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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Frank R. Addy, Circuit Court Judge

SHELTON D. BROWN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000138

APPENDIX

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Appellate Defender

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ATTORNEYS FOR RESPONDENT

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INDICTMENT 71

1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF ORANGEBURG) No. 2011 GS 38 0456

3

4 STATE OF SOUTH CAROLINA)
)
 5)
 6 versus) TRANSCRIPT OF RECORD
 7)
 8 SHELTON D. BROWN)
 9 Defendant)

10 Orangeburg, South Carolina

11 April 19, 2011

12

13 B E F O R E :

14 HONORABLE R. FERRELL COTHRAN, JR., Judge

15

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

17 For the State: S. FORD, Esq.
 Assistant Solicitor;

18 For the Defendant: MARK WISE, Esq.
 Public Defender

19 Reporter Present: HARRY DOT WALKER

21

22

23 HARRIET P. BENNETT
 Reporter, S. C. Court Administration
 24 46 Regency Oaks Drive
 Summerville, S.C. 29485

25

1 (The within matter came before the Court for hearing
2 on April 19, 2011)

3 SOLICITOR: Shelton Brown.

4 Your Honor, Mr. Brown is here pleading guilty with his
5 attorney, Mark Wise, to one count of criminal sexual conduct
6 in the second degree, Indictment 2011 GS 38 0456.

7 There is no recommendation as to sentence, Your Honor.

8 THE COURT: Mr. Wise, do you represent the Defendant?

9 MR. WISE: Yes, sir. I do, Your Honor.

10 THE COURT: And have you explained to him the charges
11 against him and the possible punishment?

12 MR. WISE: I have.

13 THE COURT: And does he understand that?

14 MR. WISE: He does.

15 THE COURT: And does he want to plead guilty?

16 MR. WISE: He does.

17 THE COURT: Is that right, Mr. Brown?

18 DEFENDANT: Yes, sir.

19 THE COURT: Have you had enough time to talk to your
20 lawyer about this?

21 DEFENDANT: Yes, sir.

22 THE COURT: Are you satisfied with his representation?

23 DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that this carries up to
25 twenty years?

1 DEFENDANT: Yes, sir.

2 THE COURT: This is a no parole offense, and you will
3 have to register. Do you understand that?

4 DEFENDANT: Yes, sir.

5 THE COURT: Any complaints about your attorney?

6 DEFENDANT: No, sir.

7 THE COURT: Has anybody promised you anything or threat-
8 ened you in any way to get you to plead guilty?

9 DEFENDANT: No, sir.

10 THE COURT: Are you pleading guilty freely and voluntar-
11 ily?

12 DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that this is also a most
14 serious offense, and you give up your right to possibility
15 of parole?

16 DEFENDANT: Yes, sir.

17 THE COURT: And this case has not been to the Grand
18 Jury, and you have a right to have it go to the Grand Jury
19 (portion not audible on tape). Do you want it to go or do
20 you want to waive it?

21 DEFENDANT: Waive it.

22 THE COURT: All right. By pleading to this charge you
23 are giving up your constitutional right to remain silent. Do
24 you understand that?

25 DEFENDANT: Yes, sir.

1 THE COURT: Are you under the influence of alcohol or
2 drugs today?

3 DEFENDANT: No, sir.

4 THE COURT: Are you on any medication that would keep
5 you from understanding what you're doing?

6 DEFENDANT: No, sir.

7 THE COURT: How far did you go in school?

8 DEFENDANT: It's my senior year, sir.

9 THE COURT: By pleading guilty you give up your right
10 to a jury trial as well. In a jury trial the State would
11 have to prove you guilty beyond a reasonable doubt to all
12 twelve jurors. The State would put up witnesses to testify
13 against you, and your lawyer could cross examine those wit-
14 nesses. You could put up witnesses on your own behalf and
15 put up a defense to the charge. If you plead guilty, do you
16 understand that you give all of that up?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you understand what you're doing here
19 today?

20 DEFENDANT: Yes, sir.

21 THE COURT: If you plead guilty, you give up all of your
22 rights I have explained. Do you understand?

23 DEFENDANT: Yes, sir.

24 THE COURT: Solicitor, give me the facts.

25 SOLICITOR: Your Honor, this incident took place on

1 January 21st of 2010. The victim went to a residence at
2 ██████ Charleston Highway in Orangeburg County to visit Chelsea
3 Williams. Mr. Brown was present at that residence.

4 The victim, Ms. W█████, and the two Codefendants were
5 hanging out and when they walked to an abandoned house next
6 door -- while in that house, the Defendant began hasseling
7 the victim. When she attempted to leave, she was pushed into
8 a closet by the Defendant, Mr. Brown, which was held closed
9 by Ms. Williams so that the victim could not get out.

10 Eventually the door was opened and both Defendants began
11 taking off the victim's clothes. She was being held down,
12 kicking and screaming.

13 Mr. Brown grabbed a stick of some sort and threatened
14 the victim's life if she did not shut up. At that time, Mr.
15 Brown instructed Ms. Williams to take the victim's panties and
16 hold her legs down. He pinned her onto the floor and he
17 began sexual intercourse with her as she was held down by
18 Ms. Williams.

19 He later admitted to officers that Ms. W█████ repeatedly
20 asked him to stop.

21 THE COURT: How old was she?

22 SOLICITOR: She was fourteen years old, Your Honor.

23 Mr. Brown was also charged with kidnapping for that
24 particular incident, and he was charged with another count
25 of criminal sexual conduct second degree for an incident that

1 occurred back in December of 2010. The victim was L [REDACTED]
2 E [REDACTED], and her parents are seated here on the front row,
3 Your Honor.

4 As a part of the plea negotiations in this case, Your
5 Honor, the State would nolle pros the kidnapping and the
6 criminal sexual conduct with a minor, second, for a plea
7 straight up to CSC, second, in this particular case.

8 The victim, Ms. W [REDACTED], in this case was -- her parents
9 were notified, and she actually had an appointment with her
10 counselor who she sees several times a week, and it seemed
11 in her best interest to see her counselor rather than to be
12 here.

13 THE COURT: All right.

14 SOLICITOR: But Ms. E [REDACTED]' parents are here. They
15 did not wish to speak.

16 Because of the short time period in which all these inci-
17 dents occurred and the nature of the crimes, the parents
18 would ask that the maximum sentence be given to the Defen-
19 dant, Mr. Brown. Your Honor, the State would concur in
20 that, although Mr. Brown is not here pleading guilty to all
21 of those. He was charged with them, and the State was prepared
22 to go forward to trial on all of those if he did not accept
23 the plea negotiation with this particular charge.

24 Your Honor, we feel that a significant sentence would
25 be appropriate in this case.

1 THE COURT: All right.

2 SOLICITOR: He does not have a prior record that I am
3 aware of. He's seventeen years old, Your Honor.

4 THE COURT: Are those facts correct, Mr. Brown?

5 DEFENDANT: Yes, sir.

6 THE COURT: You are pleading guilty to this charge?

7 DEFENDANT: Yes, sir.

8 THE COURT: Because you are guilty?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right, I find that there is a substantial
11 factual basis for this plea, and that Mr. Brown's plea
12 is freely, voluntarily and intelligently made, with the advice
13 of competent counsel, with whom you say you are satisfied.

