

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward W. Miller, Circuit Court Judge

WILFREDO SALAS

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-00240

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2011GS2306255A
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Wilfredo Salas,	)	
	)	
Defendant.	)	
	)	

August 08, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

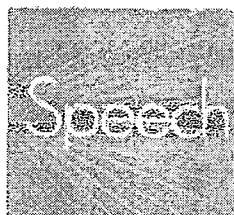
A P P E A R A N C E S:

KRIS HODGE, Esquire
Assistant Solicitor

SCOTT ROBINSON, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u> <u>EV</u>
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STATE EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

THE COURT: How far did you go in school?

1 **MR. SALAS:** Uh, ninth grade.

2 **THE COURT:** And you seem to be understanding
3 my questions just fine. Is English a second
4 language for you?

5 **MR. SALAS:** Uh, yes.

6 **THE COURT:** You seem like you're
7 understanding my questions well. But if at any
8 point you do not understand what I say to you, if
9 you will, stop me and let me know.

10 **MR. SALAS:** Oh, okay.

11 **THE COURT:** Has anyone forced you to plead
12 guilty to this charge?

13 **MR. SALAS:** Uh, no.

14 **THE COURT:** Anyone promised you anything to
15 get you to plead guilty to this charge?

16 **MR. SALAS:** Uh, no.

17 **THE COURT:** You have any complaint to make
18 against your lawyer, law enforcement or the
19 Solicitor's office whatsoever?

20 **MR. SALAS:** Uh, no.

21 **THE COURT:** When you plead guilty to a
22 charge, you give up your right to a jury trial on
23 that charge. You understand that?

24 **MR. SALAS:** Yes.

25 **THE COURT:** At that trial, your attorney

1 could call witnesses for you and cross-examine
2 witnesses against you. When you plea guilty, you
3 give up that right. You understand that as well?

4 **MR. SALAS:** Uh, yes.

5 **THE COURT:** Uh, furthermore, you give up
6 your right to remain silent about this charge. Do
7 you understand that?

8 **MR. SALAS:** Yes.

9 **THE COURT:** And, uh, ~~this charge has not~~
10 ~~been before the Greenville County Grand Jury. You~~
11 ~~have a right to have the charge go before the~~
12 ~~Greenville County Grand Jury. You want to give up~~
13 ~~that right and go forward and plea guilty today?~~

14 **MR. SALAS:** Uh, yes.

15 **THE COURT:** All right. Yes, ma'am.

16 **MRS. HODGE:** ~~As Your Honor knows,~~ this was
17 set for trial this morning. I will read to you
18 what ~~the State intended to introduce during trial.~~
19 ~~Between June 2009 and March of 2010, the victim in~~
20 ~~this case, Ms. [Victim] [REDACTED], who was four years~~
21 ~~old and five years old at the time, disclosed to~~
22 ~~her grandmother, who is a M [REDACTED] M [REDACTED] and to~~
23 ~~her mother, a V [REDACTED] S [REDACTED] that this defendant~~
24 ~~had been sexually abusing her, at the home that they~~
25 lived in at [REDACTED] (inaudible) Street in Greenville

1 County. The defendant is the child's stepfather,
2 married to V [REDACTED] S [REDACTED]. They had two smaller
3 younger children together.

4 The victim had told her grandmother, M [REDACTED],
5 back in June or July of 2010, that the defendant had
6 been rubbing on her chest, kissing her neck, biting
7 her ears. The child disclosed this at the
8 grandmother's house and was asking to please not to
9 have to go back to the home where the defendant was
10 doing these things to her. The grandmother than
11 told the child's mother, V [REDACTED], about it. The
12 mother did not believe the child. She stated to
13 the grandmother that the child was lying and did
14 nothing about these disclosures.

15 In October and in November, somewhere in
16 between that time frame of 2009, so just about
17 three months later, the child again disclosed to
18 the grandmother that the defendant was touching her
19 in places he was not supposed to, referring to her
20 vaginal and anal area and continued to plead with
21 the grandmother to not make her go back into the
22 home where the defendant was doing these things to
23 her. Again, the grandmother told the child's
24 mother. The grandmother confronted the defendant
25 about it. At that time, he denied anything. The

1 mother again stated that the child was not telling
2 the truth, that the child was lying and she did not
3 protect the child.

4 During this time frame, the mother and the
5 defendant had the child sleeping in the same bed
6 with them. The mother was working evenings. The
7 defendant worked as well but he would come home
8 before the mother would come home. The child would
9 be in his care or the care of some of his
10 relatives.

11 Finally, in mid-March of 2010, now we're nine
12 months after the child initially disclosed, she
13 again told the grandmother for the third and,
14 thankfully, final time. The grandmother went to
15 school to pick her up at school one day, which was
16 not the norm at this time. The child got in the
17 car with hysterics saying, "Please don't make me go
18 back", "I don't want to go back". And the
19 grandmother started questioning her asking what was
20 going on. The child described that the defendant
21 was hurting her in the vaginal and anal area.

22 At this point, the grandmother tells the
23 mother and the mother appears to possibly believe
24 and said she was going to take the child to a
25 pediatrician. Law enforcement wasn't called. DSS

1 wasn't called by the mother.

2 On March 17th of 2010, the day after the child
3 disclosed to the grandmother. They took the child
4 to Dr. Nithya at North Hills Medical. The child
5 disclosed to the doctor that the defendant was
6 sexually abusing her and ~~stated he was touching~~
7 ~~her~~, pointing to her vaginal area. The child
8 complained of having pain or urinating. She was
9 diagnosed with ~~vaginitis at this time~~. Dr. Nithya,
10 who would be here to testify explained there were
11 many causes for this in young children, but for
12 someone her age, it is consistent with the
13 allegations that ~~someone had been rubbing or~~
14 ⓧ touching her vaginal area in a sexually abusive
15 manner.

16 The doctor is the reason we are here today.
17 Doctors are mandated to report. So she reported to
18 DSS because the defendant was still in the home
19 with the child. DSS reported to law enforcement.
20 DSS then went to the home later that day. The
21 defendant was to move out immediately and have no
22 contact while the investigation proceeded.

23 At that point, the child was told to live with
24 the mother, V [REDACTED], even though she had not fully
25 protected. Subsequently, two months later, DSS

1 petitioned Family Court for a non-emergency
2 removal. The mother was allowing the child to be
3 around the defendant, the defendant's family and
4 there were discussions to get the child to recant.
5 So the child was then placed with her grandmother,
6 Mrs. M [REDACTED] and Mr. R [REDACTED] M [REDACTED] and is still with
7 them today.

8 Investigator Henderson was assigned this case.
9 She interviewed the child. Investigator Henderson
10 was able to gather that the defendant ~~did touch the~~
11 ~~vaginal area of victim~~ with his fingers, ~~putting his~~
12 ~~fingers inside of her~~. She stated it happened at
13 night while her mom was at work and in her mom's
14 bed in her mom's bedroom. After, uh, she was
15 picked up from the relative's home, she stated it
16 happened a lot.

17 She was referred to the Julie Valentine Center
18 and a forensic was conducted. Again, she
19 consistently disclosed that he touched her vaginal
20 area and she named it the place she go to the
21 bathroom. He ~~digitally penetrated the area~~
22 ~~vaginally and rectally~~. She stated it happened a
23 lot of times. He hurt her and it was while her mom
24 was at work. He'd turn out the lights. She would
25 be in her mom's room in her bed. She also stated

1 the defendant made her touch his penis.

