And when Dad came into my life, I just - - I felt loved I
19 felt like I can talk with a person about anything, and Dad's
20 presence in my life encouraged me He encouraged me about my
21 future, and I truly do not believe that all these stuff they have
22 said about him is true because he has never touched me to any way
23 Has never not even mentioned that kind of stuff to me, and I love
24 my father very much, and I will always be there for him, and I just
25 hope that he'll keep continue to be a part of my life because I

GUILTY PLEA

38

1 don't know what I'm going to do without him, Your Honor I love my
2 father

3 Thank you

4 MR POWERS That would be our presentation, Your Honor, and
5 I know with your vast experience you may but in thirty years I have
6 never seen so many victims with so much pain in one room on both
7 sides of the Court This is an awfully sad situation that we're
8 dealing with here,

9 And we have tried There is one outstanding charge in
10 Williamsburg County that we discussed, Your Honor, which was not
11 discussed, and it's not Mr Bryan's responsibility to do so, that
12 having been a 1998 incident

13 Although this Court does not have that matter before it, we
14 hope that when it is dealt with - - whatever Court deals with that
15 will take into consideration that a whole finding has been pretty
16 much been made and I think a determination made so that fairness
17 and justice and that whatever Court could take some consideration
18 to this record which, of course, at the time we would provide, ah,
19 to show that this Court has dealt with an awful lot and, hopefully,
20 that being a prior accusation to the one that he pleads to today
21 will be taken into consideration and, possibly, run concurrent

22 I realize you don't have that opportunity

23 One thing that really touched me is the one thing Troy Taylor
24 has asked me today of all the things he's asked is can he take his
25 Bible with him That says a lot to me about not the situation

GUILTY PLEA

39

1 but the situation and the possibility of the future

2 And although he's heading into the darkness that he will have
3 an opportunity to do a lot of good there and thereafter, and I
4 know, Your Honor He's going to jail He knows he's going to jail
5 but I don't know if this is a situation where a long time would
6 serve any purpose but the certainty of time and the Sexual Registry
7 itself will provide protection and, hopefully, this could be the
8 most blessed thing that ever happens to him

9 We would ask the Court to consider that

10 THE COURT Well, let me address one issue, and I want it
11 specifically understood that your Williamsburg incident is a matter
12 to be determined by the Court in Williamsburg, and I make no
13 assertion either way as to what that trial judge will or will not
14 do This record will say, though, that this has absolutely no
15 bearing on any further proceedings in Williamsburg County accept
16 whatever the trial judge desires to do there

17 You would understand that, Mr Powers?

18 MR POWERS Yes, sir

19 THE COURT Alright, sir

20 Does the defendant himself care to speak?

21 MR TAYLOR Yes, I do

22 MR JOYE Yes, Your Honor

23 MR POWERS Yes, Your Honor

24 THE COURT Alright, sir

25 MR TROY TAYLOR Ah, and please bear with me I may cry

CUILTY PLEA

40

1 I'll try not to

2 THE COURT I understand

3 MR TROY TAYLOR I am - - I want to thank - - well, first
4 of all, there's been a lot of pain, and I recognize that, and for
5 my - - my part of that pain, I'm extremely sorry, and I could never
6 express the love for these folks that have stood behind me and
7 those to my right They still matter very much to me and I love
8 them very much, and I thank them very much, every one of you guys,
9 and I, um, I've watched you, Your Honor I've had to sit in this
10 courtroom and watch you, and I know you are a fair and you're a
11 just man, and I want to thank you for service

12 I don't consider Bo an enemy

13 Bo, I don't consider you an enemy, and I'll pray for you, too

14 I think Bo has handled himself very properly

15 George, as well, I have no regrets as any way they've treated
16 me, and I'm thankful I'm thankful that God has put me in a
17 country I know what my son came from I've been there I've
18 been to those jails, and I've been to our jails Trust me

19 You know, I ask for your mercy, and not necessarily for me
20 because there are a lot of great things I've done, and there's a
21 lot of bad things I've done in my life, and I recognize that I
22 know that

23 There's things in my life that I would absolutely wish that no
24 one would ever go back and look at and probably wouldn't mean a
25 whole lot to some people but for me, it's the things that bother

GUILTY PLEA

41

1 me

2 But, Your Honor, I'm a man, and I think I'm a good man, and I
3 just ask you for mercy, grace I know you're a good man

4 I want to be home I want to go home, and I want to hold my
5 children I want to play with my kids, and I want to be a dad to
6 them, and I - - I give you my word, and I know what Bo said, and I
7 understand where he stands, and I know what position you're in but
8 I promise you one thing I am not that man that you're afraid of,
9 and I understand where you have to go, Bo I understand that but
10 I'm not him

11 Judge, I am not that man So, any mercy you could offer me
12 I'd appreciate that

13 The Bible says one thing It says that the heart of the king
14 is in God's hands In this case you're my king, Your Honor, and I
15 pray that God would just massage your heart in such a way that you
16 could show me mercy

17 And I thank you very much, sir

18 THE COURT Thank you

19 Anything further?

20 MR BRYAN Your Honor, just one thing We'd ask that
21 you make a finding on the record that his plea was freely and
22 voluntarily made I'm not sure that you said those things Mr
23 Powers actually brought that to my attention

24 THE COURT Well, it's clear The record will reflect it
25 I mean, without any equivocation this defendant has told me or

SENTENCE OF THE COURT

42

1 three different ways that his plea is freely and voluntarily made,
2 and it's made without coercion, without threat, without promise of
3 any kind, and I - - and he also tells me that he's convinced and
4 satisfied with the services of the attorneys

5 His plea on the basis of his testimony under oath to me is
6 accepted, he having freely admitted his guilt He said so in the
7 presence of these unfortunate victims, and that's what I wanted
8 them to hear

9 Before we proceed, I want to tell the victims that there were
10 numerous people standing with the defendant but the State of South
11 Carolina, the good folks of Georgetown County, mothers and fathers
12 everywhere stand with you unfortunate victims

13 You understand that?

14 VICTIM 1 AND MR VICTIM 2 Yes, sir, Your Honor

15 THE COURT I don't want you to think for a moment that you
16 stand alone in these proceedings

17 SENTENCE OF THE COURT

18 THE COURT Now, let me say this to you

19 First, I deeply appreciate the congregation coming forward and
20 standing with this defendant I deeply appreciate the kind remarks
21 made on behalf of him, particularly the family I am pleased that
22 he has strong family support

23 I've said on many occasions It always concerns me when a
24 defendant comes before me, particularly with young men or women,
25 and their parents don't even bother to stand with them

SENTENCE OF THE COURT

43

1 Your presence here indicates to me and tells me that he will
2 in the future have that needed strong family support

3 Now, I've been on the bench twenty-three years, and these type
4 of cases probably give me more concern than anything else that we
5 do. There is never a right or wrong answer in sentencing

6 In this case given the atrocious conduct which freely
7 admitted, there are those, and properly so, who say that he should
8 be committed for the rest of his life or for a long period of time

9 There's nothing wrong with that position. I can understand it
10 as a father and as a grandfather of six young children

11 On the other hand there are those who say that he is a man of
12 God, that these matters occurred when he was only eighteen years of
13 age, that he realized the errors of his ways and that since then he
14 is involved on the road of God's work, and for that he should be
15 now given total credit

16 There are those that say he should be totally forgiven

17 I - - I don't know the right answer to that

18 I have accepted his plea of guilty, and I do that for this
19 record for three reasons, particularly in a case of this kind, and
20 in a case of this kind I give some credence to the fact that an
21 individual has come into court and pled guilty

22 In doing so he save the State a long and arduous trial. He
23 saves these unfortunate victims the further embarrassment if there
24 be any of having to come forward and relive this horrible act,
25 these horrible situations

SENTENCE OF THE COURT

44

1 Most important to me in a case of this kind is that the
2 defendant stand in open court and tell these young men, I am
3 guilty", because I know from experience there are folks out there
4 who would say, 'Well, they said it It happened fifteen, twenty
5 years ago, and he's not guilty "

6 I want to end all that forever These victims are entitled
7 to it, and they have received that this day, and I truly hope that
8 by his admission of guilt that this brings to you a modicum of
9 closure on these unfortunate events in your life

10 Now, Mr Taylor, in certain violations of the law it is not
11 necessarily the length of confinement that gives us due process but
12 it is the certainty of confinement, and the certainty is when these
13 events come forward to the light of day and brought into court,
14 that defendant, that culprit must be punished

15 We do that not from satisfaction to me or to the system but
16 let the children of this State and let the parents of these beloved
17 children know that this sort of conduct will not be tolerated, and
18 when brought to light, it must be punished

19 Given the record here and the fact that these matters occurred
20 some years ago, and there's no evidence that it occurred recently,
21 I do hope that you've turned your life around in that respect, and
22 I give you certain credit for that

23 I give you credit for the good work that you've obviously done
24 and the love that's shown here to you by your family and your
25 congregation

SENTENCE OF THE COURT

-5

1 I especially give you credit for standing here in open court
2 and telling these young victims, 'I'm sorry I am guilty "

3 I do not believe that this is a case that should be a basis
4 for incarceration for a long period of time though there are those
5 what are going to say it's true

6 In my view it is not a case for probation because we've got to
7 send the word that this conduct will not be tolerated, and we've
8 got to send the word to these victims Come forward and justice
9 will be done

10 Therefore, considering all of the factors involved in this
11 case, it is the sentence and judgment of this Court that you be
12 confined for a period of eight years That is suspended upon the
13 service of five years, and you are thereafter placed on probation
14 for three years, and you are ordered to immediately register as a
15 Sexual Offender

16 That will be the judgment of the Court

17 Thank you

18 MR POWERS Thank you, Your Honor

19 MR JOYE Thank you, Your Honor

20 THE COURT We are in recess for fifteen minutes

21 (Court adjourns this matter and recesses this court for a
22 short break)

23 - - - END OF TRANSCRIPT - - -

CERTIFICATE OF COURT REPORTER

46

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF Horry)
3

4 I, the undersigned Linda W McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the hearing of the captioned case, relative to
9 appeal, in the Court of General Sessions of Georgetown County,
10 South Carolina

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

13 July 24, 2006

14
15 Linda W. McCall

16 Linda W McCall

17 Official Reporter
18
19

13
ST

07 CP22 476

STATE OF SOUTH CAROLINA

County of _____

In the Court of Common Pleas

Robert Tray Taylor 315084

Full name and prison number (if any) of Applicant

vs

Name of Respondent

APPLICATION FOR
POST-CONVICTION RELIEF

CLERK OF COURT
JUL 14 2025

INSTRUCTIONS — READ CAREFULLY

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

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

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

- 1 Place of detention Evans Correctional Institution 610 Hwy 9 West, Bennettsville,
South Carolina 29572
- 2 Name and location of Court which imposed sentence Court of General Sessions, Georgetown,
South Carolina
- 3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed
 - (a) 04 - GS - 22 - 44
 - (b) 05 - GS - 22 - 523
 - (c) _____
- 4 The date upon which sentence was imposed and the terms of the sentence
 - (a) April 20, 2006 - Eight (8) years suspended upon the service of five (5) years
 - (b) and three (3) years probation
 - (c) _____

- 5 Check whether a finding of guilty was made
- after a plea of guilty YES
 - after a plea of not guilty NO
 - after a plea of nolo contendere N/A
- 6 Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
- 7 If you answered "yes" to (6), list
- the name of each Court to which you appealed
 - N/A
 - N/A
 - N/A
 - the result in each such Court to which you appealed
 - N/A
 - N/A
 - N/A
 - the date of each such result
 - N/A
 - N/A
 - N/A
 - if known citations of any written opinion or orders entered pursuant to such results
 - N/A
 - N/A
 - N/A
- 8 If you answered "no" to (6) state your reasons for not so appealing
- Counsel did not inform Applicant of Appeal Rights
 - Presiding Judge did not inform Applicant of Appeal Rights
 - Did not learn of such rights until months after imprisonment in SCD
- 9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- | | |
|---|---|
| (a) <u>Ineffective Assistance of Counsel</u> | (D) <u>Actual Innocence</u> |
| (b) <u>Involuntary Plea</u> | (E) <u>Failure to Perform Pre-Trial Investigation</u> |
| (c) <u>Violation of Rules of Criminal Procedure</u> | |
- 10 State concisely and in the same order the facts which support each of the grounds set out in (9)
- See Attachment for 10(A)(B)(C)(D)(E)
 -
 -

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any already specified in (7)? NO
- (d) any other petitions motions or applications in this or any other Court?
NO

12 If you answered "yes" to any part of (11) list with respect to each petition motion or application

(a) the specific nature thereof

- i N/A
- ii N/A
- iii N/A
- iv N/A

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

- i N/A
- ii N/A
- iii N/A
- iv N/A

(c) the disposition thereof

- i N/A
- ii N/A
- iii N/A
- iv N/A

(d) the date of each such disposition

- i N/A
- ii N/A
- iii N/A
- iv N/A

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

- i N/A
- ii N/A
- iii N/A
- iv N/A

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

PCR Application only

14 If you answered 'yes' to (3), identify

(a) which grounds have been presented

i N/A

ii N/A

iii N/A

(b) the proceedings in which each ground was raised

i N/A

ii N/A

iii N/A

15 If any ground set forth in (9) has not previously been presented to any Court State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented

(a) Defendant was under extreme emotional duress and barely able to focus upon such tormenting particulars

(b) Defendant did not become aware of procedural and Counsel's deficiencies until long after incarceration

(c) Counsel did not inform Applicant of Appeal rights to challenge conviction

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

(a) your arraignment and plea? yes

(b) your trial if any? yes

(c) your sentencing? yes

(d) your appeal if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17 If you answered 'yes' to one or more parts of (16) list

(a) the name and address of each attorney who represented you

i R. Scott Joye, Esquire

ii Delton W. Powers, Jr, Esquire

iii

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

i General Sessions Court of Georgetown County on above-listed charges

ii General Sessions Court of Georgetown County on above-listed charges

iii

18 State clearly the relief you seek in filing this application

The vacating of imposed sentence and conviction as well as not having to register as a sex offender I seek physical, spiritual, and emotional release from the stigma of any and all conviction of which I am not guilty

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

N/A

07 CP22 476

STATE OF SOUTH CAROLINA

County of _____

VERIFICATION

I, Robert Troy Taylor, 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

Robert Troy Taylor
 COURT
 11:13 P.M. 25

SWORN to and subscribed before me this 27
 day of MARCH, 2007
Oscar W. Brundage (L.S.)
 Notary Public

My Commission Expires 08-06-2009

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

I, Robert Troy Taylor, 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 therefor

Robert Troy Taylor
 Applicant

SWORN or affirmed to and subscribed before me this

27 day of MARCH, 2007
Oscar W. Brundage
 Notary Public

My Commission Expires 08-06-2009

attachment Answers to 10 (A) (B) (C) (D) (E)

STATEMENT OF THE CASE

The Applicant was indicted in the Court of General Sessions for Georgetown County. Applicant was represented by co-counsel R. Scott Joye, Esquire and Delton W. Powers, Esquire. Applicant was deficiently advised by above-named attorneys to enter a plea of guilty for the criminal charges of which he was indicted.

This plea of guilty was not voluntarily and intelligently made and hence invalid per U.S.C.A. Const. Amend. 6, Fed. Rules Civ. Proc. Rule 11, 18 U.S.C.A. The district courts have adopted a strict adherence to Rule 11 so that deviations will not be tolerated, U.S. v. Livorsi, 180 F.3d 76, 78 (2d Cir. 1999). The Defendant asserts his Actual Innocence, where a guilty plea is properly open to challenge in situations involving uncounseled Defendants or in situations where circumstances that coerced a confession have abiding impact and also taint the plea, McMann v. Richardson, 397 U.S. 759, 770 90 S.Ct. 1441, 1448, 25 L. Ed. 2d 763. This fact is also accentuated by Counsel's failure to perform Pre-Trial Investigation and Research which in itself comprises an "inexcusable neglect" of duty, Engle v. Isaac, 456 U.S. 107, 130 (1982) and Fay v. Noia, 372 U.S. 317 S.Ct. at 759. The Pre-Trial period constitutes a "critical period" in criminal proceedings because it encompasses counsel's constitutionally imposed duty to investigate the case, Mitchell v. Mason, 325 F.3d 732 (6th Cir. 2003).

The Applicant proceeded to trial before the Honorable Edward B. Cottingham on April 20, 2006. The Applicant involuntarily and unwillfully pled guilty and was thereby sentenced to eight (8) years suspended upon the service of five (5) years and thereafter three (3) years probation.

STATEMENT OF THE FACTS

Ineffective Assistance of Counsel

(A) Applicant contends that he did not receive a justifiably sufficient and effective assistance of counsel whose representation fell below an objective standard of reasonableness, U S v Hernandez, 242 F 3d 110, 112 (2d Cir 2001) The Applicant supports this claim by asserting that counsel failed to perform any pre-trial investigation and/or factual research through the non-questioning of a supplied list of witnesses, Jones v Barnes, 463 U S 745 Counsel was ineffective because counsel's conduct was not in fact serving the goal of "vigorous and effective advocacy "

(B) Counsel was ineffective through failure to object to certain vague statements made by the court and prosecuting attorney's office Specifically, statements by the court on page 6, lines 23-25 to continue until page 7, lines 1-19 where the court refers to "these incidents as atrocious as they are occurred over ten or fifteen years ago " Although the Defendant has hastily made the decision to plead guilty in our system of justice a Defendant is presumed innocent until proven guilty At this point in the trial proceedings the Defendant has not stated his guilt The trial judge clearly erred by this statement whereas he should have stated "alleged incidents" The trier of fact then proceeds to expound in detail a newspaper article that he has read and how it has affected his outlook on the case Trial counsel's failure to object to improper comments and prejudiced remarks made by the trial court may constitute ineffective assistance of counsel, Porcaro v United States, 784 F 2d 38 (1st Cir 1986) Also on page 13, line 5 the court refers to the "last incident" and on page 14, lines 6-9 the trial judge continues on the same path by referring to " facts atrocious conduct " etc A trial judge should never intimate to anyone present in the courtroom his opinion of witnesses, the weight of the evidence, or guilt of the accused, State v

Sosebee, 284 S C 41 326 S E 2d 654 (1985) The sentencing judge's lack of impartiality satisfies the prejudice prong for hearing, Porter v Singletary, 49 F 3d 1483 (11th Cir 1995)

(C) Counsel's "all is lost" attitude prejudiced and coerced Defendant to plea unwillfully, where counsel understands full well that his client possesses no comparison to accurately make a judgement In the face of unavoidable uncertainty, the Defendant and his counsel must make their best judgement as to the weight of the State's case Counsel must predict how the facts, as he understands them, would be viewed by the court If proved, would those facts convince a judge or jury of the Defendant's guilt? On those facts, would evidence seized without a warrant (and containing no Chain of Custody) be admissable? Would the trier of fact on those facts find a (supposed) confession voluntary and admissable? Questions like these cannot be answered with certitude, yet a decision to plead guilty must necessarily rest upon counsel's answers The Applicant's counsel answered his questions ignorantly and/or falsely stating to him that certain evidence could and would be utilized against him when in actuality it was not applicable (Lyle) Trial counsel's failure to move to suppress tape recordings and failure to object to the admission of tapes into evidence, amounts to ineffective assistance of counsel, Pinnell v Cauthorn, 540 F 2d 938 (8th Cir 1976)

(D) Defendant asserts that counsel assumed a grossly negligent defensive posture on the basis of a pre-recorded conversation between he and his wife in which he made an "Excited Utterance" A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition The Defendant's Then Existing Mental, Emotional, and/or Physical Condition was directly attributable to the alleged events spurning the Excited Utterance The Defendant was in the process of losing, possibly forever, everyone and everything he had strived for his entire life The Applicant claims that counsel's attitude, direct instructions, and overall demeanor prejudiced his formerly unmoving stance for

a jury trial The Defendant pled guilty out of unfounded fear implanted by counsel, McMann v Richardson, 397 U S 759, 770

(E) Concerning the taped conversation between the Defendant and his now ex-wife, counsel failed to discuss with the Defendant the admissibility of such a tape at trial when a specific Chain of Custody is not available and has yet to be established Title III explains that citizens are permitted to "assist law enforcement officials in electronic surveillance It allows a citizen to record conversations to which the citizen is a party so long as he/she does not act with the purpose of committing a crime or tort Before rendering assistance however, an individual or entity must receive either a court order directing the assistance or a written certification from an authorized official establishing that no warrant is required for the interception, that statutory provisions have been satisfied, and that assistance is needed The Applicant strongly asserts that neither a court order nor written certification from any authorized official was submitted along with Discovery The Title III Exclusionary Rule may be invoked in any trial, hearing, or proceeding in or before any court, department, officer, agency, or regulatory body, or other authority of the U S , a state or political subdivision thereof See 18 U S C § 2518 (10)(a) The Applicant contends that the taped recordings were done illegally and therefore not admissible as evidence in this case "Suppression of unlawfully intercepted communications ordered even when government played no role in taping because court explicitly rejected existence of "clean hands" exception to Title III Chandler v U S Army, 125 F 3d 1296, 1302 (9th Cir 1997) Applicant contends that counsel would have known not only this statute but, U S v West, 813 F 2d 477, 481 (1st Cir 1987) U S v Moody, 977 F 2d 1425, 1433-34 (11th Cir 1992), U S v Maldonado-Rivera, 922 F 2d 943, 953-55 (2d Cir 1990) and Rule 41 of the Fed Rules of Crim Proc if he had done factual legal investigations Nor did counsel explain to him about "Excited Utterances" or "Then Existing Mental, Emotional, or Physical Condition"

clauses The Applicant asserts that his counsel was thoroughly prepared for competent handling of these particular matters, including inquiry and analysis of the factual and legal elements of the problem, and utilize methods and procedures meeting the standards of competent practitioners The required attention and adequate preparation are determined in part by what is at stake

In this case, an innocent human life

(F) The Defendant's liberty depends on his ability to present his case in the face of " the intricacies of the law and the advocacy of the public prosecutor", United States v Ash, 413, U S 300 (1973) a criminal trial is thus conducted in accord with Due Process of Law unless the Defendant has (adequate and effective) counsel to represent him An accused who has not received reasonably effective assistance from counsel in deciding to plea guilty cannot be bound by that plea, because a plea of guilty is valid only if it is made intelligently and voluntarily, U S v Couto, 311 F 3d 179 (2d Cir 2002)

(G) The Applicant contends that counsel offered no summation or closing arguments where he could have presented subjective, objective, material and factual evidence to assist in mitigating sentence Counsel actually brought forth a pending charge which in effect could have possibly prejudiced the trial judge's sentencing decision (SEE Transcript page 38 lines 4-22) A trial is defined as a "proceeding that takes place before a judge or a judge and jury In a trial, both sides present arguments and evidence This was not done by Applicant's counsel The Applicant asserts that his counsel presented neither evidence nor arguments on his behalf

(H) Counsel's specific instructions to his client were to "Go in there and say "yes sir" to everything he asks you Don't cry or you're going to jail for thirty-three years Do 'not' go in there and say you're sorry I don't remember, I'm not guilty, or anything like that (SEE Trial transcript pages 8, 16, 17, 18, 19 and 39) It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly

assist or induce others to do so, or do so through the acts of another, engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, and/or engage in conduct that is prejudicial to the administration of justice, Rules of Professional Conduct, Rules 402, 407 SCAR. The Applicant contends that counsel violated the Rules of Professional Conduct by knowingly instructing him to commit perjury. In the case of Unger v. Cohen, 718 F. Supp. 185 (S.D.N.Y. 1989) the Defendant was told to plead guilty to whatever the judge said. Counsel waived the reading of the charges, the reading of Unger's rights, and the allocution on the guilty plea. Unger's counsel merely informed the court that her client intended to plead guilty. The court concluded that counsel's advice was not within the range of competence demanded of attorneys in criminal cases. Unger's case is an almost exact replica of the Applicant's. The Applicant was a victim of "assembly-line justice".

(I) The obvious truth that lawyers are necessities, not luxuries in our adversarial system of criminal justice. The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free, Herring v. New York, 422 U.S. 853. Unless a Defendant charged with a serious offense has counsel able to invoke the procedural and substantive safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself. When a state obtains a criminal conviction through such a trial, it is the state that unconstitutionally deprives the Defendant of his liberty, Cuyler v. Sullivan, 446 U.S. at 344. If effective assistance of counsel might have produced an acquittal, a conviction at conclusion of trial on plea of not guilty will be vacated if counsel's performance was below the range of competence expected of lawyers in the conduct of criminal trials. There is no reason that the same rule should not be applied when a guilty plea is induced by counsel's ignorance and misadvice. There was no testimony by anyone that witnessed clear instance of

Defendant's alleged commission of a lewd act on the victim, and Defendant vehemently denied victim's accusations, so case effectively came down to challenge of credibility between Defendant and victim, State v Hubner, (S C App 2005) 362 S C 572 608 S E 2d 463 Applicant strongly asserts that there is more than a reasonable probability that but for counsel's errors he , he would not have pleaded guilty and insisted on going to trial, Hill v Lockhart, 474 U S 52, 57-58, 106 S Ct 366 88 L Ed 203 (1985)

Involuntary Plea

(A) The Applicant contends that his plea was unwillfully and involuntarily given Applicant had insisted on trial by jury to secure his innocence until counsel effectively prejudiced this decision with a defeatist attitude that case was unwinnable due to late Discovery of potential evidence that was damning Defendant met with counsel on Wednesday, April 12 and was told that he may have to consider a guilty plea because of the tape Counsel also informed client that he was required to attend court sessions on Monday morning, but not to worry in that they had only just received Discovery a few days earlier and didn't have copies of the newly Discovered tape as well as the recording of victim 2 On Thursday, the 13th of April counsel called Defendant to say that tape was extremely convincing Once again the Applicant was instructed to appear in court on Monday but reminded that nothing would happen On Monday morning counsel told client, "You have fifteen minutes to make up your mind' If you decide to go forward they will select a jury today I can't get a continuance or a change of venue You've got to go in there and plead guilty or they're going to give you thirty years'" Defendant claims that counsel was overly "exited" and had a disheveled, unkempt and fatigued appearance Not given ample time to consider the full ramifications of his decision (fifteen minutes), the Defendant, confused and worried only for his children's welfare asked counsel for a short extension to spend quality time

with his children Counsel miraculously agreed citing funeral they had to attend At a loss for what to do, Applicant's only legal guidance was the supposedly sure hand of counsel

(B) Defendant invokes the trial transcript as evidence of the involuntariness of his plea The Defendant states on page 41, lines 6-12 "I give you my word I promise you one thing I am not that man " This is a clear indication of the unwillingness of the Defendant's plea Throughout the trial the Defendant basically followed specific advice of counsel to continue to respond "Yes sir" to the Judge's questions His conscience would not allow him to wholly cooperate and he had no other choice but to cry out from his inner man Note how the Defendant warns that he may cry (page 39, line 25) The trial judge erred in not questioning in-depth this statement as the Defendant is basically saying "I am not guilty I am not that man " The prosecuting attorney perceived this error and asked the judge to make a ruling that the Defendant's plea was freely and voluntarily made but it was overruled The Applicant/Defendant in one final attempt to retain his personal integrity before the judgement seat asserts his claim, "Judge, I am not that man "

(C) Defendant shows and proves an adamant attitude of insisting trial and the involuntariness of his plea by evidence of the first plea agreement offered, dated 8-9-04 by the State which was slated at ten (10) years suspended to five (5) years probation Although Defendant would have to register as a Sex Offender and attend sexual abuse counseling, his Actual Innocence and God-given conscience would not allow him to plead guilty and falsely claim something that he is not If Applicant had been, at any time, intending to plea he would have accepted this particular plea agreement a long time ago and probably saved himself much heartache and loss

Violation of Federal Rules of Criminal Procedure

(A) Applicant asserts that the Federal Rules of Criminal Procedure were grossly violated during the trial. Specifically Rule 11(c) which requires that, 'before a plea of guilty or Nolo Contende, the district court "addresses the Defendant personally in open court" and inform him of "the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, and the maximum penalty provided by law," as well as ensure that the Defendant understands the applicable sentencing guidelines, Fed Rules Crim Proc 11(c)(1). The circuit "has adopted a standard of strict adherence to Rule 11, U S V Livorsi, 180 F 3d 76,78 (2d Cir 1999). Therefore it is imperative that the courts "examine critically even slight procedural deficiencies to ensure that the Defendant's Substantial Rights have not been compromised. On page 13, lines 23-25 and page 14, lines 1-4 the prosecuting attorney only states the maximum sentencing for each charge, that the Defendant would have to do eighty-five percent (85%) of the time and that he would have to register as a sex offender.

(B) The trial judge erred by not asking the Defendant whether he understood the charges to which he was pleading. It is the specific duty of the courts to ensure that the Defendant understands fully what he is pleading to as well as to the possible extent of which justice may be served upon him or her. There is a reasonable probability that the Defendant was confused as to what was happening to him.

(C) At the time of the plea, the trial judge failed to ask the Defendant whether he was under the influence of drugs or alcohol, or in the ongoing care of a physician, United States V Rosillo, 853 F 2d 1062, 1067 (2d Cir 1988). The failure to make an on-the-record determination, whether the Defendant was under the influence of any medication, and if he had taken any medication,

whether his plea was voluntary and knowingly offered, constitutes reversible error The trial judge did not do everything in his power to determine the Defendant's frame of mind, whether the Defendant was currently on any potentially mind altering drugs, his only reference to such is on page 16, lines 20-21 in which he asks the Defendant, "Mr Taylor, your mind clear today?" In which the Defendant, ignorantly following the unsound advice and guidance of his counsel states only "Yes sir " This is a clear example that the court did not make every effort to "expose the Defendant's state of mind on-the-record through personal interrogation, McCarthy v U S , 394 U S 459 If this had been done or if counsel had given a thorough summation and/or opening remarks, the courts would have known that the Defendant attempted suicide in direct relation to this case and sought counseling for severe emotional distress at several mental health clinics The Defendant was prescribed and actively taking a multitude of psychotropic medicines to combat his depression and suicidal tendencies The failure to make a full inquiry into the Defendant's mental state is enough to "tip the scales", U S v Ferrara, 954 F 2d 103, 108 (2d Cir 1992) This and the Rule 11 omissions on the part of the District Court suffice to cast doubt on the voluntariness of the plea and hence warrant overturning conviction As an initial degree of evidence the Applicant submits nine (9) mental health counselors he was attended by 1) Archie Johnson, 2) Shiloh Place Ministries, 3) Smalley Relationship Center, 4) Lighthouse Care Center, 5) Keystone ECU, 6) Tom Flichak, 7) Michael Hulsey, 8) Harold Brown, and 9) Heart 2 Heart Counseling Center

(D) Also in violation the Rules of Criminal Procedure the trial judge failed to inform the Defendant of his Appeal rights Ristigno v U S , 32 F Supp 2d 184 (M D Pa 1998), Fed Rules of Crim Proc Rule 32 (a)(2), See also U S v Gipson, 985 F 2d 212 (5th Cir 1993), Lozada v Deeds, 488 U S 430, 112 L Ed 2d 956, 111 S Ct 860 (1991) Regardless of whether an attorney was

hired only for trial intends to continue represent on through the appellate process, the attorney has certain obligations to his client regarding any right to appeal, attorneys should preserve that right to the extent possible, Rule 407 1 3 , See Matter of an Anonymous Member of the Bar, 303 S C 306, 400 S E 2d 483 (1991) (appointed attorney must counsel with client regarding potential appeal and must serve until relieved by court) See also Rule 407 1 16, requiring counsel to take all necessary steps as may be reasonable and practical to protect the client's interests The trial judge only relates to the Defendant his right to a trial by jury (Transcript pages 15-16) This is in violation of Rule 201 of S C Appellate Court Rules Admittedly, Applicant's trial counsel did not consult with or advise the Applicant as to his right to appeal which violates Applicant's Due Process Rights, SEE Evitts v Lucey, 469 U S 387, 105 S Ct 830, 83 L Ed 2d 821 (1985) SEE ALSO Jones v Barnes, 463 U S 745 Applicant contends that the trial judge should have made certain that the Applicant was fully aware of his rights to an appeal from aforementioned guilty plea Applicant didn't knowingly and intelligently waive the right to appeal his conviction and sentence

(E) The Applicant contends that the Prosecuting Attorney never explained the Elements of the Case to the court There was not an "express" explanation to the Defendant what the criminal charges he is accused of constitute The Applicant contends that the CORPUS DELICTI has not been established to a moral certainty CORPUS DELICTI is the objective proof that a crime has been committed and it applies to every crime Proof beyond a reasonable doubt is necessary if the CORPUS DELICTI is used to refer to all the elements of the crime charged, 247 P 2d 665, 670 The Prosecuting Attorney only relayed the alleged story of the victims The purpose and reasoning for reading the Elements of the Case are to inform the Defendant of the nature of the criminal charges against him and to prevent or minimize the element of surprise at trial, and the District Court, in its discretion, may order the prosecuting

office to provide recited additional detail where Particulars set out in an indictment fail sufficiently to apprise Defendant of the charges to enable him to prepare a defense, U S v Garrett, 797 F 2d 656. The Elements of the Case are a most important procedure at a criminal trial in that it is instructive to the accused as to what exactly he is alleged to have done and how the law applies to it. During the Defendant's trial the Prosecuting Attorney only told the supposed events from the viewpoint of the accusers, not once legally stating what a lewd act or criminal sexual misconduct constitutes. The Defendant's counsel also never submitted any statement of objection to this mistake.

Actual Innocence

- (A) The Defendant asserts a viable claim of Actual Innocence, hereby the Defendant affirmatively advances an objectively reasonable argument of this Innocence. The Plaintiffs made claims of extremely heinous and atrocious acts on the behalf of the Defendant, yet they offered no evidence to support their claim other than their word that these events happened which fails the CORPUS DELICTI principle Summit v Blackburn, 795 F 2d 1237 (5th Cir 1986). In cases such as this, a clear determination inevitably boils down to the credibility of the parties.
- (B) The Defendant was the leadership of a powerful ministry as Pastor of Low Country Community Church (LC3), increasing membership from a miserly thirty (30) or forty (40) individuals into an explosive seven hundred to eight hundred (700-800) members. The Defendant was happily married with children and even underwent the complicated and thoroughly invasive examine process of adopting a Romanian child. He is an admire pillar of the community and Murrels Inlet has been his home of thirty-four (34) years. The Applicant owned two (2) businesses and was studying Extended Real Estate classes to further his knowledge, along with plans for obtaining a South Carolina Contractor's License. The Defendant personally spearheaded many community

programs to include counseling, emergency intervention for the needy, and out-in-the-field proselytizing. The Defendant does not drink, smoke, or use any drug other than those prescribed by a medical physician.

(C) In regards to Plaintiff Victim 2, who has admittedly abused Oxycodine and Marijuana for over a decade. The Defendant has always been a "big brother" to Victim 2. Victim 2 joined Low Country Community Church (LC3) under Troy and worshipped under his preaching and leadership. He also joined LC3's Praise Team. The Defendant cared enough for Victim 2 well being and drove him to Buffalo, N.Y. to Teen Challenge in 2002. Teen Challenge is a drug rehab and the Plaintiff was admitted there for Oxycodine addiction in which he checked himself out of the program without completing it. The Defendant assisted the Plaintiff in developing his musical talents and has "booked" the Plaintiff's band on numerous occasions. They shared an abundant amount of time together and with others, practicing, talking, sharing and engaging in church and community activities. The Plaintiff also attended "Celebrate Recovery" —a Bible based "12 step" group that the Defendant started at LC3 and participated in a new membership class taught by the Pastor/Defendant. In spite of everything the Plaintiff has accused the Applicant of, he becomes a groomsman at the Defendant's wedding. His "friend's" wedding.

(D) Some other important fact and factors to consider about the Plaintiff are: 1) He slept in the bed with his parents from early childhood. 2) The Plaintiff's father has been accused, by his own younger sister of sexual abuse and rape. 3) His father's first cousin (male) was accused of molesting a cousin who lived next door for many years. 4) The Plaintiff was often cared for by fraternal grandparents and very close to grandfather who has been accused of molesting five (5) other grandchildren, Wade v. Calderon, 29 F.3d 1312 (9th Cir. 1994).

(D2) The Defendant has witnesses who are willing to testify and/or sign sworn affidavits in agreeance of these facts. This Plaintiff, during one of his

myriad run-ins with [redacted] able began to see a counselor [redacted] the name of McCarthy in Myrtle Beach. This McCarthy formerly worked within the penal system. This counselor convinced the Plaintiff that he possessed "repressed memories". The Defendant asserts that the Plaintiff had displaced the true cause of these memories upon his shoulders as some form of twisted retribution aimed at another person. The Plaintiff has erroneously accused the Defendant who has only tried to help him through life's hardships.

(E) In regards to Plaintiff Victim 1, he was led to Christ by the Defendant. This Plaintiff was a literal "shadow" to the Defendant, going everywhere and doing what he could with him. As a senior in high school, this Plaintiff moved to Greenville, S.C. area to live with the Defendant. This was after the alleged molestation took place. This Plaintiff also was a groomsman in the Defendant's wedding. The Plaintiff has very erratic mood swings and show the symptoms of being bi-polar. While living in Greenville, this Plaintiff's girlfriend broke up with him and he blamed the Defendant, in which he promised to "get Troy back one day". This Plaintiff lived in a broken home as his parents divorced when he was a teenager. His mother is a lesbian and left the father for her lover, while in return, his father married a woman half his age. It is very plausible that these activities and events were confusing and hurtful to this Plaintiff and he became consciously or sub-consciously envious of the Defendant. This Plaintiff only made a claim after speaking with Plaintiff Victim 2. This accounts for the similarities in their stories. This Plaintiff has admitted also to using drugs for over a decade.

(F) It is very obvious that these plaintiffs possess an obsessed infatuation of some sort with the Defendant, his lifestyle and character. Their lives have travelled destructive paths while the Defendant has had a very successful existence. The Plaintiffs have submitted no witnesses to support their claims but state that others were either involved or present. Yet those whom they claim were present state, and are willing to sign sworn affidavits to their

either not being present or not recalling any unusual activities such as the Plaintiffs claim. Also in regards to their claims, the allegations concerning dates, times and/or places are vague and have no legs upon which to stand. In one instance the claimant asserts that the Defendant was the Youth Pastor. During the time frames in which it is being asserted the Defendant was not a Youth Pastor. In another, the Plaintiff claims an assault happened at Huntington State Park in which the Defendant does not recall ever having camped at this particular park during this time period. Also this claim has a faulty time frame in that the Defendant had invasive surgery during this period and was in too much a weakened physical state to have been doing any camping at all. These are the insane ramblings of men who have vengeance in their minds for a perceived hurt that is misplaced. Their jealousy, envy, sub-conscious hatred and lingering lust for the material and non-material belonging of the Defendant have spawned a malignant and gruesome creature.

(G) The Defendant, forced to face the social stigmatization placed upon him by these allegations had a nervous breakdown and attempted suicide as a desperate means of protecting himself. Thankfully this did not work. The Defendant is a Pastor and his God-given duty is to help, heal, and aid. In an attempt to begin this process with his accusers the Defendant apologized to the Plaintiffs although he knows that he didn't do what they are accusing him of. He began meeting with a counselor at least once a week, and having call/check-ins with accountability partners everyday. He also joined a program called BSafe Online that blocks access to all questionable websites and sends an immediate e-mail to counselor if questionable sites are even attempted to be logged on to. This website sends a weekly log of all sites visited by the Defendant to his counselor. The Defendant has local, statewide, and nationwide groups of Pastors and professionals who check in with him for accountability on a regular basis. Most, if not all, of these people are willing to write affidavits or letters of reference, or be

character witnesses (on behalf of the Defendant

(H) The Defendant invited Investigator Tom Digsby to his home with his wife present to talk about the case without the fear of incriminating himself. This is not the actions of a guilty man. The Defendant has been open, honest, and realizes that his only mistake has been in pleading to something that he is not guilty of doing. It is also important to remember that the Defendant is a servant of God, a Pastor of his own church, well-beloved by his community, family, church members and highly respected by his peers. The raging witch-hunt that has been ongoing against members of the clergy involving sexual abuse has helped to create a fear deep within the Defendant. Yet, regardless of his counsel's procedural, investigative, and advisory deficiencies the Plaintiff stated under oath in a court of law clearly to his accusers "I am not the man you are afraid of. I'm not him." And furthermore to the trier of fact, "Judge I am not that man."

(I) There has been newly discovered evidence which also points to the actual Innocence of the Defendant. Kim Cook, a witness in this case who was NOT interviewed by counsel. When Ms. Cook was made aware of the dates in question (August 5-7, 1999), she immediately realized that the Defendant was, in fact, at her home during the times in question.

Ms. Cook's home was in shambles and the Defendant was actually overseeing a crew that was making repairs and hauling off refuse. She attests that the Defendant actually stayed after everyone else had left (late afternoon) and arrived at breakfast time.

Ms. Cook has signed a sworn affidavit to this effect. This is actual proof of the Defendant's Actual Innocence.

(J) Sonja Brown, a witness in this case, who was not questioned by counsel also has evidence that supports the Defendant's Actual Innocence.

She was the coordinator of the World Changers 1999 and was therefore in control over all of its various exercises. The Plaintiff made the incorrect claim that the Defendant was in charge over the excursion. Yet, the Plaintiff

possesses factual material evidence in the form of church bulletins which clearly state this

Due to counsel's failure to perform Pre-trial Investigation in this respect, this information was never obtained which could have been utilized successfully in the Applicant's defense

Failure to Perform Pre-Trial Investigation and Research

- (A) In order for a Defendant to competently litigate a criminal case he must rely on the resources of counsel and be assured that he has completed a whole investigation to produce evidence on his behalf by questioning all witnesses and accusers Hart v Gomez, 174 F 3d 1067 (9th Cir 1999), visiting and/or procuring a reliable diagram of the place and area of the alleged crimes as well as researching the proper case law and finding relevant law precedents that support or detract from material presented as evidence The Defendant supplied counsel with a list of witnesses containing more than fifty (50) names All of which counsel never interrogated regarding their first-hand knowledge of the alleged events The Defendant is currently in the process of obtaining sworn affidavits from these witnesses and submitting them to this Honorable tribunal as evidence of counsel's lackadaisical performance
- (B) The Applicant lacks both the skills and knowledge to adequately prepare his defense, although he has a substantial one Applicant wholly relied upon the supposedly thorough guidance of counsel at every step in the proceedings against him Applicant is not guilty of the criminal charges against him and was forced into perjuring himself before God and the State on the incompetent advice of counsel Due to the complete ineffectiveness of counsel, Applicant was convicted because he didn't know how to establish his innocence, 287 U S at 68, 69 53 S Ct at 64, 77 L_ 158, as well as Gideon v Wainwright, 83 S Ct 792 (1963)
- (C) Applicant further contends that his plea of guilty was not knowingly,

voluntarily, or intentionally made due to the totality of counsel's ineffective assistance as well as all of the allegations stated above, which violates his 6th Amendment Right to Effective Representation SEE

Brady v U S , 397 U S 742 (1970)

Herman v Cloudy, 350 U S 116, 100 (1956)

Moltke v Gillies, 332 U S 708 (1948)

Quillen v Leeke, 303 F Supp 698

Likewise a conviction (must) be vacated where it appears the Defendant has been grossly misinformed by his lawyer and relying on such information he is deprived of his constitutional right to counsel and when the erroneous advice induces a guilty plea, permitting him to start over again is the imperative, and should the state wish, it could avoid retrial by reducing sentence, Strader v Garrison, 611 F 2d 61 (4th Cir 1979) The Defendant invokes the "Strickland Test" It follows that if the Defendant can also establish that "there is a reasonable probability that, but for counsel's errors, he would not have pled guilty, and would have insisted on going to trial Except for counsel's failure to perform Pre-Trial Investigation and gather facts the Defendant would have been able to present " a colorable showing of factual innocence " The Miscarriage of Justice serves as "an additional safeguard against compelling an innocent man to suffer an unconstitutional loss of liberty", Stone v Powell, 428 U S at 492-493

(D) Those accused need an attorney "as a shield" to protect him against being "haled into court" by the state and stripped of his presumption of Innocence, Ross v Moffitt, 417 U S 610-611 Defendant was prejudiced, as extreme elements of ineffective elements ineffective counsel are readily apparent by counsel's inordinately deficient performance Therefore, the Applicant seeks post-conviction relief for the above-named reasons in the form of vacating sentence and conviction

ADDENDUM TO ACTUAL INNOCENCE

(K) Drexel Mixson, another witness whose name was supplied to counsel, has also come forward with corroborating evidence that the applicant is innocent. Mr. Mixson is willing to testify and has signed a sworn affidavit to the effect that he is able to verify the Applicant's whereabouts during the time of the alleged incident. He was present at Ms. Kim Cook's home on the days that the Applicant assisted her with repairs and can verify many aspects of the Applicant's alibi. The Applicant, being unaware at the time of taking the guilty plea, that Counsel had not interviewed these witnesses, believed that there was little or no evidence to support his innocence. Had Counsel taken the precious time to question Mr. Mixson, Ms. Cook and Mrs. Brown, Applicant would have realized that these three witnesses possessed enough evidence of fact to support his alibi and Applicant would have insisted on a trial by jury. Counsel's complete failure to perform his sworn duty not only allowed an innocent man to be incarcerated but may have irrevocably destroyed a family, a church community, and further weakened newly-born Christians' faith.