14 All right, counsel, I'll be glad to hear from you. I
15 accept the plea.

16 MR. WISE: Thank you, Your Honor. May it please the
17 Court?

18 I just want to make some comments about Mr. Brown, and
19 Shelton has written a statement he wished me to read to the
20 Court. He would like to address the Court.

21 THE COURT: All right.

22 MR. WISE: Since I've been appointed to represent him,
23 Shelton has never attempted to excuse or minimize his behav-
24 ior in the situation. He has always acknowledged that he
25 acted inappropriately.

1 As the Court is now aware, he's seventeen and this is
2 his first time in the adult system. He has no criminal re-
3 cord, and there is nothing in his background to indicate he
4 would do something like this.

5 We have talked about all of those things that you look
6 for, and there is none of that in his background. He has
7 never committed any kind of conduct like this.

8 I have spoken with his parents on more than one occas-
9 ion, and they both say the same thing about him. His mother
10 is in North Carolina. His father is here. He is smart, in-
11 telligent, and after speaking with him I have to agree with
12 that. He has a tremendous amount of potential.

13 He has three younger siblings and they all look up to
14 him. He has never been violent with anybody; has never used
15 drugs. There is a lot of good in his background, but he does
16 recognize he is going to be punished by this Court.

17 He is young, with potential, and within little more than
18 a five week period he has gone from being a young man with
19 a bright future and potential to a convicted felon with a
20 violent record.

21 He recognizes that there are conditions that would cause
22 him to act this way, and he has asked me to ask the Court to
23 ask that he receive counseling with whatever you do, to make
24 that a condition, so he would be able to put it right.

25 I'm asking the Court to balance the matter of retribution

1 and rehabilitation, and to give a sentence as minimal as
2 possible. I submit to the Court that he needs to be punished
3 for what he's done, and he wants to try to get his life back
4 on track. He wants to get back the life that he had.

5 At this point, I'd like to read the statement that he
6 has written; if the Court has no objection. I'm asking for a
7 second chance for Shelton. He has a lot of guilt for what
8 he's done, and he recognizes he needs to be punished.

9 (Portion not audible on tape)

10 I am writing to let you know that the decision I made
11 was a learning experience for me. (Portion not audible)
12 . . . during my time in jail I have been thinking about the
13 decision I made. I wish I had never made this decision.
14 (Portion inaudible) When I get home I promise to always do
15 the very best I can.

16 I really plan on changing my life around when I leave
17 from being incarcerated. I really would like a second chance
18 to get back my life. I never thought I would end up in the
19 Orangeburg County Jail. I would like to ask for a second
20 chance and forgiveness for what I have done. (Portion in-
21 audible)

22 Please give me a second chance. I really have learned
23 from my mistakes. I never want to be in trouble like this
24 again. I do not want to waste my talent and my education.
25 My future depends on my finishing high school.

1 Anything else you would like to say to the Court?

2 DEFENDANT: Only that again I would ask for a second
3 chance to get out of jail and regain my life. I'm sorry for
4 what I've done.

5 THE COURT: Mr. Brown, you will have a chance of get-
6 ting it back but you took something from these young ladies
7 they can't get back.

8 I'm taking into consideration the fact that you don't
9 have a prior record. You have started off with a very ser-
10 ious crime.

11 The sentence of the Court is that you be committed to
12 the State Department of Corrections for twelve years.

13 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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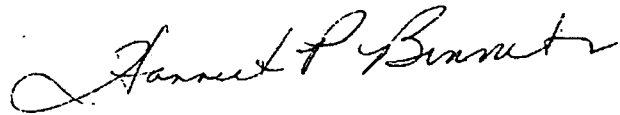
CERTIFICATE

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I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, do hereby certify that the foregoing Transcript was prepared from the records of Harry Dot Walker to the best of my ability, having been heard in the Court of General Sessions for Orangeburg County on April 19, 2011.

FURTHER, I certify that I am neither of kin nor counsel to any party to this action, nor do I have any interest in the same.

April 10, 2013



2012-cp. 38-468

STATE OF SOUTH CAROLINA)
County of ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Shelton Devon Brown, #3457803
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)
)
)
)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

- 1. Place of detention Lee Correctional Institution, 370 Wiscachy Highway, Bishopville, South Carolina 29010
- 2. Name and location of Court which imposed sentence Orangeburg County Court of General Sessions, Orangeburg, South Carolina
- 3. Name(s) of co-defendant(s) (if any) Chelsea Marique Williams

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Unborn, Criminal **ATTEST: TRUE COPY**
Wynona B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

/s/ Minor in the Second Degree

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

(a) April 18, 2011, Twelve (12) years
/s/
/s/

6. Check whether a finding of guilty was made:

(a) after a plea of guilty
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

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

No, I did not

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

(a) the name of each Court to which you appealed:
i. N/A

/s/
ii. _____

(b) the result in each such Court to which you appealed:
i. N/A

/s/
ii. _____

(c) the date of each such result:
i. N/A

/s/
ii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) First Collection Attached

~~(b)~~ _____
~~(d)~~ _____

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

(a) Denial of Effective Assistance of Counsel
~~(b)~~ _____
~~(d)~~ _____

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

(a) Failure to Investigate Case; Failure to properly advise and define Sexual Battery;
~~(b)~~ Failure to confer possible Penalties.
~~(d)~~ _____

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

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

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

(a) the specific nature thereof:

- i. N/A
- ~~ii.~~ _____
- ~~iii.~~ _____
- ~~iv.~~ _____

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

- i. N/A
- ~~ii.~~ _____
- ~~iii.~~ _____

~~iv.~~ _____

(c) the disposition thereof:

i. N/A _____

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

(d) the date of each such disposition:

i. N/A _____

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

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

i. N/A _____

~~ii.~~ _____

~~iii.~~ _____

~~iv.~~ _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No, they have not.

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

(a) which grounds have been presented:

i. N/A _____

~~ii.~~ _____

~~iii.~~ _____

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

i. N/A _____

~~ii.~~ _____

~~iii.~~ _____

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

- (a) Direct Collateral Attack
- (b) /
- (c) /

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Mark Wise, Post Office Box 1112, Orangeburg, South Carolina 29116
 - ii. /
 - iii. /
- (b) the proceedings at which each such attorney represented you:
 - i. Plea and Sentence
 - ii. /
 - iii. /

19. State clearly the relief you seek in filing this application:
Based on the foregoing, Plea and Sentence
to Vacated, Modification of Sentence

20. Are you now under sentence from any other court that you have not challenged?
No, I am Not.

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of ORANGEBURG)

VERIFICATION

I, Shelton Devon Brown, #345732, 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.

Shelton Brown

SWORN to and subscribed before me this 22
day of March 2012.


Debra Jones (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

I, Shelton Devon Brown #315782, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


 Applicant

SWORN or affirmed to and subscribed before me this

22 day of March, 2012


 Notary Public

My Commission Expires: 11-4-2015

2012-CP-38-468

(Attachment sheet)

(11) D) counsel refuse to question court on why
 Did the prosecutor "Sara A. Ford" recommend
~~sentences when my plea offer stated "no~~
~~sentencing".~~

E.) counsel, stated that he was gonna tell
 the courts all the bad things I have done
 and a few good things If I would have not
 plead guilty and If I went to my Bond
 hearings

F) plea offer also stated that If I
 the defendent didn't plea to CSC 2nd degree
 that may charges would get indicted to
 CSC 1st degree.