2 Your Honor, the State -- the charge is
3 ~~Criminal Sexual Conduct in the first degree,~~
4 However, the State is allowing the defendant to
5 plead to ~~Lewd Act to a Minor~~ for one reason and one
6 reason only. That is to save the child from having
7 to testify or any further trauma. As you well
8 know, the retelling of sexual abuse makes children
9 relive the abuse and can be very harmful and
10 traumatic. The child is in the courthouse. If we
11 are required to go to trial, we could. But of
12 course, she is not in the courtroom. ~~You may~~
13 ~~recall, we had a prior hearing regarding the child~~
14 ~~being present with the defendant during the~~
15 ~~testimony and her therapist detailed her fear of~~
16 ~~the defendant, her emotional issues about the abuse~~
17 ~~itself, but also the emotional damage that the~~
18 ~~mother not believing and supporting the child has~~
19 ~~done.~~

20 Sadly, her mother still is not supportive.
21 Her mother has been helping the defense prepare its
22 case. She's provided statements to defense counsel
23 about not believing the child and blaming her own
24 mother for these allegations, which is ironic
25 because she has moved in with her mother, utilizing

1 her mother's resources, yet, she's turning against
2 her mother here today.

3 I say all of this, Your Honor, for this main
4 reason. The State is asking you to impose the
5 maximum penalty in this case, the 15 years. He's
6 clearly gotten a great plea offer. By reducing the
7 exposure, CSC 1st is 25 years to life. The most he
8 can get here is 15. We'd ask that you impose that.
9 Because the mother has been nonprotective, if the
10 defendant serves his time, when he gets out,
11 there's a high likelihood he'll be back in that
12 home. I would ask that Your Honor give the maximum
13 time to allow Victim to grow up, to be able to
14 protect herself. It's clear that her mother's not
15 going to do the protecting.

16 The defendant does have a federal charge
17 currently for unlawfully using a Social Security
18 card. Those are federal allegations at this time.
19 I feel certain they are going to deport him. But
20 I'd ask that you impose the maximum sentence and
21 then let him deal with those issues after that.
22 Hopefully, Victim will be old enough to take care of
23 herself on the completion of any sentence.

24 Additionally, Your Honor, we would ask there
25 be no contact between the defendant or the

1 defendant's family. I know that there are only so
2 many things that you can do. But these
3 grandparents and this child have been placed in a
4 very precarious position. They all live in Greer.
5 They have had -- all family members have been very
6 involved in this case, if you will. They would ask
7 that they not be harassed, have no contact from any
8 family members, friends, anyone on the defendant's
9 side. Maybe just a verbal warning for anyone in
10 the courtroom about that might be helpful as well.
11 But they are fearful of some sort of retaliation.
12 Of course, we ask that there be no contact with the
13 victims directly or indirectly by the defendant.

14 **MR. ROBINSON:** We have no issue with that,
15 Your Honor.

16 **MRS. HODGE:** Finally, Your Honor, because
17 Ms. **Victim** [REDACTED] is not here in the courtroom,
18 there is a judge's letter that is an age-
19 appropriate type letter. I would pass that up for
20 Your Honor's consideration.

21 **MR. ROBINSON:** I haven't seen it. (Pause.)
22 I don't see the purpose of this, Your Honor.

23 **MRS. HODGE:** She's the victim and she can't
24 be here to tell her victim's impact statement. So
25 that's the purpose.

1 **THE COURT:** (Reviewing.)

2 All right. Mr. Robinson, you've gone over
3 with your client that this is mandatory Sex
4 Offender Registry?

5 **MR. ROBINSON:** I have, Your Honor. I have.

6 **THE COURT:** Mr. Salas, how do you plead to
7 this charge?

8 **MR. SALAS:** Guilty.

9 **THE COURT:** All right. Does he have any
10 criminal record?

11 **MRS. HODGE:** Your Honor, the only thing he
12 has is a 2005 Failure to Appear, but nothing in
13 General Sessions.

14 **THE COURT:** Anything from the victims?

15 **MRS. HODGE:** Your Honor, the grandmother's
16 here, but she did not wish to address the Court.

17 **THE COURT:** Yes, sir.

18 **MR. ROBINSON:** Thank you, Your Honor. Your
19 Honor, I've had the pleasure of representing him.
20 He has a tremendous amount of support in this case.
21 We've taken -- we had Dr. Price in Greenville.
22 Actually obtained him to speak at the last hearing
23 we had. He's here as well in support of Will.

24 Your Honor, I have with me today Will's wife
25 standing in court as well. His father and mother

1 are both here. Uh, they've not stopped one time
2 believing Will. Will has two children of his own.
3 Two little boys. The little boys have a great
4 relationship with their dad. Your Honor, also in
5 the courtroom are a lot of his pastors and
6 ministers that have come all the way here to
7 support Will. They believe in Will in this case.

8 I may ask in a few moments for a couple of
9 them -- please stand up and show -- I want to show
10 if you are in support of Will. You see, Your
11 Honor, there's a large number of people in support
12 of Will. Your Honor, uh, I'm going to have them
13 speak in just a second.

14 I do want to -- just in response to Mrs.
15 Hodge's, uh, presentation in this case. I've
16 looked at the doctor's reports and so forth. ~~There~~
17 ~~is no evidence of digital penetration, penile~~
18 ~~penetration, evidence of any of that.~~ Your Honor,
19 uh, Will's great with his kids, his two little
20 boys. The family can testify to that. He actually
21 has one of his niece's, I believe, here. She's 17
22 now. ~~17 or 18 now.~~ She's not afraid of Will. If
23 I could have a couple of people.

24 THE COURT: Yes.

25 MR. ROBINSON: Identify yourself.

1 **UNIDENTIFIED SPEAKER:** This is my brother.
2 I love him. He's like a second father to me. He's
3 taken care of us when we were young. He dropped
4 out of school just to take care of us. He's a
5 wonderful father. I can't say the least. I admire
6 him for the person that he is. I can't say the
7 least. I love him. We miss him. My nephews miss
8 him. They're not scared of him at all. They ask
9 when he's going to come home. One actually goes to
10 see him in jail. He's like, I want to see him,
11 when is he coming home.

12 **MR. ROBINSON:** Your Honor, his dad is here.
13 He has an interpreter, his daughter Grace.
14 Identify yourself.

15 **UNIDENTIFIED SPEAKER:** (inaudible).

16 **THE COURT:** Ma'am, I need to stop you right
17 there. I want my Court Reporter to be able to see
18 you and to hear you real clearly. I know you're
19 going to need to turn to him. Will you turn --
20 when you speak English, will you turn back to us?

21 **UNIDENTIFIED SPEAKER:** Sure, Your Honor.

22 **THE COURT:** I appreciate that. Thank you.

23 **UNIDENTIFIED SPEAKER:** Will has been in
24 church ever since he was young. He's always been
25 in God's way. All the people there here today can

1 tell you. We're not bad people. They are people
2 that have known us for years. We missed Wilfredo a
3 lot. He is the one that sings in church. We trust
4 God. That's all we can say. Thank you, sir.

5 UNIDENTIFIED SPEAKER: (Inaudible.)

6 MR. ROBINSON: I'm going to need you to step
7 up there closer to the bar.

8 UNIDENTIFIED SPEAKER: I'm 17 years old.
9 Will, we used to live with him when I was five. I
10 mean, like, he never done nothing to me. He never
11 touch me or nothing. I have, like, told the
12 sisters. They never complained about nothing about
13 him. I know if you get touch, you will remember
14 that. It's not like you will forget. He never
15 touched me or he never touched my sisters. So I
16 believe in him. That's all I got to say.

17 THE COURT: Thank you, ma'am. For being
18 here.

19 MR. ROBINSON: Your Honor, I have Dr. Price
20 here if the Court wanted to ask him any questions.

21 THE COURT: If there's something that he'd
22 like to add. Thank you, sir, for being here.

23 MR. ROBINSON: Your Honor, as Mrs. Hodge
24 referenced, Will is going to be deported more than
25 likely. We'd ask the Court for the minimum

1 sentence in this case or a suspended sentence or
2 something. But he's going to go back to Mexico
3 anyway. He's a welder by trade. As he told you,
4 he's 30 ---

5 MR. SALAS: 32.

6 MR. ROBINSON: --- 32. And he'd ask the
7 Court, Your Honor, for the minimum sentence or a
8 small sentence in this case. We haven't gone
9 through the whole process of a trial of putting
10 everyone up on the witness stand and so forth.
11 We'd ask the Court for a small sentence, Your
12 Honor. He's not getting out of jail anyway, Your
13 Honor. Thank you,

14 THE COURT: Uh, well, I'll accept the plea
15 as being freely and voluntarily made with the
16 advice of extremely competent counsel with whom he
17 says he's satisfied. The plea has a substantial
18 factual basis. Do you want your client to say
19 anything?