ADDENDUM TO INEFFECTIVE COUNSEL

(J) Counsel never even mentioned the "Two Strike/three strike" to the Applicant
Counsel has agreed to admit this to the court

(K) These are witnesses who are willing to testify and have sworn affidavits that
corroborate Applicant's assertions Affidavits are attached to this document

The witnesses are

- Mr Drexel Mixson
- Ms Kim Cook
- Mrs Michelle Gallagher
- Mr Anthony Taylor
- Mrs Linda Taylor
- Mr Gary Wells

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
	)	2007-CP-22-476
	)	
Robert T Taylor, # 315084	)	
	)	
Applicant,	)	
	)	
v	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed April 13, 2007, would respectfully show this Court

I

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the January 2004 term of the Georgetown County Grand Jury for two counts of Lewd Act on a Minor Child (04-GS-22-44, 05-GS-22-523) and Criminal Sexual Conduct 2nd Degree (06-GS-22-361). R. Scott Joye, Esquire and Delton W. Powers, Esquire, represented him. On April 20, 2006, Applicant pled guilty to two counts of Lewd Act on a Minor Child and Criminal Sexual Conduct 2nd Degree. He was sentenced by the Honorable Edward B. Cottingham to a period of eight (8) years, provided that upon the service of five (5) years the balance is suspended with probation for three (3) years. Applicant did not appeal his conviction or sentence. Attached herewith and incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's records from the South

Carolina Department of Corrections, and the plea transcript Any of the above not so attached will be forwarded upon receipt

II

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

- 1 Ineffective Assistance of Counsel
- 2 Involuntary Plea
- 3 Violation of Rules of Criminal Procedure
- 4 Actual Innocence
- 5 Failure to Perform Pre-Trial Investigation

III

Respondent interprets each of Applicant's allegations to be claims that he received ineffective assistance of counsel In a post-conviction relief action, 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, 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, Id

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

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

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

IV

In his second allegation the Applicant alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v Alabama, 395 U S 238, 89 S Ct 1709, 23 L Ed 2d 274 (1969), Dover v State, 304

S C 433, 405 S E 2d 391 (1991) In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing Harris v Leeke, 282 S C 131, 318 S E 2d 360 (1984)

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea Boykin, supra, Dover, supra Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed 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 U S, 519 F 2d 317 (4th Cir 1975), Edmonds v Lewis, 546 F 2d 566 (4th Cir 1976) The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial Roscoe v State, 345 S C 16, 546 S E 2d 417 (2001), Richardson v State, 310 S C 360, 426 S E 2d 795 (1993) Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S C Code Ann § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI

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

VII

WHEREFORE, having made its Return, the State requests that a hearing be held

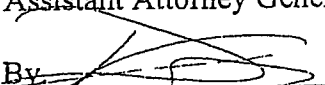
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

DANIEL E GRIGG
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P O Box 11549
Columbia, SC 29211
Telephone (803) 734 3737

July 27, 2007

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
 DATE Robert VS Troy Taylor
 KA w Sex m Age 11-03-69 SS# SS#
 Address City State Zip
 IL# SID#

INDICTMENT/CASE# 04 GS 22 44
 A/W# G-109876
 Date of Offense On or between 1-01-88 and 12-31-88
 S C Code § 16-15-0140
 CDR Code # 2 1 4 1 6 1 8
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

Disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
Land Act

violation of §16-15-0140 of the S C Code of Laws bearing CDR Code # 2 1 4 1 6 1 8
☒ NON VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17 25-45

The charge is ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury
 The plea is ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State

TEST RT B Robert Taylor R. Scott
 Solicitor Defendant Attorney for Defendant

HEREFORE the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of 5 days/months/years and/or payment
 \$ _____ plus costs and assessments as applicable* the balance is suspended with probation for 3
 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 DS-361; DS-523
 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

RESTITUTION ☐ Heard ☐ Waived ☐ Ordered
 al \$ _____ plus 20% fee \$ _____
 /ment Terms _____
 set by SCDPPPS _____

SPECIAL CONDITIONS
 PTUP _____
 days/hours Public Service Employment _____
 Obtain GED _____
 Attend Voc Rehab or Job Corp _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd in equal consecutive weekly/monthly _____
 pmts of \$ 10.00 beginning _____
 \$ _____ paid to Public Defender Fund
 Other Must register as sex offender

1-206 (Assessments 107 5%)	\$	\$
1-211(A)(1) (Conv Surcharge)	\$100	\$ <u>100.00</u>
1 211(A)(2) (DUI Surcharge)	\$100	\$
5-2995 (DUI Assessment)	\$12	\$
13 (Public Def/Prob)	\$500	\$
3 1B TP (Law Enforce Funding)	\$25	\$ <u>25.00</u>
7 1B TP (Drug Court Surcharge)	\$100	\$
21 114(BUI Breath Test Fee)	\$50	\$
5-2942(J) (Vehicle Assessment)	\$40/ea	\$
o County (if paid in installments)	\$	\$ <u>3.75</u>
AL		\$ <u>129.75</u>

Clerk of Court/Deputy Clerk Linda McCall
 t Reporter Linda McCall

PRESIDING JUDGE [Signature]
 Judge Code 0 1 9 1 2 1 1
 Sentence Date 4-20-06

- Clerk Green - Corrections Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

GEORGETOWN COUNTY
SHERIFF S OFFICE

ARREST WARRANT NUMBER

G-109876

JB § 16-15-0140

D/L#

DOI On or between 1-01-88 and 12-31-88

SID

ACTION OF GRAND JURY

True Bill

1/14/04

Date

Joseph B. Don
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO 04-GS22-44x✓

The State of South Carolina,

County of Georgetown

19690

BCR

COURT OF GENERAL SESSIONS

JANUARY TERM 2004

THE STATE

VS

ROBERT TROY TAYLOR

DOB 11-03-69
SS#

J GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

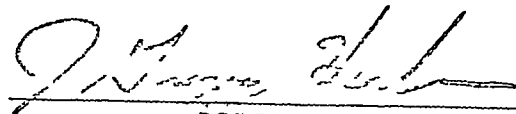
LEWD ACT ON A MINOR CHILD

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	LEWD ACT ON A MINOR CHILD
COUNTY OF GEORGETOWN	)	

At a Court of General Sessions, convened on January 14, 2004, the Grand Jurors of Georgetown County present upon their oath

That Robert Troy Taylor in Georgetown County on or between January 1, 1988 and December 31, 1988, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of a child, less than 16 years of age at the time, one Victim 1, born July 2, 1976, with intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of said defendant or of the victim in violation of §16 15 0140, South Carolina Code of Laws (1976), as amended

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


 SOLICITOR

ARREST WARRANT 2462

G- 109876

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
 GEORGETOWN

THE STATE

against

TROY TAYLOR

Address MURRELLS INLET, SC 000029571

Date of Birth SSN

Race W Height Weight

Date of Birth DL #

Date of Birth 11/03 1969 Agency ORI #

Prosecuting Agency

Prosecuting Officer

Offense COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD UNDER 16

Offense Code

Code/Ordinance Sec 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law

Signature of Judge (LS)

RETURN

 A copy of this arrest warrant was delivered to
 defendant TROY TAYLOR

on 12-5-03

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO
 WIDE WILLIAM P. MURRELL
 1450 MURRELL INLET ROAD
 MURRELLS INLET SC

295760RE3

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

GEORGETOWN

 Personally appeared before me the affiant
 being duly sworn deposes and says that defendant
 did within this county and state on
 11/01/99 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
 in the following particulars

DESCRIPTION OF OFFENSE

COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD UNDER 16

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts

 THAT IN THE YEAR 1988 THE MALE VICTIM WAS 12 YEARS OF AGE AND THE
 DEFENDANT WAS 19 YEARS OF AGE THE DEFENDANT TROY TAYLOR DID USE THE
 VICTIM'S HAND TO SEXUALLY GRATIFY HIMSELF THAT THIS OCCURRED AT
 IN THE MURRELLS INLET COMMUNITY OF GEORGETOWN COUNTY

THIS BEING AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA

11/01/99

Sworn to and subscribed before me

on 11/01/99

Signature of Affiant (LS)

Signature of Issuing Judge

Signature of Affiant

Affiant's Address 1111 AND 1111

GEORGETOWN

Affiant's Telephone 11111111

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

GEORGETOWN

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 11/01/99 defendant did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of) as set forth below

DESCRIPTION OF OFFENSE

LEWD ACT COMMITTING OR ATTEMPTING LEWD ACT UPON CHILD UNDER 16

 Now therefore you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution or as soon thereafter as is practicable

Judge's Address 1450 MURRELLS INLET ROAD

MURRELLS INLET, SC

Signature of Issuing Judge (LS)

Judge Code 721

Judge's Telephone 2436515797

Issuing Court

☐ Magistrate

☐ Municipal

☐ Circuit

ORIGINAL

 Form Approved by
 S.C. Attorney General
 July 26 1990
 SCCA 518

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
 STATE VS
Robert Troy Taylor
 AKA
 Race W Sex M Age
 DOB 11-03-69 SS#
 Address
 City State Zip I
 DL# SID#

INDICTMENT/CASE#
05 GS 22 523
 A/W# Direct Indictment
 Date of Offense On or between 1-1-89 and 12-31-89
 S C Code § 16-15-0140
 CDR Code # 2 1 4 1 6 1 8
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO Level A

in violation of § 16-15-140 of the S C Code of Laws bearing CDR Code # 2, 4, 6, 8
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17 25-45

The charge is ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury
 The plea is ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State
 ATTEST

[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of 5 days/months/years and/or payment
 of \$ _____ plus costs and assessments as applicable* the balance is suspended with probation for 3
 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 04-44, 06-361
☐ 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

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived ☐ Ordered
 Total \$ _____ plus 20% fee \$ _____
 Payment Terms
☐ set by SCDPPPS

Recipient
 Fine
 14 1 206 (Assessments 107 5%) \$
 14 1 211(A)(1) (Conv Surcharge) \$100 \$100.00
 14 1 211(A)(2) (DUI Surcharge) \$100 \$
 56 5 2995 (DUI Assessment) \$12 \$
 35 13 (Public Def/Prob) \$500 \$
 73 3 1B TP (Law Enforce Funding) \$25 \$25.00
 33 7 1B TP (Drug Court Surcharge) \$100 \$
 50 21 114(BUI Breath Test Fee) \$50 \$
 56 5 2942(J) (Vehicle Assessment) \$40/ea \$
 % to County (if paid in installments) \$3.75
 TOTAL \$128.75

[Signature] Clerk of Court/Deputy Clerk
 Court Reporter Linda McCall

PTUP _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc Rehab or Job Corp
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd in equal consecutive weekly/monthly
 pmts of \$ 10.00 beginning two after release
 \$ _____ paid to Public Defender Fund
 Other Must register as a sex offender

☐ Appointed PD or appointed other counsel §35 13 TP
 Requires \$500 be paid to Clerk during probation

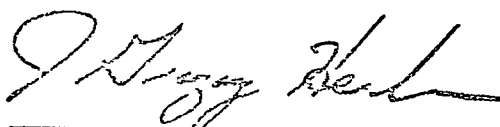
PRESIDING JUDGE [Signature]
 Judge Code 0 1 5 1 1 1
 Sentence Date 11/20/01

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
COUNTY OF GEORGETOWN) LEWD ACT ON A MINOR CHILD

At a Court of General Sessions, convened on June 22, 2005, the Grand Jurors of Georgetown County present upon their oath

That Robert Troy Taylor, born November 3, 1969 and being over the age of fourteen years did in Georgetown County between the dates of January 1, 1989 and December 31, 1989 willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body of a child less than 16 years of age at the time, one Victim 2, born December 18, 1976, with intent of arousing, appealing to, or gratifying the lust passions or sexual desires of said defendant or of the victim in violation of §16 15 0140, South Carolina Code of Laws (1976) as amended

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



SOLICITOR

WITNESSES

GEORGETOWN COUNTY
SHERIFF'S OFFICE

ARREST WARRANT NUMBER

DIRECT INDICTMENT

2468 § 16-15-0140

D/L#

DOI On or between 1-1-89 thru 12-31-89

SID

ACTION OF GRAND JURY

Date

True Bell
6-24-05

Foreman of Grand Jury

Gregory L. Hembree

VERDICT

Foreman of Petit Jury

DOCKET NO 05-GS22- 523 ✓

The State of South Carolina,

County of Georgetown

19690

RBB

COURT OF GENERAL SESSIONS

JUNE TERM 2005

THE STATE

VS

ROBERT TROY TAYLOR

DOB 11-03-69
SS#

J GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

LEWD ACT ON A MINOR CHILD

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
 STATE Robert VS Troy Taylor
 AKA _____
 Race W Sex M Age _____
 DOB 11-03-69 SS# _____
 Address _____
 City State Zip _____
 DL# _____ SID# _____

INDICTMENT/CASE# 06 GS 22 361
 AWW# H 750363
 Date of Offense on or about 8-5-99 through 8-7-99
 S C Code § 16-3-655(2)
 CDR Code # 0 1 3 1 9 1 6
☐ CASE RESTORED
☒ SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO Criminal Sexual Unlawful 2nd Degree

in violation of § 16-3-655(2) of the S C Code of Laws bearing CDR Code # 0 1 3 1 9 1 6
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25 45

The charge is ☐ As Indicted ☐ Lesser Included Offense ☒ Defendant Waives Presentment to Grand Jury
 The plea is ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State
 ATTEST AT B B Robert Taylor [Signature]
 Solicitor Defendant Attorney for Defendant

WHEREFORE the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center
 for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____ provided that upon the service of 5 days/months/years and/or payment
 of \$ _____ plus costs and assessments as applicable* the balance is suspended with probation for 3
 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 04-44, 05 523
☐ 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

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived ☐ Ordered
 Total \$ _____ plus 20% fee \$ _____
 Payment Terms _____
☐ set by SCDPPPS _____

Recipient		\$
Fine		\$
§14 1 206 (Assessments 107 5%)		\$
§14 1 211(A)(1) (Conv Surcharge)	\$100	\$100.00
§14 1 211(A)(2) (DUI Surcharge)	\$100	\$
§56 5 2995 (DUI Assessment)	\$12	\$
§35 13 (Public Def/Prob)	\$500	\$
§73 3 1B TP (Law Enforce Funding)	\$25	\$25.00
§33 7 1B TP (Drug Court Surcharge)	\$100	\$
§50 21 114(BUI Breath Test Fee)	\$50	\$
§56 5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75
TOTAL		\$129.75

[Signature]
 Clerk of Court/Deputy Clerk
 Court Reporter Linda McCall

PTUP _____ days/hours Public Service Employment
 Obtain GED _____
 Attend Voc Rehab or Job Corp _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd in equal consecutive weekly (monthly)
 pmts of \$ 10.00 beginning MO after arrest
 \$ _____ paid to Public Defender Fund
 Other Must register as a sex offender

☐ Appointed PD or appointed other counsel §35 13 TP
 Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE [Signature]
 Judge Code 0 1 0 1 4 1 1
 Sentence Date 4-20-02

White - Clerk Green - Corrections Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

GEORGETOWN COUNTY
SHERIFF'S OFFICE

ARREST WARRANT NUMBER

H 750363

0396 § 16 03 655(2)

D/L#

DOI On or about August 5 1999 through
August 7, 1999

SID

ACTION OF GRAND JURY

Date

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO 06-GS22-361 x/

The State of South Carolina,

County of Georgetown

21166

RBB

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs

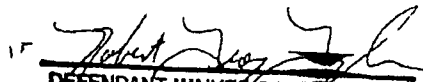
ROBERT TROY TAYLOR

DOB 11-03-69

SS#

J GREGORY HFMBREE SOLICITOR

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT
WITH A MINOR IN THE
SECOND DEGREE

 DEFENDANT WAIVES PRESENTMENT
TO THE GRAND JURY

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) CRIMINAL SEXUAL CONDUCT WITH A MINOR
IN THE SECOND DEGREE

At a court of General Sessions convened on _____ the Grand Jurors present upon their oath

That Robert Troy Taylor born November 3 1969 did in Georgetown County on or about August 5 1999 through August 7 1999 willfully and unlawfully commit the offense of Criminal Sexual Conduct With a Minor in that he did sodomize Victim 3, date of birth July 27 1987 who was twelve years of age at the time This in violation of §16 03 0655(2) South Carolina Code of Laws (1976) as amended

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


SOLICITOR

ARREST WARRANT

H-750363

H750363

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

THE STATE

against

ROBERT TROY TAYLOR

Address _____

Phone _____

SSN _____

☒ M Race ☐ W

Height

6 3

Weight

240

L. State _____ DL# _____

DOB 11/03 1969

Agency ORI# _____

Prosecuting Agency _____

Prosecuting Officer _____

CRIMINAL SEXUAL CONDUCT W/MINOR - VICTIM
11 TO 14 YRS OF AGE

Offense Code _____

Code/Ordinance Sec 16-03-0655(2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of _____The accused
is to be arrested and brought before me to be
dealt with according to law

Signature of Judge _____

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Robert Troy Taylor

on 11-22-05

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO
JUDGE WILLIAM P. MOELLER
4450 MURRELLS INLET ROAD
MURRELLS INLET S C

295760859

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GEORGETOWN

AFFIDAVIT

For Approval by
C. Attorney
No. 121, 2001
CCA 818Personally appeared before me the affiant GEORGE SMITH
being duly sworn deposes and says that defendant ROBERT TROY TAYLOR
within this county and state on 6/01 2005 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars

DESCRIPTION OF OFFENSE

16-03-0655(2)

CRIMINAL SEXUAL CONDUCT W/MINOR - VICTIM 11 TO 14 YRS OF AGE INCLUSIVE - 2ND DEG

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts1999
THAT BETWEEN THE DATE OF JUNE 01 2005 AND JULY 30 2005 THE DEFENDANT
ROBERT TROY TAYLOR, DID COMMIT A SEXUAL BATTERY ON THE 11-YEAR-OLD MALE
VICTIM THAT THIS ACT OCCURRED AT THE RESIDENCE THEN OCCUPIED BY THE
DEFENDANT LOCATED AT _____ IN THE MURRELLS INLET COMMUNITY OF
GEORGETOWN COUNTY THAT THIS INFORMATION WAS OBTAINED THROUGH THE AFFIANTS
CRIMINAL INVESTIGATION THAT INCLUDED STATEMENTS OF THE VICTIM
THIS BEING AGAINST THE PEACE AND DIGNITY OF THE STATE OF SOUTH CAROLINA
INC # 11051211

Signature of Affiant _____

11/21/2005

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
GeorgetownAffiant's Address 430 N FRAZER STREETGEORGETOWN S C 29440Affiant's Telephone 8434363600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

☒ If appearing from the above affidavit that there are reasonable grounds to believe that
on GEORGETOWN defendant _____
did violate the criminal laws of the State of South Carolina (or ordinance of _____)☐ County/ ☐ Municipality of _____

as set forth below

DESCRIPTION OF OFFENSE

ROBERT TROY TAYLOR

16-03-0655(2)

Having probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts
defendant and bring him or her before me forthwith to be dealt with according to law A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution or as soon thereafter as is practicable

Sworn to and subscribed before me _____

on 11-21-05

Signature of Issuing Judge _____ (L.S.)

Judge Code _____

Judge's Address 4450 MURRELLS INLET ROAD
MURRELLS INLET S CJudge's Telephone 8436516292Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Oct 03 08 09 22a

Gtown Co Clk of Court

8435453281

P 5

MTI330D
 MCOMITA
 CDC# > 2315084
 A/LOP, ROBERT TPJY

SCDC OFFENDER MANAGEMENT SYSTEM
 RELEASE DATE SCREEN

04/30/07
 C041957

LOC WILLIAMSBURG

SCDC CLASSIFICATION VIOLENT

SEXUAL REGISTRY Y

SEXUAL PREDATOR PENDING

OFFENDER TYPE ADULT-STRAIGHT SENTENCE DNA STATUS COMPLETED

GPS REQUIREMENT N

CURRENT SENTENCE 005-00-000 CONSECUTIVE SENTENCE N
 CURRENT SENT START DATE 04/18/2006

PROJECTED COMPLETION DATES

MAX OUT DATE 07/16/2010 CURRENT EWC 2 F 5
 YOA SIX YEAR DATE / / CURRENT EEC NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE 07/18/2010 NEXT PAROLE HEARING DATE 07/18/2010

JTAL GT DAYS EARNED 000000 LABOR CREW/WORK PROG DATE 99/99/9999
 JTAL EARNED WORK CREDITS 000133 LABOR CREW DISQ REASON
 JTAL EDUCATION CREDITS 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
 JTAL EXTRA EARNED CREDITS 000
 JTAL SERVICE TIME EARNED 000372

KEYS 5 HISTORY OF DATE CHANGES

CLASSIFICATION SUMMARY REPORT DATED 04/30/07
 DC# 315084 TAYLOR, ROBERT TROY
 FENDER TYPE ADULT-STRAIGHT SENTENCE
 INSTITUTION WILLIAMSBURG CO
 CURRENCY/CUST 2 MINIMUM IN
 RR INCARC SENT 5 YRS 0 MOS 0 DYS
 NTRAL MONITORING YES
 CLASS 1 NO MED PROB/NO WORK PESTRICT
 ITAL CLASS NMH (NO MENTAL HEALTH TPE
 -RENT PROGRAM NO CURRENT PROGRAM
 37

DORM 0000
 TOBACCO USEP N
 PROJ MAXOUT DATE 07/16/2010
 PROJ PAROLE DATE 07/18/2010
 EWC JOB CARPENTER HELPER
 EDUC PGM CARPENTRY
 EWC LEVEL 2F5 EEC LEVEL
 ASSIGNMENT VOC SCHOOL

 VIOUS NUMBERS

NO PREVIOUS NUMBERS **

RRRENT OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE START	V/NV	CAT	INDICT
JD ACT/CHILD UNDER 16	5	0	0	GEORGETOWN	04/20/2006	N	4	04GS2244
JD ACT/CHILD UNDER 16	5	0	0	GEORGETOWN	04/20/2006	N	4	05GS22523
IMNAL SEX CNDCT 2ND DE	5	0	0	GEORGETOWN	04/18/2006	V	4	06GS22361

IOR COMMITMENTS OVER 90 DAYS

INMATE HAS NO PRIORS

AINERS (HOLD,WANTED,NOTIFY)

CRIMINAL SEX CNDCT 3RD DE NOTIF OPEN ARPEST NOTIFICATION CATEG 4
 APES

NO ESCAPE HISTORY

MINAL CHARGES

NO CRIMINAL CHARGES HISTORY

SAULTIVE DISCIPLINARIES

NO ASSAULTIVE DISCIPLINARY HISTORY

I-ASSAULTIVE DISCIPLINARIES

11/06/07 DAMAGE, DESTROY, DEFACE, PR

OTHER

18/07/06 POSSESSION OF CONTRABAND

OTHER

ISTORY OF MOVEMENTS

DATE	LOCATION	STATUS	REASON
04/30/07	WILLIAMSBURG CO	ABSENT WITH LEAVE	TO COURT
03/16/07	EVANS	INCARCERATED	RETURN FROM COURT
03/07/07	WILLIAMSBURG CO	ABSENT WITH LEAVE	TO COURT
10/19/06	EVANS	INCARCEPATED	RETURN FROM COURT
10/03/06	WILLIAMSBURG CO	ABSENT WITH LEAVE	TO COURT
07/11/06	EVANS	INCARCERATED	RETURN FROM COURT
07/11/06	GEORGETOWN CO	ABSENT WITH LEAVE	TO COURT
05/11/06	EVANS	INCARCERATED	ADMINISTRATIVE
04/24/06	KIRKLAND	INCARCERATED	R&E PROCESSING
04/24/06	LIEBER	INCARCERATED	NEW ADMISSION

ISTORY OF EARNED WORK CREDIT ASSIGNMENTS

DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
PENTER HELPER	03/19/07	00/00/00		2F5
PENTER HELPER	12/12/06	03/16/07	INSTIT TRANSFER	2F5
TODIAL WORKER	10/20/06	12/11/06	LATERAL TRANSFER	2F5
TODIAL WORKER	05/19/06	10/03/06	COUPT	2F5
TODIAL WORKEP	05/12/06	05/18/06	MI ELIGIBLE FOR LEVEL 2	3F5

ISTORY OF EARNED EDUCATION CREDITS

DESCRIPTION	START DATE	END DATE	TERMINATION REASON

SCHOOL ASSIGNMENTS*

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
 STATE Robert Tray Taylor
 AKA
 Race W Sex M Age
 DOB 11-03-69 SS#
 Address
 City State Zip
 DL# SIU#

INDICTMENT/CASE# 04 GS 22 44
 A/W# G-109876
 Date of Offense On or between 10-1-88 and 12-31-88
 S C Code § 16-15-0140
 CDR Code # 2 1 4 6 1 8
☐ CASE RESTORED
 SENTENCE
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
 TO Larceny

in violation of §16-15-0140 of the S C Code of Laws bearing CDR Code # 2 1 4 6 1 8
☒ NON VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17 25-45

The charge is ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury
 The plea is ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State
 ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 or a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
 and/or to pay a fine of \$ 5 provided that upon the service of 5 days/months/years and/or payment
 of \$ 5 plus costs and assessments as applicable* the balance is suspended with probation for 3
 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 DS-361, DS-523
☐ 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

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard, ☐ Waived ☐ Ordered
 total \$ plus 20% fee \$
 Payment Terms
☐ set by SCDPPPS

Recipient
 Fine
 14-1 206 (Assessments 107 5%) \$
 14-1 211(A)(1) (Conv Surcharge) \$100 \$ 100.00
 14-1 211(A)(2) (DUI Surcharge) \$100 \$
 56-5 2995 (DUI Assessment) \$12 \$
 35-13 (Public Def/Prob) \$500 \$
 73-3 1B TP (Law Enforce Funding) \$25 \$ 25.00
 33-7 1B TP (Drug Court Surcharge) \$100 \$
 50-21 114 (BUI Breath Test Fee) \$50 \$
 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 % to County (if paid in installments) \$ 3.75
 QTAL \$ 128.75

Clerk of Court Deputy Clerk
 Court Reporter Linda McCall

PTUP days/hours Public Service Employment
 Obtain GED
 Attend Voc Rehab for Job Corp
 May serve W/E beginning
 Substance Abuse Counseling
 Random Drug/Alcohol Testing
 Fine may be pd in equal consecutive weekly/monthly
 pmts of \$ 10.00 beginning
 \$ paid to Public Defender Fund
 Other Must register as a sex offender
4

☐ Appointed PD or appointed other counsel §35 13 TP
 Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE
 Judge Code 0 1 4 1 1
 Sentence Date 4-20-00

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

VS

Georgetown
Robert Troy Taylor

AKA

Race

W

Sex

M

Age

DOB

11-03-69

SS#

Address

City State Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

05

GS

22523

AW#

Direct Indictment

Date of Offense

On or between 1-1-89 and 12-31-89

S C Code §

16-15-0140

CDR Code #

2 1 4 1 6 1 8☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said Indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO Lewd Actin violation of § 16-15-140 of the S C Code of Laws bearing CDR Code # 2, 4, 6, 8☒ NON VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand JuryThe plea is ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State

ATTEST

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____ provided that upon the service of 5 days/months/years and/or payment
of \$ _____ plus costs and assessments as applicable* the balance is suspended with probation for 3
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 09-44, 06-361

☐ 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

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard, ☐ Waived ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms

☐ set by SCDPPPS

Recipient

*Fine

§14 1 206 (Assessments 107 5%)	\$	
§14 1-211(A)(1) (Conv Surcharge)	\$100	\$100.00
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§50 21 114(BUI Breath Test Fee)	\$50	\$
§56-5 2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3.75
TOTAL		\$128.75

[Signature]
Clerk of Court/Deputy Clerk

Court Reporter Linda McCall

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab or Job Corp

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd in equal, consecutive weekly/monthly

prmts of \$ 10.00 beginning 1 mo. after release

\$ _____ paid to Public Defender Fund

Other Must register as a sex offender

☐ Appointed PD or appointed other counsel §35 13 TP
Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code

Sentence Date

[Signature]
0 1 0 1 4 1 1
4/20/06

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Georgetown

VS

Robert Troy Taylor

AKA

Race

W

Sex

M

Age

DOB

11-03-69

SS#

Address

City State Zip

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

06

-GS

22

361

AW#

H-750363

Date of Offense

On or about 8-5-99 through 8-7-99

S C Code §

16-3-655(2)

CDR Code #

0 / 3 / 9 / 1 / 6

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO Criminal Sexual Unlawful 3rd degreein violation of § 16-3-655(2) of the S C Code of Laws bearing CDR Code # 0, 3, 9, 1, 6☐ NON VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17 25 45The charge is ☐ As Indicted ☐ Lesser Included Offense ☒ Defendant Waives Presentment to Grand Jury
The plea is ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

AT B. B.

Solicitor

Robert Troy Taylor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 8 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$ provided that upon the service of 5 days/months/years and/or payment of \$ plus costs and assessments as applicable* the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation Parole and Pardon Services standard conditions of probation which are incorporated by reference
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☐ 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

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived ☐ Ordered
Total \$ plus 20% fee \$

Payment Terms

☐ set by SCDPPPS

Recipient

*Fine

\$14 1-206 (Assessments 107 5%)

\$100

\$100.00

\$14 1 211(A)(1) (Conv Surcharge)

\$100

\$

\$14 1 211(A)(2) (DUI Surcharge)

\$12

\$

\$56-5 2995 (DUI Assessment)

\$500

\$

\$35 13 (Public Def/Prob)

\$25

\$25.00

\$73 3 1B TP (Law Enforce Funding)

\$100

\$

\$33 7, 1B TP (Drug Court Surcharge)

\$50

\$

\$50 21-114 (BUI Breath Test Fee)

\$40/ea

\$

\$56 5 2942(J) (Vehicle Assessment)

\$

\$3.75

3% to County (if paid in installments)

\$

\$129.75

TOTAL

Court Reporter

Clerk of Court/Deputy Clerk

Linda McCall

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc Rehab or Job Corp

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd in equal consecutive weekly/monthly

pmts of \$ 10.00 beginning 1 mo. after release\$ paid to Public Defender FundOther. Must register as a sex offender☐ Appointed PD or appointed other counsel, \$35 13 TP
Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code

Sentence Date

0 / 1 / 0 / 1 / 4 / 1 / 1

4-20-00

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	07-CP-22-476
COUNTY OF GEORGETOWN	)	

ROBERT TROY TAYLOR,	)
	)
Applicant,	)

-vs-	)

TRANSCRIPT OF RECORD

THE STATE,	)

Respondent	)

November 20 and 21, 2008
Conway, South Carolina

B E F O R E

THE HONORABLE MICHAEL G NETTLES, Judge

A P P E A R A N C E S

TARA D SHURLING, Esquire
Attorney for the Applicant

CHRISTINA J CATOE, Esquire
Assistant Attorney General
Attorney for the Respondent

PATRICIA A McDANIEL
Circuit Court Reporter

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ROBERT TROY TAYLOR

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SCOTT JOYE

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A P P L I C A N T ' S E X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Church Bulletin	30	30
2	Affidavit of Shane E Gray	118	118
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R E S P O N D E N T ' S E X H I B I T S

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	CD	169	169

1 THURSDAY, NOVEMBER 20, 2008

2 (WHEREUPON, at 2 24 a m , on Thursday, November 20,
3 2008, this matter was called for a post-conviction relief
4 hearing, without the Applicant being present in the
5 courtroom but with counsel for the Applicant and counsel
6 for the State present in the courtroom)

7 THE COURT All right Madam Court Reporter, this is
8 Robert T Taylor versus the State of South Carolina And
9 let's wait for the Defendant to be brought into the
10 courtroom Civil Action 2007-CP-22-476

11 MS CATOE Your Honor, would you like the procedural
12 history?

13 THE COURT I think we need to wait on the Defendant
14 here first Or the Applicant

15 (Pause while Applicant entered open court)

16 MS SHURLING Your Honor, I would note that, since
17 my client didn't get here as early as I had been told he
18 would be here, I -- I'm going to need about five minutes
19 with him So perhaps when we take a break in a little
20 while -- He's not my first witness

21 THE COURT Right

22 MS SHURLING When we take a break in a little
23 while, while Ms Catoe talks to the other witnesses, it'll
24 give me an opportunity to---

25 THE COURT Very good

1 MS SHURLING ---talk to my client

2 THE COURT Very good All right All right All
3 right I'll recognize the -- the Applicant at this time

4 Do you -- Would you like to put the procedural
5 history up, Ms Catoe?

6 MS CATOE I'd be happy to, Your Honor

7 Mr Robert Troy Taylor was indicted in Georgetown
8 County in January, 2004, for a lewd act on a minor, then
9 in June, 2005, for lewd act on a minor And then he was
10 also charged in 2006 for criminal sexual conduct in the
11 second degree

12 He pled guilty on April 20th, 2006 He waived
13 presentment to the grand jury on the criminal sexual
14 conduct charge and pled as indicted on the two lewd act
15 charges He was represented by Mr Scott Joye and Mr
16 Delton Powers seated here beside me

17 He was sentenced by Judge Cottingham to eight (8)
18 years, suspended to five (5) years of active time and
19 three (3) years of probation, concurrent The same
20 sentence on each charge to run concurrently No direct
21 appeal was filed, Your Honor

22 The PCR was filed on April 13th, 2007 The State
23 made a return on July 27th, 2007 And the Applicant, of
24 course, is represented today by Ms Tara Shurling

25 THE COURT Very good All right Ms Shurling,

1 you're recognized

2 MS SHURLING Thank you, Your Honor Your Honor, as
3 I -- as a threshold matter, we would place on the record
4 our claim that Mr Robert Troy Taylor is entitled to
5 vacation of his judgments and sentences on the ground that
6 his pleas of guilty were not knowingly, voluntarily, and
7 intelligently entered and that they were the product of a
8 violation of his Sixth and Fourteenth Amendment right to
9 affective assistance of counsel in that counsel failed to
10 represent him to the standard of reasonable professional
11 assistance of counsel as announced by our Supreme Court --
12 The United States Supreme Court in Strickland vs
13 Washington and adopted by our own Supreme Court in Butler
14 v State and its progeny

15 It's our position, that under the standard announced
16 by the U S Supreme Court in Hill v Lockhart, that the
17 relevant inquiry here today is whether, but for the errors
18 and omissions of counsel, the Applicant would have gone
19 forward with a jury trial rather than waiving the numerous
20 constitutional rights inherently waived by virtue of entry
21 of pleas of guilt

22 It's our position, Your Honor, that the record in
23 this case fails to disclose that this was a knowing,
24 voluntary, and intelligent plea Specifically, there is
25 an endless list of cases where our Supreme Court has

1 specifically held that a knowing and voluntary plea
2 requires evidence that the pleas were entered with full
3 knowledge of the elements of the offenses and the
4 consequences of the pleas themselves

5 At this time, Your Honor, Mr Scott Joye would be the
6 first witness for the Applicant

7 THE COURT Very good Mr Joye, I'm going to ask if
8 you could come forward and place your left hand on the
9 Bible and raise your right hand as the clerk administers
10 the oath

11 WITNESS JOYE Certainly, Your Honor

12 SCOTT JOYE, being first duly
13 sworn, testified as follows

14 DEPUTY CLERK RHONDA LILLY Please have a seat
15 DIRECT EXAMINATION BY MS SHURLING

16 Q Mr Joye, before we start out, I -- I'd like to put
17 on the record you and I know each other fairly well

18 A Absolutely, we do, Ms Shurling

19 Q Okay If I slip and call you Scott, my apologies I
20 mean no disrespect

21 A Certainly

22 Q Do you---

23 A I would---

24 Q ---recall---

25 A ---think not

Scott Joye - Direct by Ms Shurling

9

1 Q ---representing Mr Taylor?

2 A I absolutely do

3 Q And he was initially charged with two counts of lewd
4 act, is that correct?

5 A Yes But my representation started prior to that
6 point of him being charged

7 Q Okay And the lewd act charges actually went to the
8 grand jury and were true-billed,---

9 A Yes

10 Q ---correct?

11 A I believe about a year apart

12 Q Okay And by the time this case came to court for
13 this plea proceeding, there had been a late-coming charge
14 of criminal sexual conduct involving an individual named
15 Victim 3?

16 A That's correct

17 Q That's correct? And at the time you appeared before
18 Judge Cottingham in April of 2006, your client had not
19 been indicted by the grand jury on the CSC charge, had he?

20 A That's correct

21 Q And if I read this record correctly, the State was
22 about this -- April 20th, 2006, was on like Thursday, and,
23 if I understood the record correctly, Judge Cottingham was
24 ready to try one of the lewd act charges the following
25 Monday?

1 A My understanding was that Solicitor Bryan had said
2 that he would try three in a row, that he had three
3 separate cases and that he was going to try Victim 1
4 first, because Victim 1 had been furloughed from Iraq
5 and had come back from Iraq specifically for this case and
6 that the Solicitor wanted to try the two right back to
7 back in the same week, which Judge Cottingham and
8 everybody knew that that was not going to happen

9 Q Okay

10 A But -- But the implications were that this case had
11 been dragging on for an inordinate amount of time and that
12 Judge Cottingham was -- that -- that Bo Bryan was going to
13 try them one, two, three The next three terms of court,
14 that if he could possibly do it, he wanted to try all
15 three (3) of them within successive weeks

16 Q Okay And there again, the lewd acts were ready to
17 go to trial?

18 A Yes The lewd acts were clearly ready to go to
19 trial

20 Q The CSC-second had not been true-billed?

21 A It had not been true-billed No

22 Q So there was no immediate threat, at least, that the
23 following Monday your client was going to be on trial for
24 CSC?

25 A No

Scott Joye - Direct by Ms Shurling

11

1 Q Okay

2 A Absolutely not

3 Q Now, were you, at the time, also representing Troy
4 Taylor --

5 MS SHURLING And, Your Honor, he is known, by those
6 who are close to him, as Troy, not Robert

7 THE COURT Very good

8 BY MS SHURLING

9 Q Were you representing Troy in some allegations that
10 had arisen in Williamsburg County as well?

11 A Yes, ma'am, I was

12 Q And when you were initially discussing plea
13 negotiations with Mr Taylor and his family, was it your
14 intent to try to resolve all of these charges in a cross-
15 county deal?

16 A No, it was not Troy had told me, on numerous
17 occasions, that he absolutely would not plea on the
18 Williamsburg County counts He had guided me to several
19 witnesses who he -- whom he said were going to be good
20 witnesses in Williamsburg County One was a Charles
21 Harrison, and that's Randy Harrison that goes to our
22 church That's his son

23 The investigator tried -- contacted Charles Harrison
24 Charles Harrison remembered nothing about -- Charles
25 Harrison was also supposedly present at the time that the

1 CSC in Horry County -- Or excuse me -- Georgetown County
2 happened and that Charles Harrison said he remembered
3 nothing about the beach trip in which the Georgetown
4 County charges arose but that he did remember certain
5 information about the -- about the Williamsburg County
6 camping trip

7 Q Okay Now, did you get that information directly
8 from young Harrison or from the father?

9 A No I got the -- At first I called -- I think I saw
10 Randy at church, and I said, "Randy, I need to speak to
11 your son " And he called and gave me -- He called me at
12 the first of next week and gave me the number, and I had
13 my investigator contact Charles Harrison

14 Q Okay Let's stop there for a minute It's clear in
15 your mind that your client unequivocally said he was going
16 to go to trial and attempt to prove his innocence on the
17 Williamsburg charges?

18 A Without question

19 Q Okay Did you ever discuss with your client the fact
20 that a plea in Georgetown County to criminal sexual
21 conduct, second degree, would be a predicate offense that
22 would expose him to L-WOP in Williamsburg if he went to
23 trial?

24 A No I absolutely did not, and I'll tell you why
25 This was kind of a convoluted thing I was involved in

1 this case for -- Gosh, I don't know -- two (2) whole
2 years, maybe two and a half (2-1/2) before -- before the
3 Williamsburg -- And -- And let -- let -- let me go back a
4 little bit

5 Involved in the -- Involved in the two lewd acts --
6 And we had numerous discussions on the two lewd acts We
7 were even offered a probationary sentence on the two lewd
8 acts on an ABHAN charge We certainly never did anything
9 with that

10 One -- It's only happened to me one time in State
11 court, but, as this case got older, it got worse The
12 first time that Troy and I ever met, he and his wife came
13 to the office, and I sent Troy -- I send -- told -- asked
14 to speak to Troy alone And at that point in time, I put
15 my finger in his face, and I said, "Now, I can tell you
16 that I'm looking at her, and she's going to leave you " I
17 said, "And you can assume from this moment forward that
18 your conversations are going to be tape recorded "

19 In fact, that eventually was the straw that broke the
20 camel's back in terms of -- When he heard that recording
21 that I did eventually get,---

22 Q Okay

23 A ---then he close -- chose to take the plea

24 Q And I don't---

25 A All right But -- But---

1 Q I have---

2 A But I'll go -- I'll -- I'll -- I'll move on to where
3 you -- where you're going

4 Q Okay

5 A The -- We had numerous -- Initially, when the
6 allegation came up in Williamsburg County, it was an
7 allegation of lewd act In fact, I had a tape of
8 Victim3 talking about a lewd act

9 We find ourself, just like this week, right before
10 Thanksgiving, and he had already been charged with the two
11 lewd acts, and the CSC, the criminal sexual conduct, from
12 the Hor- -- from the Georgetown County incident, they
13 called and asked would he turn himself in

14 I said, "Certainly " We got with Troy Turned him
15 in, I believe, on Tuesday before Thanksgiving and that on
16 Wednesday that -- that we had a bond hearing Set a bond
17 in, I believe, ten thousand (\$10,000 00) dollars Mr
18 Taylor and Ms Taylor were there, and Ms Taylor -- Mr
19 Taylor -- We got him -- He connected with the bondsman

20 By the time they posted the bond on Wednesday
21 morning, they had picked him up and taken him to
22 Williamsburg

23 I later discovered that, immediately upon setting the
24 bond in Georgetown County, they immediately -- The Victim3
25 immediately went to Williamsburg County and took out a

Scott Joye - Direct by Ms Shurling

15

1 warrant, and all of a sudden the lewd act that I was so --
2 that I knew about was a criminal sexual conduct, first
3 offense (sic) I was pretty furious, and I was furious
4 in---

5 THE COURT First degree of first offense?

6 WITNESS JOYE First degree

7 MS SHURLING , Degree

8 WITNESS JOYE Excuse me I'm sorry

9 I was pretty furious because that meant that my
10 Thanksgiving day was taken attending a bond hearing for
11 Troy Taylor because I felt -- Troy had been everywhere
12 anyone had ever asked him to be He would have been more
13 than happy to turn himself in And I was so furious I
14 really didn't look at the warrant

15 BY MS SHURLING

16 Q Did you---

17 A Did not -- Did not look at the warrant The judge
18 didn't read the charge It was Thanksgiving, and we got
19 him out and moved on

20 Q Okay Well, this plea in Georgetown took place April
21 20th, 2006, correct?

22 A That's -- Yes, ma'am

23 Q That's a good bit after Thanksgiving?

24 A Oh, ain't no question about it, but I had no
25 discovery I did have the warrant, but I had no

1 discovery

2 Q Okay So by then, were you aware that the
3 Williamsburg charge was CSC-first?

4 A Ms Shurling, in -- in -- in all candor, I had been
5 fighting the lewd acts for so long that that was the
6 battle, although I had done some homework on the -- on the
7 other I had had the investigator do some homework

8 In getting back to it getting worse and worse, the
9 Williamsburg case -- Charles Harrison said he didn't
10 remember anything about the -- the -- the Georgetown
11 incident, didn't remember a camping trip in which -- As I
12 remember, the description was it was cold and rainy, but
13 they played strip tag---

14 Q Okay

15 A ---that day in Williamsburg County

16 Q I'm sorry I'm not trying to rein you in,---

17 A Sure

18 Q ---but we've---

19 A Certainly

20 Q ---got a lot---

21 A Certainly

22 Q ---of people and a long---

23 A Sure

24 Q ---afternoon And I thank you for your candor

25 A Sure

Scott Joye - Direct by Ms Shurling

17

1 Q What you're essentially saying is that once the
2 warrant was issued in Williamsburg, to your knowledge, you
3 never made note of the fact that the crime had escalated
4 from a lewd act to a first degree criminal sexual conduct?

5 A No I did not

6 Q Okay

7 A I didn't, clearly

8 Q All right And during the guilty plea proceeding --
9 Do you have a copy?

10 A Yeah I think so

11 Q Okay If you could look with me --

12 MS SHURLING Your Honor, I would direct the Court's
13 attention to page thirty-nine (39)

14 WITNESS JOYE I've got it I've got it

15 BY MS SHURLING

16 Q On page thirty-nine (39), line -- Well, roughly,
17 starting with line ten (10) but going forward to line
18 sixteen (16), let's read line fourteen (14) through
19 sixteen (16) on the record Judge Cottingham says, "This
20 record will say, though, that this has absolutely no
21 bearing on any further proceedings in Williamsburg County
22 except whatever the trial judge desires to do there "

23 A That -- That's correct

24 Q Okay Now, will you agree with me, that if you had
25 realized that your client was facing first degree criminal

1 sexual conduct in Williamsburg, that that's a misstatement
2 that you would have wanted to correct?

3 A Probably so But he was offered a lewd act in
4 Williamsburg County, and I'll also -- My last conversation
5 with Troy was "I've made a mistake "

6 Q Okay I -- I'm just---

7 A And -- And -- And I've made a mistake

8 MS SHURLING Your Honor,---

9 WITNESS JOYE And I'm -- I'm---

10 MS SHURLING ---I'm not trying to be difficult

11 WITNESS JOYE Oh, no, and I -- And I'm not, and I'm
12 just -- I'm -- I'm answering quest- -- I -- I mean, if
13 you---

14 THE COURT I -- I'll allow him to answer

15 WITNESS JOYE It -- My last conversation wiss' (sic)
16 Troy was "I have made a mistake, they're offering you a
17 lewd act, I'm gonna go to that judge and beg and stick my
18 neck out and try to get you a sentence to where you don't
19 serve another day "

20 And the conversation was "You get it, and I'll take
21 it "

22 And I said, "No If I'm gone go -- If I'm gone go
23 fall on this sword, then you gone take it if I get it "

24 BY MS SHURLING

25 Q Okay

1 A And -- And that was the end of our -- That was the
2 end of our relationship

3 Q Okay I'm going to back up and try to ask some---

4 A Sure

5 Q ---precise---

6 A Sure

7 Q ---questions

8 A Certainly

9 Q Okay Will you agree with me, that if you'd known
10 your client was charged with first degree criminal sexual
11 conduct in Williamsburg at the time of the plea, that this
12 statement that "this plea today will have no further
13 bearing on the proceedings in Williamsburg except whatever
14 the trial judge desires to do there," that that would
15 indicate that in a Williamsburg conviction that the trial
16 judge would have discretion to do what he desired with
17 regard to sentencing?

18 A Absolutely, because I tried to put on the record to
19 let -- to have that particular issue, hopefully, -- Shall
20 we say, the judge would have it considered -- It would be
21 something that was -- that was also considered by my
22 sentencing judge

23 Q Sure I understand But as a practical matter, you
24 as a lawyer know that, if your client pleaded to CSC in
25 Georgetown County and were convicted as indicted in

1 Williamsburg, it wouldn't matter what the judge desired to
2 do,---

3 A That's correct

4 Q ---it would be an L-WOP case?

5 A That would be correct

6 Q Okay And, again, my direct question is, if you had
7 specifically had on your mind at the time of this plea the
8 fact that Williamsburg was a first degree criminal sexual
9 conduct case,---

10 A We clearly would have talked about it

11 Q ---you would have---

12 A No question---

13 Q ---talked about it?

14 A ---about that

15 Q Okay

16 A Yes, ma'am

17 Q That's all I was trying---

18 A Yes, ma'am

19 Q ---to get to

20 A No question---

21 Q All right

22 A ---about that

23 Q And there's no question in your mind that you never
24 discussed with Troy Taylor, before he entered these pleas
25 in April of 2006, that he was about to enter a plea that

1 was going to be a predicate offense that made it so that,
2 if he did go to trial to try to clear his name on a
3 Williamsburg charge, he'd be risking L-WOP?

4 A Right In retrospect, you're -- you're correct, and,
5 in fact, I called you and told you precisely that

6 Q You did I was going to put that on the record, too

7 All right Now, so what ends up happening is, by the
8 time these pleas are entered, he's in a position where
9 he's offered the opportunity to get a concurrent sentence
10 that will mean no additional time

11 A Let me---

12 Q Wait a minute Let me---

13 A Let me stop---

14 Q Let me---

15 A Let me stop you there I'll clarify that a little
16 bit for you

17 Q You offered to go beg for it?

18 A Yes, ma'am And I -- You know, you do this long
19 enough and you know that there are certain things that you
20 just, in your heart of hearts, know without having a -- a
21 mental knowledge of it, but I just -- I felt very st- --
22 very strongly that I would have gotten that deal

23 Q Okay But your position was, "If I go to the
24 solicitor and to the judge and admit that I've made this
25 mistake, I want to know in advance, that if I basically

1 put my cards on the table and humble myself and say 'will
2 you do this for me, help me make this right,' " so to
3 speak, "that you'll take it"?

4 A That's right

5 Q Okay

6 A And -- And in clearly -- And in -- And in my
7 conversation with -- Ms Barr and I went to law school
8 together, and I -- knew each other very well, and -- and I
9 was clear with her that I had made this mistake

10 Q I understand Now, my next logical line of
11 inquiry---

12 THE COURT Let me fast forward just a little bit

13 MS SHURLING Okay

14 THE COURT What happened with the Williamsburg
15 County?

16 MS SHURLING He went to trial and got L-WOP

17 THE COURT Very good All right Very good

18 WITNESS JOYE Two consecutive life sentences

19 THE COURT Very good

20 All right (To Ms Shurling) Go ahead

21 WITNESS JOYE Consecutive to the five (5) he got
22 here

23 MS SHURLING Eight (8) he got here

24 WITNESS JOYE Eight (8)

25 MS SHURLING All right Not that that matters any

Scott Joye - Direct by Ms Shurling

23

1 THE COURT All right

2 MS SHURLING But in any event,---

3 THE COURT Okay Very good

4 BY MS SHURLING

5 Q ---so -- But your client had always been very clear
6 with you that he wanted to go to trial by jury in
7 Williamsburg?

8 A Yes, ma'am

9 Q No doubt?

10 A No doubt

11 Q And so he was put in the position of, to try to
12 rectify the mistake that had been made in Georgetown, he
13 would have to give up his right to the jury trial in
14 Williamsburg?

15 A He'd also been insistent that he wanted a jury trial
16 in Georgetown County from day one, but, when he heard his
17 tape of his wife,---

18 Q I understand

19 A ---he changed his mind

20 Q Scott, and -- Scott, I understand, and I'm not trying
21 to be argumentative, but---

22 A No I'm -- And -- And I'm -- I'm not either I'm
23 just -- Yeah

24 Q But---

25 A I -- I answered yes

1 Q Okay

2 A But I -- I also qualified it

3 Q And---

4 A Yes

5 Q But there's no question that he consistently said,
6 "I'm not taking a deal in Williamsburg, I didn't do it, I
7 want to go trial"?

8 A That's correct

9 Q Okay And after the fact it's kind of "the only way
10 to fix the mistake we've made in Georgetown is for you to
11 plead"?

12 A That's correct

13 Q Okay And he declined to do that?

14 A That's correct

15 Q And he went to trial and got two consecutive L-WOPs?

16 A That's correct

17 Q Okay Now, let's talk about the Georgetown charges,
18 the Victim3--

19 A Sure

20 Q -- Victim3 charge in -- in Georgetown The discovery
21 materials included a police report that indicated that
22 this had happened sometime between the end of June and the
23 beginning of July---

24 A That's correct

25 Q ---in 1999 Do you recall that?

1 A I do call -- recall that

2 Q And is it fair to say that you had been pressuring
3 the Solicitor's Office to give you a more -- a more
4 definitive date for the incident prior to the guilty plea?

5 A I don't remember that I do remember, and I believe
6 prior to even these charges coming about, hav- -- filing a
7 motion to compel discovery because I kept getting little
8 things piecemeal along and along

9 There was an investigator's report from Tom Digsby
10 who was an investigator who initially after some of the
11 things that happened -- that happened in this case -- an
12 investigative report that was found almost a year and a
13 half after, which supposedly had been filed a year or a
14 year and a half before that, stating that he was -- he was
15 an investigator for Georgetown carry (sic) -- County
16 Sheriff's Office

17 In fact, I believe he probably reco- -- recommended
18 Troy contact me

19 But that they had sat on Troy's front porch and Troy
20 had related to him that he had some -- some inappropriate
21 relations with -- with these two young men

22 Q Okay Well, the two young men with the lewd act
23 charges?

24 A Yes Victim 2 and Victim 1

25 Q Okay But we're not talking about Victim 3 ?

1 A No We're not talking about Victim 3

2 Q Okay And Victim 3 is the CSC,---

3 A You---

4 Q ---he's the real serious problem here

5 A That's correct

6 Q Not that the others -- I -- I don't mean to diminish
7 the significance of the lewd act charges, but you know
8 what I mean---

9 A Absolutely

10 Q ---when I say that?

11 A Absolutely

12 Q Now, in criminal sexual conduct cases involving
13 minors, it's not uncommon to see indictments that give a
14 -- a range of time, is it? On or about June/July of 2000
15 or something like that?

