

LAW OFFICE OF



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August 31, 2016

**RECEIVED**

SEP 02 2016

**S.C. SUPREME COURT**

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court Clerk  
Post Office Box 11330  
Columbia, South Carolina 29211-1330

Re: William David Wooten, #349872 v. State of South Carolina; 2012-CP-39-1196.

Dear Mr. Shearouse:

Enclosed please find for filing a Notice of Appeal on behalf of the above-captioned Post-Conviction Relief client. An Order of Dismissal denying this client's Post-Conviction Relief was filed on October 6, 2015 and received by counsel on October 12, 2016. Subsequently my Motion to Alter or Amend pursuant to Rule 59(e) was filed with the Pickens County Clerk of Court Office on October 26, 2015. An Order denying my 59(e) Motion was filed with the Pickens County Clerk of Court on July 25, 2016 and received by counsel on August 1, 2016. I have been *retained* by the family to handle this appeal. I have already received the transcript of the PCR hearing held in this matter and therefore request that the time limits for this appeal be set from the date this Notice of Appeal is filed. The Appellate Division of the South Carolina Commission on Indigent Defense has been copied on this correspondence so they will make note that I am retained in this case, and won't need to send me an inquiry concerning this appeal. With my thanks for your assistance in this matter, as always, I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosures

cc: Karen C. Ratigan, Senior Assistant Deputy Attorney General (w/enclosure)  
Paula Murdoch, South Carolina Commission on Indigent Defense, Office of Appellate Defense (w/enclosure)  
William David Wooten, #349872 (w/enclosure)  
Jean Keown (w/enclosure)

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas  
Edward W. Miller, Presiding Judge

2012-CP-39-1196

**RECEIVED**

SEP 02 2016

WILLIAM DAVID WOOTEN,

v.

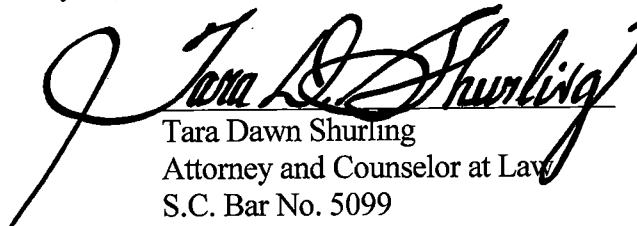
Applicant  
**S.C. SUPREME COURT**

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 Final Order of Dismissal denying his Post-Conviction Relief filed October 6, 2015 and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, which was filed with the Pickens County Clerk of Court on July 25, 2016 and received by Counsel on August 1, 2016.

  
Tara Dawn Shurling  
Attorney and Counselor at Law  
S.C. Bar No. 5099

3614 Landmark Drive, Suite A  
Columbia, South Carolina 29204  
(803)738-8622  
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 3<sup>rd</sup> day of August, 2016.

Other Counsel of Record:

Karen C. Ratigan, Senior Assistant Deputy Attorney General  
P. O. Box 11549  
Columbia, SC 29211  
Attorney for Respondent  
(803) 734-3737

STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas  
Edward W. Miller, Presiding Judge

2012-CP-39-1196

WILLIAM DAVID WOOTEN,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

**RECEIVED**

SEP 02 2016


CERTIFICATE OF SERVICE

**S.C. SUPREME COURT**

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, Karen C. Ratigan, Senior Assistant Deputy Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 31<sup>st</sup> day of August, 2016.

  
Tara Dawn Shurling  
Attorney for Applicant

SWORN TO BEFORE me this 31<sup>st</sup> day  
of August, 2016.

  
Notary Public for South Carolina  
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA  
IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF PICKENS )

WILLIAM DAVID WOOTEN, )

2016 JUL 25 P 2:31 CASE NO: 2012-CP-39-1196

vs. )

**ORDER DENYING MOTION TO  
ALTER OR AMEND**

STATE OF SOUTH CAROLINA, )

**RECEIVED**

Defendant. )

SEP 02 2016

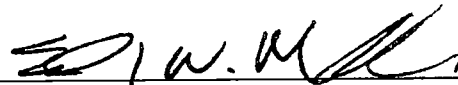
**S.C. SUPREME COURT**

THIS MATTER is before the Court on the Petitioner's Motion to Alter or Amend

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. After careful consideration of the issues raised in the Motion, the Motion is denied and the Court's previous ruling is reaffirmed.