ATTEST: TRUE COPY

Winniford B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

Department of Corrections. The transcript of Applicant's guilty plea has been ordered and will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Denial of Effective Assistance of Counsel."
 - a. "Failure to investigate case."
 - b. "Failure to properly advise and define sexual battery."
 - c. "Failure to conform possible penalty."
 - d. "Counsel refuse to question court on why did the prosecutor "Sara A. Ford" recommend sentence when my plea offer stated "no."
 - e. "Counsel, stated that he was gonna tell the courts all the bad things I have done and a few bad things if I would have not plead guilty and if I went to my bond hearing.
 - f. "Plea offer also stated that if I the defendent (sic) didn't plea to CSC 2nd degree that may charges would get indicted to CSC 1st degree."

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

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's

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

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

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

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests

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

IV.

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

V.

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


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina

September 10, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
)
)
 SHELTON D. BROWN. 345182.)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2012-CP-38-0468

AFFIDAVIT OF SERVICE BY MAIL

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

C. Bradley Hutto, Esquire
Williams & Williams
Post Office Box 1084
Orangeburg, SC 29115

DATED this 10th day of September, 2012.

Lauren Meara

 Lauren Meara, Legal Assistant
 For Respondent

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Shelton D. Brown, # 345782)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2012-CP-38-0408

AMENDED

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
 WITH
 CLERK
 2012 DEC 20
 2:30

INSTRUCTIONS - READ CAREFULLY

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

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

1. Place of detention Kershaw Correctional Institution, 4848 Goldmine Highway, Kershaw, SC 29267
2. Name and location of Court which imposed sentence Orangeburg Court of General Sessions, Orangeburg, S.C.
3. Name(s) of co-defendant(s) (if any) Chelsea Monique Williams
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-38-456
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:

ATTEST: TRUE COPY
 [Signature]
 CLERK OF COURT
 ORANGEBURG COUNTY

Revised 3/2003

- (a) April 18, 2011; 12 years incarceration
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty x
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. n/a
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. n/a
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. n/a
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. n/a
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Not advised of right to appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

- (a) ineffective assistance of counsel
- (b) plea not taken under oath
- (c) _____

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

(a) Failure to investigate case including obtaining information from Petitioner's cell phone; Failure to review results of DNA testing; Failure to properly advise and define sexual battery; Failure to advise possible charges and penalties; Failure of counsel to challenge prosecutors recommendation of sentence when plea was supposed to be for no recommendation from the state regarding sentencing; Coersion of counsel to get Petitioner to plead guilty; Failure to explain to Petition the difference between varying degrees of CSC.

- (b) Failure to require plea to be under oath
- (c) Failure to advise of right to appeal.

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

- (a) any petition in a State Court under South Carolina Law? none
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? none
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? none
- (d) any other petitions, motions or applications in this or any other Court? none

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

(a) the specific nature thereof:

- i. n/a
- ii. _____
- iii. _____
- iv. _____

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

- i. n/a
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

i. n/a

ii. _____

iii. _____

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


- (a) Not advised of right to appeal. This PCR is first collateral attack.
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes, by Mark Wise
 - (b) your trial, if any? n/a
 - (c) your sentencing? yes, by Mark Wise
 - (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? Brad Hutto was appointed as counsel for PCR.

18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Mark Wise, P.O. Box 1112, Orangeburg, SC 29116
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Plea and sentence
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:
Vacation of plea and sentence and new trial.

20. Are you now under sentence from any other court that you have not challenged?
no

December 23, 2013



C. Bradley Hutto, Esquire
 P.O. Box 1084
 Orangeburg, SC 29116
 (803) 534-5218
 Fax (803) 536-6544

State of South Carolina) In the Circuit Court
 County of Orangeburg) First Judicial Circuit

Shelton D. Brown,) Transcript of Record
 Applicant,) 2012-CP-38-0468
 V.)
 State of South Carolina,)
Respondent.)

October 27, 2015

St. George, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Presiding Judge

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

C. Brad Hutto, Esquire
 Attorney for the Applicant

J. Clayton Mitchell, Assistant Attorney General
 Attorney for the State

SHARON L. VIZER
 CIRCUIT COURT REPORTER

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E X H I B I T S

FOR THE APPLICANT:

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1 -- failure to challenge the prosecutor's recommendation
2 of a plea after the agreed upon terms for the plea was
3 that there would be no recommendation from the State.

4 The other two aspects we would raise is that this
5 appeal was not taken under oath -- I mean, this plea was
6 not taken under oath. The defendant was not put under
7 oath at the time of the plea, and failure to advise him
8 of his right to appeal.

9 THE COURT: All right. The State is ready to
10 proceed?

11 MR. MITCHELL: Yes, Your Honor.

12 THE COURT: Call your first witness, Mr. Hutto.

13 MR. HUTTO: We'd call Mark Wise.

14 MARK WISE, after having been duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HUTTO:

18 Q. Good morning. You are Mark Wise?

19 A. Yes.

20 Q. And you are a licensed attorney in South Carolina?

21 A. I am.

22 Q. And how long have you been practicing law in South
23 Carolina?

24 A. I was admitted, I think, '93, '94.

25 Q. Okay. And in the context of this proceeding you

1 were a public defender for Orangeburg County?

2 A. Yes.

3 Q. And is that the role that you had when you met --
4 first met Shelton Brown?

5 A. It was.

6 Q. Okay. And were you appointed to represent him?

7 A. Yes.

8 Q. Okay. And did you meet with him prior to this
9 plea?

10 A. Yes.

11 Q. And can you tell us about that.

12 A. About meeting with him?

13 Q. Yeah. Did you meet with him in the jail or was he
14 out on bond?

15 A. He was in the jail.

16 Q. Okay. And he was, I believe, 17 at the time?

17 A. I'd have to look, but he was young.

18 Q. He was young. And what was he charged with?

19 A. He was charged with two counts of criminal sexual
20 conduct with a minor in the second degree. He was
21 charged with kidnapping.

22 Q. And do you recall how many times you met with him
23 prior to the plea?

24 A. I think approximately six times.

25 Q. Because he was of a young age did you ever meet

1 with his parents?

2 A. I talked to her mother. I don't think I met with
3 his mother.

4 Q. Okay. When you say talked to her, that would be by
5 telephone?

6 A. Yes.

7 Q. All right. And it's my understanding that the plea
8 date in April was actually scheduled as -- initially as a
9 bond hearing. The reason he was scheduled to go over to
10 court that particular day had been to set bond on him?

11 A. No. We had a bond hearing the month before.

12 Q. So there was no bond hearing scheduled for the date
13 of the plea?

14 A. Not as I recall.

15 Q. All right. There was also a preliminary hearing
16 scheduled in May, the plea took place in April. Do you
17 think that it was not wise to wait and have the
18 preliminary hearing before making any decisions about
19 advising him on the plea?

20 A. Well, we talked about the case, we talked about the
21 offer. I don't believe we had a conversation about
22 waiting until after the preliminary hearing to do the
23 plea.

24 Q. Okay. This was a case in which both counts against
25 him were criminal sexual conduct involving two separate

1 young women; is that right?

2 A. That's correct.

3 Q. And were there rape kits on either one of these
4 cases?

5 A. No.

6 Q. He had been ordered at some point in time or maybe
7 he had consented to having his DNA taken for the purpose
8 of a possible match; is that right?

9 A. That's correct.

10 Q. Did the attempt to match ever take place?

11 A. Not as far as I know. I've never received a report
12 from SLED indicating an analysis was done.

13 Q. Did you not think it was important to get back the
14 SLED analysis from a match on the DNA before properly
15 advising him of his -- you know, whether he should have a
16 trial or take a plea?