16 A That's correct

17 Q And our Supreme Court has even said that that's
18 acceptable?

19 A In fact, the two lewd acts, one was alleged in 1990
20 -- the year of 1998, and I believe the other was alleged
21 in the year of 1999

22 Q Okay And actually it was 1988 and---

23 A Eighty-eight ('88)

24 Q ---'89

25 A I'm sorry It's---

1 Q That's okay

2 A It goes so far back

3 Q And it was 1988 and 1989, and this---

4 A That's correct

5 Q ---was 2006 we were dealing with this mess, right?

6 A Yes, ma'am

7 Q Okay So these young men had come forward, you know,
8 we're talking like twenty (20) years later or something
9 Or, well, fifteen (15)

10 A Fifteen (15)

11 MS SHURLING Basic math is not my strong suit, Your
12 Honor Sorry

13 THE COURT Yeah

14 BY MS SHURLING

15 Q In any event, on the Victim 3 matter though, we weren't
16 talking about a child who was saying some time in the
17 summer between the 4th and 5th grade this happen, but I
18 can't say exactly when, right?

19 A No We -- The -- The best that we were able to come
20 up with is that -- that -- that the allegation says end of
21 July -- end of June, early July, 1999, I believe

22 Q Correct But my point being that Victim 3 wasn't
23 pointing to some vague nebulous occurrence, he was talking
24 about a very specific church trip that he had been on that
25 he alleged your client to have been involved in after

1 which this incident had occurred?

2 A It was a trip -- a church trip Now, I don't know
3 about specifics of anything else, other than that

4 Q Sure

5 A But a church trip Yes

6 Q But my -- Once again, going back to my original
7 point This is not a child or an adolescent who was
8 referring to some vague time line, it was a specific event
9 that he tied this assault to, correct?

10 A That's correct

11 MS SHURLING Okay (While handing documents) Your
12 Honor, I've got copies for you and for Ms Catoe

13 BY MS SHURLING

14 Q (While handing document) Do you recall this being --
15 And I assume you still have your discovery package

16 A Yes

17 Q (While indicating) Right there in your file, do you
18 recall this being in the discovery package?

19 A (Looked at document) Not specifically There were
20 a couple of different things, but -- but I -- I certainly
21 don't dispute that it probably was

22 Q Can you take a moment to look in your file and see if
23 you can confirm that for me?

24 A Yeah (Looked through documents) I'll be honest
25 with you, Ms Shurling I've been through this file I

Scott Joye - Direct by Ms Shurling

29

1 don't remember seeing him (sic) I certainly remember
2 seeing the fact that I got them I remember having seen
3 them, but that's kind of the ex- -- the extent that I
4 remember

5 Q Okay

6 A I -- I -- I don't know I -- I'm certainly not
7 disputing that I did In fact, I specifically remember
8 some church bulletins being there

9 Q Okay

10 A Well, in fact, there's a church bulletin there

11 Q Okay August 1st, 1999?

12 A November -- November, '98 Yep Got it

13 Q Got it And it was in the discovery package provided
14 to you by the Solicitor's Office, correct?

15 A Yes, ma'am

16 MS SHURLING Your Honor, I move to introduce this
17 as Applicant's 1

18 THE COURT Any objection from the State?

19 MS CATOE I guess the State would object simply
20 because the State is not sure who types up these
21 documents

22 THE COURT Well, I -- It doesn't really make any
23 difference It was -- It was provided in discovery and,
24 therefore, admissible, and I'm going to allow them to
25 admit that

Scott Joye - Direct by Ms Shurling

1 MS CATOE Thank you, Your Honor

2 THE COURT Applicant's Number 1 is into evidence,
3 without -- over objection from the State

4 MS SHURLING Thank you

5 THE COURT It's not really the authenticity of the
6 document itself but whether or not he received it

7 MS CATOE Thank you, Your Honor

8 (WHEREUPON, Church Bulletin marked and admittèd into
9 evidence as Applicant's Exhibit Number 1, over objection)

10 BY MS SHURLING

11 Q Do you remember discussing this particular church
12 bulletin with Troy Taylor and his mom and dad the day of
13 the plea?

14 A Honestly, no

15 Q Do you remember relaying to them that you had thought
16 that this church bulletin was in there to authenticate --
17 or rather, verify the fact that Troy Taylor was the pastor
18 of this church?

19 A I honestly don't remember what this was -- what this
20 document was -- was for I -- No, I really don't I
21 don't remember any conversations about the bulletin, per
22 se

23 Q Okay Do you remember any conversations with the
24 Solicitor's Office in which you ultimately clarified that
25 the bulletin was in there to establish the date of the

1 church trip during which this alleged assault occurred?

2 A I honestly do not I'm -- I'm not saying it didn't
3 happen I just don't remember it

4 Q Okay So -- So to retrace just a little bit, if the
5 CSC case involving Victim3, had not gone to the grand
6 jury yet and it was not getting ready to go to trial, did
7 -- had you, at that juncture, reviewed all the discovery
8 concerning that case with your client?

9 A Yes, I have I -- I don't -- I never really got the
10 import There was a November bulletin that I received
11 also I -- I -- I never -- I -- I guess I don't know
12 anything about the significance of the bulletin unless --
13 and I -- I have not been provided the 'prose -- propose
14 -- the proposed indictment

15 Our discussions centered on what we going to do about
16 these two lewd acts, and we told him what the deal was if
17 he took a plea on all three (3) charges

18 Q Okay

19 A And also explained to him that he would have to
20 answer these questions truthfully

21 Q And did you feel you would have an adequate
22 opportunity to investigate the CSC charge?

23 A Ms Shurling, every time that we sent an investigator
24 to get something, the information I was getting back was
25 not helping but rather going the other way The only

1 thing that we were able to do that he had made clear that
2 Charles Harrison would clear this up, that -- that -- that
3 -- and exonerate him, and Harrison remembered absolutely
4 nothing about any of it

5 I never asked for a more definitive statement as to
6 what date it happened I told Troy at his plea that he
7 would have to plea truthfully

8 Q Okay So you knew, at the time of the plea to second
9 degree criminal sexual conduct, that the other young man
10 who supposedly had gone to Troy's home with Victim 3 at
11 the time of the alleged sodomy said he didn't remember
12 anything about such an incident?

13 A He did not remember anything about any particular
14 beach trip He did remember that there were trips that
15 they took as a youth group, and he was, in fact, the youth
16 -- in the youth group at Troy's church when, in fact, his
17 -- more or less, his membership was at our church

18 Q Okay But -- So at that juncture, you were dealing
19 with a situation where the State's alleged witness to the
20 facts that Troy had invited these young men back to his
21 house to shower---

22 A That's---

23 Q ---supposedly didn't remember being---

24 A That's correct

25 Q Okay Now, the allegation, as summarized in the

1 police incident report, claims that the kids had been to
2 the beach---

3 A Been to beach Yes

4 Q ---and come back to the church and were showering at
5 the church before going home, correct?

6 A And that the showers were full and that Troy
7 suggested that Charles and Victim3 go back to his house

8 Q Okay Did you talk to any of the adults who were
9 active with the youth group at the time to ascertain why
10 in the world these kids would be going to the church to
11 take a shower before they went home?

12 A No We didn't The -- The -- The long and the short
13 of it was we had an allegation that was almost nine (9)
14 years old We had a situation where it didn't really --
15 It was one of those things where, okay, it generally
16 happened in the summer of '99

17 The -- The focus really still, at the date of the
18 plea, was on these two lewd acts---

19 Q Sure

20 A ---and that -- and that Troy's question was what
21 about this other charge

22 Q Okay Well, to -- But to back up to my point,---

23 A No I -- I -- Absolutely not

24 Q Okay

25 A Absolutely not I've done some -- some

1 investigation I felt like that, at -- at this point, it
2 was going to be a he said/he said

3 Q I -- I'm just asking you personally, if you think in
4 terms of the kids have gone to the beach, they've come all
5 the way back to the home church, you didn't question why
6 they would be taking a shower at the church before they
7 went home?

8 A No It -- And it would -- I mean, you have to
9 understand Huntington Beach State Park, from his church,
10 is -- is literally two (2) miles I mean, it -- it --
11 it's right around the corner I -- I don't know what
12 other activities -- I -- It just said that they were
13 taking show- -- I mean, it wasn't something that jumped
14 out at me as being---

15 Q Sure

16 A ---impertinent

17 Q How about whether or not there were even any showers
18 for that kind of bathing located at that church during
19 this time period?

20 A Didn't -- Did not have any -- Don't -- Didn't know
21 anything about the church It seemed normal to me I --
22 I -- I didn't -- I didn't focus in -- Again, Troy took the
23 plea on the CSC to clean up all cases in Georgetown

24 County

25 Q Uh-huh

1 A And that -- that -- that was where we were

2 Q I understand, and -- but I'm just -- I've got to go
3 through this---

4 A Certainly

5 Q ---regardless

6 A Certainly

7 Q Scott, I'm not---

8 A Certainly

9 Q ---trying to be difficult

10 A No, I -- And I'm not either

11 Q And did---

12 A I -- I'm---

13 Q Did you investigate whether or not there were, in
14 fact, even any showers at the church that the kids could
15 have used if the story was true?

16 A I -- I surely didn't In fact, we had enumerable
17 conversations about this case, about both of the other
18 cases Never once was I told that there was not showers
19 at the church

20 Q Okay Would you agree with me that at least up to
21 the time of the plea you didn't have any specific
22 information about the date you were talking about, either,
23 did you?

24 A No, I didn't

25 Q Okay

1 A I -- I did not

2 Q Okay Now, let -- Moving along a little bit You
3 agree with me that Troy's contrition, if you will, that
4 you had been exposed to from talking to police officers
5 and other people, had to do with things dating back to the
6 '80s, '88, '89, and some inappropriate touching back when
7 he himself was eighteen (18), nineteen (19) and the boys
8 in question were twelve (12)?

9 A That -- That's my understanding Yes

10 Q Okay And you also knew that Troy himself was a
11 victim of generational sexual abuse, unfortunately, in his
12 family?

13 A Yes, ma'am

14 Q Okay

15 A He'd made that clear

16 Q And -- And you've been able to verify that with
17 Troy's parents, among other people?

18 A You know, this delicate conversations -- And we
19 really didn't dig into it, other than Troy told me on
20 numerous occasions, and Troy -- In fact, there was a
21 videotape in which he talked about all kinds of
22 inappropriate behavior amongst he (sic) and his cousins

23 Q Okay But you actually presented witnesses in
24 mitigation in sentencing---

25 A Yes, that's---

1 Q ---who talked about the other family members that had
2 been sexually abused by Troy's grandfather---

3 A That's correct

4 Q ---and uncles in this same family?

5 A That's correct

6 Q Okay So it was on the table that this young man had
7 been victimized himself as a young person?

8 A I -- I did And Troy spoke at length to me about
9 that being some defense to the case

10 Q Okay

11 A And I -- We -- At -- At length, I told him I thought
12 it was mitigation because my feeling was that jurors would
13 believe that someone who's victimized victimizes

14 Q Okay

15 A And -- And I felt that that was a very dangerous land
16 mine to step on

17 Q Sure

18 A And, in fact, one of the things that we talked about
19 of a defense was that he was a preacher, which twenty (20)
20 years ago I would think would be very positive, however,
21 unfortunately, I believe that there would be a connotation
22 that would attach with some people that would be negative
23 immediately

24 Q Okay

25 A All right Because---

1 Q And didn't---

2 A ---we do things in the consex (sic) of time and
3 place

4 Q In this case, however, when the first allegations
5 came to light that Troy had had some inappropriate contact
6 with some young people back fifteen (15), sixteen (16)
7 years earlier, he was very forthright with church members,
8 talking about his background as an abused young adult and
9 how that had led him to have some problems with
10 pornography and some other situations, wasn't he?

11 A Yes, ma'am In fact, but -- In fact, I had sa- --
12 explained to Troy that it was very important to not talk
13 about these things, and I believe the following Sunday he
14 went up before the church and was video recorded saying
15 "My lawyer would shoot me for this, but "

16 Q Okay And I understand Believe me, my clients
17 don't always listen to me, either

18 But the fact of the matter is -- And we -- All these
19 years later, we've still got a courtroom full of these
20 folks He was putting testifying, confessionals,
21 redemption ahead of listening to his lawyer's advice when
22 it came to talking to these people about his background
23 and about some of the things that he was willing to own up
24 to, right?

25 A My opinion? My opinion, he was attempting to explain

Scott Joye - Direct by Ms Shurling

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1 it away Troy -- Troy wants to explain a lot of things
2 away, and the more he explains, the deeper the hole gets

3 Q Okay

4 A And -- And that -- So, no, I -- I didn't think it was
5 something positive for the church I think that was Troy
6 trying to explain away the whole thing

7 Q Okay Well, let---

8 A And---

9 Q Let us examine that a little bit

10 MS SHURLING And, Your Honor, I'm not going to take
11 all afternoon with this I'll try to be brief

12 BY MS SHURLING

13 Q But this was not a pastor who had been, you know,
14 proven to be a pedophile abusing children in the church
15 and had no other positive evidence of being a good
16 productive loved member of his church, right?

17 A In the context of that church, you're absolutely
18 correct There'd never -- I knew of any -- no allegations
19 at that point with Troy as pastor of a church There were
20 other allegations, but nothing with him as pastor of that
21 church

22 Q But even people who had heard him get up in the
23 pulpit and make his confessional about what he was owning
24 up to, those people were still very supportive about the
25 fact that he had been a good man, a good pastor, done

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1 countless good works in the church?

2 A I would tell you that there was -- that that church
3 immediately split into two factions, and one faction was
4 very positive and very supportive for Troy, the other
5 faction was not

6 In fact, I defended Troy to the church in -- in some
7 letters that I sent the church for things that were being
8 said about Troy, about me I defended Troy when he would
9 go to pick up -- His mother kept the day care at the
10 church When Troy would go to drop his child off, the new
11 pastor had made a real issue of it, that he was not to be
12 there, and -- and Troy simply was dropping his child off

13 Q Sure

14 MS SHURLING May I have a moment's indulgence, Your
15 Honor?

16 THE COURT Okay

17 (WHEREUPON, Ms Shurling conferred with the
18 Applicant)

19 MS SHURLING Your Honor, I have no further
20 questions

21 THE COURT All right

22 MS SHURLING Let me get my stuff out of the AG's
23 way

24 THE COURT Ms Catoe, you're recognized Cross-
25 examination

Scott Joye - Cross by Ms Catoe

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1 MS CATOE Thank you, Your Honor May it please the
2 Court?

3 CROSS-EXAMINATION BY MS CATOE

4 Q Good afternoon, Mr Joye

5 A Good afternoon, Ms Catoe

6 Q Could I refer you to page thirty-eight (38) of the
7 transcript of the guilty plea?

8 MS SHURLING Your Honor, if I could -- Ms Catoe
9 has a very lovely but soft-spoken speech, and I'm a little
10 bit deaf If she could speak up just a little bit, I'd
11 appreciate it

12 MS CATOE I will do my best and to lean into the
13 microphone as well

14 MS SHURLING Thank you

15 MS CATOE I was just referring Mr Joye to page
16 thirty-eight (38) of the transcript

17 WITNESS JOYE Yes, ma'am

18 MS SHURLING Thank you

19 BY MS CATOE

20 Q If you would just take a moment and perhaps review
21 what Mr Powers is trying to convey to the judge regarding
22 the Williamsburg charge I believe it starts around line
23 nine (9) and continues on to the next page

24 A (Looked at document) Yes, ma'am

25 Q And then it actually culminates in the statement that

1 Ms Shurling was referring to earlier that the Court made
2 about the Williamsburg incident?

3 A Yes, ma'am

4 Q What was your impression that the Court was trying to
5 convey? Or did you have an impression that the Court was
6 trying to convey to -- I guess, to the lawyers and to the
7 Defendant at that time?

8 A My -- My feeling was that -- that he was letting
9 everybody know that there wasn't -- that the matter was
10 not before him and that he didn't have any -- anything to
11 do with what was going to happen in Williamsburg but that
12 he was certainly making a note of it

13 Q Okay Let me refer you real quickly to page thirty-
14 eight (38), line twenty-one (21) where Mr Powers is
15 talking about possibly concurrent sentences

16 A (Looked at document) Yes, ma'am

17 Q Was it your impression that the Court was trying to
18 dissuade everyone from thinking a Williamsburg sentence
19 might be concurrent?

20 MS SHURLING Objection, Your Honor That's purely
21 speculative

22 THE COURT It's a nonjury matter I'll allow --
23 allow that -- her to ask it

24 WITNESS JOYE My---

25 BY MS CATOE

1 Q I guess I'm asking was the judge responding to Mr
2 Powers' statement?

3 A Yes I -- I think so I -- I -- And -- And, again,
4 we were trying to create the best record we could have to
5 go to Williamsburg County

6 Q All right Let's talk about your investigation a
7 little bit Did you ever look into potential motives of
8 the victims?

9 A We talked about this at some length, and Troy felt it
10 was some conspiracy contrived in the church to run him out
11 of the church I asked Troy, "Other than that, any reason
12 that they -- that any one of these folks would do it?"

13 The only people -- person that he said that he
14 thought would have any motivation -- He felt that
15 Victim 3's father was pushing Victim 3 to put up something based
16 on the fact that there had been some -- that -- that Troy
17 had been the counselor for Victim 3's mother and that
18 he had recommended that she leave Victim 3's father

19 Q Okay Did you ever find any -- any bases for Troy's
20 suspicions about -- about these potential motives?

21 A I didn't Troy told me that he thought that -- that
22 Victim 3 -- Victim 3's father had been arrested on a
23 solicitation of prostitution charge in Myrtle Beach and
24 that I had asked my investigator to pull Myrtle Beach
25 records, and there were no records of -- of the father up

1 there

2 Q What about as to the -- the two lewd act charges?

3 A In terms of the investigation, you know, those are
4 things that -- that Troy had true -- had freely admitted,
5 that -- that -- that both of these young men had slept in
6 the bed with him

7 Q And to whom did he admit that?

8 A Oh, he -- he said it was common place for them that
9 -- for some -- for these kids to stay, and -- and kids
10 would stay over, and occasionally some of them would sleep
11 with him in the bed

12 Q When you say commonplace, where did you learn of
13 that?

14 A From Troy

15 Q Okay Do you know if he had told anyone else that?

16 A I think his folks had -- or at least his father had
17 said, yeah, that -- that they would do church things and
18 church -- They -- They would have youth groups over, and
19 they would have people stay and that -- and that it --
20 and, in fact, that Troy would -- that -- that occasionally
21 one of them -- one of the -- one of these -- I would call
22 them pre-teens -- would sle- -- would sleep with Troy when
23 he was probably eighteen (18), nineteen (19), twenty (20)
24 years old

25 Q All right Were there any other potential witnesses

1 as to the two lewd act charges?

2 A Well, do you mean were there any witnesses -- I -- I

3 -- Yes There was a cousin I -- I believe a Dennis

4 who the -- who Solicitor Bryan told me had had a

5 similar experience The -- The -- The -- There was a kind

6 of a common thread here that -- that these -- these young

7 folks, who would be ten (10), eleven (11), twelve (12)

8 years old, would sleep in the bed with Troy and, after

9 they would go to sleep, that there would be some

10 inappropriate touching, et cetera

11 In fact, there was a conversation with a

12 -- Victim 1 who was one of the -- the -- the

13 victims or alleged victims, that Troy said -- When -- When

14 I pointed out to what Victim 1 said, Troy absolutely

15 confirmed the conversation and then later confirmed it in

16 the -- in the disk -- in the recording with his wife that

17 when they were coming back to get measured for tuxes

18 before he got married to Allison that they wanted---

19 Q Do -- Do you have any idea of what date that was

20 around or---

21 A I have no---

22 Q ---what age he was?

23 A I really don't This was during the time that --

24 that Troy was in North Greenville, and he was driving back

25 with Victim 1 , and Victim 1 was essentially

1 living with him at that point and that there had been a
2 conversation initiated -- Well, I've been told by Troy
3 that -- that Victim 1 initiated the conversation
4 The vic- -- The disk of the conversation with Allison says
5 that he initiated the conversation---

6 Q And who is Allison?

7 A Allison is his ex-wife That in that disk or in --
8 in that conversation that -- that Victim 1 had said,
9 "Troy, how are you going to get married, you're a
10 homosexual" and that Troy and -- and that Troy and Victim 1
11 had had a conversation and that he didn't remember any
12 specifics but that -- that something had obviously
13 happened between he (sic) and Victim 1

14 Q All right Where was that? You -- You---

15 A That was in a car---

16 Q ---mentioned a disk

17 A That was in a car coming back to get measured for
18 tuxedos before Troy's wedding to Allison

19 Q Okay I was going to ask you where -- where was---

20 A In a car---

21 Q ---this information---

22 A ---that---

23 Q ---recorded from?

24 A Oh There's --

25 Q How did that recording that you're speaking of---

1 A Okay

2 Q ---come about?

3 A One -- As I got further in -- As -- As I told you,
4 when I first got in this case, -- And I -- And I had a
5 very specific conversation or -- As I already testified, I
6 had a very specific conversation with Troy that -- that I
7 -- It just -- It just seemed apparent to me that Allison
8 was pretty close to exploding when we meet

9 And I told Troy that I -- that -- that I -- I cleared
10 her out of the room, and I said, "Troy, you need to
11 understand me, we don't need -- you don't need to have a
12 conversation with anybody about this case except me " I
13 said, "Your wife is going to leave you I -- It's clear
14 as day " I put my finger in his face, and he told me I
15 was wrong And I said, "Before -- You can assume from
16 this day forward that every conversation that you have
17 with your wife is going to be recorded And, in fact, if
18 you don't want to hear these word -- if you don't want to
19 hear your conversations again, don't say anything about
20 this case even with Allison "

21 I became aware, during his divorce proceedings, that
22 there was a recording and that that recording -- In it, he
23 had admitted to having some type of inappropriate contact
24 with both Victim 2 and Victim 1, and, in fact, one of the
25 things that -- The specific comment was -- And I'm -- And

1 I'm trying to find the tape It may be over there But
2 the specific comment was "So Troy what you're telling me
3 is what Victim2 and Victim2 are saying is not true?"

4 He said, "No, I'm telling you the exact opposite, but
5 I don't remember a date or a time or anything, and -- and
6 things were way different back there and then, and there
7 were -- We -- I did numerous things, and other people did
8 numerous things "

9 And that's part of what -- what he said That --
10 That tape is either here or it's over there

11 Delton, do you see it?

12 There's a disk of that conversation I became aware
13 of that, and I asked for it But Troy said, no, he'd
14 never admitted to anything like that to Allison, and,
15 unfortunately, I believe, like Thursday -- Yes No

16 (To Delton Powers) You don't see a DVD?

17 Thursday before we were going to have trial on the --
18 the following week, I gave Troy this disk He drove off
19 with it and listened to it and came back and said then, at
20 that point, he wanted to take a plea

21 Q Okay

22 A All right

23 Q Well, are you aware if -- whether the ex-wife, I
24 believe, Allison -- Did she consent to the -- to the
25 recording of that conversation?

1 A She turned it over to her divorce attorney

2 Q So the answer is yes?

3 A I assume so The divorce attorney had let me know or
4 -- of its existence sometime way back

5 Q All right Do you recall whether Mr Taylor made any
6 specific denials on -- on the tape?

7 A No In fact,---

8 Q Did he deny that something happened when he was age
9 twenty-one (21)? If you recall?

10 A Not denied I -- I---

11 Q Did he admit that---

12 A Yeah

13 Q ---certain things happened on---

14 A Yeah

15 Q ---certain dates, but it didn't happen when he was
16 twenty-one (21)?

17 A I -- That -- That, I think, is how it may have been
18 couched I -- I don't know (While indicating) Certainly
19 here's the tape

20 Q Okay Do you have copies of the indictments and
21 arrest warrants?

22 A I -- I did, but I've probably got it nice and jumbled
23 now It was indictment---

24 Q You've got it?

25 A Yes, I do I---

1 Q Okay Do you have all three (3) of them?

2 A Let's see (Looked through documents)

3 Q I just want to go through some---

4 A Sure

5 Q ---some things---

6 A Sure

7 Q ---real quick with you

8 A Okay The -- The---

9 Q I just want the---

10 A ---445---

11 Q First, I want the Defendant's date of birth, if you
12 could, please

13 A November the 3rd, 1969

14 Q All right And would you agree that makes him age
15 twenty-one (21) from November, 1990, through November,
16 1991? I think I did that correctly

17 A Oh, boy You're going to ask me math Let's see
18 Let me -- I'm sorry Let me find my place again

19 Q Well, let's move on to the---

20 A November---

21 Q ---the first victim, *Victim 1*

22 A Right

23 Q Do you have his date of birth in the indictment? I
24 believe that would be 04----

25 A July -- July 2nd, 1976

1 Q All right And what is the date of the alleged
2 occurrence for Victim 1

3 A Between January 1, 1988, and December 31, 1988

4 Q All right And would you agree that's just the
5 entire year 1988 for---

6 A Nineteen-eighty-eight (1988)

7 Q -- Victim 1, Nineteen-eighty-eight (1988) Why do
8 we keep saying -- I don't know

9 A Well, because there were -- there were 1988 and 1987
10 incidents, and then there were 1998 and 1999 incidents

11 Q That explains it All right So would you agree
12 that that makes Troy age nineteen (19) for that occurrence
13 and the victim approximately age twelve (12)?

14 A I'll try to---

15 Q I'm going to---

16 A ---can't dis- -- How about I can't disagree with it
17 because I can't add that fast

18 Q All right Let's move on to the other victim

19 Victim 2 Do you have his date of birth in the
20 indictment there?

21 A Yes

22 MS SHURLING Your Honor, I---

23 WITNESS JOYE December 18, 1976

24 THE COURT All right We have an objection here

25 MS SHURLING It's not really an objection so much

1 as noting that -- that we're not disputing the age of the
2 alleged victims as approximately twelve (12) and that our
3 client's date of birth puts him at approximately nineteen
4 (19) when both of the allegations of lewd act upon a minor
5 happened, if -- if that saves some time

6 THE COURT I think it would save some time I
7 think, really, the numbers pretty much speak for
8 themselves

9 MS CATOE All right Thank you, Your Honor

10 THE COURT I think she's probably trying to
11 demonstrate for -- for me and those who aren't as familiar
12 with the facts perhaps But we can move forward

13 MS CATOE Thank you, Your Honor

14 BY MS CATOE

15 Q In light of those dates and those ages, did you --
16 how did you consider the -- the -- I'll call it the ex-
17 wife's tape How did you consider that as evidence
18 against Mr Taylor for the two lewd act charges, ---

19 A Well, I thought it was---

20 Q ---considering that he made an -- he denied age
21 twenty-one (21) but did not deny that other acts happened?

22 A I -- I clearly felt that it was going to be very
23 damaging to him, not to mention the fact that there was a
24 statement---

25 Q Well,---

1 A --given by his former wife while she was -- I -- I
2 don't even know if they'd split up at this point But his
3 former wife gave a st- -- a written statement to
4 Georgetown County Sheriff's Office back December of 2003,
5 I believe December 5th, and, in that statement, she -- she
6 said that he had said that he had been involved in in- --
7 inappropriate touching Further, that in one of the -- as
8 far as Victim 2 was concerned, that he had gone to
9 his -- to Victim 2 mother and apologized prior to
10 anything happening

11 Q And what do you mean by anything happening?

12 A I mean, prior to any charges or anything When the
13 allegations first came up, Troy -- the -- the -- the
14 indication was that Troy went and apologized to Victim 2
15 mother, and, in fact, Troy told me that he had apologized
16 to Victim 2 mother

17 Q All right So was she a potential witness in the --
18 had the case gone to trial?

19 A I don't believe she would have been a potential
20 witness I believe she would have been an actual witness

21 Q Okay Do you know who else the solicitor intended to
22 call?

23 A The solicitor intended to Lyle in the two cases, the
24 two lowed (sic) acts In fact, he was going to try to
25 Lyle in all three cases I explained to him that I felt

1 that that would be a very -- that -- that -- Then
2 explained to Troy and explained to everyone, that I felt,
3 given the 1988 and the 1989 incidences (sic) being so
4 closely resembled, that -- that I would believe that the
5 judge'd be likely to Lyle those -- those cases together so
6 that *Victim 2* , could testify in *Victim 1* ' case,
7 *Victim 1* could testify in *Victim 2* ' case

8 There was also an additional young man by the name of
9 Dennis W who was also a cousin up in Green- -- up in
10 Greenville that my under- -- under my understanding was
11 going to testify to the -- essentially the same thing

12 There was potentially a young lady from Greenville
13 and another allegations (sic) involving a -- a young lady
14 who was about thirteenth in a motel room in Myrtle Beach,
15 that that had also come to light or -- or at least been
16 alleged and that that person may or may not be available
17 for tes- -- to testify

18 But this -- And Troy and I had a conversation about
19 the young lady He said that they went to the beach
20 together and that the only thing he ever did was rub
21 lotion on her or something, but I think she had alleged
22 that he inappropriately had touched her

23 Q All right Now, going back to the tape, did you
24 discuss that with Mr Taylor? The -- The ex-wife's tape?

25 A We didn't have so much a discussion as much as I gave

1 it to him knowing that we were going to trial the
2 following week and gave him that tape, and he rode off I
3 said, "You need to go listen to this because this is very
4 bad This is very, very bad " And so he rode off, and --
5 and -- and he came back, and he said that he'd -- I think
6 he told me he'd talked to his father or had talked to his
7 parents and that he felt he was going to have to -- have
8 to take a plea

9 Q All right

10 A And I think that was the week prior to the plea

11 Q Ms Shurling touched on this a bit, but did Mr
12 Taylor ever tell you that there were not any showers at
13 the church?

14 A Never mentioned one word that there were not showers
15 at the church The church, in fact, was -- was -- I mean,
16 when you talk about the church and his home, they
17 literally -- They -- They couldn't have been more than a
18 block apart

19 Q All right Now -- And I believe that the showers
20 incident would be the other victim, Victim 3 So
21 let's---

22 A That would be the---

23 Q ---move on---

24 A --- Victim 3 incident

25 Q ---to that Do you know when the arrest -- Do you

1 have the arrest warrant real handy there?

2 A On the victim 3 matter?

3 Q Yes If -- If it's---

4 A Gosh

5 Q ---the same as my packet, it might be the last
6 document in there

7 A Yeah The -- Oh, right before Thanksgiving---

8 Q Okay Now, that's---

9 A And that's---

10 Q ---2005?

11 A That's correct

12 Q And that's when that was served?

13 A I'm -- Yeah Yeah I -- I knew it was like
14 literally the day prior to -- two -- two days before
15 Thanksgiving And as I explained earlier, I -- I -- I
16 took on the other Williamsburg case and didn't ask for
17 anything else I was already in this case I was in it
18 neck deep I didn't ask to be hired I just got in I
19 just -- This family had been through a lot, and I was
20 trying to do a -- the best I could for this family

21 Q All right Well, while you've still got that page
22 marked, tell me the dates of the alleged incidents in the
23 arrest warrant

24 A Between June the 1st, 1999, and July 30th, 1999

25 Q All right And---

1 A In fact, I think it had initially been typed between
2 2005 and 2005, but I believe they struck through and --
3 and wrote over it

4 Q All right And you mentioned earlier the proposed
5 indictment Now, the Defendant did end up waiving
6 presentment, is that right?

7 A That's correct I -- I had not seen an indictment

8 Q Okay Do you know where the August 5 through 7 date
9 came from?

10 A I -- I really don't -

11 Q But that indictment was not true-billed, is that
12 correct?

13 A That indictment was not true-billed The best that I
14 had was the stuff that I'd looked at which said June --
15 late June, early July

16 Q All right And did you discuss any defenses to that
17 charge, the CSC-second charge with Mr Taylor?

18 A Sure In fact -- Well, one of the things that I had
19 hoped to do was -- was I had arranged for Troy to take a
20 polygraph so that I could possibly -- potentially offer
21 him up to the prosecutor and say, "hey " You know, if --
22 if -- if -- if he had -- if he had taken a polygraph and
23 done well, then -- then we could say, "Prosecutor, you
24 know "

25 The polygraph went very badly, and Troy asked me to

1 tell his parents that it was inclusive

2 Q But it was not, in fact, inclusive?

3 A No, ma'am

4 Q All right And how did that factor into -- into the
5 case?

6 A Well, it really didn't, other than -- other than it
7 was a strategy I had because I had defended him, that --
8 that this had absolutely never happened

9 Q Was the poly- -- What was the polygraph relating to?
10 Was it all three---

11 A All three

12 Q ---cases? Okay

13 A And, in fact, the -- My specific question to the
14 investigator was, well, the third one wasn't -- that --
15 that the -- the new kid that was making an allegation -- I
16 don't even know that we had the name at that point He'd
17 certainly not been arrested for it But the person that's
18 making the new allegation -- And I think I did know that
19 it was Victim 3 at that point "He passed on that
20 question, didn't he?" And the response was that it was
21 real bad, that he had failed it badly

22 Q All right

23 A Which changed nothing in my -- ex- -- except for that
24 I had to do, have a different strategy than what I wanted
25 to do at that point

1 Q All right And did you have other discovery on this
2 CSC-second charge?

3 A Troy had given me names of people to talk to

4 MS SHURLING Your Honor, if I might briefly, taking
5 a pragmatic approach, I realize that Your Honor is the
6 finder of fact in this setting, and you -- and the bell's
7 been rung, so there's not a lot I can do about it But I
8 would move to strike the testimony dealing with the
9 polygraph examination

10 The Rule with regard to waiver of attorney-client
11 privilege says that the privilege is waived only to the
12 extent necessary to specifically address allegations make
13 by the Defendant And the Applicant has made no
14 allegations toward Mr Joye with regard to failure to
15 pursue a polygraph, failer -- failure to pursue plea
16 negotiations that would use a polygraph test as any sort
17 of leverage in the negotiating process

18 There's been no allegation by my client of any wrong-
19 doing or error or omission on the part of Mr Joye that
20 necessitated him revealing that part of his attorney-
21 client relationship or the attorney-client privilege with
22 his client

23 And so I would say that the -- the information that
24 was just disclosed exceeds the scope of the statutory
25 waiver of the privilege and should be stricken

1 THE COURT All right I will, indeed grant the
2 motion to strike that from the record To be quite honest
3 with you, it really doesn't deal with the issues that are
4 before the Court here today It really makes no
5 difference

6 MS CATOE May it please---

7 THE COURT You can---

8 MS CATOE ---the Court?

9 THE COURT You can move forward Yeah

10 MS CATOE Thank you, Your Honor

11 MS SHURLING Thank you, Your Honor

12 BY MS CATOE

13 Q Did you have other discovery in the CSC-second case?

14 A Not really I mean, the -- these -- these -- these
15 type cases are the world's worse

16 Q Did you talk---

17 A And I -- I---

18 Q ---to any witnesses?

19 A I had investigated---

20 Q Or your investigator?

21 A Investigators talk to witnesses, Ms Catoe I --

22 I've seen it happen in cases in which people have spoken
23 to witnesses only to have the witness change their story
24 on the stand, and either prosecutor or defense say, "Well,
25 didn't you tell me", and then the -- the natural objection

1 is "Is this person going to be trying this case, or are
2 they going to be a witness in this case " And so I leave
3 investigations to investigators, and we talk about the
4 case

5 Q All right Did the victim give any statement to the
6 police?

7 A The victim gave a very explicit statement that I had
8 on tape that basically some type -- some time in July --
9 June, 1980 -- June -- July -- June and July, 1999, that
10 there had been an incident at the church and that -- or
11 that that incident happened after something at Huntington
12 Beach and that -- Initially, that wasn't the case, though

13 Victim 3 went in and gave a statement saying that
14 he had been -- there'd been a lewd act performed on him at
15 a camping trip somewhere around Andrews Now, half of
16 Andrews falls within Georgetown County and half of it
17 falls within Williamsburg County

18 Andrews proper, I guess, would probably be Georgetown
19 County, and what they call West Andrews would then be
20 Williamsburg County, or vice-a-versa Andrews would be in
21 Georgetown and West Andrews would be in Williamsburg and
22 that -- and that he had said that Troy come to him in the
23 middle of the night and moved him to his tent and then
24 that there had been some -- a lot of the act -- same type
25 of acts that were alleged by the -- the other two victims

1 Q Okay And that was -- supposedly occurred in
2 Williamsburg?

3 A Never really was -- They'd gone somewhere on Black
4 River around Andrews, and that was about as close as I
5 think anybody could ever get Sooner---

6 Q Okay And that was tried in---

7 A That -- That---

8 Q ---Williamsburg County?

9 A But -- But that was -- that was the initial
10 allegation in Williamsburg or would -- That -- That
11 eventually ended up in Williamsburg County

12 Q Okay

13 A It sat out there and sat out there and sat out there
14 and sat out there, and then, all of a sudden, there's a
15 new allegation from this swimming trip to Huntington Beach
16 State Park

17 THE COURT Who actually tried the Williamsburg case?

18 WITNESS JOYE Charles David Barr, Your Honor

19 THE COURT Very good That's all I want Very
20 good

21 MS CATOE All right Beg the Court's indulgence
22 one moment

23 (Pause)

24 BY MS CATOE

25 Q Did you discuss defenses to the criminal sexual

1 conduct charge with Mr Taylor?

2 A Yes

3 Q Did he -- Did he get to review the tape?

4 A I believe he's turd (sic) ever tape that I ever had
5 my hands on and that -- The discovery from Williamsburg
6 County case never came until after the plea in -- in -- in
7 Georgetown

8 Q Did he review the Georgetown tape of the victim
9 relying the events to the investigator?

10 A Now, I gave him everything I ever had to review, and
11 I'm trying to remember -- There was the tape of the
12 Victim 3. I had on a micro-cassette recorder, and Troy
13 listened to it, and I think I tried to listen to it again,
14 and I did something to mess it up

15 But, yes, Troy had listened to it, and he'd given the
16 names -- He said, "Well, Charles Harrison can testify that
17 that never happened " And, in fact, we -- The
18 investigator talked to Charles Harrison, and Charles
19 Harrison didn't remember anything He just remembered the
20 Williamsburg County trip or the purported Williamsburg
21 County trip

22 Q Okay Now, speaking of Williamsburg, the victim in
23 Williamsburg was also Victim 3, is that correct?

24 A Yes

25 Q Okay And are you aware -- Are you familiar with

1 that trial? Or -- Or are you aware if he testified?

2 A My understanding is he -- he -- is he has I've seen
3 some portion of the transcript, but I certainly was not
4 there

5 Q Okay All right And did you -- I believe you
6 mentioned earlier you worked on some plea negotiations in
7 the case, initially with the lewd act?

8 A Yes In fact, I went through, I believe, four (4)
9 solicitors I believe Bradley Richardson had it first,
10 and he talked with me at some length about it, and I
11 talked with Troy at some length about it It past to --
12 It may have been three (3) It certainly went to Will
13 Andrews' hands one -- at one point, and Will Andrews
14 offered us a probationary ABHAN plea, with sex counseling
15 and sex registry

16 Q All right And what did Mr Taylor say about that
17 plea offer?

18 A That he would not have any part of it I think he
19 would have taken it except for the sex registry part of it
20 in that -- in that he -- he had concerns about his
21 children and that that was --

22 Q All right Was there another plea offer? Or was
23 that the only one?

24 A No They -- Finally, Bo Bryan got it I think Bo
25 and Troy actually went to Socastee High School together,

1 and -- and Bo -- Bo literally became dogged in his
2 determination to try this case And, in fact, he had --
3 he had stated that he was going to line them up one, two,
4 three He was going to try them He was -- He was -- He
5 was -- Literally, he was just -- He wanted his portion of
6 blood And, in fact, the recommendation by Bo Bryan was
7 for ten (10) years, although Judge Cottingham gave Troy
8 five (5)

9 Q All right And let's talk about the -- the actual
10 plea What were -- What were the terms---

11 A Eight (8)

12 Q ---under which -- Well, first of all, what was your
13 understanding of when Mr Taylor started considering the
14 -- the eventual plea? Or---

15 A The -- The---

16 Q ---what times did you present to him?

17 A The -- The -- The week before -- The week before
18 Judge Cottingham was -- was coming there, I think we were
19 looking at -- And -- And solicitors being solicitors, they
20 always say, "Well, you're first up for trial on Monday
21 morning" when, in fact, you're not

22 But on Thursday, we got this tape that was made --
23 provided by Allison's attorney, Doug Thornton, to Bo Bryan
24 and Bo Bryan to me -- a copy of which to me , Based on
25 that tape, I allowed -- I let -- gave it to Troy, and Troy

1 drove off in his pickup truck while I was sitting on the
2 front porch of the office, and he came back about ten (10)
3 minutes later, and he decided, at that point, that he was
4 going to plead

5 And then we had a meeting I want to believe that he
6 and myself and Delton and maybe even his parents met, and
7 we -- Or -- And it may not have been his parents, but I
8 know there was a meeting And we said, "Troy, we need to
9 know Are you going to trial? If you're going to trial,
10 we need to be preparing for this trial "

11 Again, we're talking about the lewd act cases at this
12 point because the other had not been indicted And -- And
13 he said that he would take a deal

14 And I made it clear that -- that -- that in this type
15 of trial there are not -- there -- there're no -- there
16 are no eyewitnesses There's no physical evidence
17 There's no what I would call objective evidence But this
18 case is about cross-examining the witnesses and their
19 believability, his believability

20 Q All right Did---

21 A But---

22 Q ---you discuss that with Mr Taylor?

23 A Oh, absolutely

24 Q Okay

25 A Absolutely

1 Q And what did -- what did you tell him about that?

2 A Well, Troys (sic) felt that I -- that -- that it
3 could all be explained in that there was some conspiracy
4 in the church to -- to get rid of him, that -- that his
5 youth minister or music minister, David Wright, and his
6 wife had conspired

7 In fact, he sent me a letter later on even after the
8 plea and said that -- that -- that they'd -- that Allison
9 and Troy had a whole lot of money from October to
10 December, 2006, and felt that they may have paid -- paid
11 off people to be witnesses or paid off Dennis and

12 Victim 2 I mean, excuse me Victim 2 and Victim 2

13 Q All right Did you discuss the potential success of
14 that defense with Mr Taylor at trial?

15 A I discussed with him the fact that twenty (20) years
16 prior to that, if I had represented him, I'd want the
17 world to know he was a preacher I don't think I would
18 have wanted that fact to come out in front of a jury in
19 this day and age, given recent history

20 Also, here were a number of contradictory statements
21 My understanding that Allison Taylor was going to testify
22 against him The -- The -- The CD was certainly damning
23 of the -- of the conversations Also, Allison Taylor had
24 been -- gave a statement, in fact, as far back as 2003
25 stating that Troy had told her

1 Q Okay Now, what day -- Do you recall what day it was
2 that -- that you provided Mr Taylor with the -- the tape?

3 A I want to think it was probably Thursday before he
4 pled on the following Thursday

5 Q Okay All right And, again, what were the specific
6 terms that you understand he was pleading to? What did
7 you tell him was going to be the deal? Do you know?

8 A Well, to -- to begin with, we were going to plead to
9 the two lewd acts, and the CSC, literally, was something
10 that was still hanging out there, and we were struggling a
11 little bit with what we were going to do about it and that
12 the deal would be that it was eight (8), suspended on five
13 (5), three (3) years probation and that he would have to
14 serve eighty-five (85%) per cent

15 Q All right Now, when you say the deal, do you mean
16 there was a negotiated sentence or---

17 A No, no But the judge had told us pretty much so
18 what he was going to do

19 Q Okay And you mentioned that the solicitor wanted
20 ten (10)?

21 A The solicitor wanted ten (10) The solicitor was
22 making a recommendation of ten (10) years

23 Q All right What did he -- Did Mr Taylor say
24 anything to you about those particular terms? Or did he
25 express any---

1 A I -- That -- That---

2 Q ---particular dissatisfaction?

3 A That he was going to -- That he was going to take the
4 deal And I specifically said, "Troy, now, you're the one
5 that has to answer these things, and you have to answer
6 them honestly "

7 Q When you say---

8 A "And you're the"---

9 Q ---he has to---

10 A ---"one that has to answer them "

11 Q ---answer them, what do you mean?

12 A I mean, answer these allegations, answer in court

13 Q Okay All right Let's talk about prior to the
14 plea Did you advise Mr Taylor regarding the elements of
15 each charge -- each of the three (3) charges?

16 A We talked -- I can't specifica- -- I'm certain I did
17 We never -- We talked on numerous occasions We talked on
18 the phone Troy would come by every other week As
19 closer'd -- as closer to -- to court that we got, Troy
20 came by all the time, and I always took time to talk to
21 him

22 Q Did he know what -- essentially what the charge was
23 as far as---

24 A Oh, yes

25 Q ---lewd act and---

1 A Yes

2 Q ---and as far as what the specific allegation was?

3 A Certainly

4 Q And as far as the CSC-second?

5 A Yes, he did

6 Q All right Did you discuss with him the waiver of
7 grand jury presentment on the CSC-second?

8 A Yes That -- That we -- Now, that we had -- That
9 conversation, we actually had the day of the plea, that he
10 would have to waive presentment that -- that he had a
11 right for the case to go before the grand jury, and -- and
12 a number of grand jurors then would have to agree to bind
13 it over for trial, and that was a probably cause
14 determination and that -- and that -- And I, quite
15 frankly, told him that -- that, generally, when something
16 goes to the grand jury, it's almost a foregone conclusion
17 that it's going to get bound over

18 Q All right And did you also discuss---

19 A Or get indicted Excuse me

20 Q Okay Did you also discuss with Mr Taylor his
21 constitutional rights to include the jury trial and---

22 A Sure

23 Q ---the attendant rights, such as the right to remain
24 silent? Did you discuss that?

25 A All of those things, that I told him that if he chose

1 to testify, that if he chose not to testify that that
2 couldn't be used against him, that he had a right to
3 testify, that we had a right to cross-examine the
4 witnesses, we had the right to call -- call our own
5 witnesses

6 Q Did you discuss that it's the State's burden to prove
7 those things beyond a reasonable doubt?

8 A Certainly

9 Q Did you discuss the maximum sentences on each charge?

10 A He knew that -- that I believed the -- the two lewd
11 acts was zero (0) to fifteen (15), and, if I'm correct, I
12 believe we talked about the fact that there was a zero (0)
13 to twenty (20) on the -- on the CSC-second

14 Q All right And do you recall the judge going over
15 these things with Mr Taylor on the record as well?

16 A Judge Cottingham was -- was extremely thorough, I
17 felt, in -- in -- in addressing the plea

18 Q All right And do you recall whether Mr Taylor was
19 sworn at the plea? If you can't recall,---

20 A No I -- I can't---

21 Q ---that's fine

22 A I -- I don't recall it, but I -- I would almost bet
23 on it

24 Q Okay And did Mr Taylor admit guilt---

25 A Yes, he did

1 Q ---to the Court?

2 A (WHEREUPON, the witness nodded his head in the
3 affirmative)

4 Q All right And, again, what was the sentence?

5 A The sentence was eight (8), suspended to five (5)
6 years, with three (3) years probation

7 Q All right Are you aware of any erroneous advice
8 that you gave to Mr Taylor regarding the charges or the
9 sentence?