THEREFORE, it is ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for to Alter or Amend is DENIED.

IT IS SO ORDERED.

  
The Honorable Edward W. Miller  
Judge, Thirteenth Judicial Circuit

Dated: 7/17/16  
Greenville, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF PICKENS )  
 )  
 William David Wooten, )  
 S.C.D.C. No. 349872, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-39-1196

CLERK OF COURT  
 PICKENS COUNTY  
 SOUTH CAROLINA

2015 OCT -6 P 1:

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 17, 2012 (and amended August 28, 2012 and April 17, 2015). The Respondent made its return on February 12, 2013. An evidentiary hearing was held on April 20, 2015 at the Pickens County Courthouse.<sup>1</sup> The Applicant was present and represented by Tara D. Shurling, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were: Lisa Spangler, assistant solicitor Brandi Batson Hinton, Jean Cowan, Richard Douglas Wooten, III, and the Applicant's plea counsel, S. Paul Aaron, Esquire. The Court had before it the guilty plea transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibits 1-6.

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<sup>1</sup> This Court notes a full hearing was had on this matter on August 25, 2014 before the Honorable James R. Barber, III. At the conclusion of the hearing, Judge Barber took the matter under advisement and subsequently re-opened the record in order to take additional testimony. In an order filed December 16, 2014, Judge Barber ordered a de novo hearing in this case.

## PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Pickens County Grand Jury indicted the Applicant for two counts of lewd act upon a child (2011-GS-39-1763, -1765), first-degree criminal sexual conduct (CSC) with a minor (2012-GS-39-0492), and second-degree CSC with a minor (2012-GS-39-0493). He was represented by S. Paul Aaron, Esquire.

On February 27, 2012, the Applicant pled guilty – pursuant to a negotiated sentence – to one count of lewd act upon a child<sup>2</sup> and first-degree CSC with a minor. The Honorable Brooks P. Goldsmith sentenced the Applicant to concurrent terms of fifteen years for lewd act upon a child and twenty-five years for first-degree CSC with a minor. The Applicant did not appeal.

## ALLEGATIONS

In his original PCR application and amended PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
  - a. Failed to convey a plea offer in a timely fashion.
2. Involuntary guilty plea:
  - a. “The Applicant’s pleas of guilt were coerced by counsel’s failure to provide adequate representation.”

In his second amended PCR application, the Applicant makes the following additional allegations:

1. Ineffective assistance of counsel:
  - a. “Plea Counsel was ineffective for allowing the State to force the Applicant to make a decision about the plea offer extended to him on February 27, 2012, the date of his pleas, where the Applicant was not indicted for two separate charges of First Degree Criminal Sexual Conduct and Second Degree Criminal Sexual Conduct with a minor relating to his daughter until February 21, 2012, and was not made aware of these charges until immediately prior to his plea

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<sup>2</sup> 2011-GS-39-1765.

- proceeding.”
- b. “Plea Counsel was ineffective for failing to adequately advise the Applicant of measures which could be taken to ask the Court to sever the prosecution of his charges which involved two separate victim’s neither of whom were witnesses to acts alleged to have been committed with the other.”
  - c. “Plea Counsel was ineffective for neglecting to fully advise the Applicant concerning what use the defense could make of a recantation made by the Applicant’s daughter if his case had proceeded to trial by jury.”
  - d. “Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State.”
  - e. “Plea Counsel was ineffective for failing to fully discuss with the Applicant what use the defense could make of the domestic history between the Applicant and his daughter’s mother, if the Applicant exercised his right to trial by jury, where allegations of sexual battery were not made against the Applicant until after he sought child support from his ex-wife sometime after he was awarded custody of their daughter.”
  - f. “Plea Counsel was ineffective for failing to consult with Attorney Nick Lavery concerning the fact that the Applicant’s daughter had made a statement in the presence of Attorney Lavery, recanting her allegations of sexual battery.”
  - g. “Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner.”
  - h. “Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order.”
  - i. “Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection.”
  - j. “Plea Counsel failed to provide the Applicant reasonable professional assistance of counsel in that he failed to adequately inform the Applicant of the elements of the charges against him.”
  - k. “Plea Counsel was ineffective for failing to give the Applicant accurate advise concerning his sentencing exposure if he proceeded to trial by jury.”
  - l. “Plea Counsel was ineffective for failing to object to the Applicant’s re-indictment for First Degree Criminal Sexual Conduct with a Minor and Second Degree Criminal Sexual