17 A. Well, when we talked about this case there was an
18 issue of -- in the case that he pled to, there was an
19 issue about one of the witnesses being his cousin, and we
20 talked about it, but if we were going to go to trial I
21 would have preferred not to have any DNA connecting him
22 to the case. And so I guess the answer is no, we didn't
23 -- I didn't tell him that he should wait until after the
24 DNA came back, if it ever came back.

25 Q. Okay. And did you and he talk about the necessity

1 or the wisdom of getting his cell phone records prior to?

2 A. No.

3 Q. No. You did not have any conversation about that?

4 A. No.

5 Q. All right. Whether he had any conversation with

6 you about that or not did you not think it might be

7 important to obtain his cell phone records to determine

8 his whereabouts during either one of these instances?

9 A. Senator, I don't think -- I thought about that and

10 I'm very comfortable saying we didn't talk about that.

11 Q. Let me get to two other issues real quick, just so

12 I can check them off. Did you advise him of his right to

13 an appeal?

14 A. I looked at file. I don't think that we had that

15 conversation.

16 Q. Do not think you had that conversation. Okay.

17 Most guilty pleas -- and I've been trying to think back

18 in the history of me doing criminal work, when it

19 started, because I don't think we always did, but most

20 guilty pleas now are under oath. Did you recognize that

21 they did not put him under oath at the beginning of this?

22 A. No.

23 Q. Did you raise that as an issue?

24 A. Did I raise it?

25 Q. Right.

1 A. No. No.

2 Q. Do you think it's an issue?

3 A. I don't know. The only reason I hesitate is when
4 we came to this agreement that he would plea it was
5 something that he wanted to do. You know, we kind of
6 looked at the evidence, made a decision. So I just don't
7 know that -- I don't know, Senator. If I had recognized
8 it that day would I have raised it? As I sit here now, I
9 don't know.

10 Q. Okay. So you admit that no DNA record, no DNA
11 testing was reviewed because you actually did not ask
12 them to go forward with the DNA testing before making the
13 decision or helping him make the decision about the plea?

14 A. That's correct.

15 Q. Did you explain to him the elements of CSC and what
16 the State had to prove?

17 A. My normal practice is to do that.

18 Q. Okay. Would you have gone over with him or do you
19 have a recollection of going over with him the possible
20 penalties he was facing?

21 A. That would be what I would discuss as part of the
22 discussion about the charge.

23 Q. Okay. In this particular case the State sent over
24 a written offer for plea; is that correct?

25 A. It is.

1 Q. And in that written offer for the plea it was on
2 the form that it was going to be without a recommendation
3 from the State; is that correct?

4 A. It was.

5 Q. And yet during the course of the plea the State
6 recommended a sentence. Did you object?

7 A. I did not.

8 Q. Did it cross your mind at the time that she was
9 making the recommendation that she was going against what
10 had been written down in the plea offer?

11 A. Senator, I looked at the transcript and I have to
12 tell you that my recollection would have been that she --
13 I don't recall her saying that. And after looking at the
14 transcript I saw the point that Mr. Brown was making,
15 that she did say that. So, obviously, I didn't object
16 but I can't tell you why.

17 Q. But it was clearly -- in addition to the fact that
18 the solicitor had written down on the plea offer that the
19 State was not going to make a recommendation do you
20 recall having that agreement with the solicitor, that
21 they were not going to recommend a sentence?

22 A. That's correct.

23 Q. Yet you do realize after reading the transcript
24 that the State did weigh in on what they thought the
25 sentence ought to be?

1 A. I think they said they wanted a substantial
2 sentence, words to that effect.

3 Q. When you have a person who is under the age of 18
4 do you have any sort of policy about having their parents
5 with them when they make some decision like this?

6 A. No.

7 Q. And you had talked to at least one of his parents
8 on the phone?

9 A. Yes.

10 Q. Was that in connection with the bond hearing, or do
11 you recall?

12 A. I don't recall what it was in connection with.

13 Q. Okay. Since the charge was criminal sexual conduct
14 do you know why there was not a rape kit done?

15 A. I do not.

16 Q. Did that strike you as unusual in a case like that
17 that there would not be a rape kit done?

18 A. I don't know that it struck me as unusual. You
19 know, we -- I don't know.

20 Q. Okay. Did you feel comfortable advising him of his
21 rights and his potential outcome going forward with a
22 trial without having the results of a rape kit on a
23 criminal sexual conduct case?

24 A. Yes.

25 Q. Do you recall Mr. Brown asking you to request a

1 continuance because his parents could not get there that
2 day?

3 A. No.

4 Q. Now, just to put this in context for the plea, he
5 was facing two separate counts with two separate young
6 women; is that right?

7 A. That's correct.

8 Q. And the plea agreement was that one was going to be
9 nolle prossed if he pled to the other?

10 A. That's correct.

11 Q. And the kidnapping was also going to be nolle
12 prossed?

13 A. Yes.

14 Q. And you explained to him -- did you explain to him
15 that that was -- of all the charges he was facing that
16 that was the deal that was being presented to him?

17 A. That was the plea offer?

18 Q. Yes.

19 A. Yes. We talked about this.

20 Q. Was it also the position of the State at that time
21 that if he did not take this plea deal that they may
22 consider upping the charges to a CSC first?

23 A. They did put that in their offer.

24 Q. Okay. And could they have done that given his age
25 and the age of the victim? Could they have made this a

1 CSC first? Was that a real threat?

2 A. I don't know that it was. I assume her position
3 was that it had this element of kidnapping involved in
4 it, so I don't know. I don't know that it was a real
5 threat.

6 Q. But you did tell him that if he did not take this
7 plea offer that the State was making overtures that they
8 would move forward with a CSC first indictment?

9 A. We did discuss the plea offer that they made.

10 Q. Okay. Was there any discussion -- I want to get
11 back to this issue about the scheduling of this. I take
12 it it's your recollection then that this was not
13 scheduled to be a bond hearing. It was definitely
14 scheduled to be a guilty plea on that day?

15 A. That's my recollection.

16 MR. HUTTO: Excuse me one second.

17 (WHEREUPON, A brief discussion took place between
18 Mr. Hutto and the Applicant, privately.)

19 MR. HUTTO: That's all I have at this time, Your
20 Honor.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. MITCHELL:

24 Q. Good morning, Mr. Wise.

25 A. Good morning.

1 Q. Thanks for being here today. Mr. Brown was charged
2 with kidnapping, two counts of CSC second, right?

3 A. Yes.

4 Q. Okay. And then through the plea negotiations you
5 were able to have one of the CSCs and the kidnapping
6 dismissed, right?

7 A. That was the plea offer.

8 Q. Okay. How did these plea negotiations come about?
9 Did you go to the solicitor and ask for an offer? Was it
10 extended?

11 A. I didn't go and seek an offer.

12 Q. Okay. So in your discussions with Mr. Brown on
13 whether to accept this offer what did you all -- what was
14 your advice to him on that?

15 A. Well, we talked about the facts, how a trial may
16 proceed, look at the plea offer. We talked about the
17 possibilities and, you know, I leave it up to him to make
18 a decision how he wants to proceed.

19 Q. Was it your advice that he should accept this offer
20 or you just left it in his discretion?

21 A. I left it in his discretion.

22 Q. Okay. And he indicated that he did want to plead
23 guilty?

24 A. He did.

25 Q. The evidence against him in the case, was it the

1 victims's statements?