20 MR. ROBINSON: He does not wish to address
21 the Court, Your Honor. And thank you for
22 listening.

23 THE COURT: Well, I'll start by saying this
24 to the families involved. I'm going to order that
25 there be no contact between the families. No

1 harassment whatsoever. Whatever anyone's opinion
2 of what happened is, the simple fact of the matter
3 is Mr. Salas is here today and he's pled guilty to
4 the charge. This matter is now closed. In other
5 words, any contact that you have with the victim's
6 family, uh, would only serve to make things worse
7 on everybody. I'm going to order you to have no
8 contact.

9 Second, I appreciate your words on behalf of
10 Mr. Salas. It's clear that he has a lot of family
11 support and he's very lucky in that regard. I
12 appreciate you being here on his behalf. I think
13 we all understand he's pled guilty to a very
14 serious charge and he has to be punished for that.

15 To the grandmother of the victim in this case,
16 I want to say thank you and thank you for being
17 there for your granddaughter. I know you've never
18 done anything but been there for her. But thank
19 you for being there for her.

20 This is -- and I will say, your attorney has
21 worked you out a good deal pleading to Lewd Act.
22 That is certainly a break in a number of ways. You
23 can thank your attorney for that that he did do
24 that. However, when I look at the facts of this
25 case, it is a very egregious case. My sentence is

1 going to be 15 years. I wish you the best of luck.

2 **MR. ROBINSON:** Thank you, Your Honor.

3 **MRS. HODGE:** Thank you, Your Honor.

4 **(WHEREUPON,** the proceedings conclude at
5 approximately 12:11 p.m.)

6

7

8

9

CERTIFICATE

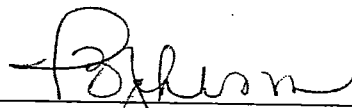
21

App. P.23

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 13th day of July, 2012.

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



Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of Greenville, S.C.

IN THE COURT OF COMMON PLEAS

Wilfredo SALAS #347611

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2012-CP-23- 03341

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS 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 Kershaw Correctional Institution - 4848 Goldmine Hwy, Kershaw, S.C. 29067
2. Name and location of Court which imposed sentence Greenville County Court 305 East North Street, Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-GS-23-6255A - LEWD ACT ON A MINOR

- (b) None
- (c) none
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 8, 2011 - fifteen "15" years - non violent
- (b) none
- (c) none
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty yes = Plead Guilty
- (b) after a plea of not guilty none
- (c) after a plea of nolo contendere none
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- No
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. none
- ii. none
- iii. none
- (b) the result in each such Court to which you appealed:
- i. none
- ii. none
- iii. none
- (c) the date of each such result:
- i. none
- ii. none
- iii. none
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. none
- ii. none
- iii. none
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) ^{NOT} WAS TOLD by my LAWYER OR THE COURT THAT I

- (b) Could Appeal if I was unhappy with the outcome
 (c) of my case or sentence.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) "Please See Attached Page."
 (b) "Please See Attached Page."
 (c) "Please See Attached Page."
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) "Please See Attached Page."
 (b) "Please See Attached Page."
 (c) "Please See Attached Page."
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. none
 ii. none
 iii. none
 iv. none
 (b) the name and location of the Court in which each was filed:
 i. none
 ii. none
 iii. none

Attachment Post Conviction Relief

A. Applicant was denied effective assistance of Counsel guaranteed by (b)(5)(i)(h) and (i)(4) Fourteenth Amendment to the Constitution. Trial Counsel's act and performance during the entire phase of representation was both unreasonable and prejudicial. Counsel's act and omission are included, but are not limited to the following:

1. Counsel failed to produce applicant's rule-5 discovery.

2. Counsel misled applicant about the conditions of the plea.

3. Counsel failed to investigate the discrepancies and evidence of which concerns the allegations in this case.

4. Counsel failed to investigate discrepancies of which concerns the date of offense in this case.

5. Because of counsel's misrepresentation with
in this case, applicant entered a guilty plea
upon counsel's advice which was not within
the range of competence demanded of attor-
neys in criminal cases. Also due to counsel's
errors, applicant would not have plea guilty but
would've insisted on going to trial which is
other wise known as ineffective assistance
of counsel.

Wilfredo Balas #347611
Kershaw Corr. Inst.
4848 Goldmine Hwy.
Kershaw, S.C. 29067

iv. none

(c) the disposition thereof:

i. none

ii. none

iii. none

iv. none

(d) the date of each such disposition:

i. none

ii. none

iii. none

iv. none

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

i. none

ii. none

iii. none

iv. none

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

no

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

(a) which grounds have been presented:

i. none

ii. none

iii. none

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

i. none

ii. none

iii. none

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) none
- (b) none
- (c) none
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? none
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? none
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. MR. SCOTT ROBINSON - ATTORNEY AT LAW
- ii. none
- iii. none
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea Hearing
- ii. none
- iii. none

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

Sentence vacated

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Greenville, S.C.)

I, Wilfredo SALAS #347611, 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.

Wilfredo Salas

SWORN to and subscribed before me this 7th
day of May, 2012.

Catherine A. Amara (L.S.)

Notary Public

My Commission Expires December 22, 2018

My Commission Expires: _____

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

I, Wilfredo SALAS # 347611, 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.

Wilfredo Salas
Applicant

SWORN or affirmed to and subscribed before me this
7th day of May, 2012.

Catherine A. Amesa
Notary Public

My Commission Expires December 22, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-3341
COUNTY OF GREENVILLE	)	
	)	
Wilfredo Salas,	)	
S.C.D.C. No. 347611,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 17, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant waived presentment to the Greenville County Grand Jury for the charge of lewd act on a minor (2011-GS-23-6255A). Scott D. Robinson, Esquire represented the Applicant.

On August 8, 2011, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to fifteen (15) years imprisonment. The Applicant did not appeal.

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

II.

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

1. Ineffective assistance of counsel:
 - a. Failure to obtain discovery.
 - b. "[M]islead applicant about the conditions of the plea."
 - c. "[F]ailed to investigate the discrepancies and evidence of which concerns these allegations in this case."
 - d. "[F]ailed to investigate discrepancies of which concerns the date of offense in this case."
2. Involuntary guilty plea.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v.

State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove

that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of

the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

August 31, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)

IN THE COURT OF COMMON PLEAS

2012-CP-23-3341

WILFREDO SALAS, 347611)
)

Applicant,)
)

vs)

AFFIDAVIT OF SERVICE BY MAIL

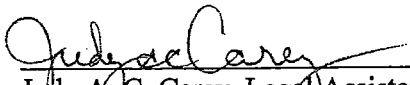
STATE OF SOUTH CAROLINA,)
)

Respondent.)
)
 _____)

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

Wilfredo Salas, 347611
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw SC 29067

DATED this 31st day of August, 2012.


 Judy A. C. Carey, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
3
4 Wilfredo Salas,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2012-CP-23-3341
7 The State,)
8 Respondent,) October 23, 2013
9) Greenville, South Carolina
10
11
12
13
14

11 B E F O R E:

12 HONORABLE EDWARD W. MILLER, JUDGE
13
14

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

16 JOHN G. RECKENBEIL, ESQUIRE
17 Attorney for the Applicant

18 KAREN C. RATIGAN, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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MOTIONS AND MATTERS

1 MS. RATIGAN: Thank Your Honor, may it please the Court.
2 This is the case of Wilfredo Salas vs. the State of South
3 Carolina, the Docket Number is 2012-CP-23-3341. Applicant
4 waived presentment to the grand jury on the charge of lewd act
5 on a minor, he was represented on that charge by Scott
6 Robinson. On August 8th of 2011 he pled guilty before Judge
7 Verdin, received a 15-year sentence, he did not file an
8 appeal. His application was timely filed so the State's ready
9 to proceed.