10 A No, other than the mistake that I clearly made in not
11 -- in not realizing what I had going on in Williamsburg
12 County---

13 Q All right

14 A ---and not advising him that this would be one strike
15 of two strikes

16 Q All right Are you aware of any active misadvice
17 that you gave to Mr Taylor on these three (3) charges?

18 A No I gave Troy a lot of advice over an extended
19 period of time I -- I'm not aware of anything that --
20 that -- that -- that -- that was wrong, but I -- I
21 certainly -- certainly couldn't say that I wasn't wrong in
22 some respects I mean, when you give as much advice as
23 you -- as I gave in this particular case, it would be more
24 likely than not to have some -- some -- something not
25 right

1 Q Well, I meant simply with---

2 A Yeah

3 Q ---with the legal---

4 A But not---

5 Q ---advice that---

6 A ---specifically, I can't Yeah Right Yeah Nay
7 Yeah

8 MS CATOE And with that, I will conclude Thank you
9 very much, sir

10 THE COURT Redirect?

11 MS SHURLING Your Honor, may I approach

12 WITNESS JOYE Sure

13 (WHEREUPON, a bench conference was held on the record
14 with Ms Shurling and the Court but without Ms Catoe, and
15 the following proceedings were had)

16 MS SHURLING I don't know how Your Honor wants to
17 handle this at this point I can tell you that we could
18 go to six (6) and not be through

19 THE COURT I think I'm going to plow forward I
20 want to see if we can't finish the testimony today

21 MS SHURLING Okay I'm going to do the very best
22 I just---

23 THE COURT Very good

24 MS SHURLING I'm letting you know with what -- with
25 how long that took I can---

1 THE COURT Yeah We probably need a record of that
2 We probably should have set aside all day for this, but
3 let's keep on going

4 MS SHURLING If -- Are -- Is Your Honor hearing
5 cases tomorrow?

6 THE COURT I am

7 MS SHURLING Maybe we could finish it -- I'm
8 supposed to do a hearing in Lexington tomorrow, but it's a
9 matter that could be continued If we could break shortly
10 before five (5 00) o'clock so -- If -- If -- Maybe we
11 could take a five-minute break now so that I could get my
12 office to check with Judge Keesley and see if that matter
13 could be continued---

14 THE COURT Well, I'm going to---

15 MS SHURLING ---or if maybe---

16 THE COURT ---move on Let's --

17 Ms Catoe?

18 MS CATOE Yes I wasn't sure if y all needed me or
19 not

20 (WHEREUPON, Ms Catoe approached bench, and the
21 conference continued as follows)

22 THE COURT All right

23 MS SHURLING Oh, I'm sorry I -- I thought you
24 heard me invite you up

25 THE COURT Yeah

1 MS CATOE I heard---

2 MS SHURLING I'm very---

3 THE COURT What we have are -- apparently is going
4 to take forever It -- How many are there tomorrow?

5 MS CATOE Unfortunately, a lot I think there's
6 five (5) Five with -- Three with Paul Archer and then
7 two -- two that have been continued several times

8 THE COURT Okay I'll take five minutes -- We're
9 going to take a five-minute recess, and then what we're
10 going to do is contemplate how we're going to handle it
11 I'm inclined to keep on going 'til we finish it

12 MS CATOE I would be, Your Honor

13 THE COURT Very good

14 MS SHURLING My only problem with that, Your Honor,
15 is that, if we do it that way, I have a case at nine-
16 thirty (9 30) in the morning in Lexington, and, if we plow
17 through, we're talking about finishing here at seven-
18 thirty (7 30) and me getting home at like ten (10 00)
19 o'clock at night---

20 THE COURT All right

21 MS SHURLING ---with preparation for a case in
22 Lexington in the morning

23 THE COURT All right

24 MS CATOE The only thing I'll say is I think that
25 was my lengthiest part of the case

1 THE COURT All right Let's -- Let's continue to
2 plow on Okay Let's plow on

3 MS SHURLING Your Honor, could we -- could we take
4 a five-minute break and let me call and just cover my
5 bases with getting the Lexington case continued so that --
6 I mean, I just don't see how I can possibly be here 'til
7 seven-thirty (7 30) and then get home at ten (10) and---

8 THE COURT All right Let's --

9 (WHEREUPON, after said bench conference had been
10 concluded, and the following proceedings were had)

11 THE COURT All right We'll stand at ease for ten
12 (10) minutes

13 MS SHURLING Let me do that, Your Honor Thank
14 you

15 (WHEREUPON, at 3 53 p m , court stood in recess, and,
16 at 4 02 p m , court reconvened, with the Applicant and
17 counsel present in the courtroom and with the witness on
18 the witness stand)

19 THE COURT Might counsel approach the bench for a
20 moment

21 MS SHURLING Your Honor might be getting a call
22 from Judge Lee

23 (WHEREUPON, a bench conference was held off the
24 record, and, after said bench conference had been
25 concluded the following proceedings were had)

1 THE COURT All right Redirect, I believe, is where
2 we're at

3 REDIRECT EXAMINATION BY MS SHURLING

4 Q Scott, you indicated that the solicitor's
5 recommendation in exchange for these pleas was a
6 recommendation of a ten-year cap?

7 A No, no, no The ten (10) years was his
8 recommendation Now, I can't honestly tell you that he
9 put it on the record, but I can tell you that -- that what
10 he was asking the judge for back in chambers was ten (10)
11 years

12 Q Okay But there was no agreement---

13 A No, ma'am

14 Q ---that your client would get a recommendation of any
15 cap in exchange for his pleas?

16 A Never -- Never a recommendation of a cap The
17 recommendation of the -- They were going to make a ten-
18 year recommendation

19 Q Okay Would you---

20 A I don't know that they did that on the record I do
21 know that that was our -- By the time that we all went out
22 to take this plea, everybody knew what we were doing
23 because I told -- told Troy that Judge Cottingham was one
24 of those old-school judges that very few left of but that
25 you can meet in chambers and you can know what was going

1 to happen, and we clearly were -- So -- So I can't tell
2 you that there was a ten-year recommendation on the
3 record I can tell you that Judge Cottingham had told us
4 that -- that -- that -- that essentially he was going to
5 get five (5) years active

6 MS SHURLING Okay Your Honor, I would direct the
7 Court's attention to page thirteen (13), lines twenty-
8 three (23) and twenty-four (24), where Mr Bryan said,
9 "The State is not making a recommendation in this case
10 He's facing fifteen (15) on each lewd act, twenty (20)
11 years for criminal sexual conduct "

12 BY MS SHURLING

13 Q So the official position, on the record, was that
14 this was a straight-up plea?

15 A And I think that was because he had talked with the
16 judge, that his recommendation was going to be ten (10)
17 years, and the judge had told him he was going to get five
18 (5) -- but eight (8) to suspended to five (5) and that --
19 And I guess solic- -- the solicitor, at that point, didn't
20 want the sentence to come back somewhat less than where he
21 was, and -- and I -- I don't know if there was going to be
22 recommenda- -- He wanted ten (10) years That -- That was
23 the -- That was the clear part of the story

24 Q Okay I am perhaps, just tired and not being
25 articulate Let me see if I can frame this question one

1 more way Did you have an agreement for any kind of quid
2 pro quo in exchange for these pleas?

3 A No None

4 Q So it was a straight-up plea?

5 A It was a straight-up plea That's correct

6 Q Okay

7 A The solicitor -- The -- But the plea was formulated
8 in chambers

9 Q But in terms of any formal concessions, any---

10 A No, ma'am

11 Q ---consideration given in exchange for the waiver of
12 the right to trial by jury, there was none?

13 A That is correct

14 Q Okay

15 A That -- That is correct

16 Q And the only case that was in immediate jeopardy of
17 going to trial four (4) days later was the one with the
18 reserve officer that was scheduled to go to trial on
19 Monday?

20 A They -- Tara, they -- they really didn't say They
21 said that one of the two lewd acts was going to go I
22 assumed that the -- the Victim 1 case was going to go
23 first---

24 Q Okay

25 A ---because---

1 Q Well, let me---

2 A -- Victim 1 -

3 Q ---redirect---

4 A ---was on -- Victim 1 was on furlough from Iraq

5 MS SHURLING Okay Madam Court Reporter, I

6 apologize You can only repeat one of us at a time I'm

7 sorry

8 BY MS SHURLING

9 Q In any event, there was no question that they could
10 not try the CSC case the following Monday?

11 A No question whatsoever I -- I assume I assume
12 that there was not going to be a grand jury on Thursday of
13 that week It -- That would be very doubtful, but I -- I
14 -- I honestly don't know

15 Q Well, and if they indicted your client on Thursday or
16 Friday, you would have a pretty darn strong case for a
17 motion for a continuance on Monday, wouldn't you?

18 A No question about it

19 Q Okay Now, on either of the lewd acts, you were
20 dealing with a charge of lewd act on a minor going back to
21 '88 or '89, depending on which one they took to trial, is
22 that correct?

23 A That is correct

24 Q So you were talking about although -- No ones argue
25 it's not inappropriate conduct, but you were talking about

1 a touching and petting kind of case between a nineteen-
2 year-old and a twelve-year-old as opposed to any overt
3 sexual battery, correct?

4 A That -- Well, no, not really In -- In -- I don't
5 know if you've had the benefit of the discovery in the

6 Victim 2 case Victim 2 in fact, even alleged that
7 there was a -- a -- that he was sodomized by Troy in Horry
8 County, and those were in his -- in -- in his written
9 statement

10 Q The charges in Georgetown---

11 A But in---

12 Q ---County---

13 A ---Georgetown County, the -- he had -- or -- said
14 that he had -- that -- that Troy had, on several
15 occasions, touched him and he had touched Troy and that
16 Troy had always come So I would assume that that wasn't
17 -- I'm trying to use a little gentler term than
18 inappropriate touching but -- but that Troy would take
19 Victim 2's hand and Victim 2 -- and grab -- take---

20 Q Okay

21 A ---and---

22 Q We don't need---

23 A I -- I---

24 Q ---the graphic---

25 A Well, I mean, I'm just trying to---

1 Q But -- But -- But there's truly no necessity for
2 this My question is, in the Georgetown County charges of
3 lewd act on a minor, we were not dealing with allegations
4 of actual sexual battery, were we?

5 A No We were talking about lewd act charges

6 Q Correct

7 A Okay Yeah No question about in---

8 Q Okay

9 A ---Georgetown County

10 Q And you were dealing with a minister of a church
11 Now, we've talked about what a double-edged sword that was
12 in 2006 But you were talking about a young minister that
13 was very highly regarded by at least, based on your
14 earlier testimony, half his church anyway, correct?

15 A I -- I think he was very much highly regarded up
16 until the time that something like this happened, and then
17 it -- it -- the allegations of it happening I'm -- And I
18 don't mean happening but that like a number of people --
19 And -- And I believe that -- I -- I believe in my own
20 heart, if someone is accused of CSC or some type of lewd
21 act with a minor, I believe you're going to split fifty-
22 fifty in what plea -- people believe regardless of the
23 facts

24 Q Sure

25 A And so that -- In terms of splitting the church, I

1 knew that there were some in the church that had -- that
2 Troy had felt were going to be strong supporters who were
3 not, and I imagine that there were some he didn't count on
4 their support and that he did have, but -- but I do know
5 some that he really thought were going to be kind of
6 faithful to him who did not

7 Q Okay

8 A Or were not

9 Q But nonetheless, back to my point Even after his
10 pulpit confessional and after much of this came to light,
11 there were still large numbers of people from the church
12 that were very supportive of Troy Taylor, is---

13 A Oh,---

14 Q ---that correct?

15 A ---absolutely And -- And extended family and, yes,
16 yes Troy -- Troy had done a tremendous job of building
17 that church I -- I think Troy had taken that church from
18 -- from a very small church to a -- to -- to a pretty --
19 pretty huge membership

20 Q Okay Did you discuss with your client the
21 possibility of pleading straight-up to just the lewd act
22 charges?

23 A We told Troy that they were prepared -- If he plead
24 on one of the lewd acts, they were going to go to trial on
25 the other one The question was what were we doing about

1 the criminal sexual conduct Told Troy that this was an
2 opportunity to wrap them all up

3 Q Right

4 A But he'd have to answer the questions He had to be
5 the one answering the questions truthfully

6 Q Did you discuss with him the option of pleading
7 guilty to both lewd acts?

8 A The option of -- But, yes, sure did

9 Q Okay

10 A Sure did

11 Q And it was decided, according to your recollection,
12 that it was better to plead to all three (3) things?

13 A Don't believe the sentence was going to change except
14 inasmuch as you would have to max out -- a -- a greater
15 max-out date

16 Q Okay

17 A Yes And the -- And -- And that was discussed

18 Q Okay And there, again, you're crystal clear on the
19 fact that you never discussed with him that the criminal
20 sexual -- that the charge in Williamsburg was a criminal
21 sexual conduct case?

22 A No, ma'am Quite crystal clear on that

23 Q Okay

24 A In fact, I was horrified when I received the
25 discovery from Williamsburg County

1 Q What we haven't addressed is whether or not you ever
2 discussed with Mr Taylor or his family the fact that the
3 criminal sexual conduct in Georgetown County would be a
4 first strike?

5 A Absolutely did not

6 Q Okay

7 A Because that's why I was horrified at the -- at the
8 Williamsburg County indictment

9 Q Okay So even independent of any knowledge about
10 Williamsburg, you're -- you're certain that there was no
11 discussion of the strike law?

12 A Not by me

13 Q Okay You mentioned, again, that your investigator
14 interviewed Mr Harrison---

15 A That's correct

16 Q ---or young -- young Master Harrison, I guess it was

17 A Well, it wasn't Master Harrison at that point He
18 was in Clemson at that time

19 Q Okay And do you have a report in your file of any
20 sort of interview with him? Did your investigator provide
21 you with written reports?

22 A No, ma'am He did not He called me -- Of course, I
23 wouldn't have wanted a written report because Harrison
24 remembered that they had played strip tag in Williamsburg
25 County, and that -- that was -- that was concerning to me

1 because I represented him at the time on the Williamsburg
2 County charge also, and it just didn't seem to me that was
3 going to be something that was going to be appropriate for
4 a church While it might have been totally innocent, it
5 wasn't something that I thought was going to be good in
6 front of a jury

7 Q Sure But your investigator confirmed, to the best
8 of your recollection, that -- that Mr Harrison had no
9 recollection of this shower incident in Georgetown?

10 A That was -- Yes And his father -- Like I spoke
11 earlier, I spoke with Randy Harrison who's Charles
12 Harrison's father in -- I believe at church We were
13 leaving church and always in an exit where -- where the
14 choir exits and kind of pulled Randy aside

15 Randy said, "Well, I'll call my son, and -- and I'll
16 try to find" -- And he said, "He doesn't have any
17 recollection of going on a beach trip with the youth
18 group, doesn't remember it one way or another "

19 Just wasn't -- When you live down here, going to the
20 beach is -- is -- is a common occurrence It's in
21 somewhat an every day or -- or -- or -- You know, my
22 children go with their -- with their church, they go with
23 their school So it -- I mean, it just is not -- Let's
24 say, if you live two hours from here, that would be a big
25 huge something you'd remember Here, it's not so much

1 Q Okay How about having any recollection of going to
2 a pastor's house to take a shower?

3 A My investigator knew all the facts and circumstances
4 It's Don Meyers Don Meyers was retired after thirty-five
5 (35) years as -- for the FBI and station chief here in
6 Myrtle Beach We had been thorough through all of these
7 cases on several occasions

8 Charles -- Troy had met with Don Mr and Ms Taylor
9 had met with Don A number of people -- And he was
10 investigating cases for me

11 I honestly can't tell you -- I can tell you that he
12 -- he had some questions for him I don't specifically
13 remember I -- I feel certain that he would -- he would
14 have done that, but I can't tell you, no, that he
15 specifically asked him "do you ever remember going to
16 Troy's house to take a shower " I -- I do not know that
17 he asked that question

18 Q Your earlier testimony was that the investigator
19 indicated that Harrison had no recollection of the events
20 alleged by Victim 3 is that accurate?

21 A No information as to the allegations of either one,
22 except for remembering and going on -- He did remember the
23 trip to Black River

24 Q Which was the Williamsburg -- the alleged
25 Williamsburg---

1 A The alleged -- alleged Williamsburg I -- I'm still
2 not clear it was Williamsburg I don't -- It -- You know,
3 the best that I ever got out of any discovery was they
4 went somewhere to Black River over around Andrews and---

5 Q I believe the Court of Appeals won't be too sure,
6 either That's still pending---

7 A Well, it---

8 Q ---on appeal

9 A And I'm being---

10 Q All right

11 A ---honest I don't -- You know

12 Q Let me ask you are you aware that Harrison was not
13 ultimately a witness in the Williamsburg County case?

14 A I -- When I was told that -- that -- that -- that I
15 was no longer wanted in the Williamsburg County case, I
16 certainly kept up with it I was mortified when Troy got
17 two consecutive life sentences, but, in terms of -- The
18 only thing I know about the Williamsburg County case is a
19 friend of mine called me and said that -- that he had a
20 lot to say about me after it was over

21 Q Okay

22 A But I don't -- I don't know it I've never read it
23 Don't -- It's -- It's not -- It's not an issue, other than
24 I really hate the fact that Troy's doing life in prison
25 I don't believe he should be

1 Q Well, and if you're like me, you have enough to read
2 without reading things for the fun of it or out of
3 curiosity, is a better way to put it

4 But anyway, let's -- let's move on for a second We
5 talked briefly about the fact that this was formerly, at
6 least, a straight-up plea I understand your position
7 about the discussion about the benefits of taking out all
8 the trash at once, so to speak, I believe was the phrase
9 you used But did you discuss with your client the fact
10 that pleading to one or possibly both of the lewd act
11 charges would give you the opportunity to further
12 investigate the more serious charge?

13 A No, I did not I mean, I -- I -- Everything that
14 Troy had pointed to -- me to at that point, regarding all
15 charges, nothing panned out to help us

16 Q Okay

17 A I would have given my eye teeth for something to---

18 Q I understand

19 A ---help us

20 Q But the answer is no, you didn't discuss that?

21 A No, I did not

22 Q And if I understood you correctly earlier, you had
23 not even seen the discovery in the Williamsburg County
24 case yet?

25 A I had not And the reason for that was because I had

1 an audiotape of what I thought the Williamsburg County
2 case was I had questions I still have questions as to
3 -- In the interview with **victim 3** for the Georgetown
4 County case, the -- **victim 3** said, "He raped me "

5 Lieutenant George Smith said, "Now, I'm not trying to
6 put words in your mouth,"---

7 Q But?

8 A ---"but I need to know -- or what you're saying you
9 -- he penetrated your anus with his penis?" And the
10 answer was "Yes "

11 After the bond hearing, I later found out -- After
12 the bond hearing in which Troy was going to get out on a
13 ten-thousand-dollar (\$10,000 00) bond, -- I think the
14 **victim 3** were very aware of that -- they immediately took
15 off to Williamsburg County, and those magic words
16 miraculously dis- -- miraculously appeared in the
17 statement then given to Williamsburg County It was a
18 verbatim of what George Smith had told him that he had to
19 say to make the allegation

20 Q Okay Did you discuss with your client the fact that
21 you would have that scenario available to you as a
22 possible tool for impeachment if he went to trial on the
23 Georgetown County sodomy case?

24 A He and I talked about it as to the Williamsburg
25 County case, but we could not speak about it as to the

1 Georgetown County case because I didn't have that tape at
2 that point That tape, I received later, after he had
3 pled in Georgetown County And, yes, we talked about the
4 fact that -- that the language of the tape was the exact
5 same that had -- George Smith had -- had steered him to in
6 the Georgetown County case

7 Q Let me interrupt you You just said something that I
8 -- I need to go back to Earlier, you said you had all
9 the discovery in Georgetown and you had reviewed it with
10 your client before the plea Now, if I hear you
11 correctly, you're saying that you didn't have the tape of
12 the Williamsburg interview until after---

13 A No

14 Q ---the plea?

15 A No I had -- There was a second interview by
16 Georgetown There was an interview -- I mean, in -- in
17 Williamsburg I'm sorry And I keep getting these two
18 mixed up I had all the discovery in the Georgetown
19 County case

20 Q Okay

21 A In that, I had a tape also talking about a lewd act
22 on a camping trip in Williamsburg

23 Q Okay

24 A After the plea, I received discovery from
25 Williamsburg, and, in the Williamsburg discovery, there

1 was a tape now going from a lewd act on this camping trip
2 to a CSC, criminal sexual conduct And now the miraculous
3 words appeared in the discovery that I received after the
4 plea in Georgetown

5 Q Gotcha But my question is, did you have the tape of
6 the interview concerning the Georgetown County
7 incident,---

8 A Oh, yes

9 Q ---the one in which the officer---

10 A Oh, yes

11 Q ---originally said, "Are you saying that?"

12 A Oh, yes

13 Q You had that tape?

14 A I had that tape

15 Q Okay

16 A And he listened to that tape

17 Q Did you discuss with your client the fact that you
18 could use the circumstances under which that allegation
19 was made in the interview process as an impeachment tool
20 if the case went to trial?

21 A Well, no, I didn't because the immediately proceeding
22 statement was "I had been raped by Troy Taylor ("

23 Q I understand

24 A So, no, I -- I -- I -- I didn't necessarily see it as
25 a great impeachment tool because I believe -- I unner -- I

1 understood the connotation of rape I -- I -- I had a
2 very visual, in my mind, of what he meant---

3 Q Sure

4 A ---by rape, and it fell completely in line with what
5 George coached him

6 Q Okay

7 A But I did have a real problem with the fact that now
8 those magic words -- And -- And George tells him, "You
9 know, you -- when -- when we talk about rape, I know what
10 you mean, but you got to tell me specifically "

11 Q Okay

12 A That -- So when he walks in to Williamsburg and gives
13 a statement, it is immediately -- It's not "I was raped "
14 It was the magic words

15 Q Let's talk about a couple of other things you
16 mentioned about the Victim 3 family You said that your
17 client had informed you that he counseled Victim 3's mother as a
18 parishioner con- -- about her marriage?

19 A That's correct

20 Q And that in the context of that counseling, he had
21 advised her that she needed to leave Victim 3's father

22 A Absolutely

23 Q And you, in fact, discovered, did you not, that she
24 did leave Victim 3's father?

25 A I don't remember that part of it, but I do certainly

1 remember it, and we talked about that that would be
2 something that you -- that could be used as a motivating
3 factor I mean, we -- we talked about it Yes

4 Q Okay And did you discuss what use you could make of
5 that in a trial if the case went to trial?

6 A Sure We -- We -- We absolutely discussed about the
7 fact that he was -- that -- that -- that he had stated
8 that ~~Victim 3's Father~~ had -- It would have been nice to have
9 substantiated it in some regards, and we tried to do that
10 because Troy said he had been picked up on a solicitation
11 of prostitution charge, that he believed he had been
12 picked up on a---

13 Q How about -- Pardon me

14 A I'm sorry

15 Q How about interviewing ~~Victim 3's mother~~ Did you talk to
16 her?

17 A No We -- We did not interview ~~Victim 3's mother~~ I think
18 it's clear we had a lot of discussions about all the
19 cases, but the primary focus and the thrust of where we
20 were was the two lewd acts

21 Q Okay

22 A And that's why I was very clear in saying, "Hey,
23 these are questions you have to answer, and you have to
24 answer truthfully, these are the questions you have to
25 answer " I---

1 Q Is it fair to say, however, that on the day of the
2 plea, the tenor of your conversations with your client was
3 "this is a chance to sort of take care of three for the
4 price of one"?

5 A Yes I -- I true -- I truly believe -- I -- In fact,
6 the sentence that he got on those charges -- He -- If
7 we're going to have to take a plea, I couldn't have hoped
8 for a better sentence

9 Q Okay Now, when you are talking to a client about a
10 possible plea -- Well, let's go back to your earlier
11 testimony You said that originally your client said he
12 wouldn't plea anywhere, including Georgetown, right?

13 A That's correct That -- That was the tenor of
14 immediately -- immediately after the two lewd act charges
15 came about It was always difficult because he never
16 jumped up and down and said "I didn't do it "

17 Q Okay

18 A It was always, "Well, maybe I might have put my hand
19 somewhere inappropriate in my sleep" or some
20 explanation,---

21 Q I understand

22 A ---not---

23 Q But my question is, initially, your client indicated
24 he wanted a trial in Georgetown?

25 A Absolutely

1 Q And eventually he came around to accepting the idea
2 of entering a plea?

3 A As things came in and the final -- the disk that's
4 right there which is a copy of the -- the taped
5 conversation, yes

6 Q And---

7 A Yes

8 Q And the great weight of all of the evidence that you
9 have talked about at length today that was so damning was
10 going to those two lewd acts?

11 A Oh, I -- I don't think there's any question about
12 that

13 Q Okay Now, let me -- I'm -- I'm trying to break this
14 down so we can not quite take quite so long Did you even
15 explore the possibility of a cross-county plea with
16 Williamsburg?

17 A No, I did not That was -- That was something that
18 he was adamant about, and we didn't explore the
19 possibility of a cross-county deal I certainly explored
20 the -- the -- the cross-county kind of deal after the
21 fact, but that doesn't get you anywhere in terms of the---

22 Q Sure

23 A ---the Georgetown County

24 Q Let's go back---

25 A And I truthfully believe that I could have gotten him

1 a sentence that matched and fell in line with what he got
2 in Georgetown

3 Q But you never did?

4 A No Had he told me that he -- that he would of --
5 that he would take it, I would have gone and done
6 everything I could in my power to get it, and I -- and
7 I---

8 Q You believe you could have gotten it?

9 A I certainly believe I could have gotten it

10 Q But you don't have anything---

11 A No, ma'am No, ma'am

12 Q ---to prove that

13 A I wouldn't because -- because you don't go ask for
14 that kind of sentence if somebody's not going to take it,
15 and the clear implication was he was not -- he -- he --
16 that the best he would do was think about it And at that
17 point in time, he was already saying that he was going to
18 PCR me on the Georgetown County thing

19 Q Okay Now, let's -- let's go back briefly to the
20 Victim 3 case with the shower in Georgetown Have you
21 had cases where you got discovery materials from the
22 solicitor and, as you were going through them, you spot
23 something that you say "what's this and what's this --
24 what is this in here for"? Have you ever had that happen?

25 A Yeah

1 Q Okay And -- And do you, on occasion, talk to the
2 assigned solicitor in the case and say "I don't understand
3 the relevance of some particular item that's in the
4 discovery materials"?

5 A Sure Sure I've done that on occasion

6 Q Okay Did you ask the Solicitor's Office why the
7 particular church bulletin from the August outing was in
8 the discovery materials? Do you have any---

9 A No

10 Q ---recollection of doing that?

11 A No I didn't -- didn't ask about the November one
12 either

13 Q Okay And do you recall telling anyone connected
14 with this case that the solicitor had finally yielded and
15 told you that the bulletin was there to establish the time
16 line of the Victim's assault?

17 A I cannot tell you -- I -- I absolutely have no memory
18 of it

19 Q Okay That's a fair answer Did you go to the
20 church and look around?

21 A No, I didn't

22 Q Did you ask anybody how many showers they had the
23 summer of 1999?

24 A No Didn't -- Didn't ask that either

25 Q Did you talk to any of the other young people that

1 were in the youth group that summer to ask them if they
2 could recall any beach outings where the young people had
3 gone back to the church to shower?

4 A Troy -- That -- I never had any names of who might
5 have been on this outing, except that Charles Harrison --
6 The -- Troy didn't have any recollection of it -- any
7 outing He told me that -- that he didn't remember any
8 ever being -- attending any outing

9 Q But my -- my question is---

10 A No, we didn't in- -- No No

11 Q Troy had taken the membership in this church up
12 substantially, but, nonetheless, it was still a relatively
13 small church, wasn't it?

14 A I think Troy told me about twelve hundred (1200)
15 members or something I -- I -- I mean, I---

16 Q Okay

17 A I don't know I -- I don't You know, as best I can
18 remember But -- But, no And -- And I'm gone -- I'm
19 going to continue to say this I made a mistake in this
20 case The mistake is I didn't tell him about second
21 strike The second -- The -- The mistake is I certainly
22 did not know because I was so mad on Thanksgiving that I
23 had time taken away from my family, but I didn't think
24 about that I thought about Troy and his family, and I
25 went to -- to Williamsburg and got him out on Thanksgiving

1 day, and I was furious

2 I called the sheriff over there I sold the sheriff
3 the land that he lives in his house in, and I said,
4 "Sheriff, cut him loose the only people's -- you're --
5 you're ruining my Thanksgiving, you're ruining this
6 family's Thanksgiving, we will come back on Friday "

7 Q Sure

8 A I didn't pay attention I grabbed the warrant I
9 turned it over to -- to my staff I certainly will never
10 make that mistake again I used to work -- clerk for
11 Sydney Floyd Judge Floyd said, "You never learn by what
12 you did right, its what you did wrong "

13 MS SHURLING I'll say amen to that one, and no
14 further questions

15 THE COURT All right Very good All right You
16 may step down

17 (WHEREUPON, the witness was excused from the witness
18 stand)

19 THE COURT All right You may call your next
20 witness

21 MS SHURLING May I have a moment, Your Honor

22 THE COURT Certainly

23 (WHEREUPON, Ms Shurling conferred with the Applicant
24 and other witnesses)

25 MS SHURLING Your Honor, it had been my intent to

1 call to the stand numerous people who were present during
2 consultations between Mr Taylor and his attorney
3 concerning this matter, each of whom was prepared to
4 testify to certain aspects of the case that I think are
5 sort of no longer necessary in light of some of Mr Joye's
6 testimony

7 In retrospect, I do have to call the mother, though
8 I called Linda Taylor, Your Honor

9 THE COURT All right Ms Taylor, please come
10 forward

11 MS SHURLING The testimony should be somewhat
12 briefer than---

13 THE COURT Very good

14 MS SHURLING ---earlier feared for that reason,
15 Your Honor

16 THE COURT You got plenty of time We'll -- Just
17 take your time We'll -- We'll hear it all

18 Ms Taylor, place your left hand on the Bible and
19 raise your right hand as the clerk administers the oath

20 LINDA WELLS TAYLOR, being
21 first duly sworn, testified as follows

22 DEPUTY CLERK LILLY Please have a seat

23 THE COURT Ms Taylor, watch your step as you come
24 around I'm going to ask you to have a seat in the
25 witness chair Pull up real close to that microphone

Linda Wells Taylor - Direct by Ms Shurling

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1 Speak loudly, clearly, and slowly in order that we can
2 hear everything that you've got to say Thank you, Ms
3 Taylor

4 WITNESS L TAYLOR Okay

5 THE COURT State your full name, please, ma'am

6 WITNESS L TAYLOR Linda Wells Taylor

7 THE COURT Thank you

8 DIRECT EXAMINATION BY MS SHURLING

9 Q Ms Taylor, you, I believe, heard me say earlier that
10 you're my client's -- Troy Taylor's mom That's correct,
11 right?

12 A Correct

13 Q Did you hire Mr Joye to represent your son?

14 A We did

15 Q Okay And were you present during some of Mr Joye's
16 interviews with your son?

17 A Some of them

18 Q Did you attempt, along with your husband and your
19 son, to determine the date that Victim 3 was alleging
20 the shower incident had occurred at the church?

21 A We did

22 Q And were you ever, prior to the time of the plea,
23 given any answer with regard to a time period that this
24 was alleged to have occurred?

25 A No Only on the -- the June -- part of it says June

1 to July One---

2 Q The time period that was alleged in the arrest
3 warrant?

4 A Right

5 Q There was never anything more definitive given to
6 you, either you or your husband, that you're aware of?

7 A Right

8 Q On the day of the plea, did you, for the first time,
9 become aware exactly when Victim 3 was alleging this to
10 have occurred?

11 A Yes It was changed to August August, what?
12 Fourth, fifth, sixth, I think

13 Q And how did that information come to your attention?

14 A It was on a -- It was on a church bulletin that --
15 And we saw that And then it was, you know, on the papers
16 that Troy got later

17 Q Okay

18 A And we saw it -- that---

19 Q Now, when you say it was on a church bulletin, who
20 brought that church bulletin to your attention?

21 A Oh, gosh Let me think (Pause) I cannot remember
22 right now, but I believe it was Troy that showed it to us
23 I am not sure

24 Q So someone brought it to your attention that there
25 was a church bulletin in the discovery material covering

1 that August 4th, 5th, 6th time period?

2 A Right

3 Q Okay And did you subsequently discuss, with Mr
4 Joye, whether or not that was the operative date of what
5 Victim3 was alleging?

6 A That was discussed aft- -- right before we started to
7 go in You know, it was so -- Everything was so hectic
8 and just like 'chaotic to us because we'd never been in a
9 position like this, and we did not realize what date they
10 were saying that he did this All of a sudden it was one
11 day, we thought, and then it's another one

12 Q Okay I'm going to get after you just like Mr Joye
13 Try to answer my specific---

14 A Oh

15 Q ---question

16 A Okay

17 Q Did Mr Joye confirm that the dates on that church
18 bulletin were when Victim2 - I mean, pardon me Victim3
19 was now saying the assault occurred?

20 A If he did, I do not remember it

21 Q Thank you Do you --

22 MS SHURLING Your Honor, based on the fact that Mr
23 Joye has -- has quite---

24 THE COURT Do we know that that's what the bulletins
25 were in there for? I don't think anybody's established

1 that, have they?

2 MS SHURLING Your Honor, it was my understanding
3 from previous interviews---

4 THE COURT But it hadn't been testified to in here,
5 has it?

6 MS SHURLING And it was my understanding that the
7 church bulletin had been explained to them as being into
8 -- in the discovery materials for that purpose I will
9 rest with this particular witness at this time and move on
10 to another

11 THE COURT Very good All right Cross-
12 examination

13 MS CATOE Yes, Your Honor And I think Your Honor
14 asked it for me

15 CROSS-EXAMINATION BY MS CATOE

16 Q But, Ms Taylor, are you aware of how the church
17 bulletin entered into this case?

18 A It was entered in as discovery, is what we were told

19 Q Okay But you don't -- you don't know where it --
20 where it came from?

21 A No, I don't

22 MS CATOE Thank you, ma'am No further questions

23 THE COURT Redirect?

24 MS SHURLING None, Your Honor And may I have a
25 moment's indulgence?

1 THE COURT Certainly

2 (WHEREUPON, Ms Shurling conferred with another
3 witness, and Witness L Taylor stepped out of witness
4 stand)

5 MS SHURLING Your Honor, I would call Tony Taylor
6 to the stand

7 THE COURT Mr Taylor, please come forward, if you
8 could, please, sir I'm going to ask you, if you could,
9 to place your left hand on the Bible and raise your right
10 hand as the clerk administers the oath

11 ANTHONY "TONY" TAYLOR, being
12 first duly sworn, testified as follows

13 DEPUTY CLERK LILLY Please be seated

14 THE COURT Mr Taylor, watch your step as you come
15 around Have a seat in the witness chair, and speak
16 loudly, clearly, and slowly Pull up real close to that
17 microphone I'm going to ask you to state your full name,
18 please, sir

19 WITNESS A TAYLOR Anthony Taylor

20 THE COURT Thank you, Mr Taylor

21 CROSS-EXAMINATION BY MS SHURLING

22 Q Mr Taylor, you are Robert Troy Taylor's father?

23 A Yes, ma'am

24 Q On the day of your son's plea, back in April of 2006,
25 did you know what date Victim 3 was alleging the

1 incident at the church to have occurred?

2 A Yes, ma'am We had just found out

3 Q Okay Now, when you say you just found out, tell us
4 when and under what circumstances you were able to find
5 out for the first time what the date -- what date the act
6 was alleged to have occurred

7 A We had a meeting with Scott Joye, and we were
8 discussing some aspects of the case And he, at that time
9 -- As -- As he stated a while ago, he still thought that
10 it was a lewd act against Victim 3 And Troy point out
11 to him -- He says, "No, it's not that "

12 And he says, "Yeah, that -- that's not what it is "

13 And Troy says, "No "

14 So he got his copy out and looked at it, and sure
15 enough it wasn't So at that point, my -- the way I
16 remember it, he contacted the -- the solicitor to make
17 sure that we had everything and to get the rest of the
18 discovery

19 And when we met with him the next time, he told us
20 that -- that the dates had been changed and that it was
21 the 4th, 5th, and 6th, I believe, or the 5th, 6th, and
22 7th, whichever it was, and it -- that was the same dates
23 that were in the bulletin And that's when Jan 3 had
24 accused -- That's the dates that he was accused -- Troy
25 was accused of molesting him

1 Q Okay Now, that second meeting with Scott Joye, was
2 that the day of the plea?

3 A I -- I am not sure

4 Q Was it long before the plea?

5 A No, ma'am It would have been the day of the plea or
6 the -- We had two meetings in the -- in the courtroom

7 Q Okay

8 A One of them was, I think, on Monday, and one was on
9 Thursday I think they'd had a death and what have you
10 It was one of those two dates

11 Q Mr Taylor, what -- you're retired now, aren't you?

12 A Disabled Yes, ma'am

13 Q Okay And before you were involuntarily retired,
14 shall we say, what was your line of work?

15 A I -- I was a electrician, but, for a good while
16 there, I was just doing a lot of stuff around the church

17 Q And did you, at one point, in fact, install some
18 showers at this church?

19 A Yes, ma'am, I did I -- I installed those showers in
20 1998 There was a youth group that was -- discussed
21 coming down and staying at the church for a while, and
22 they were going to sleep in the church and needed a place
23 to shower So we put a hot water heater in, and we
24 installed four (4) showers out in the back I did And
25 that was in 1998

1 Q Okay And out in the back, you mean they were
2 outdoor showers with---

3 A Yes, ma'am

4 Q ---stalls?

5 A Yes, ma'am

6 Q Okay And I bet the Judge is wondering where I'm
7 going with this now But did those showers continue
8 working?

9 A No, ma'am

10 Q What happened to them between '98 and '99?

11 A We had a tremendous freeze, and it was one of the
12 coldest winters we'd had for a while, and those showers
13 froze up

14 And in 1999, March the 16th, I had open-heart
15 surgery, and I didn't get those -- I -- I attempted to fix
16 those showers I didn't get them good because they
17 leaked, and we cut their valves off, and those showers
18 were not used

19 Q Okay So after the winter of '99, before the
20 summer,---

21 A Right Before the summer

22 Q ---those showers were completely inoperable?

23 A Yes, ma'am

24 Q The valves were, in fact, cut off---

25 A Yes, ma'am

1 Q ---so they could not be used?

2 A The ones outside were froze up, and they leaked I
3 had to cut the valves on the inside off, and they weren't
4 used again

5 Q Okay So the values were cut off in order to stop
6 them from leaking perpetually outside?

7 A Yes, ma'am

8 Q Okay When Mr Joye mentioned to you that they'd
9 narrowed down the date that this Victim 3 incident
10 supposedly occurred, did it occur to you at that time that
11 the information you're telling us today about the showers
12 was inconsistent with what young Victim 3 was claiming?

13 A No, ma'am I was so confused that day We had never
14 been through anything like this before I couldn't have
15 told you my name, probably We were very confused

16 And then as we started researching this stuff and
17 going over it and studying the testimonies, we found a
18 tremendous amount of stuff, and that was one of the things
19 that we found, that those showers weren't operating

20 Q Now, back in August of 1999 when this church bulletin
21 was put out, there is a reference to the World Changers
22 Youth Missionary Group Retreat dated August 5th, 6th, and
23 7th---

24 A Yes, ma'am

25 Q ---in this bulletin?

1 A Yes, ma'am

2 Q Okay Do you have any specific recollections of any
3 activity that the men in the church engaged in on the same
4 weekend that the kids went to this retreat?

5 A Yes, ma'am

6 Q And what would that be?

7 A We decided since that was a date that's set aside
8 that we should do something good for -- the men should
9 work, too We had a young lady in the church whose house
10 was leaking, the floor was rotten out, and so a group of
11 us went over Now, I didn't do anything physically I --
12 They wouldn't even let me pick up a piece of paneling or
13 anything But I was there I was going to have my
14 presence And there was about nine (9) or ten (10) of us
15 there

16 Q Now, I believe the lady's name is Pat something, is
17 that right?

18 A No, ma'am Kim

19 Q Kim I'm sorry

20 A Kim Cook

21 Q And I thought I remembered

22 A No

23 Q I'm sorry

24 A Her name was Kim Cook, and---

25 Q Is she here today?

1 A Yes, ma'am, she is

2 Q Okay And the men in the church went to her house
3 and did what?

4 A We went to her house, and we replaced a lot of the
5 roof We repair -- put new siding around the house We
6 replaced the floor We replaced the ceiling in the back
7 We worked for three days from early morning 'til very late
8 in the evening

9 And there was Drexel Mixon, Troy Taylor, myself,
10 Shane Gray, Tom Gibson and I know a couple of others
11 One of them has past away, a -- a Henry Cross He's past
12 away And Rod Cross We hadn't been able to contact him
13 But---

14 Q The ones that you've mentioned that are still with us
15 in this world, are they present in the courtroom?

16 A Most of them are Yes, ma'am

17 Q Okay And you as a group worked, you said, 'til
18 (sic) early in the morning 'til late at night?

19 A Late -- Very late in the afternoon It was---

20 Q Late in---

21 A ---almost dark

22 Q ---the afternoon? Can you tell the earliest you
23 recall finishing up on those three (3) days?

24 A It was -- It was very rainy, and we worked through
25 the rain So I believe probably seven (7 00) o'clock

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1 because there was times we had to sit in the trucks and
2 get out of the rain To finish the job, we -- we usually
3 worked to about seven (7) or -- or maybe even later

4 Q Was it raining all three (3) days?

5 A I think it was maybe just rainy just a couple of days
6 or misty or what have you It was not real heavy, and --
7 But we decided to do this because of the World Changers
8 The -- The youth were cleaning yards They were doing
9 things around the house for the elderly people And the
10 -- the gentlemen in the church felt like that there was --
11 the ones that could go, that was something for them to do

12 Q Okay I'm not going to dwell on this because Mr
13 Joye's been very generous in his testimony But did you
14 ever take part in any conversation in which you were aware
15 that your son was accused of criminal sexual conduct in
16 Williamsburg County?

17 A No, ma'am

18 Q Before this plea? Pardon me At any time before
19 this plea, did you realize your son was charged with
20 criminal sexual conduct in Williamsburg?

21 A No, ma'am I don't think we understood it that way
22 You'll have to -- As we discussed it most of the time, it
23 was just a lewd act

24 MS SHURLING Okay Thank you No further
25 questions

1 WITNESS A TAYLOR Yes, ma'am

2 THE COURT All right You need -- You need to---

3 MS SHURLING Oh You have to---

4 THE COURT You need to stay---

5 MS SHURLING ---answer her questions

6 THE COURT ---there just one second, Mr Taylor

7 MS CATOE No questions, Your Honor

8 THE COURT All right You may step down, Mr

9 Taylor

10 (WHEREUPON, the witness was excused from the witness
11 stand)

12 MS SHURLING I don't blame you for wanting to bolt,
13 but you can't

14 All right At this time, I would call, Your Honor,
15 Kim Cook to the stand

16 THE COURT Ms Cook, please come forward

17 (WHEREUPON, Ms Catoe and Ms Shurling conferred)

18 MS SHURLING Ms Cook, if you can, wait one moment,
19 please

20 Your Honor, I have a number of affidavits from men in
21 the church who took part in this event with Ms Cook's
22 residence, from Ms Cook and others And Counsel for the
23 Respondent has just agreed to stipulate to those
24 affidavits and not object to their introduction into
25 evidence

1 MS CATOE That that would be their testimony if
2 they---

3 THE COURT Very good

4 MS CATOE ---if they testified

5 THE COURT And, of course, I will accept that
6 stipulation, and, if we could, gather those affidavits
7 together sometime before the conclusion of the hearing,
8 and I want for us to have a good clear understanding that
9 for the ones that are going to be stipulated to we'll make
10 it a part of the record We can do that now, or we can do
11 it at the conclusion of the hearing

12 MS SHURLING If -- If we could take a five-minute
13 recess and do that, I think there's -- it would be
14 appropriate to do it in---

15 THE COURT All right

16 MS SHURLING ---this order, Your Honor

17 THE COURT I think that would more -- more of an
18 expedited way to do it, however, if you want to take live
19 testimony, we're in a position to do that

20 MS SHURLING Your Honor, trusting that you will
21 give equal weight to the content of their affidavits, I
22 see no reason to burden the Court with their live
23 testimony

24 THE COURT Very good All right We'll -- We'll
25 stand at ease for five (5) minutes

1 (WHEREUPON, at 4 53 p m , court stood in recess, and,
2 at 5 07 p m , court reconvened, with the Applicant and
3 counsel present in the courtroom)

4 MS SHURLING Your Honor, my thanks to Counsel for
5 the Respondent She's helped us significantly streamline
6 our -- the case We've been able to cut the list down
7 significantly

8 At this time, I would call Shane Gray for a moment,
9 Your Honor, and ask that he -- He doesn't really need to
10 go any further than the podium and be sworn I have
11 the---

12 THE COURT All right Mr Gray,---

13 MS SHURLING ---statements---

14 THE COURT ---please come---

15 MS SHURLING ---for him---

16 THE COURT ---forward I'm going to ask, if you
17 could, to come over here and place your left hand on the
18 Bible and raise your right hand as the Clerk administers
19 the oath

20 SHANE GRAY, being first duly
21 sworn, testified as follows

22 THE COURT Mr Gray, you stand right where you are,
23 and state your full name

24 WITNESS GRAY Shane Christian Gray

25 THE COURT All right

1 DIRECT EXAMINATION BY MS SHURLING

2 Q (While handing document) Mr Gray, would you identify
3 this for me, please

4 A (Looked at document) Yes That's what I wrote up
5 and sent to you

6 Q Okay

7 A Well, my wife typed it 'cause I can't spell

8 Q And you sent it directly to my law firm?

9 A Yes, ma'am

10 Q And is that your signature?

11 A Yes, ma'am

12 Q Okay Now, unlike some of the others, that's not
13 notarized?

14 A No

15 Q So the Judge has just sworn you here today Do you
16 swear that the matter contained in that statement is the
17 truth, the whole truth, and nothing but the truth---

18 A Yes, ma'am

19 Q ---so help you God?

20 A Yes, ma'am

21 MS SHURLING Okay Thank you

22 WITNESS GRAY You're welcome

23 MS SHURLING Your Honor, I would move to introduce
24 this as an Applicant's exhibit I believe we're on Number

25 2

1 THE COURT Very good Any objection from the State?

2 MS CATOE No, Your Honor

3 (WHEREUPON, Affidavit of Shane C Gray marked and
4 admitted into evidence as Applicant's Exhibit Number 2,
5 without objection)

6 THE COURT All right You may resume your seat
7 Thank you

8 (WHEREUPON, the witness was excused from testifying
9 further)

10 MS SHURLING Your Honor, at this time, I would
11 introduce as Applicant's 3 an affidavit of Thomas W
12 Gibson, Jr , dated 11-4-08

13 THE COURT That's Applicant's Number 3, is that
14 right?

15 MS SHURLING Correct, Your Honor

16 THE COURT Applicant's Number 3 is stipulated by the
17 State and Defense -- Petitioner

18 (WHEREUPON, Affidavit of Thomas W Gibson, Jr ,
19 marked and admitted into evidence as Applicant's Exhibit
20 Number 3, without objection)

21 MS SHURLING Applicant's Number 4, Your Honor, will
22 be an affidavit dated April 12th, '07, executed by
23 Kimberly Cook who is the woman whose home was worked on
24 that was being discussed by the last witness

25 (WHEREUPON, Affidavit of Kimberly Cook marked and

1 admitted into evidence as Applicant's Exhibit Number 4,
2 without objection)

3 MS SHURLING Your Honor, the next affidavit is
4 dated March 23rd, '07, and is an affidavit of J Gary
5 Wells I'd like marked as Applicant's 5

6 THE COURT Applicant's 5 is stipulated to by the
7 parties Is that correct, Ms Catoe

8 MS CATOE It is, Your Honor

9 (WHEREUPON, Affidavit of J Gary Wells marked and
10 admitted into evidence as Applicant's Exhibit Number 5,
11 without objection)

12 MS SHURLING Your Honor, we also have an affidavit
13 from Linda Taylor that will be Applicant's 6

14 THE COURT Ms Catoe?

15 MS CATOE No objection, Your Honor, even though
16 she's already testified That's fine

17 THE COURT Okay

18 (WHEREUPON, Affidavit of Linda Taylor marked and
19 admitted into evidence as Applicant's Exhibit Number 6,
20 without objection)

21 MS SHURLING And the last -- My apologies, Madam
22 Court Reporter I persist in thinking they can do two
23 things at one time I don't know why

24 THE COURT She'll straighten you out -

25 MS SHURLING The last affidavit, Your Honor, would

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1 be that of Michelle Gallagher, and it is dated April 12th
2 of '07

3 (WHEREUPON, Affidavit of Michelle Gallagher marked
4 and admitted into evidence as Applicant's Exhibit Number
5 7, without objection)

6 MS SHURLING Thank you

7 Your Honor, at this time, I would call Drexel Mison
8 to the stand

9 THE COURT Mr Mison, please come forward and place
10 your left hand on the Bible and raise your right hand as
11 the clerk administers the oath

12 DREXEL RANDOLPH MIXON, being
13 first duly sworn, testified as follows

14 DEPUTY CLERK LILLY Please be seated

15 THE COURT Watch your step Pull up real close to
16 that microphone Speak loudly, clearly, and slowly I'm
17 going to ask, if you could, to state your full name

18 WITNESS MIXON Drexel Randolph Mison

19 THE COURT Very good Ms Shurling?

20 MS SHURLING Thank you

21 DIRECT EXAMINATION BY MS SHURLING

22 Q Mr Mison, were you a member of Pastor Taylor's
23 church back during the time period when these allegations
24 were made?

25 A Yes, I was

1 Q And were you a member of the church back in 1999 when
2 -- during the time period, the summer of 1999, when victim³
3 _ alleged that he was assaulted at the church?

4 A Yes, I was

5 Q Do you recall an event in August of 1999 when the men
6 of the church took part in a mission, if you will, to help
7 upgrade the home of Ms Kimberly Cook?

8 A Yes, I do I was present for all three (3) days

9 Q What were the hours that the men of the church worked
10 those three (3) days in August, 1999?

11 A I got there about seven (7) and left sometimes around
12 seven (7), some as late as eight (8 00) o'clock

13 Q Okay And was Troy Taylor present the entire time on
14 all three (3) days?

15 A Yes And I got onto him because he couldn't work too
16 good

17 Q And why couldn't he work too good?

18 A 'Cause he's a preacher

19 Q Okay Do you have any recollection of him leaving
20 for any period of time during the day on any of those
21 three (3) days?

22 A No No recollection at all

23 Q Okay Who rode with whom to Ms Cook's house? Do
24 you remember that?

25 A No, I do not remember that I believe everybody

1 drove different vehicles

2 Q Okay

3 A Just to go there and arrive at the -- pretty much the
4 same time

5 Q Okay What do you do for a living?

6 A I'm in the construction industry

7 Q All right Were you familiar with the physical
8 layout of this church at the time of the alleged incident
9 in August, 1999?

10 A Absolutely

11 Q Did you hear Mr Anthony Taylor's testimony that the
12 showers that had been installed the previous year were not
13 operational the summer of 1999?