2 A. I'm sorry?

3 Q. Were the victims's statements part of the evidence
4 that the State planned to use if the case had gone to
5 trial?

6 A. Well, they would -- I assume they would have called
7 the complaining witnesses to come to court and testify.
8 There was also another witness that was present in one of
9 the cases.

10 Q. So, you know, was it part of your strategy to not
11 wait to see the DNA testing results as a positive match
12 in your advice to advise Mr. Brown to plead guilty?

13 A. No. It wasn't a strategy. We had the offer. We
14 looked at the evidence, Mr. Brown made a decision he
15 wanted to accept the offer. I don't have the note
16 specifically indicating this but it is not uncommon for
17 us to kind of see if we can get a feel for what kind of
18 sentence the Judge might impose, so I might have done
19 that. But that would have been how we would proceed.

20 Q. But if the DNA evidence had come back and it was a
21 match that would have been stronger evidence that the
22 State could present; is that fair to say?

23 A. It would have been more evidence.

24 Q. I guess moving to the sentence, this was an open
25 plea, as you understood it; no recommendation, no

- 1 negotiations?
- 2 A. That's correct.
- 3 Q. Okay. I guess he was facing up to 20 years?
- 4 A. Well, on the charge that he pled to, yes.
- 5 Q. Okay. Right. Now, the kidnapping he was facing
- 6 more than that, right?
- 7 A. That's correct.
- 8 Q. So as far as -- you believed it was an open plea
- 9 but then I believe the solicitor said something about the
- 10 victim was asking for the higher end; is that your
- 11 recollection?
- 12 A. I don't recall.
- 13 Q. Okay. Did you go over the applicant's version of
- 14 facts or for how his side of the story?
- 15 A. Yes.
- 16 Q. Did you look at this case as a case that should be
- 17 pled from the beginning or did you think that this case
- 18 could possibly go to trial?
- 19 A. I think every case can go to trial.
- 20 Q. So it's up to the applicant to make -- up to
- 21 Mr. Brown to make a decision?
- 22 A. Yes.
- 23 Q. After he decided to plead guilty did he ever give
- 24 any indication he wanted to go to trial?
- 25 A. Did he indicate that he had changed his mind about

1 wanting to plead guilty?

2 Q. Right.

3 A. No.

4 Q. Did you feel he had a proper understanding of the
5 consequences of what was going to happen at the plea?

6 A. Yes.

7 Q. He also stated in the -- at the plea that he never
8 attempted to excuse his behavior, so it seems like he was
9 pretty upfront with the whole situation?

10 A. I'm not sure how to answer that.

11 Q. Okay. I understand. No further questions. Thank
12 you.

13 THE COURT: Anything on redirect?

14 MR. HUTTO: Briefly.

15 REDIRECT EXAMINATION

16 BY MR. HUTTO:

17 Q. So just to be clear for the record, Mr. Wise, the
18 transcript on page 6 where the solicitor is speaking
19 reads, Because of the short time period in which all
20 these incidents occurred and the nature of the crimes the
21 parents would ask that the maximum sentence be given to
22 the defendant, Mr. Brown. Your Honor, the State would
23 concur in that.

24 So the State did, in essence, ask for the maximum
25 sentence in derogation of what they had said they were

1 going to do in the written plea offer; is that right?

2 A. Yes, sir.

3 Q. You indicated that every case could go to trial
4 and, of course, we all know that, but in this case isn't
5 it true that you had a 17 year old who had not been to a
6 prelim, who had been denied bond, whose parents weren't
7 in the courtroom with him, there was no DNA results back
8 and apparently no explanation for why rape kits weren't
9 done; do you think he had enough facts to make an
10 intelligent decision about pleading, given all of those
11 circumstances?

12 MR. MITCHELL: Objection. Speculation.

13 THE COURT: Overruled. To the extent he can answer
14 it, that's fine. If he can't answer it he can say so.

15 A. Senator, I think this is where we were, and there's
16 kind of two issues there. I think your point about his
17 parents not being there is a valid and well taken point
18 and that may have made a difference. I did speak to his
19 mother. I don't recall trying to get him and his mother
20 together closer to the time of the plea so that she could
21 be of help to him in making this decision.

22 As it goes to his decision, I think what compelled
23 him to want to do this was a concern in the case that he
24 pled to about his cousin who is alleged to have been
25 present and had wrote a statement to the police possibly

1 being a witness against him. So that was, I think -- I
2 think that was weighing on him. However, you are correct
3 that he was in a position as a young man making this
4 decision, he and I, and his parents -- really his mother
5 not being present.

6 Q. Was it that his cousin was potentially going to be
7 a witness against him or was she also charged as an
8 accomplice?

9 A. She was charged as an accomplice, absolutely.

10 Q. And so was a part of the -- are you telling us that
11 you think that he was taking the wrap so that they would
12 drop the charges on her?

13 A. No, no, no, no, no. I'm sorry. What I'm saying is
14 recalling our conversations then he had a concern that
15 the State would call her as a witness at his trial.

16 Q. Okay. Let me ask you one other thing, too, just to
17 wrap back around to the recommendation again. The actual
18 parents that were in the courtroom making the
19 recommendation, the solicitor said, The parents are here
20 to make a recommendation, that was actually on the case
21 that was being nolle prossed?

22 A. I don't remember which parents were there.

23 Q. Okay. Well, you wouldn't deny that the victim who
24 actually he pled weren't in the courtroom but the victim
25 of the one being nolle prossed was there?

EXAMINATION BY THE COURT

20

1 A. Senator, I just don't remember.

2 MR. HUTTO: Okay. Excuse me one second.

3 (WHEREUPON, a brief discussion took place between
4 Mr. Hutto and the Applicant, privately.)

5 BY MR. HUTTO:

6 Q. Do you have the transcript in front of you?

7 A. I do.

8 Q. I want you to turn over to where you are speaking
9 on page -- here it is at the top of page 9. On line 2,
10 this is you talking, you say, I submit to the Court that
11 he needs to be punished for what he's done.

12 Did you have a conversation with Mr. Brown before
13 where you told him that you were actually going to ask
14 the Court to punish him?

15 A. No.

16 Q. Thank you. That's all the questions I have.

17 THE COURT: Recross?

18 MR. MITCHELL: Nothing further.

19 THE COURT: Just a couple of questions from me.

20 EXAMINATION

21 BY THE COURT:

22 Q. I don't have the advantage, obviously, of appearing
23 before Judge Cothran anymore and I can't really remember
24 what his habit or practice is. Does he come to
25 Orangeburg a good bit or have you practiced in front of

1 him a good bit, or can you speak to that?

2 A. I'm trying to remember back then. He had been in
3 Orangeburg on a number of occasions but I can't remember
4 how many times he had been there prior to this plea.

5 Q. Okay. Do you recall if he's the sort of judge or
6 if his M-O is to follow recommendations or if he just
7 considers it merely a recommendation and he's got a
8 hundred percent authority over it, or does he typically
9 take what the State recommends and goes with that? Or
10 can you speak to that or do you know?

11 A. It is not my impression he will just accept the
12 State's recommendation. I remember him being -- my
13 recollection is he is a judge who will listen to the
14 recommendation but listen to the facts of the case and do
15 what he thinks is appropriate. So my recollection it
16 would not be unexpected that he would go under the
17 recommendation of the State.