10 MR. RECKENBEIL: Thank you, Judge, may it ---

11 THE COURT: Ready?

12 MR. RECKENBEIL: --- please the Court, uh, John
13 Reckenbeil for Wilfredo Salas here on a post-conviction
14 relief. Uh, Your Honor, he has asserted in his application
15 several matters a first subject matter, the Court lacked
16 subject matter jurisdiction, uh, also fact that his trial
17 counsel fell below the standard of which has been set forth
18 by the State, a reasonably objective standard, ineffective
19 assistance of counsel, uh, Your Honor, and I've I've added to
20 this issue with the fact that, uh, there is possibly after-
21 discovered evidence. I realize here we're we're sitting here
22 in a civil court, uh, standard, uh, and there is an
23 opportunity for a 29(b) motion to be made in the criminal
24 setting, uh, for the purposes of today we will be going
25 forward on the civil matters that we have pending before this

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1. court on his application. First like to call Victoria Salas
2. to the stand.

3. THE COURT: Alright.

4. THE CLERK: Ms. Salas, please place your left hand on the
5. Bible and raise your right hand.

6. VICTORIA SALAS, having been first
7. duly sworn, testified as follows:

8. THE CLERK: Thank you, please be seated. State your full
9. name for the record.

10. THE WITNESS: Victoria Salas.

11. DIRECT EXAMINATION BY MR. RECKENBEIL:

12. A. Uh, Victoria, you reside here in Greenville County?

13. Q. Yes.

14. A. You just make sure you speak up loud enough and I might
15. remind you a couple times just to make sure that Judge Miller
16. can hear you, ---

17. A. Okay.

18. Q. --- okay, and the court reporter.

19. A. That's fine.

20. Q. Alright. Uh, you were married to the applicant Wilfredo
21. Salas?

22. A. I still am, yes.

23. Q. Still married.

24. A. Yes.

25. Q. Your daughter is whom?

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. Victim ---

2 Q. Victim ? And she was ---

3 A. --- Gonzal ---

4 Q. --- the victim in the matter?

5 A. Yes.

6 Q. Uh, at the time how old was she?

7 A. She was 5.

8 Q. And how old is she now?

9 A. She's 9.

10 Q. Uh, as it stands right now do you have custody of Victim ?

11 A. No.

12 Q. Uh, how did that all play out with the Department of
13 Social Services?

14 A. Uh, well they decided that it was in the best interest
15 for her to to stay with my mom.

16 Q. And when was that adjudicated, when did that happen with
17 the family court?

18 A. Um, date I don't remember but it was, it's been about a
19 year or two.

20 Q. 'bout a year?

21 A. Yeah.

22 Q. Was it after the court matter that took place when
23 Wilfredo came ---

24 A. Yeah, ---

25 Q. ---- before the judge ---

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

- 1 A. --- it was about a month later I believe.
- 2 Q. A month after that.
- 3 A. Um-hum, after.
- 4 Q. Sometime in 2011?
- 5 A. Yes.
- 6 Q. And who received custody of Victim at that time?
- 7 A. My mom and my dad.
- 8 Q. And does Victim live with them now?
- 9 A. Yes.
- 10 Q. Has there been efforts for you to try to get Victim
- 11 back?
- 12 A. Yes.
- 13 Q. And where does it stand right now?
- 14 A. Um, at this time right now my mom has, uh, she's talked
- 15 to me and she's told me that if, uh, she's willing to give the
- 16 custody back to me.
- 17 Q. Okay. Uh, ~~back~~ in 2010 when the first accusations came
- 18 down of Victim being molested by Wilfredo were you the first
- 19 one, uh, to be told of this?
- 20 A. Yes, by Victim , yes.
- 21 Q. By Victim ?
- 22 A. Um-hum.
- 23 Q. And when it originally happened did you take her to a
- 24 doctor?
- 25 A. Yes.

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Where'd you take her?

2 A. I took her to Dr. Nithya at North Hills.

3 Q. Alright, like an Urgent Care?

4 A. No, that's her primary physician.

5 Q. Primary care pediatrician?

6 A. Um-hum.

7 Q. And she's seen that doctor before?

8 A. Yeah, she's seen her since she was born.

9 Q. And it -- in your kind of opinion as a mother did you
10 notice any sort of, uh, abnormalities to Victim at that point
11 in time?

12 A. No.

13 Q. Alright. Uh, Wilfredo hired Scott Robinson to be his
14 attorney, ---

15 A. Yes.

16 Q. --- uh, did you have any sort of, uh, input as to hiring
17 Mr. Robinson to be his attorney?

18 A. Uh, yes.

19 Q. Alright. Were you still in close contact with with
20 Wilfredo at that point in time immediately after it
21 happened?

22 A. Yes, I was.

23 Q. Uh, did you make any sort of, uh, statements to your
24 family or to his family as to what you believed or how you
25 believed back at that point in time when it first happened?

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. I mean, me and Will we always, we kept in contact. I
2 mean, when at first when she first mentioned it I went to him
3 and I spoke to him about it and he was the primary one who
4 told me take her to the doctor.

5 Q. 'cause what did, what did Will tell you when ---

6 A. That ---

7 Q. --- you first talked to him?

8 A. --- he had nothing to fear, that he had done nothing
9 wrong.

10 Q. Okay. Did, uh, that that she's in school at that point
11 in time back originally when this happens.

12 A. Yes.

13 Q. She's in, like in elementary school?

14 A. Yeah, she was like in K-5.

15 Q. Uh, was there a a point in time back then where you had
16 to have permission to pick a child up from school?

17 A. Yes.

18 Q. Was there people on a list that were able to pick up the
19 child from school?

20 A. Um-hum, yes.

21 Q. Do you, do you know who was on that list?

22 A. It was primarily Will, me, my mom, my dad and my sister.

23 Q. Alright. Do you know if Will ever picked her up from
24 school?

25 A. Not.

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. He never picked her up from school.

2 A. No.

3 Q. Alright. When Victim originally accused Will of doing
4 this, do you know what time of day it was that this
5 happened?

6 A. It was, it was night. It was at night when she told me
7 about it.

8 Q. It was at nighttime.

9 A. Um-hum.

10 Q. And was Victim alone with Will at the house?

11 A. No.

12 Q. There was others at the house at the time when ---

13 A. Yes.

14 Q. --- it took place?

15 A. Um-hum.

16 Q. And where did she say that it took place?

17 A. She said it took place in my bedroom.

18 Q. Do you believe that true?

19 A. No.

20 Q. Why's that?

21 A. Because at the time, you know, we had -- well I have two
22 other boys and, um, I just don't believe that, that that
23 happened and she had her own room of course where she slept in
24 and as well we had, uh, believe it was his brother who was
25 living with us upstairs so . . .

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. You just don't find it reasonable that Victim would be in
2 your bedroom at that ---

3 A. Yes, ---

4 Q. --- point in time.

5 A. --- um-hum.

6 Q. And were there other people in the house that you spoke
7 to when asked whether or not they saw anything?

8 A. I didn't speak to 'em, speak to them about it but, um,
9 there were others in the house at at all times, uh, . . .

10 Q. Okay. Now with what you're talking about right now did
11 you ever communicate that to law enforcement or to Scott
12 Robinson?

13 A. Yes.

14 Q. Did you give written statements?

15 A. Yes.

16 Q. Are they consistent with what you've talked about now?

17 A. Yes.

18 Q. Do you think that there was any sort of influence that
19 Victim had upon her as to the reasons why she would accuse Will
20 of doing this?

21 A. I believe my mom had a big part non-intentionally but by
22 she would always say, you know, they touch you here, they do
23 this to you, you need to come tell me or you need to go tell
24 your mom and, uh, and I I believe that's where she she she
25 came about that that idea.