Conduct with a Minor on charges of sexual battery upon his daughter where the second indictments broke the time period covered in a earlier single indictment into two separate offenses.”

- m. “Plea Counsel was ineffective for neglecting to review all the discovery materials produced by the State with the Applicant before he was required to make a decision regarding exercising his right to a jury trial.”
- n. “Plea Counsel was ineffective for failing to consult with his daughter’s guardian ad litem, Liz Young, where Ms. Young’s testimony would have helped develop a defense to the Applicant’s charges pertaining to his daughter.”
- o. “Plea Counsel was ineffective for failing to advise the Applicant concerning how the defense could use the testimony of a child interviewer who was the first to interview his daughter after the allegations concerning the daughter came to light.”
- p. “Plea Counsel was ineffective for failing to object to a conflict of interest where the Plea Judge’s daughter was close friends with the Prosecutor in the Applicant’s case.”
- q. “Plea Counsel was ineffective for failing to review favorable evidence from a Pickens County investigation concerning a recantation by Applicant’s daughter with the Applicant and in failing to discuss the potential admissibility of that evidence in a jury trial with the Applicant before he was required to make a decision concerning a waiver of his right to a jury trial in Pickens County.”

At the PCR hearing, counsel for the Applicant stated they would proceed solely upon the following issues:

1. Ineffective assistance of counsel because the plea offer was not conveyed to the Applicant in a timely fashion.
2. Prosecutorial misconduct because the plea offer was conveyed to plea counsel when counsel had an order of protection.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

#### **A.**

The Applicant stated he went to court in October 2011 but it was not for him to plead guilty. The Applicant stated he never saw an 18-year offer and never made a 5-year counteroffer. The Applicant stated plea counsel brought him sentencing sheets on January 17, 2012 and that plea counsel mentioned a 15-year offer, so he signed the sheets. The Applicant stated he did not know the 15-year offer had expired on January 3, 2012. The Applicant stated he did not make a counteroffer of 8-9 years to the State. The Applicant stated he was dissatisfied with plea counsel on the day of the plea hearing but stated he did not inform the plea judge of

this because he wanted "to go along." The Applicant acknowledged he did not tell the plea judge about wanting the 15-year offer because he did not "feel it was proper" to say this. The Applicant stated he would have wanted plea counsel to file a motion to enforce the 15-year plea offer.

Jean Cowan stated she was the Applicant's mother. Cowan stated she was unaware of the existence of a 15-year plea offer.

Richard Douglas Wooten, III stated he was the Applicant's brother. Wooten stated the Applicant told him about a 15-year plea offer and mentioned the sentencing sheets. Wooten stated the Applicant was committed to the 15-year offer but that the Applicant did not know if this would be "solid."

Brandi Batson Hinton, the assistant solicitor, testified the Applicant was brought to court to plead guilty on October 27, 2011 but that she was told he did not want to plead guilty. The assistant solicitor confirmed, however, that she later made an 18-year plea offer and the Applicant made a 5-year counteroffer. The assistant solicitor testified she recalled plea counsel saying he had protection at some point but stated she does not check the order of protection list when she makes a plea offer. The assistant solicitor confirmed that, in the series of emails exchanged with plea counsel on January 12, 2012, he asked for an 8-9 year offer. The assistant solicitor testified they were still negotiating the offer. The assistant solicitor testified she told plea counsel to take sentencing sheets to the Applicant to see if he would sign them but that she would then discuss a plea with the victims. The assistant solicitor testified she did not make any promises they would proceed with the 15-year offer. The assistant solicitor testified she received blank but signed sheets and called the victims to discuss it, but that the victims did not want an offer. The assistant solicitor noted plea counsel never stated the Applicant accepted the 15-year