14 A That is correct

15 Q And is that true---

16 A That is---

17 Q ---to the best of---

18 A ---one hundred (100%)---

19 Q ---your---

20 A ---per cent true

21 Q Okay Please remember, as we're going through this
22 process, that that nice lady by you has got to write down
23 every word we say And I'm the guiltiest person in this
24 room about talking over people I try not to, but she --
25 she really has a hard job when we talk over each other

1 A Okay

2 Q So try to let me finish questions, and I'll let you
3 finish answers Okay?

4 A (WHEREUPON, the witness nodded his head in the
5 affirmative)

6 Q Okay So you can verify that that is, in fact, true?

7 A Yes, ma'am

8 Q Okay Now, were you present during any of the
9 interviews between Mr Taylor and his lawyer?

10 A Yes, I was

11 Q How did that happen?

12 A Troy and Linda Taylor had asked me to be present in
13 the meeting they were having in the -- I call it the ante-
14 room on the side of the courtroom -- courtroom there
15 They said, "Would you please come back here and listen to
16 what's going on?" And so I went back there and listened,
17 and I remember very vivid -- vividly what happened

18 Q That was the day of the plea?

19 A The day of the pleas

20 Q And can you tell us what you recall?

21 A What I recall was it was very hectic as they have
22 spoken and that Mr Joye -- (While indicating) I don't
23 know this gentleman's name But both of them were
24 present, and Mr Joye brought a piece of paper in for Troy
25 to sign And -- And exactly what Troy said, he said,

1 "What does this mean for me?"

2 And -- And the man told him point blank He said,

3 "This has no bad effect on the Williamsburg case "

4 I remember that vividly I even wrote it down on
5 paper

6 Q Okay

7 A And -- And he told Troy that

8 Q And when you say he gave him something to sign, do
9 you recall what it was that he was signing?

10 A No, I do not

11 Q Do you remember the discussion about waiving grand
12 jury presentment on the CSC charge?

13 A Do not remember that ever taking place

14 Q Okay Thank you Is there anything else?

15 A I'd spoke with Mr Joye's investigator on three (3)
16 separate occasions Gave him vivid information Gave him
17 stuff that he needed to know And if it ever reached him,
18 I do not know

19 Q Okay

20 A The camping trip, my stepson Nicholas, he was on that
21 trip And I asked him point blank I said, "Was Troy
22 there? Did this take place? Do you remember Troy ever
23 being there?" And he -- And I've been trying to find
24 Nick He's been in college

25 But he said, "Troy never took place in that camping

1 trip, and I will testify to that "

2 As far as any beach trips, I have no recollection
3 with any beach trips Every Sunday, the fourth Sunday of
4 the month, the church went to the beach We had a get-
5 together and had lunch, and that's pretty much about it

6 Q Okay

7 A Also Victim 2 came---

8 Q But your stepson---

9 A Uh-huh

10 Q ---was on the camping trip,---

11 A He was on---

12 Q ---but he's---

13 A ---that camping trip That's correct

14 Q And he told you that Troy Taylor was not present?

15 A He was not present at that trip

16 Q And did you share that information with---

17 A With the investigator

18 Q ---Mr Scott Joye? Oh With his investigator?

19 A Yes

20 THE COURT Now, is this the camping trip in
21 Williamsburg---

22 WITNESS MIXON That's correct

23 THE COURT ---County he was on

24 WITNESS MIXON That's correct

25 MS SHURLING That's what --

1 BY MS SHURLING

2 Q All right Is there anything else that you wanted to
3 share with the Court?

4 A Well, Victim 2 came to me You have to
5 understand---

6 Q Let me back up for just a second

7 MS SHURLING Your Honor, just this has gotten
8 terribly confusing for everybody But Victim 2 is
9 one of the two people alleging lewd acts in Georgetown
10 County

11 BY MS SHURLING

12 Q Please continue

13 A Okay This is the information I give the
14 investigator Victim 2 approached me I don't
15 remember exactly what year it was But Troy had kicked
16 Victim 2 out of the Praise of Worshipping For what
17 reason, I do not know Victim 2 came to me and told me
18 this, and he said, "I'm going to fix Troy for this " And
19 that was his response to me

20 And I approached Troy about it in his office And I
21 said, "What is going on?"

22 And Troy -- And Troy told me He said, "He was
23 caught doing drugs And that's the reason why I had him
24 removed "

25 And I said, "Troy, you're surrounding your self with

1 bad people in this church "

2 So as far as a division going on, yes, I do believe
3 that was taking place

4 MS SHURLING Okay No further questions Thank
5 you

6 THE COURT Ms Shurling, of course, this is nonjury
7 setting I'm simply going to ask you -- You asked him
8 about the fact that this young man didn't go to
9 Williamsburg County That -- Well, did he testify to that
10 in the Williamsburg County case? I mean, why is that
11 relevant with what we're talking about here?

12 MS SHURLING Your Honor, Mr. Mixon had come forward
13 to me and been adamant about his desire to present
14 testimony here today, and I was unclear as to exactly what
15 it was that he felt would be beneficial I thought I had
16 narrowed it down to matters that involved Georgetown
17 County I was evidently mistaken,---

18 THE COURT Okay And I---

19 MS SHURLING ---and I apologize---

20 THE COURT I thought I was---

21 MS SHURLING ---for wasting the---

22 THE COURT ---missing---

23 MS SHURLING ---Court's---

24 THE COURT ---I -- I was missing something

25 MS SHURLING No, sir You were---

1 THE COURT I was -- I was trying to figure out

2 MS SHURLING You were not I -- I was, perhaps,
3 not as clear as I wish I'd been with Mr Mixon, that we
4 needed to limit our inquiry---

5 THE COURT Okay

6 MS SHURLING ---more to the Georgetown County
7 incident

8 THE COURT All right

9 MS SHURLING Thank you

10 EXAMINATION BY THE COURT

11 Q Mr Mixon, did you or your stepson testify in the
12 Williamsburg County case?

13 A No, sir We never were asked to testify

14 THE COURT Well, that's for a different matter A
15 different matter for a different day Very good

16 All right Cross-examination?

17 MS CATOE Very briefly, Your Honor May it please
18 the Court?

19 CROSS-EXAMINATION BY MS CATOE

20 Q Mr Mixon, you said you -- you were familiar with the
21 showers at the church?

22 A Yes, ma'am

23 Q What was the date that they were -- that they -- they
24 were rendered inoperable?

25 A What date?

1 Q Do you know? Yes

2 A I was just showed on a Sunday morning that these
3 showers were not working 'cause that was showed to me

4 Q Okay Do you have---

5 A 'Cause we did put---

6 Q ---any idea---

7 A ---them -- We did put those in there for a youth
8 group coming down that was sleeping in the church

9 Q Okay But you don't have---

10 A And they asked what my opinion was, and I told---

11 Q I'm just -- I'm looking for the date that they
12 became---

13 A I---

14 THE COURT One at a -- One at a time Let's
15 everybody slow up

16 MS CATOE Okay

17 THE COURT You start with a question, and you answer
18 it Wait -- You wait until he -- he finishes before you
19 ask about one Very good

20 MS CATOE Yes, sir, Your Honor Thank---

21 WITNESS MIXON I don't---

22 MS CATOE ---you

23 WITNESS MIXON As far as a date, I don't have an
24 exact date

25 MS CATOE Okay I was just checking

1 WITNESS MIXON Okay

2 MS CATOE Thank you

3 THE COURT Very good

4 MS SHURLING Briefly, Your Honor

5 THE COURT Redirect

6 REDIRECT EXAMINATION BY MS SHURLING

7 Q Do you recall that they became inoperable immediately
8 following the winter season?

9 A Oh, absolutely

10 MS SHURLING Thank you No further questions

11 THE COURT You may step down

12 WITNESS MIXON Thank you

13 (WHEREUPON, the witness was excused from the witness
14 stand)

15 MS SHURLING Your Honor, I would call Trevor
16 Morton

17 THE COURT All right Mr Morton, please come
18 forward Place your left hand on the Bible and raise your
19 right hand as the clerk administers the oath

20 CHRISTIAN TREVOR MORTON,
21 being first duly sworn, testified as follows

22 DEPUTY CLERK LILLY Please be seated

23 THE COURT Pull up -- Pull up a chair right there,
24 and ask that you pull up real close to the microphone and
25 speak loudly, clearly, and slowly And state your full

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1 name, please sir

2 WITNESS MORTON Christian Trevor Morton

3 THE COURT Mr Morton, thank you, sir

4 Ms Shurling?

5 DIRECT EXAMINATION BY MS SHURLING

6 Q Mr Morton, let's get this out of the way right up
7 front What's your relationship to Troy Taylor?

8 A He's my uncle

9 Q Your mom is his sister, is that correct?

10 A Yes, ma'am

11 Q Okay Back during the time period that we're talking
12 about in late 2005/2006, when all of this stuff with the
13 -- the charges against your uncle was going on, were you
14 actively participating in his church?

15 A Yes, ma'am

16 Q Okay And did that participation go all the way back
17 to 1998/99?

18 A It went back before he was even a pastor there

19 Q Okay How old are you now?

20 A I'm twenty-one (21)

21 Q How old were you back in 1999?

22 A Oh I mean, like twelve (12), thirteen (13), maybe

23 Q So you were just about the same age as Victim 3,

24 A Oh, yes We were in the same grade

25 Q You were in the same grade?

1 A Uh-huh

2 Q I could have found an easier way to get to that
3 information than trying to do higher math I'm sorry
4 You were the same age group as 'Victim 3'?

5 A Yes, ma'am

6 Q And is it fair to say your mom had you at the church
7 pretty much every time the doors were open during that
8 time period?

9 A Yes, ma'am

10 Q Okay

11 A Whether I wanted to be or not

12 Q Whether you wanted to be or not And did you
13 participate on a regular basis in all of the youth group's
14 activities?

15 A Yes, ma'am

16 Q During the summer of 1999, did your youth group take
17 any outings to the beach that you recall?

18 A We did many outings One to the beach, I can't say
19 that I remember going to the beach We did a lot of stuff
20 outside of that, going to water parks and stuff like that
21 But, no, I can't remember anything about the beach

22 Q Okay Do you remember any -- I guess you've already
23 answered this But do you remember any outing to the
24 Intracoastal Waterway or the -- any part of the beach?

25 A We -- We did do a -- a camping trip to Huntington

1 State Park, but my uncle was not present for that trip

2 He wasn't the -- the youth director at that time So

3 Q You anticipate my next line of questioning

4 A Oh

5 Q You do recall that trip to the beach?

6 A Yes

7 Q And---

8 A Well, it wasn't---

9 Q Well,---

10 A ---to the beach It was actually in the woods We

11 never---

12 Q Okay

13 A ---went down to the beach, and it was---

14 Q The State Park?

15 A Yeah It was a full weekend \

16 Q And your uncle was not on that trip?

17 A No, ma'am

18 Q And when you came back to the church at the end of

19 that trip, do you remember what time of day it was?

20 A I can't recall that

21 Q Okay Do you recall seeing your uncle at the church

22 when you came back?

23 A I don't recall that either

24 Q Okay In your church group, do you ever recall

25 hearing any of the young people talk about your uncle

1 doing anything inappropriate toward them?

2 A No, ma'am Nobody ever had anything to say like
3 that

4 MS SHURLING Okay No further questions

5 THE COURT Cross-examination, Ms Catoe?

6 MS CATOE Beg the Court's indulgence for one
7 moment

8 THE COURT Certainly

9 MS CATOE Thank you

10 (Pause)

11 MS CATOE Thank you, Your Honor May it please the
12 Court?

13 CROSS-EXAMINATION BY MS CATOE

14 Q Mr Morton, you testified at the Williamsburg trial,
15 is that correct?

16 A Yes, ma'am

17 MS CATOE All right No further questions

18 THE COURT Redirect?

19 MS SHURLING No, Your Honor

20 THE COURT All right You may step down Thank
21 you, sir

22 (WHEREUPON, the witness was excused from the witness
23 stand)

24 THE COURT Ms Shurling, you may call your next
25 witness

Sydney Taylor Brown - Direct by Ms Shurling

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1 MS SHURLING Sydney Brown, Your Honor

2 THE COURT Ms Brown, please come forward Place
3 your left hand on the Bible and raise your right hand as
4 the clerk administers the oath

5 SYDNEY TAYLOR BROWN, being
6 first duly sworn, testified as follows

7 DEPUTY CLERK LILLY Please have---

8 THE COURT Ms Brown,---

9 DEPUTY CLERK LILLY ---a seat

10 THE COURT ---watch your step as you come around
11 Pull up a seat, and speak loudly, clearly, and slowly, and
12 state your full name

13 WITNESS BROWN Sydney Taylor Brown

14 THE COURT All right Ms Brown

15 DIRECT EXAMINATION BY MS SHURLING

16 Q And what is your relationship to Troy Taylor?

17 A He is my uncle

18 Q Was the -- Is the last witness who testified -- Is
19 that your brother?

20 A No He's my cousin

21 Q Your cousin?

22 A Uh-huh

23 Q Okay Were you also an active member of the youth
24 ministry at the church we're been talking about today?

25 A Yes, ma'am

1 Q Your family have you there pretty much every time the
2 doors were open, too?

3 A Yes, ma'am

4 Q Did you participate in all of the youth group's
5 activities the summer of 1999?

6 A Yes, ma'am

7 Q How old were you in '99?

8 A Twelve (12) or thirteen (13)

9 Q Twelve/thirteen?

10 A (WHEREUPON, the witness nodded her head in the
11 affirmative)

12 Q So you, too, were the same or approximate age as '

13 Victim 3?

14 A Yes, ma'am

15 Q Do you know Victim 3 ?

16 A Very well Yes

17 Q Okay Do you recall any organized trips to the beach
18 in late June, July, August where your uncle drove the kids
19 from the youth group to the beach?

20 A No, ma'am No

21 Q Do you remember any trips that the youth group took
22 that you came back and all took showers at the church
23 before you went home?

24 A No I've never taken a shower at the church

25 Q Do you ever recall any circumstance where any of the

Sydney Taylor Brown - Direct by Ms Shurling

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1 members of the youth group that were regular members of
2 the church took showers at the church before going home?

3 A No, ma'am

4 Q Okay You were the same age group we've already
5 established Did -- Did you ever hear any young people
6 talk about or complain about your uncle being
7 inappropriately familiar with them or touching them
8 improperly?

9 A No, ma'am

10 MS SHURLING Nothing further, Your Honor

11 MS CATOE No questions, Your Honor

12 THE COURT You may step down Thank you

13 (WHEREUPON, the witness was excused from the witness
14 stand)

15 MS SHURLING And, Your Honor, I'm sorry, but I need
16 about three (3) minutes indulgence if we could take a very
17 brief break

18 THE COURT Very good

19 MS SHURLING Thank you

20 THE COURT We'll stand at ease for about three (3)
21 minutes

22 (WHEREUPON, at 5 27 p m , court stood in recess, and,
23 at 5 29 p m , court reconvened, with the Applicant and
24 counsel present in the courtroom)

25 THE COURT All right We'll call the court back to

Robert Troy Taylor - Direct by Ms Shurling

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1 order, and, Ms Shurling, you're recognized

2 MS SHURLING One moment, Your Honor

3 (WHEREUPON, Ms Shurling conferred with the
4 Applicant)

5 MS SHURLING Your Honor, I'd call Troy Taylor

6 THE COURT Mr Taylor, please come forward I'm
7 going to, once again, ask that you place your left hand on
8 the Bible and raise your right hand as the clerk
9 administers the oath

10 ROBERT TROY TAYLOR, being
11 first duly sworn, testified as follows

12 DEPUTY CLERK LILLY Please be seated

13 THE COURT Mr Taylor, please pull up real close to
14 that microphone Speak loudly, clearly, and slowly, and I
15 want you to state your full name, please, sir

16 APPLICANT TAYLOR Robert Troy Taylor

17 THE COURT Very good Ms Shurling, you're
18 recognized

19 MS SHURLING Thank you

20 DIRECT EXAMINATION BY MS SHURLING

21 Q Mr Taylor, prior to entering your pleas in
22 Georgetown in April of 2006, were you aware that the
23 criminal sexual conduct charge against you in Georgetown
24 would be a predicate offense that could expose you to L-
25 WOP in Williamsburg?

1 A No, ma'am

2 Q Okay Had your lawyer ever discussed with you the
3 fact that the Georgetown CSC would be a strike under the
4 provisions of South Carolina strike laws as it's known?

5 A No, ma'am

6 Q If you had known that, would you have waived your
7 right to trial by jury by entering the pleas of guilty
8 that you entered in April, 2006?

9 A No, ma'am Had I known that, I would have never pled
10 guilty

11 Q Okay At the time that you pled, you were -- what
12 were you told was going to happen the following Monday if
13 you didn't enter your pleas that Thursday?

14 A If you don't mind, the week before is what started
15 it I'll answer your question I -- I was under the
16 impression and was told that Monday, which was the 17th,
17 that I had fifteen (15) minutes to make up my mind and
18 that they were going to call a jury that day, is what I
19 was told And that's why I was so fearful

20 Now, eventually, it turned into that someone had
21 passed away, the judge had to be at the funeral and that
22 we were going to be able to do it on Thursday, but I was
23 fearful because I knew we weren't prepared There was no
24 preparation So I was told it was starting now Here we
25 go

1 Q So on Thursday when you went to the courthouse, you
2 thought it was clear to go to trial that day?

3 A Yes, ma'am

4 Q But sometime before the actual pleas were entered it
5 became clear to you that, if you didn't pled that day,
6 you'd be going to trial on Monday?

7 A Yes Yes I'm sorry

8 Q Okay

9 A I'll -- I'll -- I'll say yes, but only -- I -- I
10 believe he -- What we were told was it was inevitable,
11 they were going to trial, if we did not plead guilty then,
12 it was going to be called So

13 Q Well, -- And certainly, during the guilty plea
14 proceeding, Judge Cottingham made clear that, if you
15 didn't go through with the plea, it would be okay with
16 him, you'd just go to trial on Monday?

17 A Exactly But that I do remember---

18 Q That you---

19 A ---quite well

20 Q ---do remember

21 A That was on Thursday

22 Q Okay What did you think you'd be going to trial on
23 on Monday?

24 A If you don't mind, I'd like to back up to the week
25 before I think it---

1 Q No First I want you to---

2 A Okay

3 Q ---answer my question

4 A I was -- I was under the impression -- The words that
5 were told to me by Scott was that we were taking out all
6 the trash at the same time

7 Q That's not my question

8 A Okay

9 Q Okay The pleas, as you say, was to designed, in
10 your mind, to take all the trash out at one time,---

11 A Yes, ma'am

12 Q ---is that correct? And that's a quote from Mr
13 Joye?

14 A Yes, ma'am

15 Q All right If you didn't plead, if you didn't agree
16 to plead, you understood, certainly from Judge
17 Cottingham's mouth, if not sooner, that you were going to
18 trial on Monday?

19 A Yes, ma'am

20 Q What did you think you would go to trial on on
21 Monday?

22 A I was never told I had no clue which, what, or the
23 other No I would -- I would say that Scott did I --
24 I apologize Scott did say that they would line them up,
25 that they would do either one or the other of the lewd

1 acts That's what he did -- And that -- And I do clearly
2 remember that that one or the other would be brought up
3 and that they would do back to back to back to back to
4 back, is what I was told

5 Q Okay Did he explain to you what back to back to
6 back meant?

7 A Just that they were going to do them as quickly as
8 they could, one trial after another, and that's all I know
9 to say Just---

10 Q You've heard him testify today, that regardless of
11 what the solicitor threatened, that he knew Judge
12 Cottingham wouldn't allow them to literally try them back
13 to back to back?

14 A I heard him say that today Yes

15 Q Did you know that then?

16 A No I was scared to death No

17 Q Okay But did he ever explain to you---

18 A No

19 Q ---that---

20 A If we didn't plea, I was going to go to jail for
21 thirty-eight (38) years of my life, is what I was told

22 Q Okay Stop Troy, I know you're scared, and---

23 A I am scared---

24 Q ---I know you're---

25 A ---to death

1 Q ---nervous, but you've got to listen to my questions
2 and answer them Okay? And you were told, if you didn't
3 plead, they were going to go to trial back to back to
4 back?

5 A Yes, ma'am

6 Q Is that correct?

7 A Yes, ma'am

8 Q And did your lawyer ever explain to you that what he
9 said on the stand here today, that notwithstanding that
10 threat by the solicitor, that he didn't believe there was
11 any real danger that Judge Cottingham would let them take
12 them to trial end on end like a chain smoker?

13 A I was under the impression that we were going to be
14 going to trial, that they were going to be able to do the
15 back to back to back That's what I was under the
16 impression of

17 Q Thank you Did he discuss with you the fact that at
18 least the CSC charge could not be tried immediately
19 because it had not yet gone to the grand jury?

20 A No No

21 Q If you had known that, would you have entered the
22 plea?

23 A I would have never entered a plea

24 Q Okay Now, most importantly, if you had understood
25 that by entering a plea to CSC in Georgetown County you

1 were putting yourself in the position of not being able to
2 go to trial on the Williamsburg charge without risking L-
3 WOP, would you have ever entered the plea in Georgetown?

4 A No, ma'am I would have never entered the plea

5 Q Did you go over the discovery on the Georgetown
6 County charges with Scott Joye?

7 A The week before

8 Q The week before?

9 A Yes, ma'am

10 Q Do you recall seeing the church bulletin referring to
11 the August time period in the discovery materials?

12 A Yes, ma'am

13 Q Did you have any discussion with him about what that
14 was doing in the discovery?

15 A Yes, ma'am, at length

16 Q And what did he tell you at that time?

17 A He told me that that was there to prove that I was
18 the pastor of the church That was the assumption It
19 was there to prove I was the pastor of the church

20 Q Okay Now, he told you that was an assumption?

21 A Yes, he did

22 Q Okay Did you ask, at any time, for a more
23 definitive time for the alleged incident at the showers at
24 the church?

25 A Yes, ma'am

1 Q And were you ever given a more concrete time period,
2 other than the sometime June, early July, '99?

3 A No, ma'am No, ma'am

4 Q You've -- You've heard your dad testify to
5 discussions in Mr Joye's office about clarification that
6 it actually dealt with the August 5th, 6th, and 7th time
7 period Were you present for that conversation?

8 A I was present, but I do not recall ever hearing from
9 them anything about Aus- -- August 5th, 6th, or 7th
10 because that was our question Why did this bulletin have
11 that date, and it doesn't make any sense

12 Q Okay

13 A There's nothing about June or July

14 Q So you just -- That didn't register with---

15 A Did not register---

16 Q ---you at the time?

17 A ---with me

18 Q Okay

19 A Yeah

20 Q If -- If -- If it had, do you think, on such short
21 notice, that you would have even put those pieces together
22 anyway?

23 A I -- It -- I -- I need a little bit more clear
24 question---

25 Q Okay

1 A ---from you I'm sorry

2 Q You're talking about the day of or the day before the
3 plea?

4 A Yes, ma'am

5 Q If -- If you'd have heard August 5th, 6th, and the
6 7th, would that have necessarily registered in your mind
7 as the time you'd worked at Kim Cook's house?

8 A It would have registered under the title World
9 Changers because that's the only time there was a World
10 Changers, was August 5th and 7th of 1999 There was never
11 another And Drex, who testified earlier, was there with
12 me, and he would have immediately said, "Wait a minute,
13 you know, that's when we were at Kim" -- And then,
14 absolutely Well, exactly what happened, we did start to
15 realize what the dates were

16 Q You gave your lawyer permission, I assume, to tell
17 the Court that you had been the victim of sexual abuses
18 yourself as a young person?

19 A I -- I -- I didn't give him permission

20 Q Okay But you'd had discussions with him about the
21 fact that that was going to be something that would be
22 discussed in sentencing?

23 A Yes

24 Q So indirectly, you'd given him---

25 A Okay I see---

1 Q ---permission?

2 A ---your point I though you---

3 Q You didn't---

4 A ---were talking about today

5 Q ---object to him making it a part of your sentencing?

6 A I thought you were talking about today No, I did---

7 Q No, no, no

8 A ---not object to that at all

9 Q My point is that that's something you knew was going
10 to be---

11 A Yes, ma'am---

12 Q ---gone into prior---

13 A Yes, ma'am

14 Q What was your understanding of what you were getting
15 in exchange for pleading guilty to two counts of lewd act
16 and one count of CSC-second?

17 A I was under the impression, by what I was told about
18 taking all the trash out, that everything, including
19 Williamsburg, was tied together and that I was taking the
20 trash out at the same time That was up until we
21 literally were walking through the door to go in front of
22 Judge Cottingham, and, at that point, Scott said, "I was
23 not able to take care of the stuff in Williamsburg, but go
24 ahead and do this, and we'll take care of that later "
25 And that's what was said to me

1 So I was under the impression that everything put
2 together was going to be eight (8) years suspended to five
3 (5) with the service of eighty-five (85%) per cent and
4 three (3) years probation

5 Q Okay But to be fair, going in the doors, before you
6 actually entered the plea, you knew he hadn't wrapped
7 Williamsburg into it?

8 A Yes, I -- Yes Absolutely I did know at that
9 point

10 Q But as of that point, did you still think that the
11 Williamsburg case was a lewd act?

12 A Oh, no We knew clearly it wasn't a lewd act

13 Q When did you find out it wasn't a lewd act?

14 A They changed it -- The Williamsburg originally was a
15 lewd act, and that was like in the spring of 2005, what I
16 was accused of But whenever it got four (4) or five (5)
17 months later and we were able to look and determine what
18 we was being accu- -- we were accused of, we looked and --
19 and saw these holes in the testimony

20 Q Stop

21 A Okay

22 Q When did you find out that the charge in Williamsburg
23 County was an allegation of criminal sexual conduct as
24 opposed to just lewd act?

25 A That was changed in the November -- Right at this

1 time of 2005 -- '05 when they took me to Williamsburg
2 County around Thanksgiving of that year

3 Q When -- So after you were let out on bond in
4 Georgetown and they rearrested you for Williamsburg and
5 you had this incident that happened where Mr Joye talks
6 about being so angry about the bond hearing on
7 Thanksgiving Day,---

8 A Yes, ma'am

9 Q ---you knew, as of them, that it was a criminal
10 sexual conduct case in Williamsburg?

11 A Yes

12 Q And did you have any idea that your lawyer wasn't
13 aware it was criminal sexual conduct?

14 A No, ma'am Not whatsoever The first time I heard
15 it was today

16 MS SHURLING Okay Thank you

17 APPLICANT TAYLOR Yes

18 MS SHURLING No further questions

19 THE COURT Cross-examination?

20 MS CATOE May it---

21 THE COURT Ms Catoe

22 MS CATOE ---please the Court?

23 CROSS-EXAMINATION BY MS CATOE

24 Q Good afternoon, Mr Taylor I was about to say good-
25 night We're getting there

1 Did you receive a -- a DVD from your attorney, Scott
2 Joye, the week before the plea?

3 A A CD Yes

4 Q A CD?

5 A Yes, ma'am

6 Q Did you listen to that in your pickup truck?

7 A I did

8 Q Okay And did you -- did you decide to take a plea
9 after that?

10 A No, ma'am, I did not

11 Q Okay But at some point after that, you did?

12 A We decided to take a plea on Monday, which was the
13 17th of April, was when we had made the decision

14 Q Okay How long did you have to consider the issue of
15 the plea?

16 A On the Monday you mean, ma'am? Or---

17 Q Just the whole time

18 A The 12th of April was when we met with Scott and
19 Delton and got discovery

20 Q You got discovery?

21 A On the 12th of April when we---

22 Q You didn't have any discovery prior to the 12th of
23 April---

24 A No, ma'am

25 Q ---of 2006? Is that it?

1 A Two-thousand-six (2006)

2 Q And when you say -- Are you saying that your lawyers
3 got discovery or you got discovery?

4 A I'm able to look through the papers now and see that
5 Scott signed for them on the 10th It seems as through
6 they were prepared by Bo Bryan on the 7th Scott signed
7 his name on the 10th, though

8 Q All right Now, how many meetings would you say you
9 had with Mr Joye?

10 A Oh,---

11 Q Or Mr Powers?

12 A Well,---

13 Q With either one of them?

14 A With Delton, I would say two (2) Scott, I mean,
15 there's just no way of -- of saying I mean, it --
16 through two and a half (2-1/2) years of---

17 Q So you had -- you had lots of meetings---

18 A Yes, ma'am

19 Q ---with Mr Joye?

20 A Numerous

21 Q Okay And what did you do in these meetings, if you
22 recall?

23 A Well, I mean, there's sort of an open-ended question
24 There's many conversations about many different, you know,
25 things, obviously but---

1 Q So did you go over any paperwork in those meetings?

2 A When we got around to April was when we got
3 discovery

4 Q All right What did you -- Did you discuss the --
5 the CD that you received from Mr Joye which I believe
6 contained the -- the recorded conversation?

7 A Yes, we did I was under the impression we'd spoke
8 on the phone If, in fact, I came back to his office, I
9 -- I very well may have, but I -- I was under the
10 impression that I had talked to him on the phone, but,
11 yes, I did talk to Scott after I listened to it

12 Q All right What did you tell him about your -- your
13 thoughts about that tape and how it might affect -- You --
14 You made some admissions on that tape, is that right?

15 A I spoke to my wife at the time on that tape, and she
16 was my wife, and this was recorded in 2003 before I was
17 even arrested for the two lewd acts That's when it was
18 recorded When I talked with Scott, I explained to Scott
19 that the admission was -- You want to call it admission
20 -- I simply shared with her the same thing I had shared
21 from the beginning So admissions to guilt, no

22 Q Did you admit to inappropriate touching?

23 A As a young child, yes

24 Q Okay

25 A As a young child, things did happen with me and my

1 other cousins

2 Q Okay And you -- All -- Did you admit to
3 inappropriate touching with Victim 1

4 A No

5 Q You did not?

6 A What -- What I say on that tape -- And it's -- I -- I
7 guess the way to express this, when my wife said to me
8 along the line -- But, again, I don't have the act- --
9 access to the tape, and I'm kind of go with my memory
10 She says, "Are you saying that what they're saying is a
11 lie?"

12 And I said, "No What they're -- The opposite
13 Things did happen but not when I was fifteen (15) or
14 sixteen (16) or seventeen (17) or eighteen (18) or
15 nineteen (19) years old " And that's exactly---

16 Q But isn't it true that you said not when you were
17 nineteen (19), twenty (20), twenty-one (21)---

18 A Again,---

19 Q ---twenty-two (22), not---

20 A ---I don't have it in front of me I just remember
21 -- Sorry I apologize I don't remember

22 MS CATOE All right Beg the Court's indulgence
23 one moment, Your Honor

24 (WHEREUPON, Ms Catoe conferred with Witness Joye)

25 BY MS CATOE

1 Q Do you recall at what point you met victim 1 or
2 how old you were at the time?

3 A I couldn't even begin to tell you, except for I know
4 that I was either a senior in high school or thereafter --
5 soon thereafter

6 Q All right And do you recall mentioning to your wife
7 about the phone conver- -- Or I'm -- Excuse me -- the
8 conversation you had with Victim 1 in the car around the
9 time you were getting married?

10 A Yes, ma'am

11 Q All right Now, at the -- the guilty plea, do you
12 recall the judge going over your rights with you?

13 A Yes

14 Q And -- And what I mean is your right to trial and the
15 rights that go with that?

16 A I had taken medication, and, to be honest with you,
17 very much -- a lot of this is a blur to be honest with
18 you, but, yes, I do By reading back and seeing the
19 transcript, I do recall the judge asking me and telling me
20 about my rights

21 Q Okay And you did tell the judge that you -- you
22 understood what was going on and you were in -- I don't
23 know if he asked you if you were under the influence, but
24 he asked you some statement "Is your mind clear?"

25 A He said, "How you doing today?"

1 Q Well, he did say, "Is -- Is your mind clear?" Did
2 you hear him say that?

3 A I don't remember I don't believe so

4 Q Something of that nature? Do you recall the judge
5 telling you that you could change your mind?

6 A I remember him saying I could change my mind and go
7 to court next Monday Yes

8 Q All right

9 A Some of those lines

10 Q Did the judge go over any maximum sentences on each
11 charge?

12 A No, ma'am

13 Q Was that stated on the record at the plea?

14 A (No response)

15 Q If you don't recall, the record will---

16 A I don't

17 Q --speak for itself

18 A I -- I've read the record, and -- but I -- No, I was
19 not told -- There was not discussed there

20 Q Okay Did -- Were you aware of the maximum sentences
21 on each charge?

22 A I was not

23 Q Okay But if it was stated on the record at the
24 plea, you would have no reason to dispute that, is that
25 right?

1 A I would have no reason to dispute that No, ma'am

2 Q All right Now, do you recall being sworn at the
3 plea?

4 A I do

5 Q All right And you do recall admitting your guilt at
6 least three (3) times in the plea transcript?

7 A Yes, ma'am

8 MS CATOE All right No further questions, Your
9 Honor Thank you

10 THE COURT I've got a couple if I could

11 EXAMINATION BY THE COURT

12 Q Mr Taylor, of course, there are two basic categories
13 of allegations you made against Mr Joye and his co-
14 counsel concerning ineffectiveness of counsel, one of
15 which deals with your not being informed of the fact that
16 the criminal sexual conduct was a strike on the most-
17 serious two-strike rule

18 A Yes, sir

19 Q That stands on its own Of course, there's been
20 testimony offered by you and your witnesses that would
21 seem to indicate that, you know, the showers weren't
22 working, that -- that, you know, there was a construction
23 project going on at the time and you were there and it
24 could not have happened at that time

25 But in your plea transcript, you admit in no

1 uncertain terms that you're guilty, and you actually
2 apologized to some extent

3 My question to you is are you maintaining that --
4 that you're not guilty of what you were accused of?

5 A Yes, Your Honor I'm not guilty of what I was
6 accused of

7 Q Pardon? Say that again

8 A I am not guilty of what I was accused of

9 Q Okay All right Well, now, in your plea
10 transcript, the judge specifically asked you if you were
11 guilty, didn't he?

12 A He did

13 Q And what was your response?

14 A My response was that I was

15 Q All right And he also mentioned the fact that these
16 are old allegations and that -- And he asked you if you
17 were pleading guilty, and I think your response was
18 absolutely Isn't that right?

19 A I -- I think, when I said absolutely, he asked me if
20 I was satisfied with my try -- trial counsel, if---

21 Q I think -- Well,---

22 A ---I'm not mistaken

23 Q ---it says, "I understand that these old -- these are
24 old accusations, some of them going back to 1988, but they
25 are still provable, and they are still atrocious

1 allegations against you You understand that?"

2 "Absolutely "

3 A Oh, okay

4 Q And "Is your plea of guilty made without reservation
5 whatsoever?" What was your response?

6 A Your Honor, I -- I apologize I don't remember, but
7 I'm sure I -- if he asked me if I was guilty, I said,
8 "Yes, Your Honor " Or that was it

9 Q And he asked if your plea was freely and voluntarily
10 made, and your response was, "Yes, sir," wasn't it?

11 A And at that moment, I would have to say it was
12 because I didn't have all the information There was
13 exculpatory evidence that was withheld from me, and, had I
14 known that expulpatary (sic) evidence, had I known those
15 materials, the date, I would have never pled guilty

16 Q And once again he asked you in line nine (9), page
17 seventeen (17), several times, "Are you guilty of these
18 charges?" You said, "Yes, sir "

19 Okay So you maintain that you aren't guilty of any
20 inappropriate touching of any way, shape, or form here
21 today?

22 A Your Honor, when I was a young boy, things did happen
23 with my cousins, and I have offered an apology to my
24 cousin Udell , which I will -- I will never withdraw
25 But to say that I was a late teen-ager, to say that I did

1 anything along the lines of raping anyone is -- is not
2 true

3 And I was told by counsel that I was to stand in
4 front of the judge and say yes, sir, and no, sir, show no
5 emotion or they're going to take you to trial, and you're
6 not -- you're not going to see your children, your
7 daughter will get married without you being there, your
8 sons -- your parents will get old and die

9 And, sir, I was scared to death, and the people that
10 I was able to trust, the person that I thought I could
11 trust to lead me through that mine field of the legal
12 terms I feel like failed me in that respect

13 Had we had the dates, we would have never, ever gone
14 to trial Ever I would have never pled guilty

15 THE COURT All right All right Ms Shurling,
16 redirect?

17 MS SHURLING Yes, sir

18 REDIRECT EXAMINATION BY MS SHURLING

19 Q Troy, I can't quite begin to imagine how difficult
20 this line of inquiry is with this many people here that
21 are all from your church, but we've got to be real clear
22 here When you say you were not guilty, what you were
23 denying guilt of is the sodomy charges, isn't that true?

24 A Yes, ma'am

25 Q Okay And what did you think was going to happen if

1 you didn't agree to say you were guilty of everything that
2 you were charged with?

3 A That I was going to go to jail, and I would not be a
4 part of my family I would lose everything, which I'd
5 already lost everything anyway, but---

6 Q When you stood up in front of those you loved and the
7 people from your church and said "I'm guilty," how did you
8 justify, as a man of God, saying that? Was it based on
9 the things that you knew you were guilty of?

10 A It was based on dealing with the fact that -- that
11 things had happened when I was a young man with my cousins
12 and with others

13 Q Well, -- And there again, you've got -- At some
14 point, you've got to draw a line in the sand, Troy, and
15 today's as good as a time as any And my understanding
16 that the conduct that you are expressly denying guilt of
17 is the conduct that was the subject of the criminal sexual
18 conduct charges in Georgetown and Williamsburg, is---

19 A Yeah

20 Q ---that correct?

21 A Yes, ma'am

22 Q Okay And the reason you pleaded guilty to the CSC
23 charge is because you thought you had to say you were
24 guilty of all of it in order to get the plea to go
25 through?

1 A Yes, ma'am

2 Q All right Now, you were -- You know, you were
3 gracious about your attorneys in your guilty plea
4 transcript You -- You said you were satisfied with them
5 Was that based on your knowledge as of April, 2006?

6 A Yes, ma'am

7 Q Okay You did not know, that by entering the CSC
8 plea in Georgetown, that you were exposing yourself to L-
9 WOP if you went to trial in Williamsburg?

10 A No, ma'am I would have never pled guilty if I'd
11 have known that

12 MS SHURLING No further questions

13 THE COURT Okay I -- I do have one follow-up

14 EXAMINATION BY THE COURT

15 Q I think your lawyer has indicated that you're denying
16 the criminal sexual conduct and the sodomy, but it seems
17 to me, from the line of questions -- questioning she's
18 asking you -- And I want to ask you specifically Are you
19 guilty of any inappropriate touching of any of these
20 individuals?

21 A No, sir

22 Q Victim 3?

23 A No, ---

24 Q You---

25 A ---sir

1 Q ---never inappropriately touched---

2 A No, sir

3 Q -- Victim 3 ---

4 A Never---

5 Q ---in any way?

6 A ---in no way, shape, or form

7 Q Victim 1?

8 A No, Your Honor I did not inappropriately touch

9 Victim 2, and, in the tape that is said, it says that
10 things happened, but, again, as Scott so eloquently put
11 it, I feel as if it can be explained because the truth is
12 it did not happen, however, with my cousin Victim 2 I
13 will admit that inappropriate touching did happen

14 Q How old were you? And how old were -- were your
15 cousin at that time?

16 A I was---

17 Q Well, you weren't being accused of -- of
18 inappropriately touching your cousin?

19 A Yes, sir

20 MS SHURLING Yes, sir, he was

21 BY THE COURT

22 Q Which -- Which -- How old was he?

23 A How old was Victim 2?

24 Q Right

25 A Victim 2 is six (6) years younger than I am

1 THE COURT Okay All right All right Very good
2 Anything further, Ms Shurling?

3 MS SHURLING Nothing further, Your Honor

4 THE COURT All right You may step down

5 (WHEREUPON, the Applicant was excused from the
6 witness stand)

7 THE COURT Anything further from the Applicant?

8 MS SHURLING No further witnesses, Your Honor I
9 would have some summation

10 (WHEREUPON, the Applicant rested his case)

11 THE COURT Very good All right

12 MS SHURLING In lieu---

13 THE COURT Ms Catoe, you're recognized

14 MS SHURLING In lieu of the hour, we'd certainly
15 see if she has additional witnesses, but, if she does not,
16 in lieu of the hour, I would suggest that we perhaps
17 submit bench briefs in the form of proposed orders and be
18 real clear on how many days we have to do them, Your
19 Honor

20 THE COURT All right Ms Catoe, do you have any --
21 any witnesses?

22 MS CATOE Your Honor, I think I would like to
23 briefly call Mr Joye to the stand

24 THE COURT All right Mr Joye, please come
25 forward, and I'll remind you that you're still under oath

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1 SCOTT JOYE, having been
2 previously sworn, testified as follows

3 MS CATOE Hello again, Mr Joye

4 May it please the Court? I'm sorry

5 THE COURT Certainly

6 DIRECT EXAMINATION BY MS CATOE

7 Q What do you have in your hands there, Mr Joye?

8 A Well, in my hands is my glasses, (while indicating)
9 but over here is a tape that I provided to Troy

10 I believe I got it on Thursday before we were to go
11 to court that Monday that we were going to go to trial,
12 and the -- A couple of things that had happened were it --
13 the terms of the lewd act charges -- Troy and Victim2 and
14 Victim2-- Victim2 and Victim1-- He had told Victim2's
15 mother he was sorry That was long before any charges
16 were ever brought about That was in part of the
17 discovery

18 I had a two-page incident report in terms of
19 discovery for the Victim 2 case, maybe three (3)
20 pages as to the Victim1 case Later I received one
21 more sheet of paper which was in -- from Investigator Tom
22 Digsby All of these items had been shared with Troy
23 throughout the process

24 There was also -- I was also told that Dennis
25 had made an allegation, and I think I got a solicitor's

1 summary sometime That was shared with Troy I shared
2 everything with Troy We met a lot

3 So when he talks about being provided discovery on
4 April 6th or -- 6th or so, he's talking about the
5 discovery that was provided to me in the Victim 3
6 case, but one of the things that I was provided on the
7 Thursday before the Monday we went there -- And for
8 whatever reason, there was a death or something that --
9 that I believe Judge Cottingham had to go back to
10 Bennettsville for -- was a tape of a telephone
11 conversation between Allison and Troy that I had known of
12 this -- the existence of this for some time, but I had
13 never had it I was hoping it never would raise its head
14 It did

15 I provided it to Troy Troy left my office, and I
16 said, "You need to listen to this, and you need to
17 understand what you're going to do, I think it's very
18 damaging, I think it's extremely damaging because it
19 substantiates what Victim 2 and Victim 2 say" and, not
20 only that, it substantiates another conversation that Troy
21 had later with Victim 1

22 Troy had always told me he had never met Victim 1
23 until he was a senior in high school

24 So this tape sh- -- His wife says, "So what you're
25 telling me is that what Victim 2 and Victim 1 are saying is

1 not true?"

2 Q Victim2 and Victim1 you say?

3 A Yes Victim2 and Victim1 is not true And he said,
4 "I'm telling you the exact opposite " And then he went on
5 to do some explaining, and that's the substance of this CD
6 that I provided him on the Thursday

7 I believe we met again on Friday with -- with Delton,
8 and we said, "Look, this case is about cross-examination,
9 it's not some great witness to come into court because
10 it's clear from everything we know that you and Victim2
11 and you and Victim2 shared a bed, you shared a bed
12 sometime in the year of 1989 with one of them, in 1988
13 with the other, your folks have told me that, you have
14 told me that, everybody in the world tells me that, there
15 is not some witness out there that can come forward, there
16 -- there's no discovery, there's no"--- -

17 Q Let me ask you a question Is there -- Are there
18 statements on that CD there that contradict what Mr
19 Taylor just said?

20 A Without question

21 Q All right Have you had that in your discovery file
22 until today?

23 A Yes In fact, I had had to get another copy cop- --
24 another copy from the attorney upon your request, from his
25 -- from his wife's attorney because the original -- I

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1 thought the original was lost Well, actually, I found it
2 in---

3 Q All right

4 A (While indicating) This is the original that I have
5 I also have another copy of that DVD That copy of that
6 DVD I got from Melissa Emory who now goes to go church
7 with Allison Taylor, and she also is an attorney

8 But what happened with the original from the
9 Solicitor's Office is it was provided to Williamsburg
10 County in their prosecution They provided their one and
11 only copy

12 I believe you attempted on numerous occasions to get
13 it from Kimberly Barr, the assistant solicitor in
14 Williamsburg, and from Bo Bryan, and neither one of them
15 had it, but I did find it in my file, and I've not
16 listened to it

17 I have listened to the other tape which was -- which
18 -- the other CD which was clearly the CD related to that,
19 and -- and -- in -- in -- I just thought it -- In terms of
20 evidence, it was a very damening (sic) piece of evidence
21 I felt that that was a hill that we would not be able to
22 overcome, but I always told Troy that I would be happy to
23 try this case This case was going to be about cross-
24 examination

25 We discussed possible defenses on this case One of

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1 the things that we discussed about this case was both
2 *Victim 2* and *Victim 1* that had struggled with drug
3 addition Both had represented to the Solicitor's Office
4 and to the psychiatrist that -- that first brought this
5 whole situation to light that it was an impetus for them
6 to get involved in drugs and alcohol to kill the pain of
7 being abused That was -- That was what was part and
8 parcel of the -- what they said

9 MS CATOE All right Your Honor, at this time, the
10 State would propose to submit the CD into evidence The
11 State does not wish to publish it but just would like to
12 submit it as Respondent's Number 1 just for the Court's
13 consideration

14 THE COURT Very good

15 MS SHURLING I've never had the opportunity to hear
16 it, Your Honor I'd ask that we take a recess and me be
17 allowed to listen to it before I---

18 THE COURT Okay Do we have another copy of it?

19 MS CATOE I -- I have another copy, Your Honor

20 THE COURT Okay Well, I -- I think that certainly
21 you can -- It's part of discovery Wasn't it a part of
22 discovery?

23 WITNESS JOYE Yes, sir, Your Honor, and I---

24 THE COURT All right Well, I -- I'm going to admit
25 it into evidence, and you can listen to it for whatever

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1 it's worth and incorporate that into your argument with
2 regard to the final---

3 MS SHURLING I was not clear on the fact that it
4 was actually---

5 THE COURT All right Well,---

6 MS SHURLING ---a part of the discovery process,
7 Your Honor Thank you That's fine

8 THE COURT All right Very good All right It's
9 into evidence, without objection from the Applicant

10 MS CATOE I have no further questions Your Honor

11 THE COURT All right Very good

12 MS SHURLING There again, assuming that---

13 THE COURT We need to mark that as -- as State's---

14 MS CATOE That's right

15 THE COURT ---Exhibit Number 1

16 WITNESS JOYE (While indicating) Your Honor, I
17 believe this would be the original, and that would be a
18 copy I provided I -- I have not listened to that I
19 have listened to that, but I -- I -- I'm hoping it's still
20 ' working If it's not, she has a copy of the---

21 THE COURT Very good All right

22 (WHEREUPON, CD marked and admitted into evidence as
23 Respondent's Exhibit Number 1, without objection)

24 THE COURT Anything further, Ms Catoe

25 MS CATOE No, Your Honor

1 THE COURT All right All right I'm---

2 MS SHURLING Oh, Your -- May I, Your Honor?

3 THE COURT Yes, you may

4 CROSS-EXAMINATION BY MS SHURLING

5 Q In any event, what's on this tape, even assuming
6 arguendo that what you're saying is crystal clear on here,
7 goes to his guilt on the lewd act charges, not---

8 A Oh -- Oh, yes

9 Q ---CSC?

10 A Oh, yes Absolutely That -- Never the CSC I -- I
11 -- I don't want to be -- I -- I don't want to confuse
12 anything

13 If -- When we made the decision -- Or when Troy made
14 the decision and pled, he was staring at down the gun, and
15 we specifically talked I told him that they wanted to
16 line up each and every one of them I -- I made that
17 clear I also made clear to Troy that they would not be
18 able to try but one per term

19 We had a two-week term They could -- They could try
20 one one week and one the next week, which I would have
21 thought, obviously, because there was a right good bit of
22 press and I didn't want it spilling over to the second
23 week of trial But both victims, I felt, would have been
24 able to testify in each other's lewd act case

25 I knew Judge -- Judge Cottingham, and, if we went to

1 trial and he was found guilty, there were going to be
2 serious consequences

3 The -- Then they would take the other case to the
4 grand jury and move with all deliberate speed on that
5 case That was their plan I told Troy that was their
6 plan

7 Q I understand My -- But my---

8 A But -- But---

9 Q ---question was the tape goes to his guilt on lewd
10 act,---

11 A Lewd act

12 Q ---not CSC?

13 A Yes, sir Yes, ma'am

14 MS SHURLING That's it Thank you, Your Honor

15 THE COURT All right You may step down, Mr Joye

16 WITNESS JOYE Thank you

17 (WHEREUPON, the witness was excused from the witness
18 stand)

19 THE COURT Any redirect I assume not

20 MS CATOE No, Your Honor

21 (WHEREUPON, the Respondent rested its case)

22 THE COURT All right Very good I'll be glad to
23 hear brief summations, and what I would like to do is I
24 would like for the State and the Applicant to submit
25 briefs as to what their position would be, not proposed

1 orders Submit briefs And I will, by court call or
2 conference call, after having reviewed those, tell each
3 how I'm going to rule

4 I'll be glad to hear, summations I think it's fairly
5 clear what the facts are, and I know what the issues are

6 And one of the things that I would ask you to focus
7 on, Ms Shurling, is that there are some cases that deal
8 with the extent to which a criminal defense lawyer needs
9 to inform a client as, to collateral consequences, and --
10 and you can say any -- you can have wide range on anything
11 you want to say, and that's probably what I will focus
12 most on

13 MS SHURLING Thank you, Your Honor I would argue,
14 respectfully that an offense being categorized as a most-
15 serious strike is not a collateral consequence

16 The Court has found even discussion of the eighty-
17 five (85-) per cent rule, parole eligibility, sex offender
18 registry, and various matters to be collateral
19 consequences, to be sure, but the characterization of an
20 offense as a felony, for example, or as a most-serious
21 offense is part of the definition of the offense It is
22 part of what the offense is in South Carolina

23 And in this case, it's clear by the admission of
24 counsel that he never informed his client that the CSC-
25 second charge was a most-serious offense, nor did he tell

1 him what that meant in terms of future exposure

2 That problem is compounded by the fact that there
3 were already known to be outstanding criminal charges in
4 Williamsburg County and I understand Mr Joye has been
5 very frank and forthright here today, and I appreciate
6 that, but -- And I can begin to understand how angry he
7 was on Thanksgiving Day when he got called in for a bond
8 hearing But, respectfully, there's a long time between
9 November and April of 2006

10 And what we're hearing is that, at the time he was
11 advising his client to enter a plea to CSC in Georgetown,
12 he admits that he didn't tell him it was a most-serious
13 offense, that he didn't even know that the charge in
14 Williamsburg was CSC as opposed to what it had originated
15 as, which was lewd act, and, therefore, the -- the
16 standard that the Court has -- has followed, for as long
17 as I've been a lawyer, is that a plea of guilty cannot be
18 deemed to be knowing, voluntary, and intelligently entered
19 if it is entered without a comprehensive understanding of
20 both the elements of the offense and the consequences of
21 the plea

22 And in this situation, -- You know, there -- there
23 have been cases, for example, where somebody says, "Well,
24 back in 1965 when I pled guilty to burglary, I didn't know
25 that it was violent and I didn't know it was going to be

1 my first violent in, you know, 2008 " Okay?