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Has your mother ever given a statement to law enforcement
2 or to Mr. Robinson, if you know?

3 A. To law enforcement I'm sure but not positive and to Scott
4 Robinson I don't believe so.

5 Q. Don't believe so?

6 A. Uh-uh.

7 Q. Okay. Uh, when your daughter was going through this
8 whole judicial process, uh, did you ever have the opportunity
9 to talk with her alone about it?

10 A. No.

11 Q. 'cause DSS basically stepped in immediately, right, ---

12 A. Yes.

13 Q. --- and your contact was limited ---

14 A. Um-hum.

15 Q. --- with your daughter.

16 A. Yes.

17 Q. Uh, would you say was in a matter of days, weeks, or
18 months from the accusation that you really kinda lost contact
19 with your daughter?

20 A. I would say days.

21 Q. Days.

22 A. Um-hum.

23 Q. So you never really had an ability to sit down and talk
24 with her by ---

25 A. Uh-uh.

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. --- herself and your visitation that the family court
2 ordered or allowed after, uh, this came out was all
3 supervised, correct?

4 A. Yes.

5 Q. Your mother had to be around?

6 A. Um, no, uh-uh.

7 Q. Was social workers had to be around ---

8 A. No.

9 Q. --- D ---

10 A. Victim stayed with me up until about I would say a couple
11 months maybe.

12 Q. Okay. Uh, and you've never had an opportunity to really
13 sit down and talk with her and ask her whether or not this was
14 true.

15 A. No.

16 Q. Alright, but you're here today, uh, we've had other
17 conversations over the phone ---

18 A. Um-hum.

19 Q. --- and in person, you're here today to tell this court
20 that you don't think this really happened?

21 A. Yes.

22 Q. And is there anything else that you can think of in your
23 mind that would lead you to come to that conclusion, uh,
24 besides what you've already talked about?

25 A. No.

VICTORIA SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. ~~Alright.~~ And Will has since day one professed his
2 ~~innocence?~~

3 A. Yes.

4 Q. And have you tried at all times to communicate this with
5 his attorney Scott Robinson?

6 A. Yes, I did.

7 Q. Do you agree with Will pleading guilty to ---

8 A. Um, ---

9 Q. --- what he pled guilty to?

10 A. --- no.

11 Q. Do you know why he pled guilty to that?

12 A. No, I don't.

13 Q. Okay.

14 A. I haven't had the opportunity to to talk to him about
15 it.

16 Q. And even i -- to this day as we sit here you still
17 haven't talked with Victim about ---

18 A. No.

19 Q. --- whether or not this is true or not.

20 A. No.

21 Q. Okay. Okay, answer any questions the Attorney General
22 might have for you.

23 A. Um-hum.

24 CROSS-EXAMINATION BY MS. RATIGAN:

25 Q. I believe you testified on direct that your daughter told

VICTORIA SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 you first about having been touched by your husband ---

2 A. Yeah.

3 Q. --- but didn't the State say at the guilty plea hearing
4 that she first told your mother and that your mother told you
5 about it?

6 A. The very first accusation ---

7 Q. Yes?

8 A. --- she did.

9 Q. Okay. So in fact the first person she told was your
10 mother.

11 A. Yes, the very first one, yes.

12 Q. And then your mother told you about it.

13 A. Yes, she sat down with me and Will and she talked about
14 it.

15 Q. Okay. And you stated you took her, you took, uh, Victim
16 to the doctor at one point?

17 A. Yes, I took her.

18 Q. ~~How many times had she made an allegation that your~~
19 ~~husband touched her before you took her to the doctor, do you~~
20 ~~remember?~~

21 A. Twice.

22 Q. ~~Okay. So was it the third time that she went to the~~
23 ~~doctor or the second time?~~

24 A. The second time.

25 Q. ~~Okay. At the plea hearing the State said it was after~~

VICTORIA SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 the third disclosure, is that inaccurate?

2 A. No, it was the second time.

3 Q. And in total the State alleges that, uh, Victim made three
4 different disclosures to you, is that correct?

5 A. No, there was only two.

6 Q. Only the two? So she made two disclosures to you and
7 your mother, is that correct?

8 A. Yeah, the first one she told my mom, the second one she
9 came to me.

10 Q. Okay. And even though she disclosed to you two times she
11 was being molested, you never asked her about it?

12 A. We talked to her about it. As I told you, my mom sat
13 down with me and Will and we discussed it.

14 Q. Okay, but did you ever speak to the victim about it?

15 A. Yes, we did.

16 Q. Well I believe you said you never had an opportunity to
17 ask her if it was true or not.

18 A. That was the first time, first ---

19 Q. Okay.

20 A. --- accusation, the second time I did not.

21 Q. Okay, so you have had an opportunity to ask the victim
22 whether or not it's true.

23 A. From the first one yes, ---

24 Q. Okay, ---

25 A. --- the second one no.

VICTORIA SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. --- and -- okay. And you testified on direct that you
2 made a statement, did you give a statement to the police or to
3 Mr. Robinson?

4 A. Uh, Mr. Robinson.

5 Q. And your statement was basically that you did not believe
6 your daughter?

7 A. Yes.

8 Q. And were you actively helping the defense kinda put
9 together a case?

10 A. Yes.

11 Q. Okay.

12 MS. RATIGAN: That's all I have, Your Honor.

13 THE COURT: Okay. You can step down, thank you.

14 (Whereupon, the witness left the stand.)

15 MR. RECKENBEIL: Judge, we just ask that she be, uh,
16 released from her subpoena.

17 THE COURT: Any objection?

18 MS. RATIGAN: No, Your Honor.

19 THE COURT: Okay.

20 MR. RECKENBEIL: Your Honor, we're just providing her her
21 witness fee that we ---

22 THE COURT: Okay. Well you didn't have to show me.

23 (Whereupon, a discussion was held off the record.)

24 THE COURT: Alright, call your next witness.

25 MR. RECKENBEIL: Uh, the applicant, we're gonna call

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Scott Robinson.

2 (Whereupon, the witness came forward.)

3 THE CLERK: Mr. Robinson.

4 THE WITNESS: Yes.

5 SCOTT D. ROBINSON, having been
6 first duly sworn, testified as follows:

7 THE CLERK: Thank you, you may be seated.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Robinson, you need to keep your decibel
10 level up.

11 THE WITNESS: Yes, sir.

12 DIRECT EXAMINATION BY MR. RECKENBEIL:

13 Q. Alright, Scott, you practice here in Greenville County?

14 A. I do.

15 Q. Uh, represented Mr. Wilfredo Salas, uh, on the charge of
16 criminal sexual misconduct with a minor?

17 A. I did.

18 Q. Okay. Uh, do you recall when you first came on board for
19 the representation in this matter?

20 A. Yes. It would've been, excuse me, woulda been on or
21 about, uh, April 29th 2010.

22 Q. Back in 2010?

23 A. Um-hum.

24 Q. Okay. I obviously wanna go through your investigation of
25 the case but I wanna kinda work backwards ---

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. Sure.

2 Q. --- basically going from Victoria's, uh, testimony that
3 she just provided to the Court.

4 A. Um-hum.

5 Q. Uh, did she have an opportunity to tell you what she just
6 disclosed to the Court before?

7 A. She did. She gave a s -- she gave written statement to
8 my investigator and she also came in a decent bit to the
9 office.

10 Q. Uh, did -- was there ever an opportunity, uh, that your
11 investigator had to talk with either, uh, you or your
12 investigator had an opportunity talk with Victoria's mother?

13 A. No.

14 Q. Alright. Uh, did Victoria disclose to you that she felt,
15 uh, that her mother may have provided influence upon Victim to
16 give these explanations as to what Will did to her?

17 A. Yes.

18 Q. Alright, and that was never, uh, followed up with any
19 sort of investigation to talk with the grandmother?

20 A. Well the grandmother had custody and the little girl
21 was with the grandmother, she wanted to be with the
22 grandmother ---

23 Q. Sure.

24 A. --- and the grandmother I assume would say anything to
25 keep the child.

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Okay, so you just answered my next kinda question is that
2 do you think that there was great, uh, kind of it -- almost
3 like a carrot hanging out there for the grandmother to provide
4 this sorta influence to gain custody?