offer. The assistant solicitor testified she was not allowed to extend the expiration date of the 15-year plea offer because of the case management system. The assistant solicitor testified her supervisors allowed her to extend a 25-year offer on the day of the plea hearing and stated the plea that day should have been without a sentence recommendation. The assistant solicitor testified she never received confirmation at any point that the Applicant actually accepted the 15-year offer.

Lisa Spangler stated she was a detention center officer. Spangler stated plea counsel came to visit the Applicant at the jail in January 2012 and brought a paper for the Applicant to sign. Spangler stated plea counsel mentioned this was a plea for 15 years.

Plea counsel testified the assistant solicitor made a plea offer for an 18-year sentence.<sup>3</sup> Plea counsel testified he conveyed this offer to the Applicant and explained the risks and advantages of the offer. Plea counsel testified the offer was to expire on January 3, 2012 but that the Applicant rejected it. Plea counsel testified he did not recall whether or not the Applicant made a counteroffer. Plea counsel testified he spoke to the assistant solicitor around December 15, 2011, she mentioned a 15-year offer, and he said he was going out of town. Plea counsel testified he received an order of protection for when he would be out of town and believed this order covered December 20, 2011 – January 5, 2012. Plea counsel testified that, when he returned from his out-of-town trip, there were two letters from the assistant solicitor. The first letter was dated December 20, 2011 and was an offer for the Applicant to plead guilty to two counts of lewd act (and nol pros all other charges) in exchange for a 15-year recommendation.<sup>4</sup> The second letter was dated January 3, 2012 and was a re-conveyance of the December offer.<sup>5</sup>

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<sup>3</sup> Applicant's Exhibit 1.

<sup>4</sup> Applicant's Exhibit 2.

<sup>5</sup> Applicant's Exhibit 3.

Plea counsel testified both offers expired on January 3, 2012. Plea counsel testified he and the assistant solicitor exchanged a series of emails when he returned from his trip.<sup>6</sup> Plea counsel acknowledged he made a counteroffer of an 8-9 year recommendation and testified he was still negotiating with the State. Plea counsel testified that, pursuant to one of these emails, he took sentencing sheets to the jail for the Applicant to sign. Plea counsel testified, however, the assistant solicitor later reiterated the plea offer expired on January 3rd. Plea counsel testified he spoke to both the assistant solicitor's supervisor and the deputy solicitor about enforcing the 15-year offer but they did not change their position and the case was placed on the trial docket. Plea counsel testified that – on the morning of the Applicant's plea – he told the judge about the conveyance of the offer while he was protected.

**B.**

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the South Carolina Supreme Court found a defendant must demonstrate – under Strickland – both that plea counsel's failure to communicate the plea offer was deficient and that he was prejudiced by counsel's performance. This Court finds the Applicant failed to prove either error or prejudice under the Davie analysis.

This Court finds the Applicant failed to demonstrate plea counsel's representation was deficient. Plea counsel communicated the plea offer in this case when returned to town after the conclusion of his order of protection. The plea offer had, however, expired by this time. The order of protection prevented the assistant solicitor from scheduling plea counsel for court appearances but did not limit her ability to convey plea offers. "Both the South Carolina

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<sup>6</sup> Applicant's Exhibit 5.

Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands." State v. Thrift, 312 S.C. 282, 29-92, 440 S.E.2d 341, 346 (1997). "Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." Id. at 292, 440 S.E.2d at 346-47. Plea counsel believed the order of protection would have protected him from being responsible for any court-related activities.<sup>7</sup> Regardless, he conveyed the plea offer when he was able and attempted to have that offer honored by requesting such from the assistant solicitor, her supervisor, and the deputy solicitor. This Court finds plea counsel's actions and representation in this case were reasonable under the circumstances. See Strickland, 466 U.S. at 688, 104 S. Ct. at 2065 ("In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.").