2 That's a different situation from what we have here
3 Here we have a young man who already was facing similar
4 charges in another county, a prosecution that was already
5 on-going, and a prosecution in which the same attorney was
6 currently representing him in Williamsburg as well as in
7 Georgetown

8 We have a situation where the young man has clearly
9 stated that but-for this particular error, omission, that
10 he would not have pleaded guilty, would have exercised his
11 right to trial by jury That is, in essence, the standard
12 enunciated by the Supreme Court -- U S Supreme Court in
13 Hill vs Lockhart

14 This case also bears some straight -- striking
15 resemblance to a case that I was involved in very early in
16 my very long career at this point, and that's Wanda Jean
17 Hazel vs The State In Wanda Jean Hazel, she was advised
18 to pled guilty to kidnapping, and that was back in the day
19 when kidnapping carried a mandatory life without parole
20 sentence Not -- Pardon me Not life without parole but
21 a mandatory life sentence Her lawyer told her that that
22 was if she went to trial but that, if she pled, the
23 sentencing judge had the authority to suspend part of that
24 life sentence And so she pled guilty

25 During the plea itself, the presiding judge told her,

1 "Now, you do understand that I can give you a life
2 sentence for kidnapping "

3 The plea was accepted, and then, in sentencing, the
4 lawyer went about the process of introducing everybody
5 that every thought highly of this woman in mitigation of
6 sentence, and the judge stopped them part way into it and
7 said, "You know, I'm having to sit here all day and listen
8 to this, but you do understand I've got no option here,
9 it's -- it's mandatory life," at which point the attorney
10 asked to withdraw the plea and was not allowed to do so

11 The Supreme Court reversed in Wanda Jean Hazel's
12 case, and that reversal is predicated on two very
13 important things one, that she didn't know it was a
14 mandatory life sentence, but also the fact that there was
15 language from the bench which inadvertently reenforced the
16 erroneous information from counsel

17 And, ironically, that's kind of what we have here
18 I'm not saying that Judge Cottingham -- He's a very
19 experienced judge for whom I have high regard I don't
20 think he intended to be confusing anybody, but, when you
21 look at that language, Your Honor, on page thirty-nine
22 (39) of this guilty plea transcript, he clearly has
23 already told the Defendant that if any time during this
24 proceeding he wants to change his mind and not plead he'll
25 let him and we'll just go to trial next week

1 But then on page thirty-nine (39), he says, in clear
2 terms, "This record will say, though, that this has
3 absolutely no bearing on any further proceedings in
4 Williamsburg County except whatever the trial judge
5 desires to do there "

6 THE COURT I think what he was saying there,
7 personally, the way I interpret that is that he was saying
8 that he wasn't agreeing to run -- he wasn't speaking for
9 Williamsburg County as far as it running concurrent

10 MS SHURLING I---

11 THE COURT I think---

12 MS SHURLING And I don't disagree with Your Honor,
13 but---

14 THE COURT I think---

15 MS SHURLING ---but the standard in evaluating the
16 -- whether or not this guilty plea can stand is the
17 subjective state of mind of the Defendant, not what Judge
18 Cottingham meant to be conveying

19 THE COURT Right

20 MS SHURLING And -- And, unfortunately, what his
21 words -- Which I agree with you I think Judge Cottingham
22 was saying, "Look, Georgetown's first, I can't
23 prospectively bind Williamsburg " I don't disagree with
24 Your Honor---

25 THE COURT I think that's---

1 MS SHURLING ---that that's what---

2 THE COURT ---what he was saying

3 MS SHURLING ---Judge Cottingham had in his mind,
4 but, nonetheless, what he said is "what happens here today
5 has got no bearing at all on what a judge desires to do in
6 Williamsburg" and that that language in itself may have
7 reenforced misconceptions with regard to what lay ahead in
8 Williamsburg

9 The client says he didn't know, and Mr Joye's
10 candidly admitted---

11 THE COURT Well, let---

12 MS SHURLING ---and told him he could be looking at
13 L-WOP in Williamsburg and this statement certainly
14 reenforced the idea that the judge would have discretion
15 in Williamsburg, is---

16 THE COURT Well, let me---

17 MS SHURLING ---my point

18 THE COURT Let me ask two things that might
19 certainly has no bearing on my decision, but just out of
20 my own edification and curiosity was the plea -- was he
21 offered a lewd act plea in Williamsburg County?

22 MS SHURLING He was offered a plea in Williamsburg,
23 Your Honor I am not certain that it was to lewd act
24 Mr Joye is nodding affirmatively

25 WITNESS JOYE Your Honor, I went to Ms Barr, as

1 I've stated on the record, and I told Ms Barr what had
2 happened, that I had never -- I'd never realized, and I'm
3 clearly at fault for that because I thought I knew the
4 facts based on the tape that I had in Williamsburg

5 I didn't -- I just grabbed the warrant and steamed on
6 back to North Myrtle Beach, went to my in-laws and had
7 Thanksgiving dinner

8 THE COURT Okay Mr Joye,---

9 WITNESS JOYE But I -- But I---

10 THE COURT ---let me -- let me interrupt you---

11 WITNESS JOYE But clearly---

12 THE COURT Let me interrupt you just---

13 WITNESS JOYE I clearly asked---

14 THE COURT Let me---

15 WITNESS JOYE ---Ms Barr, and she---

16 THE COURT Mr ---

17 WITNESS JOYE ---did offer it

18 THE COURT Mr Joye, let me ask you just -- and just
19 one simple question Do you know and can you state as an
20 officer of the court whether or not lewd act was offered
21 to this client?

22 WITNESS JOYE Absolutely, Your Honor

23 THE COURT Okay Well, that's just -- And I don't
24 know whether that has a tremendous amount of effect---

25 WITNESS JOYE I understand

1 THE COURT ---on anything I was just curious
2 And my next question is what is the status of his
3 conviction in Williamsburg County? Is it on direct
4 appeal?

5 MS SHURLING It is, Your Honor, and it's being
6 handled by my associate, Jeremy Thompson

7 THE COURT Okay Well, that -- I -- That was just
8 something I was curious about

9 MS SHURLING Sure

10 THE COURT It doesn't have a whole lot to do with
11 anything in a way

12 MS SHURLING In response to that, I would say that
13 I don't believe that the -- the fact that he was offered a
14 plea in Williamsburg---

15 THE COURT And it doesn't I was just---

16 MS SHURLING ---is germane to the -- the---

17 THE COURT Certainly it's not, and I---

18 MS SHURLING ---validity of the---

19 THE COURT ---just wanted to know

20 MS SHURLING ---Georgetown County---

21 THE COURT And, Mr Taylor, is---

22 MS SHURLING If anything---

23 THE COURT ---do you agree that you were offered a
24 lewd act plea in Williamsburg County?

25 (WHEREUPON, Ms Shurling conferred with the

1 Applicant)

2 THE COURT Do you agree that you were offered a lewd
3 act plea in Williamsburg County?

4 APPLICANT TAYLOR Scott had told me he was going to
5 speak to her if I was willing to take that plea

6 THE COURT Okay I was -- Of course, Scott wasn't
7 who handled your case Charles David Barr was

8 APPLICANT TAYLOR Yes

9 THE COURT And did Charles David Barr communicate to
10 you an offer of a lewd act in Williamsburg County?

11 APPLICANT TAYLOR No, sir No When I had Mr
12 Barr, it was a -- they were going for life, and I -- I'm
13 speaking from what my -- my memory of it is, but I was --
14 I was told they were going for life, is what I was heard
15 (sic) on, I think, April that year

16 THE COURT Okay

17 MS SHURLING And, Your Honor, I would just note
18 that Mr Joye's sworn testimony today was that he didn't
19 go to the solicitor and get that deal because he wasn't
20 going to go get it until he had a firm commitment from the
21 client that he would take it

22 WITNESS JOYE May I respond to that, Judge? I was
23 absolutely told that he would get a lewd act The part
24 that I sworn -- My sworn testimony was that I would go try
25 to get him where he didn't serve another extra day over

1 what he'd already been given in Georgetown, but I
2 absolutely had been given a lewd act plea I absolutely
3 conveyed to Troy Taylor that it was a lewd act on the
4 table and that it -- the maximum sentence was fifteen (15)
5 years, but I---

6 THE COURT And that was before---

7 WITNESS JOYE ---would try---

8 THE COURT ---you were discharged?

9 WITNESS JOYE That was before I was discharged

10 THE COURT Very good All right Very good

11 MS SHURLING Thank you

12 THE COURT All right And I---

13 MS SHURLING And, Your Honor,---

14 THE COURT And I would be happy to, if -- if
15 everybody would agree, if -- Although I don't think it
16 really makes a whole lot of difference, but if you want to
17 clarify that issue from Ms Barr, I'd be happy to
18 entertain an affidavit to that -- to that effect I don't
19 think it's very relevant from---

20 MS SHURLING I -- I don't think it's relevant, Your
21 Honor, because the entire point from my client's
22 perspective is that he was not told that by entering the
23 package deal, the -- the group plea, in Georgetown that he
24 was putting himself in the position that to do what he
25 always planned on doing, which was go to trial by jury in

1 Williamsburg, ---

2 THE COURT Very good

3 MS SHURLING ---he would be exposed to life without
4 parole

5 THE COURT Very good All right Anything further?
6 And, of course, I'm going to allow y'all to submit briefs
7 It -- And---

8 MS SHURLING Yes, sir

9 THE COURT Anything else that comes to mind right at
10 the moment?

11 MS SHURLING No, sir

12 THE COURT Very good All right Ms -- Ms Catoe,
13 you're recognized if you'd like to summarize in any way,
14 shape, or form

15 MS CATOE Just very briefly, Your Honor

16 As we all know, the -- the burden to reverse a guilty
17 plea is -- is a pretty high burden and particularly where
18 the record is so terribly clear Judge Cottingham, I
19 think, went out on a limb to make sure that this was a
20 very clear record and made the Applicant say, I think,
21 three (3) times that he was guilty

22 THE COURT I think the law is pretty clear that,
23 when he says one thing on the -- on the plea date and
24 changes his testimony at a later date and time, certainly,
25 there's a presumption that what he said at the plea is

1 probably more accurate and -- and has to be given
2 deference in that regard

3 MS CATOE Absolutely

4 THE COURT But aside from that, what do you think
5 about the most important issue about him not being
6 informed that it was a most-serious strike?

7 MS CATOE Of course, the State's position is that
8 there's no law, at the time of his plea or now, that life
9 without parole or the recidivous statute is anything other
10 than a collateral consequence of his plea, and I would
11 just -- From one of the recent cases which says, "The
12 distinction between direct and collateral consequences of
13 a plea turns on whether the result represents a definite,
14 immediate, and largely automatic effect on the range of
15 the defendant's punishment for that charge "

16 It was not direct It was not automatic It was
17 contingent upon a guilty verdict in Williamsburg County,
18 whether -- and whether the State even pursued that charge
19 or whether it's dismissed So the State's position is
20 that it -- there's no law indicating that it would be
21 anything other than collateral, and it---

22 THE COURT All right And that's certainly where --
23 where this case lies, and it might be such there -- after
24 it's over with, there will be some South Carolina law on
25 it

1 MS CATOE Yes, Your Honor

2 THE COURT Probably More than likely Whatcha
3 think?

4 MS CATOE I think so, Your Honor If -- If you'd
5 permit me, I'd like to submit a few cases, and I have
6 copies---

7 THE COURT Very good

8 MS CATOE ---for opposing counsel, for what it's
9 worth

10 MS SHURLING Your Honor, can we just address those
11 in our -- in our individual memos and that way---

12 THE COURT How about -- I'm -- We've got a little
13 bit of time It's only six-thirty (6 30), so we can go
14 ahead I mean, I will allow you to just state briefly
15 what they -- what they are

16 MS CATOE Well, they just discuss the difference
17 between direct and collateral I ll -- I'll be happy to
18 just address them in the brief I just made copies, so I
19 thought I'd hand them out

20 THE COURT I believe I'll be happy -- I'll be happy
21 to look at those---

22 MS CATOE Okay

23 THE COURT ---right now if I could I'm a good
24 reader

25 MS CATOE May I approach, Your Honor

1 (WHEREUPON, documents handed to the Court and to
2 Applicant's counsel)

3 THE COURT All right And I think both parties --
4 counsel for both parties are familiar with the issues in
5 this case and the law that prevails And do you think
6 that we could have briefs submitted by ten (10) days from
7 today's date?

8 MS CATOE Yes, Your Honor

9 MS SHURLING Your Honor, my schedule is such that
10 it would be almost physically impossible for me to get it
11 done within ten (10) days

12 THE COURT All right I anticipated that How much
13 longer you think it'll be?

14 MS SHURLING Today is the 20th Your Honor, what's
15 the second Monday in December? What date is that?

16 THE COURT I have no idea

17 MS SHURLING Could we have until the second Monday
18 in December, whatever date that is?

19 MS CATOE I believe it's the 8th

20 MS SHURLING The 8th, Your Honor?

21 THE COURT That is the 8th All right Briefs will
22 be due by December the 8th

23 MS SHURLING Thank you, Your Honor

24 THE COURT All right And I'll make my ruling -- I
25 anticipate making my ruling by the end of that week

1 MS SHURLING Thank you And, Your Honor, since we
2 were -- you were gracious enough to entertain a little
3 case law from her, if I could just respond real quickly to
4 one point that's been made

5 You know, never in the annals of constitutional law
6 has a person's ability to avail themselves to
7 constitutional rights and privileges -- procedures been
8 contingent upon their ability to first prove themselves
9 entirely innocent, and, in the -- there's case law -- And
10 I'll be presenting it in my memo -- that clearly says
11 that the fact that somebody has indicated guilt in a plea
12 record does not mean---

13 THE COURT Well, I -- I---

14 MS SHURLING ---that they don't have a right---

15 THE COURT You know, the questions I asked in that
16 regard -- I don't take that position whatsoever

17 MS SHURLING Okay Thank you

18 THE COURT But I -- I mean, there were two different
19 grounds, one of which was saying that he's not guilty of
20 anything and one of which is that he wasn't informed of
21 the fact that it was a most-serious offense, which I think
22 is the most -- has the most merit

23 MS SHURLING I agree, Your Honor And there was a
24 point in time not too very long ago when the Office of the
25 Attorney General was taking the position that if they

1 could get the client to admit guilt of anything in context
2 of a guilt -- of post-conviction relief---

3 THE COURT That's certainly---

4 MS SHURLING ---proceedings---

5 THE COURT ---not the case the way I understand it

6 MS SHURLING ---that it -- that it---

7 THE COURT I -- I don't understand the law to be
8 that way

9 MS SHURLING ---eradicating the argument on the
10 voluntariness of the plea, and that's why I made that
11 point Thank you,---

12 THE COURT And probably---

13 MS SHURLING ---Your Honor

14 THE COURT ---the focus needs to be on whether or
15 not it's a collateral consequence, and it'd be nice to
16 have case law from as many jurisdictions as we can

17 All right Very good

18 MS SHURLING I anticipate we'll be burning up West
19 Law, Your Honor

20 THE COURT Very good All right

21 MS SHURLING Thank you, sir

22 THE COURT Thank you Anything further from the
23 State?

24 MS CATOE No, Your Honor Thank you very much

25 THE COURT Anything further from the Applicant?

1 MS SHURLING No, sir, Your Honor

2 THE COURT Good luck to you, Mr Taylor

3 All right We'll stand at ease

4 (WHEREUPON, at 6 27 p m , this matter was concluded)

5 FRIDAY, NOVEMBER 21, 2009

6 (WHEREUPON, at 10 00 a m , on Friday, November 21,
7 2009, this matter was reconvened, with counsel for the
8 Applicant and counsel for the State present in the
9 courtroom but without the presence of the Applicant)

10 THE COURT Ms Shurling, I understand you would like
11 to place something on the record

12 MS SHURLING Yes, Your Honor And I thank the
13 Court for the opportunity

14 Yesterday afternoon or most of the afternoon
15 yesterday, Your Honor, we heard the case of Robert Troy
16 Taylor versus the State Your Honor, that case, for the
17 record is docketed at 2007-CP-22-0476

18 We heard lengthy testimony from primary defense
19 counsel in the case, Mr Scott Joye Delton Powers, Jr ,
20 who was second seat in this case, was present all
21 afternoon yesterday in the courtroom He was not called
22 as a witness

23 It occurred to me last evening that it would have
24 been prudent to put on the record that I had interviewed
25 Mr Powers, and it's my understanding that Counsel for the

1 Respondent had also interviewed Mr Powers and that he had
2 confirmed to both of us that he, like Mr Joye, had not
3 discussed with the Applicant, Troy Taylor, the fact that
4 second degree criminal sexual conduct was a strike, that
5 he had not discussed South Carolina strike law with the
6 Applicant at law -- at all or the possible application of
7 any kind of recidivist statute to the CSC charge as it
8 would relate to an already pending Williamsburg charge

9 And I just wanted the record to reflect that it's my
10 understanding that the Respondent is willing to stipulate
11 to that as well in lieu of testimony from Mr Powers who
12 was---

13 THE COURT Is that correct,---

14 MS SHURLING ---not called---

15 THE COURT ---Ms Catoe?

16 MS CATOE Tnat's correct, Your Honor

17 THE COURT One -- You know, I had asked for y'all to
18 prepare memorandums, and I -- this presents a very
19 interesting question One of the things that I think
20 that's probably important to -- to concentrate, in
21 addition to the issue about whether or not this is a
22 collateral consequence or not, is that as I was riding
23 home last night the notion struck me that it very well
24 could be argued that, in view of the fact that they had
25 the tape where he admitted to improper touching and if the

1 matter would have gone forward in Georgetown County one at
2 the time, that given the tape and testimony from all the
3 witnesses, Lyle witnesses and all, that there -- it could
4 be argued that there was overwhelming evidence and that he
5 would have been found guilty of all of it anyway, and,
6 therefore, it would not have been -- it doesn't make any
7 difference, and it would have been -- You know, he should
8 have informed him of it, but it very well might not have
9 made a difference

10 In addition to that, I want to get an affidavit from
11 Kimberly Barr to determine whether or not there was an
12 offer made, and, if -- I'm not real sure that that might
13 be a superscene -- superseding intervening incident if
14 it's determined that there was an offer of concurrent
15 time, and, therefore, he, at that time, knew that he was
16 facing life imprisonment and chose to accept the risk

17 I think those are -- I mean, those are things that
18 need to be -- I think the record needs to be clear on
19 whether or not -- And I think Scott -- Scotty Joye has
20 indicated that that's what took place, but I think that we
21 probably need to have an affidavit from Kimberly Barr in
22 order that everybody can -- can -- we'll have all the
23 information for me to make my decision and the appellate
24 entity as well

25 MS SHURLING Certainly I -- I certainly have no

1 objection to the affidavit from Attorney Barr I -- It is
2 my position that it would not be relevant to the operative
3 question on the Georgetown County case, but I'll be happy
4 to develop my argument on that in my memorandum

5 THE COURT Right

6 MS SHURLING With regard to the harmless-error
7 analysis, Your Honor, the vast majority of the evidence
8 that Your Honor is referring to, the tape or the CD,
9 actually,---

10 THE COURT Everybody calls it a DVD or a CD, but I
11 think it's---

12 MS SHURLING Whatever

13 THE COURT A CD is what it is

14 MS SHURLING The audio recording,---

15 THE COURT Right

16 MS SHURLING ---whatever format it's in That -- I
17 believe there was reference to a law enforcement officer
18 having said that certain admissions were made to him at
19 some junction All of those pieces of evidence were
20 relevant only to the lewd act You will -- You will
21 find---

22 THE COURT But this -- But, see, that's the --
23 that's -- When you're trying it, I mean, that all is well
24 and good for the argument, but, when you lump criminal
25 sexual conduct in with lewd act -- And he's admitted to

1 doing all kind of unsightly, un- -- unthinkable things
2 with thirteen-year-old boys, and then I think, from a
3 trial standpoint, it all -- if you get li- -- if you get
4 the tape, get all the Lyle's conduct and then you say,
5 "Well, I did all that, but I didn't do -- do the little
6 boy in the shower" -- I mean, that's the problem that
7 you've got And it very well could be that all of that
8 was overwhelming evidence and that it wouldn't have made
9 any difference

10 He should have told him, that if he'd of gone to
11 trial, he would have lost

12 MS SHURLING And in the context of PCR Your Honor,
13 I believe that kind of harmless-error analysis would work
14 if we were talking about errors and omissions of trial
15 counsel in the course of a trial, but, since we're talking
16 about the subjective state of mind of the Defendant when
17 making the decision of whether or not to plead or not to
18 plead, it -- it -- the operative question changes, and --
19 and I believe that the legal analysis is different, but
20 I'll be happy to develop that in a memo

21 THE COURT Well, I think -- I think that's something
22 that probably needs to be developed

23 MS SHURLING Thank you, Your Honor

24 THE COURT Thank you

25 MS SHURLING And I'm really gone this time

1 THE COURT And we're going to -- Do you think that
2 we could get that affidavit in with the briefs?

3 MS CATOE Yes, Your Honor

4 THE COURT Now, I'm going to leave -- Since she is
5 an agent of your office, I'm going to ask that you get it
6 -- you get the affidavit How 'bout that?

7 MS CATOE Who's -- Who's an agent of my office?

8 THE COURT Well,---

9 MS CATOE Oh, you mean---

10 THE COURT ---Kimberly Barr

11 MS CATOE ---the solicitor Yes, sir

12 THE COURT Yeah

13 MS CATOE Yes, sir Yes, sir

14 THE COURT That's right

15 MS CATOE Oh, yes, sir I was planning to get it

16 THE COURT All right Very good All right

17

18 (WHEREUPON, at 10 07 a m , this matter was concluded

19

20 *****END OF REQUESTED TRANSCRIPT OF RECORD*****

21

22

23

24

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE) CERTIFICATE

I, the undersigned Patricia A McDaniel, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the post-conviction relief hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Georgetown County, South Carolina, held in Horry County, South Carolina, on the 20th and 21st days of November, 2008

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

Patricia A McDaniel

Court Reporter

Florence, South Carolina

June 10, 2009

THIS WEEK

August 1st 1999

10 00 AM

Teaching Pastor *Troy Taylor*
Music *David Wright*

Breakfast/Fellowship

Singing Together

*I've Got the Joy
Light the Fire Again*

Welcome

Singing Together

*Only One Day to Live
I Could Sing of Your Love Forever*

Message

Tommy Merritt

Announcements & Offering

Closing Song

Lord I Lift Your Name on High

MARK YOUR CALENDARS

New Community - Monday @ 7 00pm

Nick @ Nite - Wednesday 6 30pm

Study in Acts - Sundays @ 7 00

Ministries Leaders

Children's Ministry *Marsha Green - 215-7351*

Prayer Ministry *Teresa Wright 357-1397*

Youth *James & Sonja Brown - 650-0263
Todd Rodenbeck - 238-3892*

Light/Sound *Troy Taylor - 651-3111*

In-Touch *Tim & Schellie Digby 237-6453*

ITEMS OF INTEREST

Family Ministry

Church Office 651-3111

=> 1st Annual LC3 Softball Awards Banquet

Peggy Nobles - 651-3409

Tuesday August 3rd at 8:30pm

At Low Country Community Church. Please bring a covered dish.

LC3-Kids

=> Babies Toddlers and Preschool Ministries

Peggy Nobles - 651-3409

Sundays at 9:45 am & Wednesdays at 9:45 am

We have a terrific group of workers who are devoted to Christ and to our children. We are always looking for more so don't hesitate to call.

****This Week:** Nursery - Angie Sellers Toddlers - Regina Altman

Student Ministry

=> Age 3 - 5th Grade

Marsha Green - 215-7351

Sundays at 9:45 am

Our tremendous staff uses current topics interactive Bible study encouraging music, group games and much more to ensure the highest quality for our children.

=> NICK @ NITE *This is the last one*

Age 4 - 5th grade

Linda Taylor - 651-2274

Wednesdays 8/4 at 6:00

Cool Music, Interactive Bible study skits and then
WILD WACKY WET GROSS DISGUSTING MESSY YUCK!!!!!!
Sound like fun, see you there Want to help out call Linda.

=> W.W.J.D.

Grades 3rd - 5th

Pam Causey - 215-3939

Ginger Bryant - 651-8143

=> POWERHOUSE

Grades 6th 12th

James & Sonja Brown - 650-0263

Sundays at 5:30 - 7:30 pm

Todd Rodenbeck - 238-3892

This ministry is currently postponed until the start of the school year

=> WORLD CHANGERS Summer Mission Camp

Grades 6-12

Sonja Brown @ 650-0263 or Church Office - 651-3111

Thursday - Saturday - August 5th - 7th

We will be joined by 2 other youth groups as we do construction work, beach evangelism, go to Wild Water & Wheels and much more
We will be sleeping each night at LC3 and will have our days filled with various activities We also have many areas of service for adults

Small Groups

Adults

Church Office - 651-3111

Throughout the week at various homes

As our lives become more and more mobile and fragmented, there is a need in each of us for meaningful relationships both with God and with one another The family-like setting of a small group is the best environment we know of to experience that. If you are interested in joining or leading a small group please call for more information.

Spiritual Growth

=> Sign Up For These Classes At The Information Station

Church 101

Sunday August 8th - 11 30

This basic introduction is designed to clearly explain who and what LC3 is

Church 201

Sunday September 12th - 11 30

Discover the Four Basic Habits every Christian needs to develop in order to grow to spiritual maturity

=> Celebrate Recovery

Adults

MEN - Darryl Angus - 651-8675

STARTING SOON

WOMEN - Mary Scott - 651-3092

This Support Group Ministry is based on scripture It is a safe non-threatening place to learn to get over the HURTS HANG-UPS and HABITS that have and continue to destroy our lives

=> Study In Acts

Adults

Drexel & Lisa Mixson - 237-5187

Sunday Nights - 7:00

This is a closed Bible study It will be offered again as the study ends

=> New Community

Adults

Church Office - 651-3111

Mondays - 7:00 pm

This is an open meeting In-depth Bible study communion, praise & worship and usually a surprise or two Join other believers as we grow together This weeks topic - *Why did Jesus have to die?*

Music

=> Praise Team

David Wright - 651-4828

Wednesdays - 9:30 - 9:30

Ministry Opportunities

=> Love Offering for Rod & Kelly Cross

Today during service

Please plan to give a special offering for Kelly & Rod. Continue to pray for them and their children, as this is a particularly hard time

Prayer Ministry

=> Pastor's Prayer Partners

Sundays, 8:30 am

Meet together in auditorium for prayer for the services those attending and our Pastors

Finance

=> Counting Team

Tim Barnes - 357-2675

After Sunday Service

We need volunteers to assist with the counting of the offering
We are also expanding our team, if interested, please call Tim.



General Affidavit under Oath

I, Shane Gray, am a resident of Myrtle Beach, County of Horry, State of South Carolina, and do hereby certify, swear or affirm, and declare that I am competent to give the following declaration based on my personal knowledge, unless otherwise stated, and that the following facts and statements are true and correct to the best of my knowledge

I have known Troy Taylor since high school and attended his church at Low Country Community Church for many years I would like to come to Troy's defense in the case and charges concerning VICTIM 3

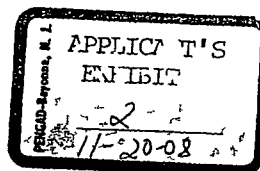
I, among many other men (including Troy Taylor) of the church, was participating in a church event known as World Changers Summer Project on the dates in question in this case We all worked together on the dates of August 5th 7th, 1999 from early in the morning until late in the afternoons on a home that needed the roof replaced along with replacing water damaged flooring This work was done on Kim Cook's mother's home

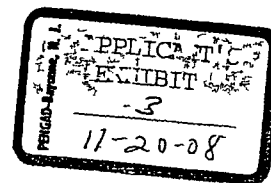
In Troy's defense, he could not have been guilty of this crime if it is being claimed on any of the above dates or times as he was present among me and many others on this project I will gladly testify to this truth in a court of law if it is needed

WITNESS my signature this 14th day of March, 2008

Shane C. Gray

Signature of Declaring





**Affidavit of Thomas W Gibson Jr
On behalf of Robert Troy Taylor**

I Thomas W Gibson Jr do have vital information concerning Rev Robert Troy Taylor on the dates of August 5th, 6th, & 7th, 1999

Mr Taylor could not have committed the alleged assault on the above dates The Church which Rev Taylor was Pastor at the time and I was a member of, were working on a project of repairing the mobile home of Ms Kimberly Cook on the above mention dates Rev Troy Taylor was with us from early morning hours till late in the afternoon, usually after sundown

I was not aware of the dates until I recently talked to Mr and Mrs Taylor, Troy's Parents I told them that there is no way that he could have done that because he was with us for the three days working on Kim's mobile home

I have known Troy for a long time We have been to Romania several times together and have had no problems I can and do attest to Troy's Character He is a find young man and is wrongly imprisoned, in my opinion

Thomas W Gibson Jr

11-04-08

Thomas W Gibson Jr
2 Plantation Rd
Myrtle Beach, SC 29588

Date

Personally appeared before me the undersigned witness and made oath that he was present and saw the within Thomas W Gibson Jr sign the affidavit

Witness Cami Dura

Sworn to me this 4th day of November 2008

[Signature]
Notary Public for South Carolina

My Commission Expires 13 January 2016

My Commission Expires

Anthony Taylor
180 Bear Dance Rd
Myrtle Beach, S.C.
29558

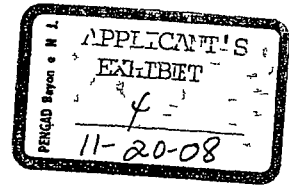
MYRTLE BEACH SC 29558
US POST SERVICE



Jara Dawn Shurling
Attorney & Counselor at Law
3614 Landmark Dr.
Suite D
Columbia, S.C.

23204+40-6

29204



IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

VS

AFFIDAVIT OF
KIMBERLY COOK

ROBERT TROY TAYLOR

Kimberly Cook hereby declares that I am a witness in this case and possess vital information that has recently come to my attention. I can clearly and factually attest that on the dates of August 5 - 7 1999, Robert Troy Taylor was with me in my home from breakfast time until late afternoon each of the dates listed. The dates listed happen to be the dates in question of the alleged assault.

The church was participating in "World Changers" during this time period. That is when the youth and members of the church take on various projects to help the needy in the area in which they live. As a single mother and member of our church, my house became one of those projects. There was much needed repairs on a roof in my mobile home that was caving in. There was also some flooring issues as a result of the roof problems that needed attention as well. Troy came and oversaw several men from our church on this project. Troy was usually the first one to my house in the morning and was always the last to leave in the late afternoon after taking a bit of time to talk and play with my two children. I also cooked a meal each day for the men working.

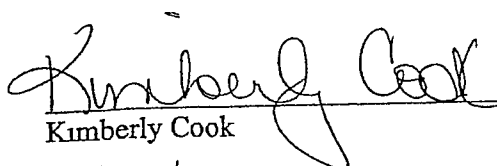
It was during a conversation with Michelle Gallagher that I was made aware of the time frame and the events in question. Until this conversation I was not aware of the time or dates in question of this alleged assault or that it was during "World Changers" in 1999.

I was placed on a list of witnesses for Troy and he told me to expect to hear from his attorney, however to this day I have never been contacted by anyone concerning my knowledge of Troy's criminal charges or even his character. Had I been questioned and told dates that were in question I would have been able to provide Troy an alibi for these dates because he was with me in my home. I was keeping a journal at the time of these events and have them documented in that journal.

I have known Troy a long time and can and will attest to his character. I am sure of Troy's whereabouts on the dates listed and know without any doubt that he was in my home with me.

I make this statement freely and voluntarily, without promise or threat, under penalty of perjury

My current address is 9641 Bradford lane, Murrells Inlet, S C 29576



Kimberly Cook

4/12/07

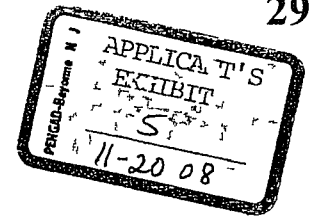
Date

Personally appeared before me the undersigned witness and made oath that he was present and saw the within Kimberly Cook, sign the affidavit

Sworn to before me this
12 day of April, 2007



Notary Public for South Carolina
My Commission expires 6-23-2010



IN THE COURT OF COMMON PLEAS

State of South Carolina

Affidavit of

Versus

Gary Wells

Robert Troy Taylor

My name is Gary Wells and I reside at 325 Butler Street, St Matthews, SC 29135 and I am Troy's uncle. On the date of Troy's trial I was invited to attend a meeting in a private room on the side of the court room with Troy's lawyer, several other family members, and friends. The lawyer, Scott Joy, advised Troy that he had been offered a chance to plea his case for a five year sentence. He said the solicitor had asked for ten years but the judge would only go five years. He did not mention that he had tried to build a case for Troy or that he had interviewed any witnesses to prove Troy's innocence. Scott Joy said he could not tell Troy what to do. However, he did say that the judge would give Troy up to thirty years if he did not plea. Troy could not understand why he should plead guilty if he was innocent. His lawyer told him there was a good chance he would lose but they would go to trial if Troy wanted to chance it. Scott Joy told Troy if he did plead he should not cry in the courtroom or say he was sorry for anything. He told Troy to say, "yes sir," to everything the judge said. He offered no assurance to Troy that he had developed any defense for him. Troy had about fifteen minutes to decide whether to lie and take a plea for a shorter sentence or go to trial and risk a thirty year sentence with Scott Joy who did not show any sign of preparation for a trial. Once Troy decided to plead, Scott Joy warned those who would speak on Troy's behalf not to say anything about Troy's innocence.

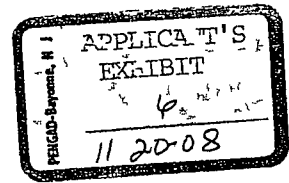
Executed at

St. Matthews South Carolina
City State

On March 23, 2007

Gary Wells
J. Gary Wells

Dee Dee Wells 3 23 07



IN THE COURT OF COMMON PLEAS

State of South Carolina

Affidavit of

Verses

Linda Taylor

Robert Troy Taylor

My name is Linda Taylor and I reside at 126 Misty Pine Drive, Myrtle Beach S C 29575 I am Troy's mother and I can bear witness to certain events and/or circumstances involving this case For two years Troy kept asking for his case to be heard in court Troy's rights to a fair and speedy trial was denied Two years is not speedy Troy always stated his innocence We believed we were going to court until just days before Troy took the guilty plea Troy said from the very beginning he would not take a plea Troy was assured in my presence that the witnesses had been interviewed His attorney R Scott Joye told Troy about the plea the state was offering on Monday before Troy's court date on Thursday Troy was in a mental emotional and spiritual disarray the whole week Troy still wanted his day in court but after hearing many times that his counsel thought this was such a good deal and that his counsel did not believe they could win the case, Troy relented against his true desire and pleaded Troy's only concern was getting back to his children G one years L seven years and adopted son M. eighteen years No mention was ever made to us that one case would be considered violent nothing about the 'two strikes' law regarding sex offenders because counsel was aware of another pending case in Williamsburg County It's evident no thought was given to the extremely dangerous and precarious position Troy would be in to face another charge at a later date I believe this to be bad counsel

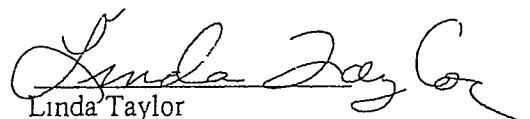
Since the court date and Troy's plea new and very important information has surfaced More than one alibi has come forward that proves Troy indeed is innocent of the ^{VC 3} allegations that he pled to against his true wishes If a true investigation had been done, these witnesses who were on the list of witnesses Troy had given to his counsel early in the process, would have played a major role in the decision process We paid for a private investigator early on in this case After Troy took the guilty plea, our money was refunded because it was not used We paid it because we wanted an investigation

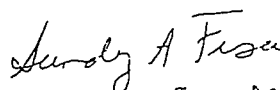
I make this declaration willfully and voluntarily I declare under penalty of perjury that the foregoing is true and correct

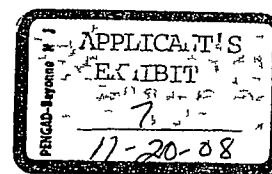
Executed at

Myrtle Beach
City
On 4-13-2007

SC
State


Linda Taylor


Commission Exp 3 November 2008



IN THE COURT OF COMMON PLEAS

State of South Carolina

Affidavit of
Michelle Gallagher

Verses

Robert Troy Taylor

- My name is Michelle Gallagher and I reside at 108 Wanabac Place, Myrtle Beach, S C 29588 I am Troy's sister, age 35, and I can bear witness to many events involving not only Troy's case, but also his frame of mind Please bear in mind that Troy and I have a very close relationship and I know him very well I've been very involved with Troy's case from the beginning For over two years of preparing for his case, Troy has always declared his innocence He never once contemplated on taking a guilty plea, even when it was only registering on the sex offender's list without prison time Please understand this about Troy's character he was always the type of person that protected the weak, always pulled for the underdog, fought what was right and fair, and never wavered his morals I say that to say this it is not in Troy's character to take a plea, it is his character to fight for what is right and just Up until the week before his trial, he hadn't even given it any thought On Monday, April 17, 2006, we (Troy and his family) met with Scott Joye and Delton Powers at Georgetown Courthouse to discuss Troy's options Scott felt like this plea was a "good deal" He also said that he did not feel like he had a good defense if we went to trial and Troy would be looking at 30 years in prison Troy asked Scott what would he do if this were him, Scott replied, "I'd take the plea" It was very overwhelming and emotional Troy's main concern was his children and how he could be away from them as little as possible We had about 15 minutes to decide whether or not Troy would take the plea or fight Also keep in mind that we were all aware that no interviews had been conducted from Troy's witness list and we certainly didn't feel prepared to go to trial I know this personally because I was one of the witnesses that had never been questioned Scott Joye felt like at that time he would be able "to take all the trash out", meaning he was going to try to tie in the charges in Williamsburg County Thursday morning, just moments before Troy was to plea, we found out that he couldn't At this time, Troy should have been informed about the two strike law since Williamsburg County was still hanging over his head, he was not then or ever told about this law After two long years of agony, pain,

loss of relationships, loss of church and ministries, rumors and gossip, broken families, hurt children, media tainting it all came down to 15 minutes!! At the advice of his lawyers, Troy chose to take the plea

Troy spent the next two days with his children, family, & close friends Wednesday night he told me he felt like this was his wake to his funeral the next day He was very emotional, distraught, and having a difficult time grasping reality My mother had given him medication to help calm his nerves and also to help him sleep He had taken this medication Thursday morning, and was never asked if he was on medication by lawyers or the judge Now he is in prison and has received information about his case that he was not made aware of at the time of his plea I urge you to please give him a chance for a trial, taking into consideration of evidence we now have

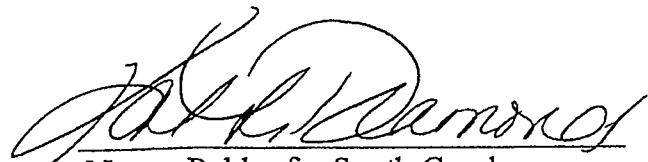
I make this statement freely and voluntarily, without promise or threat, under penalty of perjury


Michelle Gallagher

4-12-07
Date

Personally appeared before me the undersigned witness and made oath that she was present and saw the within Michelle Gallagher, sign the affidavit

Sworn to before me this
12 day of April, 2007


Notary Public for South Carolina
My Commission expires 6/23/2010

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

ROBERT TROY TAYLOR, 315084

☒ Applicant,

v

The State Of South Carolina

☐ Respondent

IN THE COURT OF COMMON PLEAS

CASE NO 2007-CP-22-476

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

297

Plaintiff's Attorney
Tara Dawn Shurling, Bar No 5099
Address
3614 Landmark Drive Suite D
Columbia, South Carolina 29204
phone 803-738-8622 fax 803-738-1600
e-mail other

Defendant's Attorney
Christina Catoe, Bar No
Address
P O Box 11549 Columbia South Carolina
phone 803-734-3713 fax
e-mail other

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I Hearing Information

Nature of Motion

Estimated Time Needed

Court Reporter Needed ☐ YES / ☐ NO

SECTION II Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order

Signature of Attorney for ☒ Applicant / ☐ Respondent

Date submitted 1/8/09

SECTION III Motion Fee

☐ PAID - AMOUNT

- ☒ EXEMPT (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v Indigent Party
☐ Sexually Violent Predator Act ☒ Post Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court, or
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter

☐ Other

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order

☐ Other

JUDGE

CODE

Date

CLERK'S VERIFICATION

Date Filed

Collected by

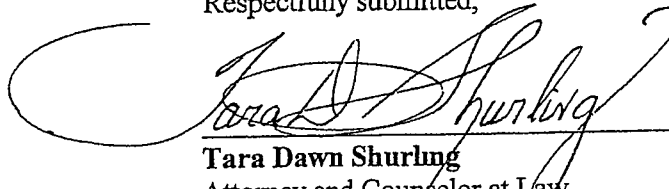
☐ MOTION FEE COLLECTED

☐ CONTESTED - AMOUNT DUE

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
ROBERT TROY TAYLOR, 315084,	)	CASE NO 07-CP-22-476
Applicant,	)	
	)	
v	)	MOTION TO WITHDRAW
	)	AFFIDAVIT SUBMITTED AS AN
STATE OF SOUTH CAROLINA,	)	EXHIBIT
Respondent	)	

NOW COMES the Applicant in the above-captioned action, acting by and through undersigned counsel, hereby moving to withdraw an exhibit admitted during the evidentiary hearing convened in this matter on November 20, 2008. In support of this motion, the Applicant would show unto this Court the following. During the hearing, the Applicant submitted, without objection, several affidavits that counsel for the Applicant had received from his friends and family members. Following the hearing, counsel for the Applicant was contacted by Thomas W Gibson, Jr., one of the individuals whose affidavits were admitted into evidence. He advised counsel that upon further reflection, he was no longer certain of the dates in his affidavit and accordingly could not swear the information was accurate. Mr. Gibson therefore advised counsel that he wished to withdraw his affidavit. Therefore, the Applicant would respectfully request that the affidavit submitted by Mr. Gibson be withdrawn from the exhibit, and that it not be used in the consideration of this matter.

Respectfully submitted,


Tara Dawn Shurling
 Attorney and Counselor at Law

3614 Landmark Drive, Suite D
 Columbia, South Carolina 29204
 (803) 783-8622
 (803) 738-1600 (Fax)

ATTORNEY FOR THE APPLICANT

This 19th day of December, 2008

2009 JAN 14 PM 2 50

ALMA H. WHITLE
 CLERK OF COURT

FILED
 IN CLERK'S OFFICE
 SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Georgetown)

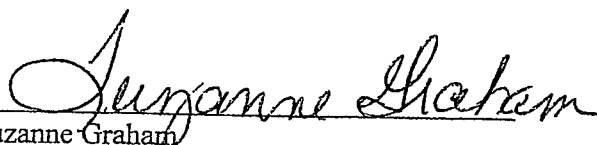
IN THE COURT OF COMMON PLEAS

Robert Troy Taylor, 315084,)
)
 Applicant,)
 v)
)
 State of South Carolina,)
)
 Respondent)
 _____)

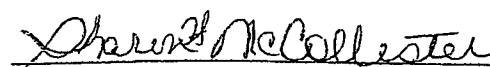
Certificate of Service

2007-CP-22-0476

The undersigned attorney hereby certifies that one copy of the Motion to Withdraw Affidavit Submitted as an Exhibit in the above-entitled cause has been served upon opposing counsel, Christina Catoe, by mailing in an envelope properly addressed with postage prepaid on this 12th day of January, 2009


 Suzanne Graham
 Paralegal

SWORN TO BEFORE ME this 12th day of
 January, 2009

 (L S)
 Notary Public for South Carolina
 My Commission Expires Jan 16, 2017

FILED
 2009 JAN 14 PM 2 50
 ALIJA J. WHIT
 CLERK OF COURT

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GEORGETOWN	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
ROBERT TROY TAYLOR, #315084,	)	CASE NO 07-CP-22-476
	)	
Applicant,	)	
	)	
v	)	MEMORANDUM OF LAW IN
	)	SUPPORT OF THE GRANT OF POST-
STATE OF SOUTH CAROLINA,	)	CONVICTION RELIEF
	)	
Respondent	)	
	)	

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully submitting this Memorandum of Law in Support of the Grant of Post-Conviction Relief In support of this Memorandum, the Applicant would show unto this Court the following

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Georgetown County Clerk of Court's orders of commitment The Georgetown County Grand Jury indicted the Applicant for two counts of lewd act upon a minor (04-GS-22-44 and 05-GS 22-523) On April 20, 2006, the Applicant waived presentment on a Georgetown County charge of criminal sexual conduct with a minor in the second degree (06-GS-22-361), and pleaded guilty to all three Georgetown County charges The Applicant was represented at this proceeding by R Scott Joye, Esquire, and Delton W Powers, Jr , Esquire The Honorable Edward B Cottingham, presiding circuit judge, sentenced the Applicant to concurrent eight year terms of imprisonment suspended to five years imprisonment and three years probation on all three charges The Applicant did not appeal his convictions or sentences

While the Applicant's charges were pending in Georgetown County, the Applicant was arrested and charged with criminal sexual conduct with a minor in Williamsburg County. At the time the Applicant pleaded guilty in Georgetown County, R. Scott Joye, Esquire, represented the Applicant on the Williamsburg County charge as well. The Applicant ultimately proceeded to trial on the Williamsburg County offense and was found guilty as charged.¹ Based on the Applicant's prior "most serious" conviction in Georgetown County, the presiding judge in Williamsburg County sentenced the Applicant to life without parole. An appeal from this conviction is currently pending.

For the reasons stated herein, the Applicant hereby moves this Honorable Court to grant him a new trial.

ALLEGATIONS RAISED

In his Application for Post-Conviction Relief, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, and
2. Involuntary guilty plea

He alleged generally that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his guilty plea.

At the evidentiary hearing convened in this case, the Applicant more narrowly defined his allegations. These allegations are amendments to his Application for Post Conviction Relief made pursuant to the evidence adduced at the hearing. See Simpson v. Moore, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), Rule 15(b), SCRCP. At the evidentiary hearing, the Applicant specifically alleged:

¹ Charles David Barr, Esquire, ultimately represented the Applicant at the Williamsburg County trial.