5 A. I think it's, ---

6 Q. --- of the child?

7 A. --- I think it was possible.

8 Q. And history can tell us exac -- exactly what happened,
9 isn't that true, ---

10 A. Yes.

11 Q. --- that the grandmother actually has custody of the
12 child?

13 A. She does.

14 Q. Alright. So then the start of the basically the case
15 he's he's charged with criminal sexual misconduct first
16 degree, ---

17 A. Um-hum, yes.

18 Q. --- he ultimately pleads to lewd conduct upon a minor.

19 A. Lewd act, yes.

20 Q. Alright. Uh, the difference in sentencing ranges where
21 criminal sexual first degree is a strike, I ---

22 A. Right.

23 Q. --- 85 percenter, now it's 80 percent, uh, it's a
24 serious?

25 A. Right.

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Okay. And then lewd is ---

2 THE COURT: Most serious.

3 MR. RECKENBEIL:

4 Q. Most serious, excuse me, Your Honor, most serious, uh,
5 and then a lewd is a 15-year cap with the possibility of, uh,
6 parole or early release.

7 A. Yes, and also the, uh, CSC first would carry 25 to
8 life.

9 Q. Twenty-five to life.

10 A. Yes.

11 Q. Alright. Now hearing what Victoria has disclosed
12 here ---

13 A. Um-hum.

14 Q. --- today and knowing everything, why would -- do you
15 think Wilfredo would have pled guilty?

16 A. I can't get into his mind but I, but I would imagine that
17 the the risks were there. Uh, you had a risk of a 25 to life
18 charge which is non-parolable, the strike versus, uh, 0 to 15
19 lewd act which is parolable, he's actually eligi -- eligible
20 parole next year in this matter, uh, but I think he may have
21 thought about that, thought about the the child coming to
22 court and testifying. Uh, she'd given the same story even at
23 this, uh, place called North Hills Medical Center which is a
24 place that, uh, Victoria first took her to. She said the same
25 thing to that doctor, with that doc, 'bout what had happened

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 that her story was consistent in this and she would testify.

2 Q. Did Victoria testify in open court or was there a motion
3 to have her testify in chambers?

4 A. Victoria or Victi ---

5 Q. Or excuse me, Victim , excuse me.

6 A. The State made a motion to, uh, to be able to introduce
7 out of court test -- the testimony of a child.

8 Q. And did that take place?

9 A. We never got to that only because we did not go to trial,
10 we went, we just plead.

11 Q. Right, but was there a hearing to make a determination as
12 to whether or not, uh, Victim could testify in chambers as
13 opposed to ---

14 A. I don't believe so.

15 Q. Okay. Uh, and so the, to the best of your recollection
16 of your notes, and and please feel free if you need to look
17 through it, you've never really had an opportunity in open
18 court to see, uh, Victim provide testimony or in chambers Victim
19 provide testimony.

20 A. I have not. All I have are -- I have both. I have the
21 DSS case because I wanted to get information on what she was
22 talking about: reports, things like that, I also had the
23 criminal case, uh, but she was consistent throughout the whole
24 time ---

25 Q. Sure.

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. --- in this matter.

2 Q. Okay. Did Victim testify in the family court matter?

3 A. No.

4 Q. It's just a ---

5 A. Allegations.

6 Q. Okay, guardian ad litem or somebody testified?

7 A. Allegations, yes.

8 Q. Okay. Uh, alright. Do you know whether or not your
9 investigator or your office, uh, received any video of Victim ,
10 uh, providing, uh, statements to any medical examination or to
11 the CAC, uh, ---

12 A. We had a, we had a a video at -- from the Julie Valentine
13 Center where she was interviewed, uh, we had that video, any
14 statements that, uh, State had they would provide to us.

15 Q. Okay, do -- does your records or anything reflect when
16 you would've received that video?

17 A. Uh, the State has a -- had an open file policy, let me
18 see when I received it. We did receive it, we did look at it,
19 he looked at it, uh, but I can't tell ya, I don't have ind --
20 an independent recollection of actually when we got it but
21 when do -- when we did get it we had to sign out, uh, uh, an
22 order that basically we couldn't start putting outside other
23 people but we did look at it.

24 Q. Uh, when you receive the video or before you received
25 that video, would it be fair to say that you would have to

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 sign a protective order?

2 A. Yes, that's what I was meaning.

3 Q. And a protective order would be something where you or
4 your staff or investigators, uh, or your client could not
5 disseminate those materials and they would have to be either
6 returned or destroyed at the end a the case.

7 A. Yes.

8 Q. Alright. Do you know when that protective order was
9 signed by the judge and entered into the record?

10 A. As far as the day, I do not, I know, we did receive it
11 though.

12 Q. Okay. Uh, Scott, yeah, go ahead and take your time look
13 for it.

14 A. Sure.

15 (Pause.)

16 I am not sure the exact date, Mr. Reckenbeil.

17 Q. Okay.

18 A. Actually, no excuse me. We did get a copy of the CD
19 which would have been July 25th 2011.

20 Q. July 25th 2011?

21 A. Yes.

22 Q. Okay.

23 A. And we have the order that was dated after that. This is
24 a, this is just a copy of proposed order, a stipulation
25 order.

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Okay. Do you know when that video, uh, originated? In
2 other words, do you know when in fact that that video of
3 Victim , uh, actually was taken?

4 A. Without looking at that CD I couldn't tell you. I would,
5 I would have to look at the CD and see what the date was and
6 what the time was.

7 Q. Alright. So we're we're talking July 25th 2011, the plea
8 was August 9th 2011?

9 A. I I'm gonna take your word for it because not looking at
10 the transcript but ---

11 Q. Okay. It's -- it was pretty close in proximity ---

12 A. August 8th 2011.

13 Q. Okay, sorry. I'm sorry, I misstated one day. Uh, so
14 pretty close proximity time frame from when you all received
15 this video to the time frame that, uh, Wilfredo pled guilty.
16 Do you know whether or not Wilfredo ever had a chance to
17 review that video?

18 A. Yes, that he came in my office and rev -- he was out
19 jail.

20 Q. So at that point in time he was outta jail?

21 A. Um-hum, yes.

22 Q. Do you any notes that reflect when, uh, Wilfredo would
23 have came by your office to, uh, view the video or any other
24 evidence that after July 25th?

25 A. He would have as soon as we received it which would have

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 been the next day, he would come in, he would -- we would call
2 him and he would come in and view it.

3 Q. Okay. Alright, so leading up to August the 8th for the,
4 for the plea, can you remember in your mind or any notes that
5 can refresh your recollection that, uh, any imminent
6 conversations that you're having Wilf -- Wilfredo right before
7 the plea, uh, any discussions that you can recall in your mind
8 as to what took place, why he decided to go in fronta Judge
9 Verdin and plea?

10 A. Well the first reason I think is because she's a very
11 good judge, she's a very considerate judge and she's just a
12 good judge to go in front but; secondly, I think that, uh, he
13 was, uh, laid out the options, that's what he was led by.

14 Q. Okay.

15 A. Option CSC potentially, CSC first 25 years to life, no
16 parole or the, uh, lewd act 0 to 15 but also too at that time
17 he also had a federal charge as well for, uh, some sort of
18 fraudulent document or something like that I believe, so he
19 had that as well, so he had a pending charge that and he also
20 was, uh, had an an I.C.E. hold as well potentially.

21 Q. Potential ---

22 A. Potentially ---

23 Q. --- for I.C.E. hold.

24 A. --- that of ---

25 Q. Okay.

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. --- course, yeah, ---

2 Q. Alright.

3 A. --- but he was not a citizen at the time.

4 Q. Alright, so was trial that day or that week?

5 A. Woulda ---

6 Q. In other words, if he would have not accepted the
7 plea, ---

8 A. No.

9 Q. --- he would've gone to trial.

10 A. Yes.

11 Q. Uh, do you know if he pled guilty, uh, before the jury
12 was even brought in or do you know whether or not that the
13 jury was just waiting to be picked or was it something where
14 it was the day before jury selection?