This Court finds the Applicant failed to demonstrate he was prejudiced as the result of plea counsel's representation. In order to prove prejudice, a defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). In cases concerning a potentially un conveyed plea offer, the defendant "must show actual prejudice." Davie, 381 S.C. at 613, 675 S.E.2d at 422. This Court finds the Applicant cannot prove prejudice because there is no evidence – other than his self-serving testimony – that he would have accepted the 15-year offer. This Court finds credible the assistant solicitor's testimony that the Applicant rejected the 18-year offer and asked plea counsel to make a 5-year

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<sup>7</sup> Plea counsel also noted he was a sole practitioner at that time, so he did not have another attorney who could have stood in for him for court. Regardless, plea counsel stated he did not believe it would have been appropriate to have another attorney (one unfamiliar with the case) stand in for him in a General Sessions matter.

counteroffer. It is improbable the Applicant would have accepted a recommendation 3 years below the original offer when he had just demonstrated that he wanted a recommendation 13 years below the original. This Court finds it is simply not credible that the Applicant would have accepted the 15-year plea offer if it had been conveyed earlier. See Lafler v. Cooper, \_\_ U.S. \_\_\_, 132 S. Ct. 1376, 1385 (2012) (in the context of ineffective assistance of counsel regarding plea bargains, defendant must show he “would have accepted the plea” to show prejudice). Furthermore, the Applicant cannot demonstrate prejudice because he cannot show “the plea would have been entered without the prosecution canceling it or the trial judge refusing to accept it.” Id. The assistant solicitor testified she discussed the 15-year offer with the victims (after plea counsel returned the signed sentencing sheets in mid-January 2012) and that the victims did not agree with this offer. In addition, while the plea judge was advised of the expired 15-year offer (and the circumstances surrounding the conveyance and expiration of that offer), he would not re-visit that sentence and instead imposed the 25-year sentence recommended by the State that day. As such, the Applicant cannot prove actual prejudice under Davie and Lafler.

This Court also finds the Applicant cannot demonstrate prejudice because the 15-year offer was never actually accepted. The South Carolina Supreme Court has noted “a plea bargain rests on contractual principles.” Thrift, 312 S.C. at 292, 440 S.E.2d at 347. The January 12th emails indicate the Applicant never accepted the 15-year offer in question. Rather, these emails indicate the parties were still negotiating the terms of a potential plea agreement – plea counsel brought up an 8-9 year counteroffer and mentioned the idea of a “straight up” plea. See Weisz Graphics Div. of Fred B. Johnson Co., v. Peck Indus., Inc., 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) (finding “no contract is formed if the acceptance varies the terms of the offer. Instead, an acceptance which adds different or additional terms is treated as a

counteroffer. . . .”); see also Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (noting common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement). The 15-year offer was rejected once plea counsel made a counteroffer of 8-9 years. See Am. Jur. Contracts § 65; Restatement 2d Contracts § 39.

### C.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was actually prejudiced by plea counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

### Prosecutorial Misconduct

The Applicant argues there was prosecutorial misconduct in this case because the assistant solicitor conveyed the 15-year plea offer while plea counsel had an order of protection and this offer expired before the end date of the order of protection. This Court finds the Applicant has failed to meet his burden of proving prosecutorial misconduct.

“The presumption of regularity supports” prosecutorial decisions and, “in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties.” United States v. Chem. Found., Inc., 272 U.S. 1, 14-15, 47 S. Ct. 1, 6 (1926). “Undoubtedly, the solicitor has discretion in choosing how to proceed with a case, including

whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” State v. Langford, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012); see also State v. Fletcher, 322 S.C. 256, 261, 471 S.E.2d 702, 705 (Ct. App. 1996) (noting “the solicitor is charged with the responsibility of prosecuting criminal charges”). In the ordinary case, “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” United States v. Armstrong, 517 U.S. 456, 464, 116 S. Ct. 1480, 1486 (1996); see also Bordenkircher v. Hayes, 434 U.S. 357, 364, 98 S. Ct. 663, 668 (1978) (“In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”).