- 1 Plea counsel was ineffective for failing to sufficiently advise the Applicant that a conviction for criminal sexual conduct with a minor in the second degree was a "most serious" strike and that it could be used as a predicate offense for his Williamsburg County charges
- 2 The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that his convictions could be used to enhance his sentence on his Williamsburg County charges
- 3 Plea counsel was ineffective for failing to sufficiently investigate the factual circumstances surrounding the criminal sexual conduct charge
- 4 Plea counsel was ineffective for failing to move for a continuance once he discovered the precise factual circumstances surrounding the criminal sexual conduct charge
- 5 The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could effectively impeach the credibility of the complaining witness on the criminal sexual conduct charge
- 6 The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could present an alibi defense on the criminal sexual conduct charge
- 7 Plea counsel was ineffective for failing to advise the Applicant that if he did not plead guilty on April 20, 2006, he would not proceed to trial immediately on the CSC with a minor charge because he had not yet been indicted on that charge
- 8 The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could have had more time to prepare for a trial on the most serious charge if he chose not to waive grand jury presentment on the criminal sexual conduct charge in Georgetown County

STATEMENT OF FACTS

The Applicant was charged in Georgetown County with three offenses stemming from various alleged sexual encounters over the course of a decade with three different victims. Two of these charges were lewd act allegations from the late 1980s while one charge was a criminal sexual conduct with a minor in the second degree allegation from the late 1990s. Most of the

evidence presented at the evidentiary hearing convened in this case pertained to the criminal sexual conduct charge²

Prior to the charges being raised against him, the Applicant was a pastor at a church in Murrell's Inlet, South Carolina. The alleged victim in the criminal sexual conduct case, [redacted] was twelve years old at the time he said the acts occurred, and was also a member of the church. The State's evidence of this charge as set forth in the incident report pertaining to this charge,³ as well as the State's presentation of evidence at the guilty plea proceeding,⁴ reveals the following: Victim was with the youth group on a trip to the beach. When they returned to the church, Victim was waiting in line to take a shower when the Applicant arrived. The Applicant then offered to take Victim and another boy, Charles Harrison, to the Applicant's home to allow them to take showers there, and they accepted. Victim claims that while he was in the Applicant's shower, the Applicant came in and sodomized him. Defense counsel testified that he spoke with Charles Harrison's father at church and he informed him that his son had no memory of any of the events alleged by Victim.

Since the Applicant was not directly indicted on this charge,⁵ the only documentation which plea counsel was provided with regarding the alleged time of the incident was late June to early July 1999. However, defense counsel also had in his possession a church bulletin from August 1999 which stated that the youth group would be going on a beach trip the first week of August. According to the PCR testimony of the Applicant's father, he was present in a meeting with defense counsel days before his son's pleas in Georgetown when defense counsel had a telephone conference with the prosecutor. When defense counsel hung up from that telephone

² The Applicant however does challenge the validity of his entire plea and wishes to vacate all three convictions.

³ This document was introduced as an exhibit at the PCR hearing by the Applicant.

⁴ See p. 8 line 23 p. 14 line 4.

⁵ As noted above, the Applicant waived grand jury presentment on the criminal sexual conduct indictment at the plea hearing.

call he informed those present that the prosecutor had pinpointed the CSC with a minor charge as having occurred between August 5 and August 7, 1999. The Applicant presented testimony at the evidentiary hearing, as well as several affidavits attesting to the fact that he was helping to repair a local woman's home during this period of time, and that he would not have been present at the church at any point in time when the youth group would have been there. Furthermore, the Applicant presented testimony that although showers had been installed at the church in 1998 to accommodate some visiting young people from another area who were to sleep at the church during their stay, the showers had frozen up over the following winter and were capped off and inoperable before the time of the alleged incident. The Applicant also presented PCR testimony from a niece and nephew who both stated that they were very active with the church youth group during the summer in question and that they attended all the planned outings sponsored by the church. They each testified that there had been no church outing that summer where the young people had come back to the church to shower after a trip to the beach.

The charges in Georgetown County were not the only charges pending against the Applicant at the time of his plea. The Applicant was also charged with criminal sexual conduct with a minor in the second degree in Williamsburg County stemming from further allegations of sodomy made by Victim² in that county. Plea counsel represented the Applicant on both counties' charges. Plea counsel testified that he never explained to the Applicant that criminal sexual conduct with a minor in the second degree is a 'most serious' strike,⁶ and that a conviction in Georgetown County on this charge could be used to enhance his sentence to a mandatory term of life without parole if he was to be convicted in Williamsburg County for another "most serious" offense.

⁶ See S.C. Code Ann. §17-25-45(C)(1)

STANDARD OF REVIEW

The Sixth Amendment guarantees every criminal defendant the right to effective assistance of counsel Strickland v. Washington, 466 U.S. 668 (1984). In the context of a guilty plea, the operative question becomes whether a defendant, but for counsel's errors and omissions, would have exercised his right to trial Hill v. Lockhart, 474 U.S. 52 (1985). In other words, the Applicant must show that there is a reasonable probability that he would have insisted on proceeding to trial on the matter instead of pleading guilty had it not been for counsel's substandard representation Porter v. State, 368 S.C. 378, 629 S.E.2d 353 (2006). A defendant who pleads guilty on the advice of counsel may collaterally attack the voluntariness of his plea only by showing (1) that counsel was ineffective, and (2) that there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997). A guilty plea, along with the resulting waiver of fundamental constitutional rights, is valid only if made voluntarily, knowingly, and intelligently Boykin v. Alabama, 395 U.S. 238 (1969), Pittman v. State, 337 S.C. 597, 534 S.E.2d 623 (1999). In these Post-Conviction Relief proceedings the Applicant has the burden of proof to establish that he is entitled to relief by a preponderance of the evidence. Rule 71 1(e), SCRPC.

DISCUSSION

A Counsel's Lack of Advice Regarding the Possibility of a Life Without Parole Sentence in Williamsburg County Rendered the Applicant's Pleas Involuntary

For a guilty plea to be constitutionally valid, a defendant must be made aware of all the "direct," but not the "collateral," consequences of his plea. "Direct" consequences have "a definite, immediate, and largely automatic effect on the range of the defendant's punishment." A consequence is "collateral" when it is uncertain or beyond the direct control of the court.

Meyer v Branker, 506 F 3d 358, 367-368 (4th Cir 2007) (internal citations omitted) It is a long-settled principle of law that plea counsel's failure to advise a client of the collateral consequences of his plea does not render counsel's performance ineffective Griffin v Martin, 278 S C 620, 300 S E 2d 482 (1983) A criminal defendant must only comprehend the direct consequences of his plea in order for his plea to be made knowingly, voluntarily, and intelligently Boykin v Alabama, *supra* Parole eligibility or ineligibility is a collateral consequence of a guilty plea Griffin, *see also* Knox v State, 340 S C 81, 530 S E 2d 887 (2000), overruled on other grounds by State v Gentry, 363 S C 93, 610 S E 2d 494 (2005) However, incorrect advice regarding the applicability of a collateral consequence, such as parole eligibility, will render a guilty plea invalid Brown v State, 306 S C 381, 412 S E 2d 399 (1991)

While there are several decisions from our appellate courts regarding parole eligibility's status as a collateral consequence, the question of whether or not failure to advise a client of the LWOP implications of his plea appears to be a novel issue of law in this State However, almost all other jurisdictions have found that the possibility of receiving a recidivist sentence in the future is a collateral consequence of a plea See Ball v United States, 470 U S 856, 865 (1985) ("[t]he separate *conviction* has potential adverse collateral consequences that cannot be ignored For example, the presence of two convictions may result in an increased sentence under a recidivist statute for a future offense") (emphasis in original), People v Arnold, 33 Cal 4th 294, 308, 92 P 3d 335, 344 (Cal 2004) ("the possibility of increased punishment in the event of a subsequent conviction is a collateral consequence"), Major v State, 790 So 2d 550, 551 (Fla 3d DCA 2001) (rejecting the argument that a criminal defendant's plea in 1993 should be invalidated due to defense counsel's failure to advise him that he could be sentenced as a

recidivist in the future because “there is no duty to anticipate a defendant’s future recidivism”), State v. Pillette, 160 Vt 509, 512, 630 A 2d 1296, 1298 (Vt 1993) (‘the potential enhancement of the status or sentence of a future conviction as a result of a previous guilty plea is a collateral consideration”)

The Applicant’s argument is not simply that defense counsel was ineffective for failing to advise him that he could be sentenced as a recidivist at some *indeterminate* point in the future. Furthermore, the Applicant’s argument is not that defense counsel *misadvised* him about the applicability of the LWOP statute, given the overwhelming evidence that defense counsel *never* advised the Applicant of his potential status as a recidivist.

The Applicant’s argument is more detailed than, and distinguishable from, the two outlined above. The Applicant alleges that defense counsel was under a duty to advise the Applicant that his pending charges in Georgetown County could be used to enhance his pending charges in Williamsburg County. The Applicant argues that since both sets of charges were pending, a plea to only the Georgetown County charges would make the possibility of a life without parole sentence in Williamsburg County a direct consequence of his plea. Furthermore, the Applicant argues that defense counsel’s duty to advise him of the LWOP possibility was made even stronger because counsel was representing him on both the Georgetown County charges *and* the Williamsburg County charges. Accordingly, the Applicant argues that his pleas of guilty in Georgetown County were rendered involuntary by defense counsel’s performance, and that he is entitled to a new trial.

The distinguishing factor between a direct and a collateral consequence of a criminal conviction turns on the immediacy and inevitability of the range of a criminal defendant’s

punishment. It is for this reason that the fact that a defendant may be deported,⁷ subject to civil confinement,⁸ or parole ineligible⁹ as a consequence of his plea does not render that plea involuntary if his attorney did not advise him of the applicability of these *possible* consequences. In all of the illustrated cases, the purported consequence of the defendant's plea may never actually occur. It is for similar reasons that the applicability of recidivist statutes is considered a collateral consequence. "there is no duty to anticipate a defendant's future recidivism." Major v. State, *supra*, at 551.

However, in this case, defense counsel did not have to "anticipate" the Applicant's future recidivism. Instead, the Applicant, by virtue of his *pending* charges, was subject to the terms of S.C. Code Ann. §17-25-45. By pleading guilty to a "most serious" offense in Georgetown County, the maximum sentence on his pending Williamsburg County charge was increased to life without parole. Furthermore, the sentencing court in Williamsburg County would have no choice but to impose a life without parole sentence on the Applicant if he was convicted as indicted.¹⁰ See S.C. Code Ann. §17-25-45(G) ('The decision to invoke sentencing under Section 17-25-45(B) [imposing an LWOP sentence for a third 'serious' or 'most serious' crime] is in the discretion of the solicitor. The provisions of Section 17-25-45(A) [imposing an LWOP sentence for a conviction for a second 'most serious' crime] shall be mandatory'). Defense counsel clearly testified that the Applicant had always insisted that he would never plead guilty to the Williamsburg charge under any circumstances. Therefore, he believed that a jury trial in Williamsburg was inevitable.

⁷ See United States v. Yearwood, 863 F.2d 6 (4th Cir. 1988).

⁸ See Page v. State, 364 S.C. 632, 615 S.E.2d 740 (2005).

⁹ See Knox v. State, *supra*.

¹⁰ A conviction on the Williamsburg County charge was a foregone conclusion given that the offense occurred around the same time, involved the same parties, and involved the same conduct as the Georgetown County criminal sexual conduct charge which the Applicant pleaded guilty to.

Additionally, defense counsel was representing the Applicant on both sets of charges. Indeed, the Applicant testified that defense counsel told him he was working toward a “wrap-around” plea that would dispose of both his Georgetown County and Williamsburg County charges. Defense counsel, on the other hand, testified that he was unaware that the Williamsburg County charge was for criminal sexual conduct rather than Lewd Act on a Minor. Defense counsel acknowledged representing the Applicant on this charge and testified to representing him at a bond hearing on Thanksgiving Day. He therefore should have been well aware of the nature of the charge in Williamsburg County and the fact that it would carry a mandatory LWOP sentence if the Applicant pleaded guilty to the Georgetown County CSC with a Minor charge on a date prior to a Williamsburg judgment for a most serious offense. Therefore, a direct consequence of his plea in Georgetown County was a life without parole sentence in Williamsburg County if convicted in that court. Defense counsel was under a duty to advise him of this consequence prior to the Applicant’s plea in Georgetown County. He did not do so. Based on his PCR testimony, he let his client plead guilty to a most serious charge in Georgetown County without even finding out what the precise charge in Williamsburg was. This error is all the more glaring in light of the fact that defense counsel knew the Williamsburg charge had been brought by the same victim whose accusation of sodomy resulted in the Georgetown County CSC with a Minor charge. Consequently, defense counsel committed error by failing to advise the Applicant of this direct consequence of his plea to the Georgetown County charges.

There can also be no doubt that the Applicant would not have pleaded guilty had he known of the direct consequences of his plea. Applicant has unequivocally testified that he would have proceeded to trial in Georgetown County had he known that he faced an LWOP

sentence in Williamsburg County. Therefore, the Applicant has met his burden of proof, and his requested relief on this ground should be granted.

B Plea Counsel's Failure to Investigate the Criminal Sexual Conduct Charge and Failure to Advise the Applicant that He Could not Be Tried until He Was Indicted Rendered the Applicant's Pleas Involuntary

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence admitted by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008).

There are two prongs to this argument. First, the Applicant alleges that defense counsel was ineffective for failing to sufficiently investigate the factual circumstances surrounding his Georgetown County criminal sexual conduct charge. Specifically, the Applicant argues that had defense counsel investigated the charge, defense counsel would have discovered that there were several alibi witnesses who could testify on the Applicant's behalf at trial. The Applicant further argues that if he had been properly advised of the existence of these witnesses, he would not have pleaded guilty but instead would have proceeded to trial.

Second, the Applicant argues that had he been advised that he would not have to proceed to trial immediately on the most serious charge of Criminal Sexual Conduct with a Minor if he did not plead guilty, he would not have entered these pleas. Additionally, the Applicant argues that had defense counsel had more time to investigate the case, he would have been able to confirm the dates of the church outing during which the CSC allegedly occurred in Georgetown and would have had time to investigate and present a readily available alibi for that time period. As mentioned above, had the Applicant known the exact time period of the alleged sexual battery in Georgetown, he would have recalled the availability of his alibi and would have made his attorney

aware of this potential alibi witnesses. He has clearly testified that he would not have pleaded guilty under those circumstances. Accordingly, the Applicant argues that he is entitled to a new trial.

1 The Defense Evidence

At the Post-Conviction Relief hearing, the Applicant presented testimony from several witnesses, as well as several affidavits from other available witnesses, attesting to the fact that the Applicant was repairing a home at the time the alleged assault would have occurred.¹¹ Furthermore, the Applicant presented testimony that the showers which Victim³ stated he was waiting on were inoperable in early August 1999. Therefore, the Applicant had a complete alibi defense to the criminal sexual conduct charge, as well as evidence that Victim³ could not have been waiting to take a shower at the church. This testimony was given by readily available witnesses who were easy to locate.¹² As will be shown below, defense counsel did not take the necessary steps to investigate these potential defense witnesses. As previously noted, the Applicant also presented PCR testimony from his niece and nephew whose testimony would have refuted the claims of Victim³ concerning a church beach outing which ended with the youth bathing in showers at the church.

2 Defense Counsel's Opportunities to Investigate the Case

As an initial matter, it is important to note that the Applicant was not indicted on the criminal sexual conduct charge, instead, he waived presentment on the charge at the guilty plea proceeding. Therefore, defense counsel did not have the benefit of an indictment to know the general dates the State was alleging that the improper acts occurred. Furthermore, defense

¹¹ The affidavits submitted by the Applicant include an affidavit from Kimberly Cook, the individual whose home the Applicant was working on during this time period. Her affidavit states that the Applicant was present and working at her home during the date of the alleged assault.

¹² The Applicant obviously has an extensive support network of family and friends, several of whom were present for both the guilty plea hearing and the PCR hearing and who could have given the Applicant an alibi.

counsel *was* provided *Victim 3* statement to the police in which *Victim 3* stated that he was assaulted by the Applicant in June or July of 1999¹³ Consequently, defense counsel did not know what precise date the sexual act allegedly occurred in the weeks leading up to the plea

However, defense counsel *did* have in his possession a church bulletin which stated that the youth group had a planned trip to the beach the first week of August 1999 Given the similarities between the church bulletin and *Victim 3* 's statement, defense counsel should have inquired concerning the reason the church bulletin was included in the discovery package provided by the prosecution and should have pressed the prosecution sooner for the dates of the church outing which allegedly culminated in the Applicant's sexual assault of *Victim 3* Had defense counsel done so, he would have discovered that the Applicant had a complete alibi defense for the dates of the church youth meeting which was held August 5-7, 1999 His failure to do so was error

Additionally, according to the Applicant's witnesses, defense counsel discovered the specific date of the alleged incident days before the plea The Applicant's father testified that during a pre-trial meeting with defense counsel and several other family members and friends, defense counsel spoke to the assistant solicitor assigned to the case by phone At the conclusion of the phone conversation, defense counsel informed everyone that he had finally gotten a firm date from the prosecutor who had stated that the alleged assault actually occurred between August 5 and 7, 1999¹⁴ Nevertheless, the evidence is clear that defense counsel did not undertake an investigation into the factual circumstances of the criminal sexual conduct charge at that point His failure to do so was error

¹³ The Applicant's warrant for this charge also lists the date of the offense as occurring between June and July 1999

¹⁴ Defense counsel for his part testified that he did not know the date of the assault until the guilty plea hearing

Assuming, *arguendo*, that defense counsel did not know of the August 1999 date until the plea, defense counsel was provided with this date *during* the guilty plea hearing. See Tr p 15, lines 6-7. If the date was revealed for the first time at the guilty plea hearing, defense counsel should have asked the plea court to stand down and should have moved to continue the matter to provide sufficient time to investigate the allegations.¹⁵ Defense counsel's failure to do so was error. The incident report and the arrest warrant placed this alleged battery as having occurred between late June and early July, 1999. The announcement of a specific narrow time period for the act which was the basis for the CSC charge *during the plea*, which had never been properly disclosed during the discovery process, should have prompted action by defense counsel. This was not one of the cases where a very young victim alleged a sexual assault and was unable to give more than a general time period for the molestation. In this case, the sexual battery was alleged to have occurred during a specific church event and the State clearly knew exactly what church event it was and the dates that function was held. If the State in fact did not disclose this information to the defense until during the plea proceeding, defense counsel was clearly ineffective for not bringing this discovery violation to the attention of the Court and for failing to ask that the matter be continued until he had adequate time to determine what, if any, impact this disclosure had on the Applicant's decision to plead guilty to that offense.

Additionally, defense counsel failed to advise the Applicant that he could not proceed to trial on the criminal sexual conduct charge until he was indicted by the grand jury. Although the State would have undoubtedly obtained an indictment at the next term of the Georgetown County Grand Jury, the extra time afforded by the State having to do so would have given defense counsel an opportunity to further investigate the date of the alleged sodomy and an alibi for that time period. Defense counsel never told the Applicant that the State might go forward on the

¹⁵ The Applicant's pleas had not yet been accepted by the plea court at that time.

Lewd Act charges but could not force him to trial on the CSC with a minor charge because of the absence of an indictment. Defense counsel testified that he knew the prosecutor would not be allowed to try these cases in rapid fire succession as they were threatening to do if the Applicant did not plead. He stated that he knew that the Court would not allow the State to call more than one of these cases for trial per term but admitted that he did not explain this fact to his client. Defense counsel's insistence on proceeding with the Georgetown pleas without advising his client of these factors was error.

In summary, defense counsel committed several errors in failing to sufficiently investigate the factual circumstances of the criminal sexual conduct charge. Defense counsel failed to investigate a potential alibi defense based on the church bulletin. Furthermore, defense counsel failed to investigate the case once he discovered the date of the alleged assault from the assistant solicitor days before the plea. Additionally, he further failed to advise the Applicant that he could obtain a *de facto* continuance because the Applicant had not been indicted on the criminal sexual conduct charge. Finally, even if defense counsel did not know the actual date of the offense prior to the plea, he failed to request a continuance at the guilty plea hearing once the State informed the plea court of the actual date of the offense.

3. Prejudice to the Applicant

The Applicant was unquestionably prejudiced by defense counsel's failure to take any of the above steps to investigate his case. The Applicant's witnesses provided him with a defense to the harshest crime that he was charged with committing. The testimony of Drexel Mixon and the Applicant's father completely repudiated the testimony of Victim 3 regarding the entire reason the Applicant supposedly took Victim 3 to his home, to avoid the long line at the church to take a shower. Their testimony establishes that there were no functioning showers at the church.

in the summer of 1999. The Applicant unequivocally testified that he would not have pleaded guilty had he known that he could have presented these witnesses in his defense at trial. Furthermore, the Applicant testified that he would not have pleaded guilty had he known that he did not have to plead guilty on April 20, 2006, in order to avoid going to trial on the CSC with a Minor charge almost immediately. For these reasons, the Applicant's requested relief on these grounds should be granted.¹⁶

CONCLUSION

For all of the above reasons, the Applicant respectfully requests that this Court vacate his convictions and sentences and remand his case to the Georgetown County Court of General Sessions for a new trial.

Respectfully submitted,

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This ____ day of December, 2008

¹⁶ Though the Applicant submits that defense counsel's cumulative errors rendered his guilty plea involuntary, he asserts that each allegation alone is worthy of granting him a new trial.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

2007-CP-22-0476

Robert Troy Taylor, # 315084,

Applicant,

v

State of South Carolina,

Respondent

**RESPONDENT'S BRIEF
SUPPORTING DENIAL OF
POST-CONVICTION RELIEF**

This matter came before the Court pursuant to an Application for post-conviction relief filed April 3, 2007, by Robert Troy Taylor. An evidentiary hearing was convened at the Horry County Courthouse on Thursday, November 20, 2008. The Applicant was present at the hearing and was represented by Tara Dawn Shurling, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General. Following the testimony, this Court requested that the parties submit briefs on the pertinent issues in the case, and particularly regarding the issue of whether a defendant must be advised that an offense to which he pleads guilty qualifies as a "most serious" strike pursuant to S.C. Code Ann. § 17-25-45 (LWOP statute). The Respondent submits that, under the current law and under the law at the time of the Applicant's plea, such a consequence is collateral, rather than direct, and that a defendant may enter a free and voluntary guilty plea even though his attorney does not advise him regarding that consequence. Further, the Respondent submits that the record in this case supports that the Applicant entered a free, knowing, voluntary, and intelligent guilty plea, having been accurately advised regarding the plea's direct consequences.

REVIEW OF THE RECORD¹

The Applicant was represented in Georgetown by Scott Joye and Delton Powers on two counts of lewd act upon a minor, and one count of criminal sexual conduct (CSC) with a minor in the second degree. Attorney Joye was the Applicant's primary attorney. The lewd act victims were Victim 1 and Victim 2. The victim as to the CSC charge was Victim 3. At the time of his plea, the Applicant had also been charged in Williamsburg County with kidnapping and CSC with a minor, second degree, regarding victim Victim 3.

The evidence against the Applicant was overwhelming as to the two lewd act charges. Both victims were prepared to testify at trial, and in fact, one of the victims made a special trip from his duty in Iraq to testify at trial. For this reason, the State intended to try all three cases successively. The State planned to present Lyle evidence in each lewd act trial to prove common scheme or plan, including testimony by another young man (Dennis W.) who also claimed the Applicant molested him in a similar fashion. The State also had in evidence a tape-recorded conversation between the Applicant and his now ex-wife, which contained conclusive admissions of guilt on both lewd act charges. (See Respondent's Exhibit # 1). The State could have also presented admissions made by the Applicant to Georgetown Investigator Tom Digsby. As Attorney Joye explained to the Applicant, there were simply no plausible defenses to the lewd act charges, in light of the overwhelming evidence, and since there were no eyewitnesses other than the Applicant and the victims. Even the Applicant's parents could not deny that it was common at that time for the Applicant and the victims to sleep in the same bed. In addition, Attorney Joye explained that the Applicant's role as a pastor to the boys would likely be more harmful than helpful at trial. Therefore, Attorney Joye advised the Applicant that the likelihood of conviction on both lewd act charges was very high.

¹ This Brief was prepared without the benefit of the PCR hearing transcript which is apparently not yet available. Accordingly, while striving for complete accuracy with respect to the factual matters asserted in this Brief, the Respondent would defer to the Court's recollection of the testimony presented at the PCR hearing.

Attorney Joye also explained to the Applicant that if the CSC case went to trial, the State would have made every effort to include as much damaging Lyle evidence from the other cases as the court would allow. This would have been in addition to the victim's own testimony, which, notably, was later found credible by a jury in Williamsburg County. Attorney Joye and the Applicant discussed the victim's statement regarding the alleged sodomy, and reviewed the discovery that had been provided. They discussed a potential strategy of bringing out the victim's history of drug abuse, and his possible motives for fabricating the assault, but Attorney Joye was not confident that such a strategy would ultimately be successful at trial. The victim's statement to police indicated that the Applicant invited him to take a shower at his house in Murrell's Inlet, following a church-related trip to Huntington Beach, because none of the showers at the church were available. Although the Applicant denied that the assault occurred, he never informed his attorney that there was any malfunction with the showers at his church. He also never told his attorney that he wanted to explore a possible alibi defense. Attorney Joye investigated the CSC allegations using a former FBI agent named Don Meyers. Mr. Meyers met with the Applicant and with his family members. Mr. Meyers interviewed the Applicant's potential witnesses, however, each person he interviewed either could not recall anything one way or another due to passage of time, or they recalled information that was actually harmful to the case.² Additionally, if character witnesses were called on the Applicant's behalf, they might have opened the door to damaging impeachment regarding whether the witnesses were aware that the Applicant had been found with a collection of pornography on his church computer.

Considering all the evidence the State might present, Attorney Joye worked to negotiate a plea offer that would combine all of the Georgetown offenses and give the Applicant as little prison time as possible. Attorney Joye was cognizant of the fact that the Applicant wanted to minimize any time he might have to be away from his children. Initially, the Applicant had not been amenable to the idea of a plea, and he rejected an offer for a plea to assault and battery of a high and aggravated nature.

² For example, at least two of the potential witnesses recalled playing strip tag with the Applicant at some point around the time of the allegations.

However, after he listened to the tape of the phone conversation between himself and his ex-wife, during which he made admissions of inappropriate touchings of both lewd act victims, he told his attorney that he had determined that a “deal” with respect to all Georgetown charges would be in his best interests. Attorney Joye testified that this decision was made one week before the guilty plea, on a Thursday, and that the Applicant listened to the tape in his truck. The Applicant acknowledged that he did listen to the tape in his truck at some point prior to the plea.

On Thursday, April 20, 2006, the Applicant pled guilty, waiving grand jury presentment as to the CSC charge. Attorney Joye testified that prior to the plea, and following a discussion in chambers, it was understood that the Applicant would receive a sentence of eight years, suspended to five years of active time and three years of probation. This was over the objection of the solicitor, who wanted at least ten years. By his plea, the Applicant avoided the possibility of receiving up to fifty years in prison had he gone to trial on each charge. The Applicant was advised of this on the record at the plea – specifically, that each lewd act charge carried a maximum of fifteen years, and that the CSC charge carried a maximum of twenty years. The requirements of 85% service and registration as a sex offender were also discussed on the record. In addition, the Applicant was informed of the nature of the charges against him, the factual basis for the charges, and the constitutional rights he was waiving by pleading guilty.

Although the Applicant now claims that his lawyer told him what to say at the plea, Attorney Joye testified that he specifically advised the Applicant to tell the plea judge the truth. At his plea, the Applicant told the court that he was pleading freely, voluntarily, and without threat or coercion. He admitted his guilt under oath, and further told the court that he was “absolutely” satisfied with his attorneys’ services, that they had called all of the witnesses that he wanted them to call, and that there was nothing further he wished for them to do. Prior to the plea being accepted by Judge Cottingham as freely and voluntarily made, “without any equivocation” from the Applicant, the Applicant was informed that he could change his mind and enter a plea of not guilty. Judge Cottingham also pointed

out that there were pending charges in Williamsburg, and he clarified that although there may have been some hope of possible concurrent sentencing, another court in Williamsburg County would have to deal with that case separately in the future (See Guilty Plea Transcript, page 38, line 9 – p 39, line 18) At the time of these comments, the Applicant had already tendered his plea and admitted his guilt

Attorney Joye represented the Applicant on the Williamsburg charges for a period of time, however, at the time of the Georgetown plea, Attorney Joye was under the impression that the Williamsburg case involved a charge of lewd act, rather than the more serious kidnapping and CSC charges Prior to the plea, he and the Applicant did not discuss the effect of a “most serious” strike, under S C Code Ann § 17-25-45, regarding the Georgetown CSC charge to which the Applicant pled³ Of course, that statute had no effect on the Georgetown County convictions, nor did it affect the penalty for those convictions However later, when Attorney Joye realized that the still-pending Williamsburg case involved charges that would subject the Applicant to life without parole if he were to be convicted as indicted, he spoke with the prosecutor, Kimberly Barr, Esquire, to discuss the possibility of a plea to the lesser charge of lewd act upon a minor Ms Barr and the victim did agree to a plea to the lesser charge, although Ms Barr indicated that she did not feel that a sentence recommendation would be appropriate (Please see attached **Affidavit of Kimberly V Barr**)

Attorney Joye testified that he thereafter advised the Applicant that he could avoid a sentence of life without parole if he pled to the lesser charge of lewd act in Williamsburg However, the Applicant was hesitant about doing so, even though Attorney Joye advised the Applicant that he believed he would be able to work out an arrangement such that the Applicant would not serve even one additional day of time in prison Their attorney-client relationship terminated shortly after this discussion, before any plea agreement in Williamsburg was formalized, and Attorney Charles Barr took over the Applicant’s representation In July 2007, the Applicant proceeded to trial and was convicted of both kidnapping and CSC with a minor in the second degree Judge James sentenced the

³ The parties stipulated that Attorney Powers also did not discuss this statute with the Applicant prior to his guilty plea

Applicant to two consecutive life without parole sentences, pursuant to S C Code Ann § 17-25 45, due to his previous “most serious” offense of CSC second with a minor

The Applicant now claims that his guilty plea in Georgetown was involuntary due to ineffective assistance of counsel, and that his attorneys should have advised him regarding the possibility of receiving life without parole upon a future conviction for a “most serious” offense

ARGUMENT

Consequences of a Plea of Guilty Direct vs Collateral

Although every defendant is initially entitled to a presumption of his innocence, once convicted under the law, this presumption is extinguished and essentially reversed See Herrera v Collins, 506 U S 390, 398-400 (1993), see also Strickland v Washington, 466 U S 668, 689-90 (1984) Therefore, a post-conviction relief applicant who challenges a conviction by guilty plea bears the burden of proof to convince the court that his plea was constitutionally infirm and that it is unworthy of reliance See Hill v Lockhart, 474 U S 52 (1985) However, “[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, 654 S E 2d 870 (2007) (*citing Blackledge v Allison*, 431 U S 63 (1977)) “[S]tatements 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 ” Id (*citing Crawford v United States*, 519 F 2d 317 (4th Cir 1975), Edmonds v Lewis, 546 F 2d 566 (4th Cir 1976)) The United States Supreme Court recognizes the presumptive validity of guilty pleas entered into in open court by counseled defendants See Brady v U S , 397 U S 742, 751-55 (1970), Hill v Lockhart, 474 U S 52 (1985)

A guilty plea record should establish that the defendant had a full understanding of the charges against him and the consequences of his plea See Boykin v Alabama, 395 U S 238, 242 (1969), Roddy v State, 339 S C 29, 33-34, 528 S E 2d 418, 421 (2000), Anderson v State, 342 S C 54, 535 S E 2d 649 (2000) (defendant who pleads guilty must be advised of the constitutional rights he is

waiving, the nature and crucial elements of the offense, and the maximum sentence and any mandatory minimum sentence) A plea of guilty entered by one fully aware of the direct consequences must stand unless induced by threats, misrepresentations, or bribes Brady v U S, 397 U S 742, 755 (1970) (citation omitted)

The imposition of a sentence may have a number of collateral consequences, but a guilty plea defendant need only be affirmatively informed of the “direct” consequences of the plea – consequences which have a “definite, immediate and largely automatic effect” on the “range of the defendant’s punishment” for that offense Williams v State, 378 S C 511, 515, 662 S E 2d 615, 617 (Ct App 2008) (quoting Cuthrell v Director, Patuxent Institution, 475 F 2d 1364 (4th Cir 1973)) “Direct consequences’ are the direct and immediate results of a guilty plea State v Armstrong 263 S C 594, 211 S E 2d 889 (1975) (citing Cuthrell, *supra*) Even certain mandatory consequences, such as registration on the sex offender registry, are nevertheless considered collateral because they have no effect on the range of defendant’s punishment for the offense to which he pled See Williams, *supra*

“A guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence” Frasier v State, 351 S C 385, 389, 570 S E 2d 172, 174 (2002) (citation omitted) (parole eligibility is collateral), see also Smith v State, 329 S C 280, 284, 494 S E 2d 626, 628 (1997) (a crime’s designation as “violent” is a collateral consequence, even though a subsequent conviction for a “violent” crime would subject the defendant to a sentence with no parole), Jackson v State, 349 S C 62, 562 S E 2d 475 (2002) (community supervision is collateral), Randall v State, 356 S C 639, 591 S E 2d 608 (2004) (85% service requirement is collateral), Knox v State, 340 S C 81, 530 S E 2d 887 (2000) (defendant can only attack a guilty plea on the basis of “collateral consequences” where he is affirmatively misadvised) (overruled in part on other grounds) Counsel cannot be held ineffective for failing to advise a defendant regarding indirect consequences that do not “flow directly from his guilty plea” Page v State, 364 S C 632, 637, 615 S E 2d 740, 742 (2005)

Consequences that stem from a separate proceeding are collateral consequences of which a defendant need not be advised prior to entering a plea of guilty. See id.

There are no cases in South Carolina directly addressing whether a “strike” under the life without parole statute is a collateral consequence of a guilty plea. However, the recent Williams case, *supra*, clearly adopts the “direct” versus “collateral” distinction that is cited repeatedly in federal case law. See Cuthrell, supra, and cases cited *infra*. In addition, there is a collection of law from around the country clearly supporting that a consequence of this nature is collateral. In a case similar to the Applicant’s case, the Sixth Circuit Court of Appeals held that a defendant’s guilty plea to murder was not involuntary where he was not informed that the plea could be used as an “aggravating circumstance” to elevate the sentence to death in a then-pending (but unrelated) murder charge from another county. King v. Dutton, 17 F.3d 151 (6th Cir. 1994). The court rejected the defendant’s argument that “the qualitative difference of death” required greater safeguards to ensure the voluntariness of his guilty plea. Id. at 154.

The court noted that the consequence could not be “direct” where (1) the notice of intent to seek the death penalty in the unrelated murder charge had not yet been filed, (2) the prosecutor in that case had discretion to make a plea offer to a lesser offense that would not trigger a sentence of death, (3) the defendant had the discretion to decide to take a plea offer, (4) even if he went to trial, he could be acquitted or convicted of a lesser offense, and (5) the jury could have declined to find a sentence of death appropriate. Id. at 154. Thus, rather than being a “direct” consequence, it was “speculative.” Id. at 155. Accordingly, the court held that neither the plea court nor the defendant’s attorney had a constitutional duty to inform the defendant of that consequence, even though they were both aware of the pending unrelated murder charge, because that consequence was “not direct, immediate, or automatic.” Id. at 153.

The King case is similar to the Applicant’s case because it involved the effect of a guilty plea on a then-pending charge from another county. Like in King, the effect of the Applicant’s Georgetown

guilty plea upon the later Williamsburg sentence was speculative rather than “direct.” The Williamsburg conviction and sentence were contingent upon a host of factors. First, the solicitor could have decided she lacked sufficient evidence to prosecute and could have dismissed the case altogether. Alternatively, the solicitor could have offered a plea to a lesser offense, and the Applicant could have accepted a plea to a lesser offense. The Applicant could have taken the case to trial and been acquitted. Finally, the legislature could have changed or repealed the life without parole statute such that it would not apply to the Applicant’s situation.

Of course, importantly, in the Applicant’s case, the solicitor had, in fact, extended a plea offer to the lesser offense of lewd act upon a minor, which would not have subjected the Applicant to life without parole (See **Affidavit of Kimberly V Barr**). The Applicant’s attorney advised him that he could avoid the possibility of life without parole if he would accept the plea, and advised him that he sincerely believed that he could convince the solicitor and/or the sentencing judge to have the Applicant sentenced such that he would not serve even one additional day in prison. However, the Applicant rejected the offer, exercised his right to a jury trial, and was ultimately convicted in Georgetown. The jury found the victim credible beyond a reasonable doubt and found that the Applicant sodomized and kidnapped him. The life without parole sentences directly followed from these convictions.

In addition to the King case, numerous other cases from the United States Courts of Appeals support the proposition that future sentence enhancement is a collateral consequence. See Wright v U.S., 624 F.2d 557, 561 (5th Cir. 1980) (“a plea’s possible enhancing effect on a subsequent sentence is merely a collateral consequence of the conviction, it is not the type of consequence about which a defendant must be advised before the defendant enters the plea”), U.S. v. Pearson, 910 F.2d 221, 223 (5th Cir. 1990) (the “consequences” of a guilty plea with respect to sentencing means that the defendant must understand the maximum prison term and fine for the offense charged), U.S. v. Brownlie, 915 F.2d 527, 528 (9th Cir. 1990) (the possibility that a defendant will be convicted of another offense in

the future and will receive an enhanced sentence based upon the instant conviction is not a direct consequence of a guilty plea), U S v Edwards, 911 F 2d 1031, 1035 (5th Cir 1990) (uncounseled defendant who pled guilty to receive a “time-served” sentence in state court needed not be advised that her plea could be used to enhance her sentence in a pending federal case, such consequence was merely collateral), U S v Long, 852 F 2d 975 (7th Cir 1988) (a consequence cannot be “direct” where it has no effect upon the nature or length of the sentence being imposed for that offense), U S v Lambros, 544 F 2d 962, 966 (8th Cir 1976) (the possibility of enhanced punishment for a subsequent similar conviction is not a direct consequence of a guilty plea), U S v Salmon, 944 F 2d 1106, 1130 (3rd Cir 1991) (the effect of a conviction on sentencing for a later offense under “career offender” law is a collateral consequence of which a defendant need not be advised, defendant need not be advised of even “foreseeable” collateral consequences in order for his plea to be voluntary under the constitution, defendant need only be advised of the direct consequences, which include only the maximum prison term and any fine), McCarthy v U S, 320 F 3d 1230, 1234 (11th Cir 2003) (the fact that defendant’s guilty plea could have sentencing consequences in subsequent federal prosecution were clearly collateral, and neither the court nor McCarthy’s counsel were constitutionally required to make him aware of them), see also Weinstein v U S, 325 F Supp 597, 600 (1971) (it is proper to “assume that the defendant will not be guilty of a subsequent offense”) (citation omitted), Fee v U S, 207 F Supp 674 (1962) (defendant’s guilty plea, which was later used to enhance the sentence on a subsequent conviction, was not involuntary where he was not informed that the plea could be used to enhance the subsequent sentence under a “third offender” provision), Ex Parte Morrow, 952 S W 2d 530, 535-36 (1997) (court rejected defendant’s argument that his guilty plea was involuntary due to counsel’s failure to advise him that his plea could be used against him in his re-trial for capital murder), People v Kirton, 36 A D 3d 1011, 1014-15, 827 N Y S 2d 352, 355 (App Div 3d Dep’t 2007) (“a defendant’s eligibility for an enhanced sentence upon a hypothetical future conviction is merely a ‘collateral

consequence' of a plea of guilty that the defendant need not be advised of in order for the guilty plea to be deemed fully informed ")

In addition, countless cases hold that similar consequences are collateral – including consequences as harsh as deportation from the country See, e.g., Cuthrell v Director Patuxent Institution, 475 F 2d 1364 (4th Cir 1973) (“the fact that the Court fails to advise the defendant that his plea, if accepted, makes him subject to deportation proceedings, a result said to be equivalent to the ‘loss of both property and life, or all that makes life worth living’ or to ‘a life sentence of banishment,’ is deemed a collateral consequence and will not render the plea involuntary”) (internal citations omitted), United States v DeFreitas, 865 F 2d 80, 82 (4th Cir 1989) (counsel not ineffective for neglecting to inform defendant he might be subject to deportation because of guilty plea), Broomes v Ashcroft, 358 F 2d 1251, 1257 (10th Cir 2004) (“deportation remains a collateral consequence of a criminal conviction, and counsel's failure to advise a criminal defendant of its possibility does not result in a Sixth Amendment deprivation”), see also People v Pequeno, 337 Ill App 3d 537, 786 NE 2d 1071, (2d Dist 2003) (even though deportation was a *mandatory consequence* of the defendant's plea of guilty, it was nonetheless a collateral consequence of which the defendant needed not be advised) (emphasis added)

Accordingly, the Respondent submits that while the Applicant's life without parole sentences were “direct” results of a jury's finding, beyond a reasonable doubt, that the Applicant committed the offenses of kidnapping and criminal sexual conduct in Williamsburg County, they were merely collateral consequences of the plea in Georgetown. Therefore, the Applicant's attorneys did not render constitutionally deficient performance for failing to advise the Applicant of this collateral consequence, and the Applicant's guilty plea cannot be invalidated as involuntary on this basis.

Failure to Credibly Prove Prejudice

Additionally, the Respondent submits that the Applicant failed to credibly prove that he would have taken the Georgetown cases to trial, instead of pleading guilty, even if he had been specifically

aware of the life without parole statute. See Leon v. State, 379 S.C. 448, 666 S.E.2d 260 (Ct. App. 2008) (Applicant bears burden to prove prejudice, in that he would have gone to trial instead of pleading guilty). First, the Respondent submits that the Applicant's self-serving testimony cannot be trusted as credible. His statements at the guilty plea directly contradict his testimony at the PCR hearing, furthermore, his denial of all guilt at the PCR hearing is at odds with the statements he made to his wife when he was unaware that he was being recorded. (See Respondent's Exhibit # 1). The Respondent submits that the clear admissions that the Applicant made on this tape are, in fact, the most reliable statements made by the Applicant in this matter. More importantly, the statements constitute conclusive evidence of his guilt on both lewd act charges, which the State would have offered into evidence at trial. The Respondent submits that it is implausible that the Applicant would have proceeded to trial on these charges, in light of the overwhelming evidence of guilt.

The Respondent also submits that the Applicant failed to prove that he would have taken the CSC charge to trial, considering that he agreed to plead guilty for a five-year concurrent sentence on all three charges, considering that he freely admitted his guilt under oath, and considering the State could have proven him guilty. At the time the victim reported the CSC, he was unable to set forth a precise date inasmuch as several years had passed. However, he did always maintain that the assault occurred during the warmer months of the year. The arrest warrant indicated that the offense occurred sometime between June and July of 1999. Ultimately, on the proposed indictment, which was never sent to the grand jury, the dates of the offense were stated as "on or about August 5-7, 1999". The record is not clear regarding how these particular dates were selected, although the Applicant suggested at the PCR hearing that a church bulletin found in the discovery led the solicitor to incorporate those particular dates. It should be noted that the victim testified regarding this offense at the Applicant's July 2007 Williamsburg trial, indicating that the offense occurred some time during the summer months of 1999. Regardless of the particular dates in the proposed indictment, the Respondent submits that the fact that the Applicant failed to ever mention the possibility of an alibi

defense to his attorney prior to pleading guilty suggests that he knew he was guilty of committing this offense at some point in the year 1999. This, of course, comports with what he told the plea judge regarding his guilt.

At the PCR hearing, the Applicant presented testimony, and several affidavits, supporting that the Applicant was assisting with the renovation of a church member's home on the dates of August 5-7, 1999. However, nothing was presented that could conclusively refute the victim's allegations against the Applicant. Additionally, the Applicant's alleged alibi is limited to the specific dates of August 5, 6, and 7 of 1999. Meanwhile, the proposed indictment includes the language "on or about" the dates of August 5-7, 1999. The Respondent further submits that, had the CSC case gone to trial, and assuming the solicitor learned that these dates were not, in fact, precisely correct, he could have re-indicted to cover a period of time more accurately reflecting the victim's memory. See State v. Wade, 306 S. C. 79, 409 S. E. 2d 780 (1991) (indictment covering a two-year period for one sexual assault incident was not unconstitutionally overbroad where child victim could not recall precise dates of the incident). The Wade court noted that "(i)t would be a very weak rule of law that would permit a man to ravish a fifteen year old girl and then say in effect, 'you cannot convict me of this crime, as you did not guess the right date.'" Id. at 84-85, 409 S. E. 2d at 783 (citation omitted).

At the PCR hearing, the Applicant also presented testimony that the showers at the church had been rendered inoperable at some point following the winter months of 1999. This would seem to undercut the portion of the victim's statement where he indicated that the Applicant told him none of the showers were available and therefore he could shower instead at the Applicant's house. However, the Applicant failed to prove that the victim's statement was not merely a recitation of what the Applicant told the victim to entice the victim back to his house. If so, then whether or not the showers were in fact inoperable at that time is beside the point. In any event, the Applicant never mentioned inoperable showers to his attorney at any time prior to his plea, even though he was clearly on notice that the victim was alleging that the assault took place *after* the winter months of 1999.

In sum, the record reflects that the State had overwhelming evidence as to two of the three Georgetown charges, and the Applicant was well aware that he could have been convicted of CSC based upon the victim's testimony and possible Lyle evidence. The Applicant failed to prove that counsel's investigation at the time was unreasonable, based upon the information counsel had been provided at the time. See Strickland v. Washington, 466 U.S. 668, 691 (1984) ("when a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable"). Accordingly, the Respondent submits that the Applicant failed to credibly prove that a viable defense to the CSC charge existed such that the Applicant would have gone to trial instead of pleading guilty, particularly where his decision to plead guilty guaranteed him a five-year sentence on all three charges, and avoided three trials that would have been personally and professionally humiliating for himself and his family.

Therefore, the Respondent submits that even if this Court were to find that the Applicant should have been advised of the life without parole statute, the Applicant has failed to credibly prove that this particular advice would have caused him to go to trial instead of pleading guilty. As discussed above, a conviction in Williamsburg was contingent upon a number of factors. Therefore, the applicability of the life without parole statute was also contingent. Importantly, after his plea, the Applicant, fully aware that he would be sentenced to life without parole if he were to be convicted in Williamsburg, nevertheless rejected a plea to lewd act where he would "not serve one additional day" of time in jail. The fact that he proceeded to trial in Williamsburg, all while having within his grasp the power to conclusively avoid a life sentence, supports that the Applicant remained convinced that he would be exonerated in Williamsburg. Therefore, necessarily, he believed that life without parole would never apply to him. The Respondent submits that if he believed it would never apply, it could not reasonably have affected his decision to plead guilty in Georgetown, considering the State's strong evidence, the

avoidance of three trials, and considering that the Applicant would have still wanted the benefit of the concurrent five-year sentence. Accordingly, the Respondent submits that the Applicant has failed to credibly prove prejudice in this case.

The fact that the Applicant is now serving life without parole, *directly* due to his conviction on *entirely separate crimes* committed in another county, should not be confused with the independent issue of whether his guilty plea to the Georgetown offenses was voluntary at the time it was entered. “The rule that a guilty plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision,” including where he “misapprehended the quality of the State’s case or the likely penalties attached to alternative courses of action.” Brady v. U.S., 397 U.S. 742, 757 (1970). In addition, the Respondent would stress that whether life without parole is an appropriate punishment, generally or in this particular case, is beyond the scope of review, since the legislature has determined that persons who twice commit offenses of this nature serve a sentence of life without parole.

CONCLUSION

In summary, because a “strike” under the life without parole statute is a collateral consequence of a guilty plea, the Applicant may not invalidate his otherwise voluntary and intelligent guilty plea because he was not specifically advised of this consequence. In addition, even if this Court were to find that the Applicant’s attorney had a constitutional duty to advise the Applicant regarding the statute, it does not automatically follow that the guilty plea must be invalidated. The Respondent submits that due to the Applicant’s lack of credibility, this Court should disregard his testimony that he would not have pled guilty had he known about the possibility of life without parole, and find that the Applicant has failed to meet his burden of proof.

The record of a guilty plea, particularly one so thorough and complete, can only be attacked with the most persuasive of evidence that it should be nullified. See Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007). The Applicant bears the burden to prove that his clear, unequivocal, and repeated

admissions of guilt at the plea proceeding must be disregarded. He bears the burden to prove that the guilty plea record is unworthy of any reliance, even though it is clear that the Applicant was accurately advised as to the direct consequences of his plea. The Respondent submits that the Applicant's burden cannot be met where the record just as easily supports that the Applicant, in hindsight, regrets his decision to reject his attorney's advice to plead guilty to a lesser offense in Williamsburg.

For all of the above reasons, the Respondent respectfully requests that this Court deny post-conviction relief in this case.

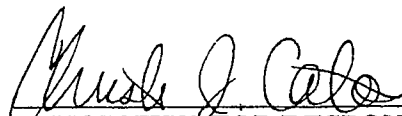
Respectfully submitted,

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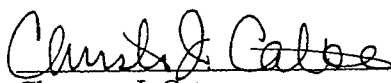
December 19, 2008

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
	)	2007-CP-22-0476
	)	
Robert Troy Taylor,	)	
	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE BY MAIL
v	)	
	)	
State of South Carolina,	)	
	)	
Respondent	)	
_____	)	

- 1 I am an employee of the Respondent in the above-captioned action
- 2 Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail
- 3 I have this day served a copy of **RESPONDENT'S BRIEF SUPPORTING DENIAL OF POST-CONVICTION RELIEF** and **AFFIDAVIT OF KIMBERLY V BARR** in the above-captioned matter on the following person(s) by depositing in the United States mail, postage prepaid

Tara Dawn Shurling, Esquire
Law Offices of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, SC 29204

DATED this 19th day of December, 2008


 Christina J. Catoe
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

Robert Troy Taylor, # 315084)

Civil Action No 2007-CP-22-0476

Applicant,)

v)

AFFIDAVIT OF KIMBERLY V BARR

State of South Carolina,)

Respondent)

The undersigned witness, who personally appeared before me having first been duly sworn, hereby states

I am employed by the Third Judicial Circuit Solicitor's Office as an assistant solicitor I prosecuted the Williamsburg County case of State v Robert Troy Taylor, Indictment # 2006-GS-45-176, regarding charges of criminal sexual conduct with a minor in the second degree and kidnapping. Some time after the Defendant's guilty pleas in Georgetown County in April 2006, and after discussions with Scott Joye, Esquire, who was then representing the Defendant, I agreed (with consent of the victim) to allow the Defendant to plead guilty to the lesser offense of lewd act upon a minor. Mr Joye wanted me to agree to a sentence recommendation of five years, to run concurrent to the time Taylor was already serving for the Georgetown County charges. Neither the victim nor I felt a sentence recommendation was appropriate given the nature of the charges and Taylor's prior history. However, before any plea agreement was formalized, I learned that Charles Barr, Esquire, would thereafter be representing the Defendant, and I had no further communications with Scott Joye as the Defendant's attorney.