18 Q. All right. So if the State were to stand up in
19 this case, say we recommend 15 years or we recommend 18
20 years, because it's not negotiated, Judge Cothran's
21 practice would be if he thinks that 10, or 8, or 5, or
22 probation is appropriate your understanding is his M-O
23 would be to go with what the gut says and what he thinks
24 is appropriate, as to opposed to what the State might be
25 recommending?

EXAMINATION BY THE COURT

22

1 A. That is my impression.

2 Q. Do you recall if he typically put individuals under
3 oath when they were pleading guilty?

4 A. I do not, Your Honor.

5 Q. All right. And in Orangeburg we don't -- I mean,
6 in Greenwood we don't -- in the Eighth Circuit we don't
7 typically use plea agreements, written plea agreements.
8 What is the general understanding or what is your general
9 understanding when it says, Will make it a straight up
10 plea and we won't make any recommendations?

11 Is this a situation where basically you simply
12 missed what the solicitor was saying or is it a situation
13 where everybody gets to say what they want; the victims
14 get to say, Hey, I want the max; and you get to say, I
15 want probation; and the Judge gets to make the call?
16 How does that usually play out or what is your
17 understanding of what that sentencing agreement or plea
18 agreement means?

19 A. Well, Judge, I think in this situation the short
20 answer is I think I missed them saying that. When I
21 reviewed the transcript, when I read Mr. Brown's
22 application and he called that to my attention I saw that
23 he was correct.

24 THE COURT: Very good. Thank you.

25 Follow up based on my questions, Mr. Hutto?

1 MR. HUTTO: Yes. I'd like to, based on your asking
2 him about the plea agreement, I'd like to put the written
3 plea agreement into evidence.

4 THE COURT: I was kind of hoping you would. Very
5 good.

6 (WHEREUPON, Applicant's Exhibit Number 1, a
7 Document, was marked and admitted into evidence.)

8 THE COURT: Without objection. And do you have any
9 follow up?

10 MR. HUTTO: I'm going to ask him about it, just ask
11 him to identify it.

12 REDIRECT EXAMINATION

13 BY MR. HUTTO:

14 Q. Mr. Wise, I'm going to approach you and hand you
15 what's now been marked as Applicant's Number 1 and ask
16 you if this is an accurate copy of the plea, I think one
17 that you actually sent to me in response to a letter I
18 asked you if you had a copy of it.

19 A. It is.

20 (WHEREUPON, the exhibit was handed to the Court.)

21 THE COURT: Any follow up based on my questions?

22 MR. MITCHELL: Nothing Further.

23 THE COURT: Thank you, sir, for coming. Take care
24 of yourself, all right?

25 Call your next witness, please.

1 MR. HUTTO: Your Honor, Mr. Brown advises me he at
2 this time would not like to testify but I'd like you to
3 ask him about that.

4 THE COURT: All right. Mr. Brown, if you could,
5 just raise your right hand, please.

6 SHELTON D. BROWN, after having been duly
7 sworn, testified as follows:

8 THE COURT: And, sir, your name is Shelton D.
9 Brown; is that correct, sir?

10 THE APPLICANT: Yes, sir.

11 THE COURT: Now, your attorney is telling me that
12 you do not want to testify in this post-conviction relief
13 action, at least in your case in chief. I don't know if
14 the State intends to call you as a witness, but maybe you
15 would be asserting your Fifth Amendment Rights, I got no
16 idea. I've actually never had that come up, but
17 basically, you understand that you do have the right to
18 testify in this case and obviously you would be subject
19 to cross-examination by the State? Do you understand
20 that, sir?

21 THE APPLICANT: Yes, sir.

22 THE COURT: So anything that you say in this,
23 technically civil case, could be used against you
24 subsequently if the Court were to grant you relief. Do
25 you understand that, sir?

1 THE APPLICANT: Yes, sir.

2 THE COURT: And Mr. Hutto has indicated to me that
3 you do not desire to testify in this action; is that
4 correct?

5 THE APPLICANT: Yes, sir.

6 THE COURT: And that is your decision, correct?

7 THE APPLICANT: Yes, sir.

8 THE COURT: And Mr. Hutto is simply doing what
9 you've asked him to do when he tells me that you don't
10 want to testify, correct, sir?

11 THE APPLICANT: Yes, sir.

12 THE COURT: All right. No additional questions of
13 Mr. Brown.

14 MR. HUTTO: Can I ask him a question?

15 THE COURT: Sure.

16 MR. HUTTO: Mr. Brown, when I came to McCormick a
17 couple weeks ago and met with you over at the Department
18 of Corrections did I go over with you what questions we
19 might ask of you if you decided to take the stand, and
20 review what your testimony might be or what questions
21 might confront you if you did take the stand?

22 THE APPLICANT: Yes, sir.

23 MR. HUTTO: Okay. Thank you.

24 THE COURT: Very good. Any other witnesses for
25 Mr. Brown?

1 MR. HUTTO: No.

2 THE COURT: Attorney General?

3 MR. HUTTO: I just want to make sure of one thing
4 just for the record. I assume that the transcript of the
5 plea is part of the record. If not, I need to introduce
6 that very short transcript. I referred to it. If it's
7 not a part of the record I'd move to introduce the
8 transcript as part of the record.

9 THE COURT: All right. Why don't we, out of an
10 abundance of caution, go ahead and make a copy of the
11 transcript as part of the record.

12 MR. MITCHELL: Your Honor, it would normally be
13 part of the record. It's part of the record.

14 THE COURT: All right. Maybe we are fine then.
15 Do you have any witnesses, Attorney General?

16 MR. MITCHELL: Your Honor, I would not call any
17 witnesses but I would like to make a point, in closing.

18 THE COURT: Please. Go right ahead.

19 MR. MITCHELL: Okay. Your Honor, I think at this
20 point Mr. Brown has failed to meet his burden. I think
21 he has to present some sort of evidence that he would
22 have gone for trial but for some bad advice, along those
23 lines. I think as far as the issues go, any challenges,
24 anything to failure to investigate, any of that, that's
25 all speculation.

1 There's been no evidence present that there was any
2 beneficial evidence to where he would not have pled
3 guilty, which again, we don't have that testimony before
4 us. This may be more properly as a motion for summary
5 judgment, but I think any challenge to the evidence, I
6 think that's all waived by pleading guilty, you know,
7 cell phone records, and DNA. And Mr. Wise did articulate
8 a strategic reason for not advising his client that he
9 should wait until the DNA results come because, you
10 know, if it's likely to be positive I think that's just
11 one more piece of evidence that the State can use to
12 show his guilt.

13 I think the issue on appeal, I don't think there
14 was anything -- there's no testimony from the applicant
15 that he asked for an appeal, but for any extraordinary
16 circumstance you're not entitled to that advice off of an
17 appeal unless something happens very much out of the
18 ordinary.

19 I think as far as the written recommendation -- or
20 as far as the State giving a recommendation, I think it
21 was kind of two parts. The victim asked for the maximum
22 then the solicitor kind of threw that in there that they
23 would also ask for that. So I think as far as you could
24 allege that's a violation of the plea agreement I don't
25 think you can show any prejudice as, you know, the

1 State's up there asking for the max and they get 12 years
2 so -- I think the max here is 20.

3 So I think that that's evidence to show that there
4 was not -- that Judge Cothran did not take that into
5 consideration, or at least it wasn't persuasive on him.
6 You know, he left it open, as the plea agreement had set
7 out for him. You know, I don't think there's any --
8 excuse me. But I think as far as being under oath, you
9 know, I think we presume regularity in these proceedings.
10 I think Mr. Brown presumed that he understood that he
11 knew he had to tell the truth to the Court.