In order to establish prejudicial misconduct on the part of the prosecutor the alleged misconduct must have “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 180-81, 106 S. Ct. 2464, 2471 (1986) (quotation omitted).

This Court finds the Applicant has failed to demonstrate there was prosecutorial misconduct in his case. The solicitor’s office is imbued with the power to make (or not make) plea offers in a criminal case. See State v. Langford, 400 S.C. at 436 n.6, 735 S.E.2d at 479 n.6. The assistant solicitor made an 18-year plea offer to the Applicant, who made a 5-year counteroffer. The assistant solicitor was not obligated to make another plea offer. Regardless, she made a subsequent plea offer for a 15-year sentence. The assistant solicitor testified she did not consult the order of protection list before she made this plea offer. This Court finds her testimony to be credible and does not find the 15-year plea offer that expired on January 3, 2012

was purposefully crafted and conveyed in order to be received by plea counsel's office while he was out of town and had an order of protection. Further, there can be no misconduct from the assistant solicitor's failure to extend the plea offer past the January 3rd expiration date because she was bound by the case management system at that point. While plea counsel properly asked the assistant solicitor for such an extension – and then appealed to her supervisor and the deputy solicitor – the State was not obligated to extend the 15-year plea offer at that point. The Applicant has failed to demonstrate the assistant solicitor did not properly discharge her official duties. See United States v. Chem. Found., Inc., 272 U.S. at 14-15, 47 S. Ct. at 6. The Applicant has failed to demonstrate he suffered a denial of due process in this case as a result of the assistant solicitor's actions in this case.<sup>8</sup> See Darden v. Wainwright, 477 U.S. at 180-81, 106 S. Ct. at 2471.

Accordingly, this Court finds the Applicant failed to meet his burden of proving the existence of prosecutorial misconduct in this case. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### **All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

#### **CONCLUSION**

Based on all the foregoing, this Court finds and concludes the Applicant has not

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<sup>8</sup> This Court notes that, as discussed supra, the Applicant failed to demonstrate either that he would have accepted the 15-year offer or that the State would re-convey this offer at any point.

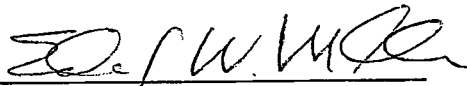
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 2 day of October, 2015.

  
Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

Abel, South Carolina.



CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

State of South Carolina  
The Circuit Court of the Thirteenth Judicial Circuit

2015 OCT -6 P 1:31

Edward W. Miller  
Judge

Greenville County Courthouse  
305 E. North Street, Suite 219  
Greenville, SC 29609-4751  
Phone: (864) 467-8559  
Fax: (864) 233-4173

October 5, 2015

Pat Welborn  
Pickens County Clerk of Court  
Pickens County Courthouse  
214 E. Main Street  
Pickens, SC 29671

RE: *William David Wooten v. State of South Carolina*, CA No. 2012-CP-39-1196

Dear Clerk:

Enclosed please find an order of dismissal for the above referenced case to be filed and mailed to the parties. The order was signed by The Honorable Edward W. Miller on October 2, 2015.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hood Dawson".

Hood Dawson  
Law Clerk to the Honorable Edward W. Miller  
305 E. North Street, Suite 219  
Greenville, South Carolina 29601  
(864) 467-8558  
(864) 233-4173 Fax  
[emillerlc@sccourts.org](mailto:emillerlc@sccourts.org)

prejudice where he can not prove that the presiding Judge would have agreed to allow Applicant to plead under the terms of the negotiated deal at issue herein. Applicant would assert that the Supreme Court's decision in Davie v. State, 381 S.C.601, 675 S.E.2d 416 (2009), indicates that the PCR Court has the authority to tailor a remedy consistent with the harm to the Applicant caused by the ineffective assistance of counsel proven by an applicant for Post-Conviction Relief. Clearly the Sixth Amendment right to effective assistance of Counsel has been extended to the plea negotiation process in this State. The only remedy that can make this Applicant whole is for the Court to set aside his judgments and sentences and remand his case to the circuit court for a new plea proceeding for specific performance of the State's agreement to allow him to plea to the two counts of Lewd Act on a Minor charged in Indictments No. 2011-GS-39-01763 and 01765. The decision of the prosecution dismiss the charge of First degree Criminal Sexual Conduct with a Minor found in Indictment 2012-GS-39-492, as part of this plea agreement, did not require judicial approval. It would then be up to the presiding judge to determine whether he would accept the negotiated sentence agreed upon as part of this negotiated plea bargain not timely conveyed to Applicant. <sup>3</sup>