Kimberly V Barr
 Kimberly V Barr

SWORN to before me this 26th day of November, 2008

Keisha Guhach
 Notary Public for South Carolina

My Commission Expires Jan 9, 2013

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Robert Troy Taylor # 315084,

2007-CP-22-0476

Applicant,

v

State of South Carolina,

Respondent

ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court pursuant to an Application for post-conviction relief filed April 3, 2007, by Robert Troy Taylor. Respondent made its Return on July 27, 2007. An evidentiary hearing was convened at the Horry County Courthouse on Thursday, November 20, 2008. The Applicant was present in court and represented by Tara Dawn Shurling, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from Georgetown County and Williamsburg County. The Applicant, a former pastor of a Murrells Inlet church, was indicted in Georgetown County for two counts of lewd act upon a minor (2004-GS-22-44 & 2005-GS-22-523). On April 20, 2006, the Applicant waived grand jury presentment on another Georgetown County charge, criminal sexual conduct ("CSC") with a minor in the second degree (2006-GS-22-361), and pled guilty to all three charges. The Applicant was represented by R. Scott Joye, Esquire, and Delton W. Powers, Jr., Esquire, at his plea. Although Attorney Joye served as Applicant's primary counsel, The Honorable Edward B. Cottingham sentenced the Applicant to concurrent eight-year terms, suspended to five

years of active time and three years of probation. The Applicant did not file a direct appeal regarding these convictions.

Meanwhile, during the pendency of the Applicant's Georgetown charges, he was also charged with kidnapping and criminal sexual conduct with a minor in Williamsburg County. The victim was the same victim from the Georgetown CSC charge. Attorney Joye represented the Applicant on the Williamsburg County charges for a period of time until Charles David Barr, Esquire, replaced him as counsel. The Applicant proceeded to trial in July 2007 on the Williamsburg offenses and was found guilty as charged. Based on the Applicant's prior "most serious" CSC conviction in Georgetown County, the trial judge in Williamsburg sentenced the Applicant to life without parole pursuant to S.C. Code Ann. § 17-25-45. An appeal from this conviction is currently pending.

ALLEGATIONS

In his PCR Application, Mr. Taylor alleged that his custody is unlawful for the following reasons:

1. Ineffective assistance of counsel and
2. Involuntary guilty plea

He alleged generally that his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, were violated prior to and during his guilty plea. At the evidentiary hearing, the Applicant more narrowly defined his allegations, and this Court considers these allegations to be proper amendments to his Application for post conviction relief. See Simpson v. Moore, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), Rule 15(b), SCRCP. Specifically, he alleged the following:

1. Plea counsel was ineffective for failing to sufficiently advise the Applicant that a conviction for criminal sexual conduct with a minor in the second degree was a "most serious" strike and that it could be used as a predicate offense for his Williamsburg County charges.

- 2 The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered where they were entered without the knowledge that his convictions could be used to enhance his sentence on his Williamsburg County charges
- 3 Plea counsel was ineffective for failing to sufficiently investigate the factual circumstances surrounding the criminal sexual conduct charge
- 4 Plea counsel was ineffective for failing to move for a continuance once he discovered the precise factual circumstances surrounding the criminal sexual conduct charge
- 5 The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could effectively impeach the credibility of the complaining witness on the criminal sexual conduct charge
- 6 The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could present an alibi defense on the criminal sexual conduct charge
- 7 Plea counsel was ineffective for failing to advise the Applicant that if he did not plead guilty on April 20, 2006, he would not proceed to trial immediately on the CSC with a minor charge because he had not yet been indicted on that charge
- 8 The Applicant's pleas of guilty were not knowingly, intelligently, or voluntarily entered inasmuch as they were entered without the knowledge that he could have had more time to prepare for a trial on the most serious charge if he chose not to waive grand jury presentment on the criminal sexual conduct charge in Georgetown County

STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence Caprood v State, 338 S C 103, 109-110 525 S E 2d 514, 517 (2000), Rule 71 1(e) Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result " Strickland v Washington, 466 U S 668 (1984), Butler v State 286 S C 441, 334 S E 2d 813 (1985) The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases Butler, supra "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional

judgment in making all significant decisions in a case" Caprood, supra, at 109, 525 S E 2d at 517 (citations omitted) The Applicant must overcome this presumption to receive relief Cherry v. State 300 S C 115, 386 S E 2d 624 (1989)

Courts use a two part test in evaluating allegations of ineffective assistance of counsel First, the Applicant must prove that counsel's performance was deficient Under this prong, attorney performance is measured by its "reasonableness under professional norms " Cherry, 300 S C at 117, 385 S E 2d at 625 (*citing Strickland*) Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S C at 117-18, 386 S E 2d at 625 In order to receive relief, the applicant must prove both ineffective assistance and resulting prejudice See Suber v. State 371 S C 554, 558, 640 S E 2d 884, 886 (2007) With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial Hill v. Lockhart, 474 U S 52 (1985)

At the PCR hearing, this Court had before it the Applicant's PCR file, the records of the Georgetown County Clerk of Court regarding the convictions, the Applicant's records from the South Carolina Department of Corrections and the guilty plea transcript Both the Applicant and his attorney, R. Scott Joye, Esquire testified at the hearing In addition, the Applicant called witnesses on his behalf, and the parties stipulated to the admission of several Affidavits, which were entered as exhibits in the Applicant's case This Court carefully considered the testimony of the witnesses and heard the arguments of counsel Thereafter this Court ordered that the parties submit briefs on the pertinent issues in the case, which both parties did on December 19, 2008 In addition, at the Court's request, the State submitted an Affidavit signed by Kimberly V. Barr, Assistant Solicitor in Williamsburg County This Court has now fully considered the briefs of both parties in

conjunction with the entire record. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Guilty Plea Record

In considering the Applicant's allegation that his guilty plea was involuntary due to ineffective assistance of counsel, this Court first looks to the extensive and thorough record created at the guilty plea itself. The plea record reflects that the Applicant was advised of the nature of the charges against him and the maximum penalties for each offense.¹ He was informed that each of the two lewd act charges carried a maximum of fifteen years, and that the CSC charge carried a maximum of twenty years. He was also advised that he would be required to serve 85% of the sentence, and register as a sex offender. He was informed of the factual basis for the charges, the evidence against him, and the witnesses who would testify against him.

The Applicant was also advised, by the plea court and by his attorneys, regarding the constitutional rights he was waiving by pleading guilty. First, he told the court that he understood that he had the right to have the grand jury review the CSC charge, and that twelve of the eighteen members would have to find probable cause before that case could proceed to trial. He told the court that he understood that procedure, wished to waive that procedure, and he stated that he had signed a document confirming his understanding and waiver of that procedure. He told the court that he understood the indictments and the serious nature of the charges. The Applicant further told the court that he was pleading freely and voluntarily without any coercion, threats, or promises made, and without any reservations whatsoever. He told the court that his mind was clear and that he fully understood the proceeding. The court informed him that he could change his mind even at

¹ The plea judge pointed out that the Applicant had pending charges in Williamsburg and clarified that although there may have been some hope of possible concurrent sentencing, another court in Williamsburg County would have to deal with that case separately in the future.

that moment and change his plea to "not guilty" if he wished to do so. The Applicant elected to proceed with his plea and told the court that if he had any questions, he would advise the court.

The Applicant further told the court that he understood that he was presumed innocent on all charges, and that at a trial, the State would be required to prove his guilt beyond a reasonable doubt. He further stated that he understood that, although the allegations were from many years ago, the cases were still provable. He told the court that he wished to "give up forever" any potential defenses he had to the charges, and instead plead guilty. He specifically told the court several times without hesitation that he was guilty, and stated "I am guilty." He told the judge that he was "very thankful" for the services of his distinguished attorneys, and that he was "absolutely" satisfied with their services. He elaborated that they had "most definitely" done everything that he had asked them to do, including calling all of the witnesses he wanted them to call, and that there was nothing further that he thought they could or should do for him. The Applicant acknowledged that there was "no question" about the fact that he was guilty of the offenses. Finally, he told the court he answered all of the questions truthfully.

Thereafter, each of the three victims spoke at the plea, describing the difficulties caused in their lives due to the offenses. Following their testimonials, the defense presented its case in mitigation, including the fact that the Applicant, as a young man, suffered abuse at the hands of certain family members. Defense counselors also presented numerous friends and family members, including former congregation members, to speak on the Applicant's behalf. Some of them confirmed the pattern of abuse that existed in the Applicant's extended family. Several letters of support were also presented to the court for consideration. Finally, the Applicant was given the opportunity to speak, and he offered an apology for his "part of the pain." He stated that he felt the solicitor had acted "very properly" in the case. He requested that the court show him mercy, so that he could return home and be a father to his three children.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is well-settled that "[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, 654 S.E.2d 870 (2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)) "[S]tatements 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." Id. (citing Crawford v. United States, 519 F.2d 317 (4th Cir. 1975), Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)) The Applicant, bearing the burden of proof, must credibly convince this Court, by the preponderance of the evidence, that the very thorough record of his guilty plea is unworthy of reliance, and that he is entitled to relief.

In this case, the Court did not generally find the Applicant's testimony to be credible. This finding is based upon the fact that his testimony at the PCR hearing was entirely self-serving, was in direct contradiction with statements he made at his guilty plea, and was at odds with statements he made when he was not aware that he was being recorded. (See Respondent's Exhibit # 1) Conversely, this Court did find Attorney Joye's testimony to be credible, candid, and more reliable than that of the Applicant. Regarding the testimony of the other witnesses presented on the Applicant's behalf, this Court has evaluated the testimony, including the Affidavits submitted, taking into account possible biases, the basis for the knowledge asserted, any contradictions between the testimony and other evidence, and the number of years that has passed between the dates of the events and the time the testimony was offered.

Allegations # 1 & 2: Involuntary Plea Due to Counsel's Failure to Advise the Applicant Regarding the Two Strikes Law

The Applicant first alleges that plea counsel was ineffective for failing to sufficiently advise him that a conviction for CSC with a minor in the second degree was a most serious strike which

could be used as a predicate offense for his Williamsburg County sentence. It is clear that, prior to the plea, neither Attorney Jove nor Attorney Powers discussed with the Applicant the effect of a most serious 'strike' under S C Code Ann § 17-25-45, regarding the Georgetown CSC charge to which the Applicant pled.² The two strikes statute had no effect on the Georgetown County convictions, nor did it influence the penalty for those convictions. However, following the plea, when Attorney Jove realized that the still-pending Williamsburg case involved charges that would subject the Applicant to life without parole if he were to be convicted as indicted, he spoke with the prosecutor in Williamsburg, Kimberly V Barr, Esquire, to discuss the possibility of a plea to the lesser offense of lewd act upon a minor. Ms Barr and the victim did agree to a plea to lewd act, although Ms Barr indicated at that time she did not feel that a sentence recommendation would be appropriate. (See Affidavit of Kimberly V Barr.)

Attorney Jove testified that he thereafter advised the Applicant that he would avoid a sentence of life without parole if he pled to lewd act in Williamsburg. Counsel advised the Applicant that he firmly believed he would be able to work out an arrangement such that the Applicant would not serve even one additional day in prison. Counsel strongly urged the Applicant to accept such an arrangement but the Applicant declined. The attorney client relationship deteriorated after this discussion, before any plea agreement in Williamsburg was formalized, and Attorney Charles David Barr took over the Applicant's representation. In July 2007, the Applicant was convicted by a Williamsburg jury of both kidnapping and CSC with a minor in the second degree. The Honorable George C James Jr., sentenced the Applicant to two consecutive life without parole sentences pursuant to S C Code Ann § 17-25-45, due to his previous most serious offense.

² Although Attorney Powers was not called to testify at the PCR hearing, the parties stipulated that he did not discuss the two strikes statute with the Applicant prior to the guilty plea.

First, this Court finds that counsel cannot be deemed deficient for failing to advise the Applicant of the two-strikes law because such a consequence is considered ‘collateral’ to the guilty plea. The imposition of a sentence may have a number of collateral consequences, but a guilty plea defendant need only be affirmatively informed of the “direct” consequences of the plea – consequences which have a ‘definite, immediate and largely automatic effect’ on the “range of the defendant’s punishment” for that offense. Williams v. State, 378 S.C. 511, 515, 662 S.E.2d 615, 617 (Ct. App. 2008) (quoting Cuthrell v. Director, Patuxent Institution, 475 F.2d 1364 (4th Cir. 1973)). “Direct consequences” are the direct and immediate results of a guilty plea. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975) (citing Cuthrell, *supra*). Even certain mandatory consequences, such as registration on the sex offender registry, are considered collateral because they have no effect on the range of defendant’s punishment for the offense to which he pled. See Williams, *supra*.

“A guilty plea is not rendered involuntary if the defendant is not informed of the collateral consequences of his sentence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citation omitted) (parole eligibility is collateral), see also Smith v. State, 329 S.C. 280, 284, 494 S.E.2d 626, 628 (1997) (a crime’s designation as “violent” is a collateral consequence, even though a subsequent conviction for a “violent” crime would subject the defendant to a sentence with no parole), Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002) (community supervision is collateral), Randall v. State, 356 S.C. 639, 591 S.E.2d 608 (2004) (85% service requirement is collateral), Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000) (defendant can only attack a guilty plea on the basis of “collateral consequences” where he is affirmatively misadvised) (overruled in part on other grounds). Counsel cannot be held ineffective for failing to advise a defendant regarding indirect consequences that do not “flow directly from his guilty plea.” Page v. State, 364 S.C. 632, 637, 615

S E 2d 740, 742 (2005) Consequences that stem from a separate proceeding are collateral consequences of which a defendant need not be advised prior to entering a plea of guilty See id

There are no cases in South Carolina directly addressing whether a 'strike' under the life without parole statute is a collateral consequence of a guilty plea. However, the recent Williams case, cited above, clearly adopts the 'direct' versus 'collateral' distinction that is cited repeatedly in federal case law. In addition, the cases from the federal circuit and district courts support that a consequence of this nature is collateral. See King v Dutton, 17 F 3d 151 (6th Cir 1994) (defendant's guilty plea to murder was not involuntary where he was not informed that the plea could be used as an "aggravating circumstance" to elevate the sentence to death in a then-pending, but unrelated, murder charge from another county), Wright v U S, 624 F 2d 557, 561 (5th Cir 1980) ('a plea's possible enhancing effect on a subsequent sentence is merely a collateral consequence of the conviction, it is not the type of consequence about which a defendant must be advised before the defendant enters the plea'), U S v Pearson, 910 F 2d 221, 223 (5th Cir 1990) (the "consequences" of a guilty plea with respect to sentencing means that the defendant must understand the maximum prison term and fine for the offense charged), U S v Brownlie, 915 F 2d 527, 528 (9th Cir 1990) (the possibility that a defendant will be convicted of another offense in the future and will receive an enhanced sentence based upon the instant conviction is not a direct consequence of a guilty plea), U S v Edwards, 911 F 2d 1031, 1035 (5th Cir 1990) (uncounseled defendant who pled guilty to receive a "time served" sentence in state court needed not be advised that her plea could be used to enhance her sentence in a pending federal case, such consequence was merely collateral), U S v Long, 852 F 2d 975 (7th Cir 1988) (a consequence cannot be 'direct' where it has no effect upon the nature or length of the sentence being imposed for that offense), U S v Lambros, 544 F 2d 962, 966 (8th Cir 1976) (the possibility of enhanced punishment for a subsequent similar conviction is not a direct consequence of a guilty plea), U S v Salmon, 944

F 2d 1106 1130 (3rd Cir 1991) (the effect of a conviction on sentencing for a later offense under 'career offender' law is a collateral consequence of which a defendant need not be advised, defendant need not be advised of even "foreseeable" collateral consequences in order for his plea to be voluntary under the constitution, defendant need only be advised of the direct consequences, which include only the maximum prison term and any fine), McCarthy v U.S., 320 F 3d 1230, 1234 (11th Cir 2003) (the fact that defendant's guilty plea could have sentencing consequences in subsequent federal prosecution were clearly collateral and neither the court nor McCarthy's counsel were constitutionally required to make him aware of them), see also Weinstein v U.S., 325 F Supp 597, 600 (1971) (it is proper to 'assume that the defendant will not be guilty of a subsequent offense') (citation omitted), Fee v U.S., 207 F Supp 674 (1962) (defendant's guilty plea, which was later used to enhance the sentence on a subsequent conviction was not involuntary where he was not informed that the plea could be used to enhance the subsequent sentence under a 'third offender' provision)

Therefore, this Court finds that, in this case, the effect of the Applicant's Georgetown guilty plea upon the later Williamsburg sentence was "collateral" rather than "direct." The Williamsburg life without parole sentence was contingent upon several factors. First, the solicitor could have decided she lacked sufficient evidence to prosecute and could have dismissed the case altogether. Alternatively, the solicitor could have offered a plea to a lesser offense not subjecting the Applicant to life without parole. In addition, the Applicant could have taken the case to trial and been acquitted of the charges. Finally, the legislature could have changed or repealed the life without parole statute such that it would not apply to the Applicant. This Court finds that the Applicant's life without parole sentence was a 'direct' result of a jury's finding that the Applicant committed the offenses of kidnapping and criminal sexual conduct in Williamsburg County. However, the life without parole sentence was not a direct consequence of the plea in Georgetown. Therefore, the

Applicant's attorneys did not render constitutionally deficient performance for failing to advise the Applicant of the two strikes law, and the plea is not rendered involuntary on this basis.

Even if this Court were to find that a "most serious" strike was a consequence of which the Applicant should have been advised, this would not automatically end the Court's inquiry. The Applicant still must convince the court, through presentation of probative and credible evidence, that he would have gone to trial rather than pleading guilty. See Smith v. State, 369 S.C. 135, 139, 631 S.E.2d 260, 261-62 (2006). Mr. Taylor testified that he would have gone to trial had he known about the applicability of the statute. However, this Court did not find him to be credible and has no reason to trust this testimony. Additionally, although the Applicant's friends and family members offered their opinions that the Applicant would not have pled guilty had he known of the statute, this Court must bear in mind that these persons cannot truly know what was in the Applicant's mind around the time he pled. Some of these same individuals expressed shock that the Applicant would have ever pled guilty to such offenses, but he nevertheless did so.

Neither the Applicant, nor the witnesses in his behalf, testified as to specific reasons why knowledge of the life without parole statute would have caused the Applicant to change his plea from guilty to not guilty. However, importantly, the Applicant indicated that he expected to be exonerated on the Williamsburg charges. Therefore *at that time*, life without parole would have been a mere future contingency that he thought would never apply to him. Furthermore, this Court would note that the Applicant was facing fifty years, at 85% for the Williamsburg charges. Considering that the Applicant was approximately age 36 at the time of his plea, the Applicant failed to point to specific reasons why the difference between life without parole and a fifty-year sentence was significant enough to him personally that he would have changed his mind about pleading guilty under the circumstances at the time of the plea. Accordingly, this Court was simply not convinced that the Applicant would have gone to trial rather than pleading guilty if he had

known about the two-strikes statute

In addition this Court finds that the assistant solicitor in Williamsburg had, in fact, extended a plea offer to the lesser offense of lewd act upon a minor, which would not have subjected the Applicant to life without parole. The Applicant's attorney advised him that he could avoid the possibility of life without parole if he would accept the plea, and advised him that he sincerely believed that he could convince the solicitor and/or the sentencing judge to have the Applicant sentenced such that he would not serve even one additional day in prison. Counsel strongly urged the Applicant to agree to accept such an arrangement offer. However, the Applicant chose to reject the offer and exercise his right to a jury trial, which ultimately resulted in his conviction and life without parole sentence.

This Court is convinced that counsel would have worked vigorously to secure a lewd act plea in Williamsburg giving the Applicant a sentence concurrent with the Georgetown sentences, and this Court believes that he most likely would have succeeded. This Court also finds that the Applicant was fully advised about this and was strongly urged to accept such an arrangement. Had he agreed to do so, he most likely would not have served any additional time in prison, and he absolutely would not currently be serving a life without parole sentence. Therefore, this Court finds that the Applicant knowingly and voluntarily proceeded to trial in Williamsburg with full awareness that he would receive life without parole if convicted, and he alone had the opportunity to completely avoid what might be considered a harsh result.³ This Court finds that this circumstance supercedes the failure of counsel to specifically inform the Applicant regarding the two strike law, such that the Applicant's life without parole sentence is the direct and proximate result of (1) his

³ This Court recognizes that whether life without parole is an appropriate or suitable punishment for these offenses or for this Applicant, is well outside the scope of review, since the legislature has determined that persons who twice commit offenses of this nature serve a sentence of life without parole.

knowing and voluntary decision to reject the guilty plea to lewd act in Williamsburg, and (2) his ultimate conviction by a jury in Williamsburg

Allegations # 3-8 Ineffective Assistance of Counsel with Respect to the CSC Charge

As to the Applicant's remaining contentions, all regarding ineffective assistance of counsel with respect to the criminal sexual conduct charge, this Court finds that the Applicant failed to credibly prove that counsel's performance fell below prevailing professional norms, and failed to prove that he was prejudiced thereby. This Court finds that, prior to the plea, counsel and the Applicant discussed the charge, the possible penalty, and the Applicant's constitutional rights. This Court finds that the Applicant was fully advised prior to acceptance of his plea, that he could not be tried on the CSC charge until the charge was presented to the grand jury. Counsel and the Applicant reviewed discovery prior to the plea. In addition, counsel's investigator, a former FBI agent, met with the Applicant and his family members and interviewed potential fact witnesses named by the Applicant. Counsel learned through discussions with his investigator that the pertinent witnesses had no specific memory of the events in question due to the passage of several years. However, some of the witnesses recalled facts that were harmful to the defense including that the Applicant used to play "strip tag" with some of the boys. Counsel and the Applicant also discussed the effect of other un-indicted allegations made by one of the lewd act victims and by this victim's cousin.

Counsel and the Applicant discussed the fact that if the CSC case went to trial, there would be no physical evidence presented by the State. Counsel advised the Applicant that the case would come down to a "swearing contest," if he chose to testify, and that the defense would focus on cross examination and impeaching the credibility of the victim and other witnesses presented by the

State⁴ They also discussed the potential for Lyle evidence They discussed possible defense strategies, including development of the victim's possible motives for fabricating the assault, and bringing out his history of drug abuse They discussed how the Applicant's own prior sexual abuse might be viewed by a jury, as well as the potential negative effect of the Applicant's former position as a pastor to the youths They discussed the pornography found on the Applicant's church computer, and how evidence of it might be raised at trial

Counsel and the Applicant also discussed the range of dates encompassing the victim's allegations The offense occurred in 1999, when the victim was 11 or 12 years old, but was not reported until 2005 The victim was therefore unable to ever pinpoint an exact date for the offense The discovery, including the arrest warrant incident report, and statement of the victim indicated that the assault occurred sometime in June or July of 1999 The incident report indicated that the assault took place following a trip to Huntington Beach State Park, after which the youth group returned to the church The victim and another young man were waiting to shower off when the Applicant approached and offered to allow them to shower at his home instead According to the victim, the assault occurred while he was later showering at the Applicant's house Thereafter, the Applicant told him to be quiet and not tell anyone Shortly before the plea, a proposed indictment was prepared by the solicitor, listing the dates of "on or about August 5-7, 1999," as the time frame during which the assault occurred The record is not clear on why the dates changed from June July to August 5-7 Counsel was unable to recall specifically when he learned of the new proposed dates or how they were ascertained although he did indicate that he had been pressing the solicitor for a more definite time period

[Testimony presented on the Applicant's behalf at the PCR hearing indicated that the Applicant and his family learned of the August 5-7 dates at least a week prior to the plea This

⁴ This victim testified in the Williamsburg trial and was apparently found to be a credible witness

Court finds that the Applicant was aware of the new dates prior to the acceptance of his plea, and that at no time did the Applicant tell counsel that the new dates had an impact upon his decision to plead guilty.] Instead he told counsel he would waive presentment of the charge to the grand jury thus waiving confirmation of the new dates - and plead guilty. The fact that the Applicant did so, and that he specifically admitted his guilt to such an offense, indicates to this Court that he knew that he committed the offense in the summer of 1999.

Clearly, there exists a sharp contrast between the Applicant's unequivocal admission of guilt to the CSC offense on the dates of August 5-7, 1999, and his current allegation that he has an alibi for those very dates. At the PCR hearing, the Applicant presented testimony and Affidavits indicating that he was involved in a repair project at the home of Kimberly Cook on the dates of August 5, 6, and 7, 1999 from morning to late afternoon.⁵ The alibi evidence presented was limited to August 5, 6, and 7. Meanwhile, the proposed indictment covered a time frame of "on or about August 5, 6, and 7, 1999." Since the Applicant voluntarily waived confirmation of these dates by waiving presentment to the grand jury, and because the time frame in this case was never exact or definite, this Court is not convinced that the victim would have testified at trial that the offense absolutely occurred during August 5-7.

In addition, there is nothing in the record that convinces this Court that the victim's trial testimony would have tied the assault to the "World Changers" event reflected in the August 1, 1999 church bulletin (entered as an Applicant's Exhibit at the PCR hearing), although the bulletin may have triggered the victim to recall that the assault occurred around that time. The bulletin did not mention Huntington Beach State Park, or any events apparently connected to the allegations of

⁵ This Court would note that one affiant came forward following the hearing and requested that his Affidavit be withdrawn, indicating that he was no longer certain about the precise dates due to the passage of so much time. This serves to illustrate the difficulties with witnesses' memories in cases of this nature.

the assault as reflected in the victim's statement. Moreover, testimony at the PCR hearing indicated that the youth group frequently took trips to the beach, since it was not far from the church. Therefore, this Court finds that the alibi evidence presented by the Applicant does not necessarily refute that the crime occurred. See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (purported alibi which leaves room for the possibility that the accused is guilty is no alibi at all).

This Court believes that under the circumstances of this case, had the Applicant elected to go to trial, and had he notified the solicitor of an alibi defense pursuant to Rule 5(e), SCRCrimP, this would have likely prompted one of two things. First, the solicitor could have reformed the indictment to cover a period of time that would more properly reflect the victim's recollection of the time frame. See State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991) (indictment covering a two-year period for one sexual assault incident not unconstitutionally overbroad where victim could not recall precise dates of the incident). Alternatively, the victim could have testified that the assault occurred sometime around August 5-7, i.e., "on or about" those dates, in keeping with the language of the current proposed indictment. For the above reasons, this Court does not find a reasonable probability that the Applicant's proposed alibi defense for the dates of August 5-7, 1999, would have been successful had the Applicant elected to go to trial.

The Applicant also presented testimony at the PCR hearing that, although showers were installed at the church in 1998, they froze up over the winter and were inoperable following the winter of 1999. Assuming those facts are accurate, the church showers would have been operable for a very short period of time during the Applicant's tenure as pastor. Since the discovery always clearly indicated that the offense occurred *after* the winter of 1999, the Applicant, as pastor of the church, would have in the best position to discern this discrepancy and alert his attorney. Otherwise, counsel would have no reason to investigate this particular aspect of the victim's

allegations. However, the Applicant failed to mention this to counsel as a potential matter to be investigated, and counsel was not otherwise informed of it. Further, this Court is not convinced that such a defense would have successfully or credibly refuted the victim's allegations at trial.

Under the Sixth Amendment, the right to counsel exists to "assist" the accused with his defense. Certainly, a criminal defendant must bear some responsibility for his own defense, in that he must provide his attorney with pertinent factual information to enable counsel to determine whether there exist any plausible legal or factual avenues to investigate. Counsel was not necessarily required to investigate every aspect of the victim's allegations unless given some reason to investigate. See Strickland v. Washington, 466 U.S. 668, 691 (1984) (noting that a decision not to investigate some aspect of a case must be assessed for reasonableness under all the circumstances, with heavy deference to counsel's judgments). This Court finds that the Applicant failed to prove that a potential alibi for the specific dates of August 5-7 was a matter that counsel should have investigated at the time, or that such a defense would have likely been successful at trial. This Court also finds that because counsel was not put on notice regarding a defense related to the operability of the church showers, he had no reason to pursue this issue.

Counsel performed reasonably considering the investigation he did undertake, and considering that, following discussions with counsel, the Applicant did not ask counsel to conduct any further investigations, nor did he inform counsel that he wished to have more time to look into potential defenses. Instead, approximately one week prior to the plea, the Applicant advised counsel that he felt that pleading guilty would be in his best interests in light of the evidence. Thereafter, when he did plead guilty, he told the court that his attorneys "most definitely" did everything he asked them to do, and that he was "absolutely" satisfied with their services. Therefore, this Court finds that the Applicant failed to meet his burden to prove that counsel's performance was unreasonable under the circumstances.

This Court also finds that the Applicant failed to credibly prove the requisite prejudice. The potential defenses now alleged by the Applicant, as discussed above, relate only to the CSC charge, one charge out of three. This Court finds that there were no plausible defenses whatsoever to the two lewd act charges, and therefore a guilty plea to those charges was unquestionably reasonable due to overwhelming evidence. There were no eyewitnesses who could refute the allegations. Even the Applicant's parents could not deny that it was common for the Applicant and the victims to sleep in the same bed. Both victims were prepared to testify at trial, and, in fact, one of the victims, whom counsel felt was a particularly credible witness, made a special trip from his duty in Iraq to testify at trial. For this reason, the State intended to try all three cases successively. The State planned to present Lyle evidence in each lewd act trial to prove common scheme or plan, including testimony by another young man who also professed that the Applicant molested him in a similar fashion. The State also had in evidence a tape recorded conversation between the Applicant and his now ex-wife, which contained admissions of guilt on both lewd act charges.⁶ (See Respondent's Exhibit # 1). In addition, the State could have presented admissions made by the Applicant to Georgetown Investigator Tom Digsby. Counsel and the Applicant discussed all of this evidence, and counsel advised the Applicant that the likelihood of conviction on both lewd act charges was very high.

Considering this, counsel worked to negotiate a plea that would combine all three of the Georgetown offenses and give the Applicant as little prison time as possible. Initially, the Applicant did not appear to be amenable to the idea of a plea, and he rejected an early offer for a plea to assault and battery of a high and aggravated nature. However, after receiving and listening to the tape recording mentioned above, during which he made candid admissions of inappropriate

⁶ Counsel testified that, after the Applicant's wife initiated divorce proceedings, he warned the Applicant to assume all conversations with his wife would be tape recorded. Nevertheless, this tape recording surfaced later.

touchings of both lewd act victims, the Applicant told counsel that he had determined that the deal with respect to all three Georgetown charges would be in his best interests. Counsel testified that prior to the plea and following a discussion in chambers, it was understood by all that the Applicant would receive a sentence of eight years, suspended to five years of active time and three years of probation. This was over the objection of the solicitor, who wanted at least ten years. By his plea, the Applicant avoided the possibility of receiving up to fifty years in prison had he gone to trial on each charge.

This Court finds that counsel reasonably evaluated the strength of the State's cases against the Applicant, thoroughly discussed this with the Applicant, and fully advised him of his options under the circumstances. This Court rejects the Applicant's contention that he was forced to plead because his lawyer was unprepared. It is true that counsel was not prepared for *trial* on the day of the plea, however, the reason he was not prepared for trial was because the Applicant made his decision to plead guilty in advance – regardless of whether he acknowledged this fact to all of his family members and friends. This Court finds that the Applicant's decision to combine a plea of guilty to all three charges was heavily based upon the fact that the State could have presented strong evidence against him, including a very inculpatory tape of the Applicant confessing certain acts to his ex wife regarding the two lewd act charges. This Court also finds that the “unofficial” negotiated five-year active sentence, concurrent on all three charges, weighed into his decision, as did the fact that the solicitor stated his intentions to try the cases back-to-back. The Applicant presented no evidence at the PCR hearing that the solicitor could *not* have indicted him on the CSC charge such that the case would have been tried in the third successive week, as the solicitor told counsel he planned to do. This Court finds that the Applicant also pled because he wished to avoid the embarrassment of public trials, and the risk of receiving significantly more time if he were convicted. Furthermore, this Court has no reason to doubt that, as reflected in the plea record, the

Applicant was motivated to enter a plea in order to confess his guilt and own up to his “part of the pain.” Finally, this Court finds that counsel advised the Applicant to tell only the truth at his plea. The Applicant informed the plea court that he had, in fact, told only the truth.

In sum, the Applicant’s self-serving testimony at the PCR hearing was simply not credible or trustworthy, and this Court finds that the Applicant did not present sufficiently persuasive reasons to permit departure from the sworn statements he made at his guilty plea. See *Dalton*, *supra*. Accordingly, this Court finds that the Applicant failed to meet his burden to establish that but for deficient performance of counsel, he would have proceeded to trial rather than pleading guilty. As discussed above, this Court was not convinced that, even had the Applicant known about the two-strikes law, he would have made a decision to proceed to trial instead of taking the concurrent five-year sentences. Furthermore, this Court finds that even had the Applicant elected to proceed to trial on the CSC charge, he most probably would have been convicted, and would therefore be serving exactly the same sentence he is currently serving. This is an additional reason supporting this Court’s finding that the Applicant failed to prove prejudice.

CONCLUSION

In summary, this Court finds and concludes that an offense’s qualification as the first of two “most serious” strikes, pursuant to S.C. Code Ann. § 17-25-45, is a collateral consequence of a guilty plea, and that the Applicant in this case entered a free and voluntary guilty plea even though his attorneys did not advise him regarding that consequence. This Court further finds and concludes that the Applicant failed to prove that counsel’s performance was outside the range of competence required in criminal cases, and failed to prove that his plea was the result of ineffective assistance of counsel. Further, this Court finds and concludes that the record otherwise supports that the Applicant entered a free, knowing, voluntary, and intelligent guilty plea, having been accurately advised regarding the plea’s direct consequences. Accordingly, this Court must deny post

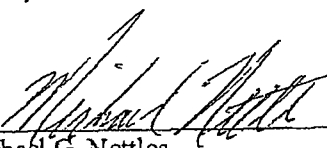
conviction relief as to all three convictions, due to the Applicant's failure to meet both prongs of his burden of proof under Strickland v. Washington, 466 U S 668 (1984), Hill v. Lockhart, 474 U S 52 (1985), and Butler v. State, 286 S C 441, 334 S E 2d 813 (1985)

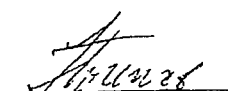
Counsel's attention is directed to Marlar v. State, 375 S C 407, 653 S E 2d 266 (2007), and Rule 59(e), SCRCP, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S C Code Ann § 17-27-80 (2003). This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Order. Pursuant to Rule 71 1(g), SCRCP, PCR counsel must file a notice of appeal on Applicant's behalf if Applicant wishes to pursue appellate review. Applicant and counsel are directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED THAT

- 1 Robert Troy Taylor's Application for post-conviction relief is **DENIED and DISMISSED with PREJUDICE**
- 2 The Applicant must remain in the custody of the State for the completion of his sentence

AND, IT IS SO ORDERED this 16 day of January, 2009


 Michael G. Nettles
 Presiding Judge, Fifteenth Judicial Circuit


 South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Robert Troy Taylor, 315084

☒ Applicant,

v

The State Of South Carolina

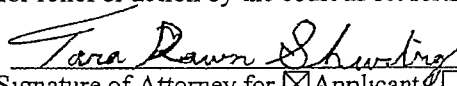
☐ Respondent

IN THE COURT OF COMMON PLEAS

CASE NO 2007-CP-22-476

MOTION AND ORDER INFORMATION
FORM AND COVER-SHEET

356

Plaintiff's Attorney Tara Dawn Shurling, Bar No 5099 Address 3614 Landmark Drive Suite D Columbia, South Carolina 29204 phone 803 738 8622 fax 803-738 1600 e-mail other	Defendant's Attorney Christina J Catoe, Bar No Address P O Box 11549 Columbia, South Carolina phone 803-734-3737 fax e-mail other
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I Hearing Information Nature of Motion Estimated Time Needed Court Reporter Needed ☐ YES / ☐ NO	
SECTION II Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order  Signature of Attorney for ☒ Applicant / ☐ Respondent February 9, 2009 Date submitted	
SECTION III Motion Fee ☐ PAID - AMOUNT ☒ EXEMPT (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v Indigent Party ☐ Sexually Violent Predator Act ☒ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69 SCRPC) ☐ Proposed order submitted at request of the court, or reduced to writing from motion made in open court per judge's instructions Name of Court Reporter ☐ Other	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other	JUDGE _____ CODE _____ Date _____
CLERK'S VERIFICATION Collected by <u>Tara Washington</u> Date Filed <u>2-9-09</u> ☒ MOTION FEE COLLECTED ☒ CONTESTED - AMOUNT DUE	

STATE OF SOUTH CAROLINA	)		
	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT	
ROBERT TROY TAYLOR, #315084,	)	CASE NO 07-CP-22-476	
	)		
Applicant,	)		
	)		
v	)	RULE 59(e) SCRPC, MOTION	
	)	TO ALTER OR AMEND	
STATE OF SOUTH CAROLINA,	)		
	)		
Respondent	)		

FILED
 2009 FEB -9 PM 3 43
 CLERK OF COURT

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court, pursuant to Rule 59(e), SCRPC, to alter or amend its Order filed January 27, 2009. In support of this motion, the Applicant would show unto this Honorable Court the following

On pages 15 -16 of the Order of Dismissal this Court states

Testimony presented on the Applicant's behalf at the PCR hearing indicated that the Applicant and his family learned of the August 5-7 dates at least a week prior to the plea. This Court finds that the Applicant was aware of the new dates prior to the acceptance of his plea, and that at no time did the Applicant tell counsel that the new dates had an impact upon his decision to plead guilty.

The testimony presented at the PCR hearing in fact demonstrated that the discovery material was shared with the Applicant's parents in a meeting with trial counsel approximately a week before the pleas were entered in this case. The Applicant's father testified that in a meeting with trial counsel about a week before the pleas they reviewed the discovery information with trial counsel. He did not deny that a copy of the August 1st church bulletin was among the documents in that material, however, he asserted that without any explanation as to what the State intended to use the document for, he and his wife assumed it was in the discovery package.

for the purpose of establishing that their son was in fact the minister for the church. The testimony of the Applicant's father and that of trial counsel clearly indicated, however, that they did not become aware that the acts charged by the alleged victim of the Criminal Sexual Conduct with a Minor charge were alleged to have occurred during the "World Changers" event reflected in the August 1, 1999, church bulletin until during the actual guilty plea proceeding. The testimony at the PCR hearing established that this assertion was revealed for the first time in remarks made by the prosecution during the guilty plea proceeding. This factual distinction is significant because up until that time all the discovery materials indicated that the alleged assault occurred at the end of June or the beginning of July. The revelation of a firm timeline, different from that ever disclosed to the Applicant or his parents, at that late date deprived the Applicant of the opportunity to develop an alibi for this crime. The Applicant asserts that the availability of that defense would have impacted his decision to enter a plea of guilty rather than exercise his right to trial by jury. During his PCR hearing, the Applicant alleged that trial counsel was ineffective for failing to apply due diligence to discovering this information prior to his pleas or in the alternative, that the State was guilty of a Brady¹ violation for its failure to timely disclose this information. With regard to the Sixth Amendment claim, the Applicant specifically asserted that trial counsel could have discovered the information in question by asking the prosecution why the church bulletin was included in the discovery package. The Applicant requests this Court's order reflecting this factual clarification and granting relief on this ground.

In addition to the above, the Applicant respectfully asserts that this Court's analysis of the issue of Counsel's failure to even find out what the exact charges in Williamsburg County were before he advised the Applicant to accept a separate plea in Georgetown, overlooks a significant aspect of the Applicant's argument. Trial Counsel was representing the Applicant in

¹ Brady v Maryland 373 U S 83 (1963)

both counties on both sets of charges during this time period. Trial counsel expressly testified that he handled the bond hearing in Williamsburg County but did not ascertain the exact charges being brought in Williamsburg County. The fact that the Georgetown charge of CSC would be a strike for purposes of the recidivist offender law of this state might ordinarily be a collateral consequence. The Applicant asserts however, that where trial counsel was representing him on both sets of charges simultaneously, he was ineffective for failing to advise him that the Georgetown CSC charge would constitute a strike and for failing to advise him of the impact that fact would have on his sentencing exposure should he exercise his right to a jury trial in Williamsburg County. The Applicant asserts that where trial counsel was counsel of record on the charges in both counties, he had a duty to fully advise the Applicant of all the law relating to each of the charges and their potential impact on each other. Clearly, the Applicant should have had this information before he was called upon to make a decision with regard to a plea in Georgetown.

The facts of this case are very different from where a defense attorney neglects to tell his client a charge would constitute a predicate strike in the event of some possible future criminal act. Indeed, they are different from where trial counsel doesn't know about other charges in another county and neglects to discuss the fact that a particular charge will constitute a strike. The Applicant understands the Court's position with regard to the opportunities for a plea which may have existed once defense counsel discovered his error, however, what this Court's Order fails to acknowledge is that the parties agree that the Applicant had *always wanted a trial* in Williamsburg. The opportunity he was offered to "fix" the mistake made by his attorney would have entailed his pleading guilty to charges he had steadfastly asserted his determination to stand trial for. In addition, this Court places great emphasis on the fact that the Applicant made

admissions and apologies in the context of his Georgetown pleas. What the Order neglects to note is the fact that the presiding Judge made those actions on his part a condition of his acceptance of the Applicant's pleas. This factor is documented in the plea record.

Based on all the foregoing, the Applicant asks for this Court to alter and amend its Order of Dismissal and grant relief. Alternatively, he seeks an amended order addressing each of these matters in order that these issues might be fully preserved and protected for appeal.

Respectfully submitted,

By Tara Dawn Shurling with permission
 For Tara Dawn Shurling TWW
 Attorney and Counselor at Law

3614 Landmark Dr , Suite D
 Columbia, S C 29204
 (803) 738-8622
 (803) 738-1600 (fax)
tdslaw@shurlinglaw.com

Attorney for the Applicant

This 9th day of February, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN) IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

ROBERT TROY TAYLOR, #315084,) CASE NO 07-CP-22-476

Applicant)

v)

STATE OF SOUTH CAROLINA)

Respondent)

CERTIFICATE OF SERVICE

FILED
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CLERK OF COURT

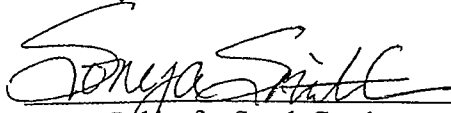
The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on the Honorable Michael G Nettles, presiding judge, this 9th day of February, 2009, by mailing one (1) copy in a stamped envelope properly addressed to

The Honorable Michael G Nettles
Presiding Judge, Fifteenth Judicial Circuit
180 N Irby Street, MSC-XX
Florence, S C 29501

The original having been sent to the Georgetown County Clerk of Court for filing



SWORN TO BEFORE ME this 9th day of
February, 2009

 (L S)
Notary Public for South Carolina

My Commission Expires 9/21/2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN) IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

ROBERT TROY TAYLOR, #315084,)

Applicant)

v /)

STATE OF SOUTH CAROLINA)

Respondent)

CASE NO 07 CP 22 476

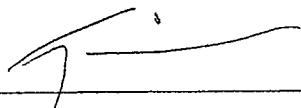
CERTIFICATE OF SERVICE

FILED
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 CLERK OF COURT

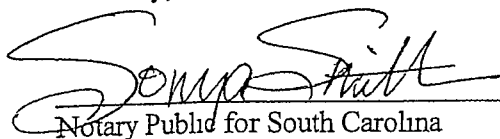
The undersigned hereby certifies that a true copy of the Rule 59(e) Motion to Alter or Amend in the above matter has been served on opposing counsel this 9TH day of February, 2009, by mailing one (1) copy in a stamped envelope properly addressed to

Christina J Catoe
 Assistant Attorney General
 Office of the Attorney General
 P O Box 11549
 Columbia, SC 29211

The original having been sent to the Georgetown County Clerk of Court for filing



SWORN TO BEFORE ME this 9th day of
 February, 2009

 (L S)
 Notary Public for South Carolina

My Commission Expires 9/21/2015

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

Robert Troy Taylor, # 315084,

Applicant,

v

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2007 CP 22 0476

STATE'S RESPONSE TO APPLICANT'S
MOTION TO ALTER OR AMEND

The State, in response to the Applicant's Motion to Alter or Amend, pursuant to Rule 59(e), SCRCF, filed on February 9, 2009, respectfully submits the following

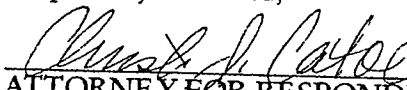
ISSUE 1 August 5 7 Dates

Respondent submits that the Court's Order of Dismissal properly reflects the facts, and properly explains why the specific dates of August 5, 6, and 7 were not necessarily critical to the prosecution of the Applicant under the circumstances of this case (See Order of Dismissal, pages 15-17) Furthermore, the Applicant's guilty plea symbolized his confession that he sexually assaulted that particular victim in the summer of 1999 - thus rendering an alibi defense inapposite Counsel never advised the Applicant to plead guilty if he was not, in fact, guilty; instead, counsel specifically advised the Applicant to tell the plea judge the truth

ISSUE 2 Two-Strike Law as a Collateral Consequence

Respondent submits that the Court's Order of Dismissal correctly and adequately addressed the issue of counsel's failure to advise the Applicant regarding collateral consequences (See Order of Dismissal, pages 7 12)

Respectfully submitted,



ATTORNEY FOR RESPONDENT

CHRISTINA J CATOE, Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

February 18, 2009

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

2007 CP-22 0476

Robert Troy Taylor,

Applicant,

v

State of South Carolina,

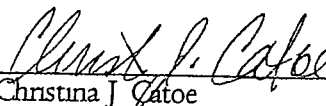
Respondent

CERTIFICATE 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 **State's Response to the Applicant's Motion to Alter or Amend** in the above captioned matter on the following person(s) by depositing in the United States mail, postage prepaid

Tara Dawn Shurling, Esquire
Law Offices of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, SC 29204

DATED this 18th day of February, 2009


Christina J. Catoe
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

Dec 7 CP 2 416

Robert Troy Taylor

State of S.C.

Plaintiff(s)

Defendant(s)

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 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 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

The applicant's motion to alter or amend is denied.

Dated at Florence, South Carolina, this 24 day of Feb 2008 *WJE*

Michael J. Miller
PRESIDING JUDGE

This judgment was entered on the 30th day of March 2008 and a copy mailed first class this 30th day of March 2008 to attorneys of record or to parties (when appearing pro se) as follows

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

STATE OF SOUTH CAROLINA
In The Supreme Court

366

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Michael G Nettles, Presiding Judge

RECEIVED

APR 16 2009

SC SUPREME COURT

2007-CP-22-0476

ROBERT TROY TAYLOR, 315084,

Applicant,

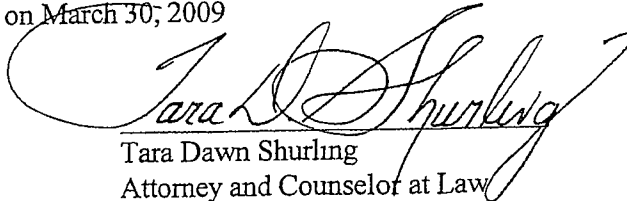
v

THE STATE OF SOUTH CAROLINA,

Respondent

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Order of Dismissal denying his Post-Conviction Relief dated January 16, 2009, and the Order Denying the Applicant's Motion to Alter or Amend, issued by the Honorable Michael G Nettles, presiding judge. The Order of Dismissal was filed with the Georgetown County Clerk of Court on January 27, 2009 and the Order Denying the Applicant's Motion pursuant to Rule 59(e) SCRPC was filed with the Georgetown County Clerk of Court on March 30, 2009.


Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Drive Suite D
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 15th day of April, 2009

Other Counsel of Record
Christina J Catoe, Assistant Attorney General
P O Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

367

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Michael G Nettles, Presiding Judge

2007-CP-22 0476

ROBERT TROY TAYLOR, 315084,

Applicant,

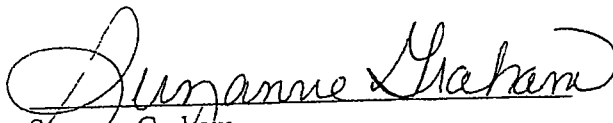
v

THE STATE OF SOUTH CAROLINA,

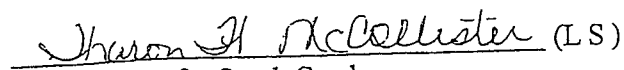
Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Christina J Catoe, Assistant Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 15th day of April, 2009


Suzanne Graham
Paralegal to Tara Dawn Shurling

SWORN TO BEFORE me this 15th day
of April, 2009

 (L S)
Notary Public for South Carolina
My Commission Expires Jan 16, 2017