15 A. I have in here the jury voir dire and questions we would
16 have asked the jury, things like that but that was not used so
17 I'm assuming it was before the jury was actually even
18 impaneled.

19 Q. So this is a discussion that is in in very close
20 proximity to possible trial going?

21 A. Right, correct.

22 Q. Alright. Now I wanna discuss some issues that he has
23 raised in ---

24 A. Um-hum.

25 Q. --- his application, ---

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. Right.

2 Q. --- uh, about subject matter jurisdiction and the lesser
3 included offense.

4 A. Sure.

5 Q. Uh, to your understanding the lewd act upon a minor is a
6 lesser included to criminal sexual misconduct first degree?

7 A. It's not, ---

8 Q. Okay.

9 A. --- it's not a less include, less ---

10 Q. It's not a lesser included.

11 A. No, it's not.

12 Q. So then how can that be presented to a court, uh, if it's
13 not a lesser included offense without a direct indictment?

14 A. They do it, do it through a direct presentment and if the
15 person also waives presentment that, uh, that addresses the
16 situation.

17 Q. In your review of the transcript did he waive presentment
18 or was ---

19 A. Yes, ---

20 Q. --- it direct presentment?

21 A. --- he waived presentment.

22 Q. Okay, so that would take care a that issue.

23 A. Um-hum, yes.

24 Q. Now in the transcript I also wanna draw your attention to
25 is that, uh, you would agree with me that evidence that the

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 State wants to present to any hearing they have to disclose to
2 you, would you agree with that?

3 A. Everything they're going to use at the ---

4 Q. Hearing or trial or anything they would need to disclose
5 to you. I -- it -- I know it's a stupid question but ---

6 A. It's not, no, it's it's not a stupid question, it's just,
7 uh, ---

8 Q. This is a basic general rule.

9 A. I don't, I -- it's usually how it would go but, um, ---

10 Q. Did they ever present to you a statement that was given
11 by the victim or the victim's family that was used at the
12 sentencing hearing? Do you remember if you saw that
13 beforehand?

14 A. No, I think if ya, if ya look in the, uh, transcript, I
15 think I just received it that day and I reviewed it, client
16 reviewed it I believe, judge looked at it. Um, I think I, I
17 don't know if I made an objection or not to this, think they
18 may have entered it, I don't know what I did, but I don't
19 think that, uh, that they did give it to us that time, ---

20 Q. Sure.

21 A. --- it didn't, woulda been nice to get it earlier but
22 they present it at that time.

23 Q. Don't you think that they should have given it to you
24 prior to the hearing, the sentencing hearing?

25 A. Yes, but another side a the coin though, uh, as a defense

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 attorney you have certain do -- like statements from people
2 that are saying good things about your client, things like
3 that that you're gonna present, ---

4 Q. Sure.

5 A. --- the State wouldn't have so . . .

6 Q. And would --- you would agree with me that the proper
7 recourse would be to state an objection on the record, uh, in
8 violation of Rule 5 to say that, you know, Judge, we didn't
9 receive this prior to, uh, the hearing, we didn't have an
10 opportunity to review and thus rebut anything that might be in
11 that statement, would you agree that that would be the proper
12 recourse that state an objection on the record?

13 A. Well I think that, uh, let's see, I think on Page, uh,
14 ele -- 13, excuse me, uh, she's talks about bringing up this
15 letter, uh, pass it up, I haven't seen it and I think I said I
16 have -- don't see the purpose of it, didn't make an an
17 objection but I said I didn't see the purpose of it. Uh, ---

18 Q. And just to, just to clarify my question you, ---

19 A. Um-hum.

20 Q. --- the proper recourse would be to state an objection on
21 the record as to a violation of Rule 5 or any other disclosure
22 requirements to preserve that, would you agree?

23 A. Yes.

24 THE COURT: Well that was a victim impact statement.

25 MR. RECKENBEIL: Yes, sir.

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 THE COURT: That's not, wasn't admissible at trial, I
2 don't think that was a trial exhibit.

3 MR. RECKENBEIL: Yes, sir.

4 THE COURT: Okay, go ahead.

5 BY MR. RECKENBEIL:

6 Q. Okay. Uh, was there any other, uh, in reviewing this
7 this file with the subject matter jurisdiction, was there
8 anything else that you saw, uh, that the prosecution did that
9 could have withheld the Court from having jurisdiction over
10 this case?

11 A. I don't. I I think that they were ethical, considerate
12 and I don't believe that they did anything inappropriate or
13 not following the rules.

14 Q. Okay. Uh, you and I have discussed this case
15 yesterday?

16 A. We have.

17 Q. Okay. You agree kind of with what Victoria has testified
18 before that ---

19 A. Which part are we talking about?

20 Q. Fact that Victim kinda made this up 'bout Will.

21 A. I have always had this idea and that's where we are
22 coming from in this case is that this grandmother had
23 something, that there was something that there couldn't fig --
24 figure out what, put a finger on it but there was something
25 there 'cause Victoria from the beginning always said it could

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 not have happened, could not have happened but then you have
2 the child sitting there from the beginning saying yes it did
3 happen so . . .

4 Q. But the grandmother was never questioned in any way,
5 shape, or form.

6 A. She was never questioned. I I have a -- I had a very
7 good investigator Paul Silvaggio, uh, but I would believe
8 that, uh, she probly wouldn't have talked to us anyway if we
9 even tried to 'cause she was pretty adamant about keeping this
10 kid think.

11 Q. Okay, answer any questions Attorney General has.

12 CROSS-EXAMINATION BY MS. RATIGAN:

13 Q. Did you, pardon me, Mr. Robinson, did you file the usual
14 discovery motions after you were retained?

15 A. I did.

16 Q. And to the best of your knowledge did you receive full
17 discovery from the State?

18 A. I did.

19 Q. Did you review those items with your client?

20 A. I did.

21 Q. And, uh, your client told you from beginning that he was
22 innocent?

23 A. Absolutely, yes. :

24 Q. Okay. And would it be fair to say that his wife Victoria
25 participated in his defense?

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 A. I think she, when she would come in as often as we'd want
2 her to come in, uh, we had different meetings with different,
3 uh, individuals to get statements, to find out information, to
4 find out something that we could use at a trial that could,
5 uh, potentially be helpful.

6 Q. But she was clearly going to support her husband instead
7 of the victim, that be fair to say?

8 A. I believe so.

9 Q. Okay. And did she give you a, any kind of a written
10 statement?

11 A. She did.

12 Q. And was that in fact that she did not believe the
13 victim's allegations?

14 A. Yes.

15 Q. Okay. And I believe you testified the victim was always
16 consistent in her story.

17 A. She was.

18 Q. Was that true even when you watch the forensic interview
19 videotape, was she also ---

20 A. Yes.

21 Q. --- consistent there?

22 A. Yes.

23 Q. Okay. And wasn't there medical evidence to corroborate
24 potential abuse? I believe the State said the doctor found,
25 uh, she had vaginitis, do you recall that?

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 A. I think she had some, uh, some, uh, physical issues but
2 there was no evidence that I I I can recall this, there was no
3 evidence of, I didn't believe there's any evidence of
4 penetration or anything really. Lotta things could be related
5 to the age of the child, different things a that nature.
6 There was no co -- I don't think there was conclusive proof of
7 it either way.

8 Q. But there some kind of medical finding that she had some
9 kind of infection, that be fair to say?

10 A. Take a look at my notes or the doctor's notes.

11 THE COURT: Those -- the transcript speaks to that.

12 MS. RATIGAN: Okay, well then I'll move on.

13 BY MS. RATIGAN:

14 Q. Uh, you explained to Mr. Salas the minimum and maximum
15 sentence for first degree CSC with a minor?

16 A. Yes.

17 Q. And also for lewd act?

18 A. Yes.

19 Q. Did -- when did the State approach you about the offer to
20 kind of let the CSC go and let him, uh, waive presentment to
21 lewd act instead?