### CONCLUSION

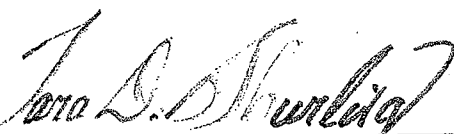
For all the above reasons, the Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRPC, grant relief and remand the Applicant's case to the Pickens County Court of General Sessions for specific enforcement of the State's plea agreement to allow him to plead to two counts of Lewd Act on a Minor and dismiss the charge of First Degree Criminal Sexual Conduct with a minor, with a negotiated sentence of fifteen (15) years. Inasmuch as the parties to this plea agreement could not bind the Court to impose the sentence negotiated by them,

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<sup>3</sup> The plea/sentencing sheets introduced in this PCR action as Petitioner's Exhibit No. 4 confirm that the two counts of Lewd Act on a Minor Applicant was to be allowed to plead to under the terms of the fifteen (15) year deal that was extended by the State, approved by the family of the victims and valid through January 3, 2012, were those found in these two indictments; 2011-GS-39-01763 and 01765. Pursuant to S.C. Code Ann. §16-15-140, each of these counts would carry a maximum term of imprisonment of fifteen (15) years.

Applicant seeks this Court's Order granting him leave of court to request that the presiding judge accept and impose the negotiated sentence for the two counts of Lewd Act on a Minor agreed upon as a part of that deal. In the alternative, the Applicant would respectfully request that the Court issue an Amended Order of Dismissal making findings of fact and rulings of law, as required by S.C. Ann. § 17-27-80, on the allegations not addressed in the previously filed Order of Dismissal and correcting the factual inaccuracies found in that Order as well.

Respectfully submitted,



Tara Dawn Shurling  
Attorney and Counselor at Law  
S. C. Bar No. 5099

3614 Landmark Dr., Suite A  
Columbia, S.C. 29204  
(803) 738-8622  
(803) 738-1600 (fax)  
[tdslaw@shurlinglaw.com](mailto:tdslaw@shurlinglaw.com)

Attorney for the Applicant

This 22<sup>nd</sup> day of October, 2015

LAW OFFICE OF



**TARA DAWN SHURLING, PA**

Attorney and Counselor at Law

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August 31, 2016

Karen C. Ratigan, Senior Assistant Deputy Attorney General  
Office of the Attorney General  
Direct Appeal Division  
P.O. Box 11549  
Columbia, SC 29211-

RE: William David Wooten, 349872 v. State of South Carolina; 2012-CP-39-1196.

Dear Ms. Ratigan:

Enclosed please find for your records a copy of the Notice of Appeal that was filed in the above-captioned matter. The family has retained me to handle this appeal. I understand you are keeping the appeals from the cases you handled in the circuit court even though you are now in the direct appeals section. If you will not be handling this appeal for any reason, please let me know. I remain,

Sincerely yours,

A handwritten signature in black ink that reads "Tara Dawn Shurling". The signature is fluid and cursive, with a large initial "T".

Tara Dawn Shurling  
Attorney and Counselor at Law

TDS/sg

Enclosure

cc: The Honorable Daniel E. Shearouse, Clerk, Supreme Court of South Carolina ✓  
William David Wooten, #349872  
Jean Keown



Law Office of

**TARA DAWN SHURLING, PA**

3614 LANDMARK DRIVE, SUITE A  
COLUMBIA, SOUTH CAROLINA 29204



The Honorable Daniel E. Shearouse  
South Carolina Supreme Court Clerk  
Post Office Box 11330  
Columbia, South Carolina 29211-1330