12 You know, I don't know, maybe there was swearing in
13 off the record, I'm not sure, and maybe that's just not
14 part of the court reporter's transcript. But I think
15 that Mr. Brown has failed to present evidence to make it
16 past the stage of summary judgment at this point.

17 THE COURT: All right. Mr. Hutto?

18 MR. HUTTO: Your Honor, of course, on the issue of
19 whether the transcript is the transcript, I mean, that's
20 what was provided to us and clearly it shows the case
21 being called. When they call his name he was not sworn
22 in.

23 Also, Mr. Wise recognizes he did not -- or didn't
24 testify that he had any recollection of advising him of
25 his right to appeal, and clearly if you read through the

1 record before Judge Cothran while most judges usually --
2 I think Judge Cothran usually does say you have the right
3 to an appeal, he didn't in this case say that.

4 On the issue of the plea agreement, plea agreement
5 is in writing. It says that there's going to be no
6 recommendation from the State as to the sentence. The
7 State clearly violated that. When it made a
8 recommendation no objection was taken from that.

9 And then finally on the issue -- I guess it goes to
10 coercion. You've got a 17 year old whose parents were
11 not there, a month ahead of his preliminary hearing
12 without a rape kit, without DNA, and, you know, with all
13 of those factors going forward with the plea agreement I
14 think it would show that he's met the burden of showing
15 ineffective assistance of counsel.

16 THE COURT: All right. If we may, there's a recent
17 case concerning ineffective assistance of counsel. It's
18 come out within the last year. I want to say that the
19 name of it is the Brewer, but I don't think that's right,
20 concerning where the State agrees not to make any
21 recommendation and then they ask for the max.

22 My recollection of that case, and if you all can
23 educate me on that if you've had a chance to find it, but
24 my recollection of that case is that the Court did find
25 that the failure to object when the State agreed to stay

1 silent, that that was ineffective assistance in that
2 case; however, I think that what happened was that the
3 Judge basically imposed a sentence that was maybe one or
4 two years off the maximum sentence on a violent 85
5 percent crime. That's issue number one, and it goes to
6 the prejudice question in this case.

7 Secondly, I think that the remedy in that case was
8 to remand for a new sentencing hearing. Am I incorrect?
9 Was that the remedy the Supreme Court crafted? Which
10 case is it that I'm thinking of?

11 MR. MITCHELL: It's Smith V. State, a Supreme Court
12 case that came out in July.

13 THE COURT: Okay.

14 MR. MITCHELL: They remanded it for resentencing.
15 I'm sorry. They state the proper remedy is a new trial,
16 so I believe all the charges would come back, not just
17 the charges that he pled to.

18 THE COURT: All right. So they remanded it for --

19 MR. MITCHELL: A new trial. They invalidated the
20 entire agreement and remanded for a new trial.

21 THE COURT: Okay.

22 MR. MITCHELL: Your Honor, you know, I think I'd
23 note that this case is distinguishable from that. I
24 think, you know, the portion of that case is that he did
25 not get the benefit of the bargain. In the Smith case,

1 Mr. Smith was not entitled to the benefit of the bargain
2 because of the breach of plea agreement.

3 I think here, I think, Mr. Brown did get the
4 benefit of the bargain. You know, it's still towards the
5 lower range of the sentence, so I just don't see how he
6 could prove prejudice on that.

7 I mean, they ask for the max and he got 12. I
8 don't think he can now come and say that he did not
9 receive the benefit of bargain now. You know, I don't
10 think there's anything presented to show that if that was
11 not asked for that he would have then sentenced him to
12 less, and I think that's what you have to prove.

13 THE COURT: I understand your position.

14 MR. MITCHELL: Yes, sir.

15 THE COURT: All right. My clerk did locate Section
16 17-23-140, which basically simply says that a defendant
17 has to appear before a judge, acknowledge his plea before
18 a judge and then the judge can sentence. The statute
19 says nothing specific about an oath or affirmation.

20 I'm going follow my usual M-O. I'll take the
21 matter under advisement and have you all an order,
22 hopefully, before I leave St. George.

23 MR. HUTTO: Thank you.

24 THE COURT: Very good. Thank you.

25 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the First 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 the evidence introduced in the hearing of the captioned case in Circuit Court on the 27th day of October 2015.

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

March 28, 2016

s/Sharon L. Vizer

SHARON L. VIZER

CIRCUIT COURT REPORTER

The State of South Carolina
OFFICE OF THE SOLICITOR
First Judicial Circuit

140 N. Main St., Suite 102
Summerville, SC 29484
(843) 871-2640
FAX (843) 871-2643
PTI (843) 873-7842



DAVID M. PASCOE
Solicitor

Courthouse, Amelia Street
Post Office Box 1625
Orangeburg, SC 29116
(803) 533-6252
FAX (803) 533-6004

PLEA OFFER

APR 4 2011

FILED FOR RECORD
WILLIAM D. CLARK
2015 NOV -2 P 1:06
CLERK OF COURT
ORANGEBURG, SC

DATE

4/4/11

DEFENDANT

Shelton Brown

DEFENSE ATTORNEY

Mark Wise

ASSISTANT SOLICITOR

Sarah A. Ford

CHARGES

CSC w/Minor 2nd (2cts)
Kidnapping

PLEA OFFER

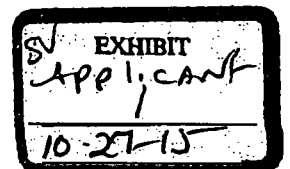
plea to CSC w/Minor 2nd

If offer is rejected,
State plans to
indict as CSC 1st.

will dismiss kidnapping
No recommendation as to
sentencing

DATE EXPIRES

2nd App



STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Shelton D. Brown, #345782,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2012-CP-38-00468

ORDER OF DISMISSAL

2016 JAN 13 P 12:01
CLERK OF COURT
ORANGEBURG, SC

FILED FOR RECORD
WINNIEFA B. CLARK

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 4, 2012. Respondent made its Return on September 11, 2012, requesting an evidentiary hearing be convened. C. Bradley Hutto, Esquire, was appointed by the Orangeburg County Clerk's Office to represent Applicant. An evidentiary hearing was held on October 27, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Mr. Hutto. The State was represented by J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office.

At the PCR hearing, Applicant declined to testify on his own behalf. Also testifying was Applicant's plea counsel, Mark Wise, Esquire. This Court had before it the Orangeburg County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant waived presentment to the April 2011 term of the Orangeburg County Grand Jury for two counts of Criminal Sexual Conduct with a Minor – Second Degree and one count of Kidnapping (2011-

TRUE COPY
CLERK OF COURT
ORANGEBURG, SC

GS-38-0456 and was represented by Mr. Wise. On April 18, 2011, Applicant pled guilty before the Honorable R. Ferrell Cothran, Jr. He was sentenced as indicted to twelve (12) years imprisonment for one count of Criminal Sexual Conduct with a Minor – Second Degree. The remaining charges were *nolle prossed* pursuant to the plea agreement. Applicant did not appeal his guilty plea or sentence.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Involuntary and unintelligent guilty plea in that Counsel failed to review the nature of the charges, penalties, and constitutional rights with Applicant.
2. Ineffective assistance of counsel in failing to
 - a. file a notice of appeal;
 - b. Ensure that Applicant was placed under oath prior to the plea; and
 - c. Object or otherwise bring to the Court's attention that the State had breach its plea agreement.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 334 S.E.2d 813.

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



Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As an initial matter, Applicant declined to testify at the hearing. This Court was not presented with any evidence that Applicant would have gone to trial but for any of the alleged errors made by Counsel. See Smith v. State, 369 S.C. 135, 138-39, 631 S.E.2d 260, 261-62 (2006) (An "averment in a PCR application is insufficient to warrant relief. Respondent's failure to take the stand resulted in a failure of proof . . ." An applicant seeking relief must present



probative evidence to support PCR allegation that a defense attorney's purported deficient performance entitles him to relief). Therefore, Applicant cannot prove prejudice. This Court will address the deficiency prong of Strickland below.

Involuntary and Unintelligent Guilty Plea

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to review the charges, penalties, and his constitutional rights with him. This Court finds Applicant's guilty plea was freely and voluntarily entered. To find a guilty plea is voluntarily and knowingly entered, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims he did not plead guilty voluntarily because he was not advised by Counsel of the charges, potential penalties, and of his constitutional rights. This Court finds this



contention meritless. The record reflects Applicant was fully advised that he was pleading guilty and waived all challenges to the evidence against him. The plea court's thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his rights. Applicant presented no evidence as to why he should be allowed to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case. The record further reflects Applicant fully admitted his guilt to the plea court. Counsel fully discussed and reviewed the discovery involved in the case. Counsel also did a full and complete investigation of the case including the issue of DNA testing. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

Ineffective Assistance of Counsel

Failing to File a Notice of Appeal

Applicant also alleges Counsel was ineffective in failing to file a notice of appeal. This Court finds Applicant has failed to carry his burden of proving Counsel was ineffective for failing to file a notice of intent to appeal. Again, Applicant did not argue these grounds because he did not testify. Accordingly, no evidence was submitted to support these allegations or to demonstrate that Applicant asked Counsel to appeal; accordingly, they are abandoned. Furthermore, upon a full review of the record, the Court finds that no grounds existed for an appeal, so any appeal would have been futile.

Failing to Ensure Applicant was Placed Under Oath

Applicant alleges Counsel was ineffective in failing to ensure he was placed under oath prior to the plea. This Court takes judicial notice of the fact that most judges do place defendants under oath prior to the plea colloquy, and this Court is of the opinion that following this



procedure is preferable in that it provides greater assurances that a defendant's answers to the court's questions are truthful. However, S.C. Code § 17-23-140 (1976) merely requires that a defendant appear before the circuit judge; this Section does not require that the defendant be placed under oath prior to the colloquy. Clearly, the manner in which a plea colloquy is conducted lies in the sound discretion of the presiding judge. Accordingly, the Court finds that Judge Cothran complied with the minimum legal formalities in accepting Applicant's plea and that it was not necessary for Applicant be placed under oath prior to his plea.

Failing to Object to Solicitor's Breach of Plea Agreement

Finally, Applicant alleges Counsel was ineffective in failing to object to the State's alleged breach of the plea agreement. At the plea hearing, Assistant Solicitor Ford informed Judge Cothran that the victim's parents were "ask[ing] that the maximum sentence be given to the Defendant, Mr. Brown." (Plea Tr. p. 6, lines 17-19). The solicitor then immediately agreed with that recommendation: "Your Honor, the State would concur in that . . ." (Plea Tr. p. 6, lines 19-20).

Defense counsel renders ineffective assistance when he or she fails to withdraw the guilty plea once the prosecution disregards a plea agreement. Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988). An applicant is entitled to post conviction relief when a solicitor makes a recommendation in violation of a negotiated plea agreement. Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000). The South Carolina Supreme Court has recently reaffirmed these holdings and held that the appropriate remedy in such a case is invalidation of the entire agreement. See Smith v. State, 413 S.C. 194, 195, 775 S.E.2d 696 (2015) (holding that the applicant was entitled to relief when the solicitor's "recommendation of the maximum sentence



was a breach of its agreement . . . and that [the defendant] would not have pled guilty had he known the solicitor was going to breach the agreement.”).

Counsel Wise candidly admitted that he did not object to the solicitor’s recommendation. Normally, under the analysis of Smith v. State, the Court would remand this matter for a new trial. However, as previously noted, Applicant did *not* testify at the hearing. Unlike Smith, wherein the court found that Smith would not have pled guilty had the State not breached its agreement, no testimony or evidence exists in the present case that Applicant would not have entered the plea had the State indicated it was seeking the maximum or a substantial sentence. Accordingly, although the Court finds that Counsel was deficient under Smith for failing to object to Assistant Solicitor Ford’s comments, the Court finds that Applicant has failed to demonstrate any prejudice. Accordingly, relief is denied on this ground.

All Other Allegations

As to any and all allegations that were raised in the application and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations which would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

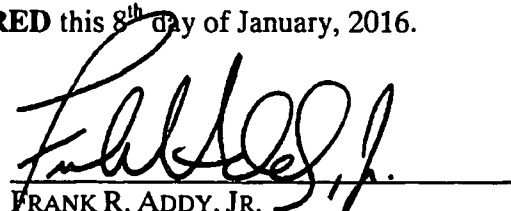


The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8th day of January, 2016.


FRANK R. ADDY, JR.
Presiding Judge

Greenwood, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Orangeburg

STATE

Shelton vs. Brown

INDICTMENT/CASE#: 2011-GS-38-0456

A/W#: M 214 786

Date of Offense: 1-21-11

S.C. Code §: 16-3-655(c)

CDR Code #: 0397

AKA:

Race: B Sex: M Age: 17

DOB: 10-1- SS#: [REDACTED]

Address: [REDACTED] Charleston Hwy

City, State, Zip: Orangeburg SC 29115

DL# _____ SID# _____

*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Criminal Sexual Conduct w/ minor - 2nd degree

In violation of § 16-3-655(c) of the S.C. Code of Laws, bearing CDR Code # 0397

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. SB (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Shawna A. Ford 77029 Shelton Brown Maui Wise 14332
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 12 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 _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION; Deferred Def. Waives Hearing Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED

Set by SCDPPPS

ATTEST: TRUE COPY
Wing B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling

*Fine: _____

Random Drug/Alcohol Testing

§14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

pmts. of \$ _____ Beginning _____

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$ _____ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ _____

Other: _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce, Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 3.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk Paul W. Bran

Presiding Judge [Signature]

Court Reporter: Wing Dat Walker

Judge Code: 2144

Sentence Date: 4-18-11

WITNESSES

Jennifer McCree-Coaxum

The State of South Carolina
County of ORANGEBURG

BOOKING NO. 2011030000000000

rights, I hereby waive presentation to the Grand Jury.

Shelton Brown
Defendant

COURT OF GENERAL SESSIONS
April 18, 2011 TERM

Orangeburg, County Sheriff

ARREST WARRANT NUMBER
M214786

Arrested: January 29, 2011

ACTION OF GRAND JURY

THE STATE
vs.

Shelton Deron Brown

Defendant

Witness:

C.C.C. PLS. AND G.S.

Foreperson of Grand Jury

Date: April 20, 2011

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 16 YRS OF
AGE, SECOND DEGREE

SC Code: 16-3-655(3)

ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

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