22 A. It would have been probly probly a day or two before this
23 'cause I think I had a conversation with Ms. Hodge on the, on
24 the cell phone about this at nighttime.

25 Q. But the case was still on the trial docket?

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 A. It was.

2 Q. Okay. When did your client decide to go ahead and waive
3 presentment and plead, would it have been that day or prior to
4 that day?

5 A. When I conveyed to him the offer, this offer that they
6 were going to tr -- they were potentially going to let him
7 plead down to a lewd act, I think he started thinking about it
8 at that point.

9 Q. So when did he make the final decision, would it have
10 been that day?

11 A. I don't know when he made the final decision, I just
12 know, I just know that at some point during that day he
13 entered a plea before Judge Verdin.

14 Q. Did you explain to him what it would mean to waive
15 presentment to the charge?

16 A. Yes.

17 Q. Okay. I believe it's on the record but in light of
18 recent case law let me just verify for sure, did you advise
19 him that pleading guilty to this would expose him to
20 potentially being deported?

21 A. Yes.

22 Q. Okay.

23 A. He already, I think he already had an I.C.E. hold on him
24 and he had a federal, uh, federal charge as well for, uh,
25 unlawfully using a Social Security card.

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 MS. RATIGAN: That's all I have, Your Honor.

2 THE COURT: Okay, you can step down.

3 THE WITNESS: Thank you, Judge.

4 (Whereupon, the witness left the stand.)

5 MS. RATIGAN: May Mr. Robinson be released, Your Honor?

6 THE COURT: Fine with me, okay. Okay, got anything else?

7 MR. RECKENBEIL: Yes, Your Honor, we call Wilfredo

8 Salas.

9 THE COURT: Alright.

10 (Whereupon, the applicant came forward.)

11 THE CLERK: Mr. Salas, please place your left hand on the
12 Bible, raise your right hand best you can.

13 WILFREDO SALAS, having been
14 first duly sworn, testified as follows:

15 THE CLERK: Thank you, you may be seated.

16 THE APPLICANT: I forgot my my notes.

17 MR. RECKENBEIL: Sure. If I may approach witness, Your
18 Honor.

19 THE COURT: Yeah, that's fine. Have a seat.

20 THE CLERK: Please state your full name for the record.

21 THE APPLICANT: Wilfredo Salas.

22 THE CLERK: Thank you.

23 MR. RECKENBEIL: Thank you, Judge.

24 (Whereupon, counsel handed documents to the applicant.)

25 DIRECT EXAMINATION BY MR. RECKENBEIL:

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Wilfredo, you're being housed in Kershaw?

2 A. Yes.

3 Q. Okay. Mr. Robinson was your attorney on the case for
4 criminal sexual misconduct?

5 A. Yes.

6 Q. Alright. Uh, you had opportunity to hear, uh, Victoria
7 testify?

8 A. Yes.

9 Q. Uh, has she ever told you what she said before, has she
10 ever told you this? In other words, ---

11 A. No, ac -- actually I was -- she did tell me that not to
12 go plead guilty but when all this came about I was already
13 arrested on on June 22nd if I believe so whenever Mr. Scott
14 Robinson say came out with a video I never had a chance to
15 actually see it 'cause I was already on on custody of, uh,
16 county, the, uh, Greenville Detention Center, uh, ---

17 Q. Okay.

18 A. --- uh, for the immigration hold that he speak about and,
19 uh, and she told me not to plead guilty but Mr. Scott Robinson
20 when he came and offered me a plea, he only brought out a a
21 piece of paper saying they they was gonna drop the charges and
22 so he say they was only going to deport me so I went and
23 signed it and then Sunday night he came to see me on the
24 county and tell me that I have to plea 'cause I don't sign the
25 plea, the plea bargain and, uh, at that point he stated that

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 there was nothing else to do.

2 Q. Okay, I wanna, can I stop, I wanna stop you there 'cause
3 you brought up about five different issues that I wanna
4 dissect and go through. First off, Victoria said basically
5 she thinks that Victim made this up, okay, ---

6 A. Yeah.

7 Q. --- I understand that, had she ever told you that before?
8 Did Victoria ever told -- tell you that she thinks Victim made
9 this up?

10 A. Uh, no, but when with ---

11 Q. Right, ---

12 A. --- Scott Robinson, yeah.

13 Q. --- just --- okay, so this the first time that you've
14 really heard it coming out of her mouth, right?

15 A. Yeah, yeah.

16 Q. Okay. Uh, now the other thing was is that you were
17 apprehended on June 27th 2011.

18 A. Yes.

19 MR. RECKENBEIL: And if I may approach the witness, Your
20 Honor.

21 THE COURT: Yeah.

22 BY MR. RECKENBEIL:

23 Q. This (indicating) is a document, if you would just i --
24 kind of identify that and then I need to show the Attorney
25 General a copy a that. What is that?

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. Uh, this is when I got a booking on, uh, Greenville
2 Detention Center ---

3 Q. And ---

4 A. --- for immigration hold.

5 Q. Immigration hold?

6 A. Yeah.

7 MR. RECKENBEIL: Your Honor, this is off of a, if we
8 could make this an exhibit, uh, ---

9 THE COURT: He's offering it, do you object?

10 MS. RATIGAN: No.

11 THE COURT: Okay.

12 (Booking sheet marked Applicant's Exhibit No. 1 for
13 identification and admitted into evidence.)

14 BY MR. RECKENBEIL:

15 Q. Wilfredo, looking at that a bond was not set on that,
16 correct?

17 A. Yeah.

18 Q. And so June 27th until you came to court here in
19 Greenville County you woulda been in custody, right?

20 A. Yeah, I was in custody.

21 Q. Okay. And during that time frame, how much, uh, how many
22 times did you have visitation from, uh, your attorney?

23 A. Well the the first time when I was arrested?

24 Q. No, that, after that time.

25 A. After that time I think he only came to see me three

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 times.

2 Q. Did you ever have an opportunity to see the forensic
3 video of Victim , uh, that he spoke, that Mr. Robinson spoke
4 about that he received on on July 25th 2011?

5 A. No.

6 Q. And the video of Victim did Mr. Robinson ever discuss
7 about what was on that video?

8 A. Well he just told me that it was a lot of tears and that
9 that if I was going to go to trial then the jury was gonna
10 believe just 'cause a child was crying in this so-called video
11 videotape.

12 Q. Alright. You've you've heard the term "I.C.E. hold" and
13 kinda deportation, right?

14 A. Yeah.

15 Q. The communication that you had with Ms. [sic] Robinson
16 was it was either promised or was it his thought that if you
17 pled guilty you would just be deported?

18 A. Well it it was his claim to signing the paper that he say
19 if I sign it I wasn't gonna be deported and I was gonna get no
20 time and he say that anyways you already got a I.C.E. hold so
21 they still gonna deport you.

22 Q. Okay, and was that the reason why you plead guilty?

23 A. No, 'cause the reason why I signed the paper was to my
24 best a my knowledge on immigration rules and regulations once
25 that you're married to a U.S. citizen and been here more than

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 ten years and got childs so when he told me that they was
2 gonna drop the charges my belief was that I was gonna be clean
3 for this charge so that's why I sign it and the Sunday night
4 when he came to the common in person he, I think it was about
5 7, 7:30 and then that's when he say that it was a plea bargain
6 and there was nothing to do, that it was on his best interest
7 to have me plead guilty 'cause he didn't want to see me going
8 to jail for the rest a my days for something I didn't
9 commit.

10 Q. Now you use the word "drop" the charges, what do you mean
11 by, what what do you mean by "drop" the charges?

12 A. Uh, well I believe that they was gonna dismiss the
13 case.

14 Q. Or was there a reduction in the the charges or was it the
15 fact that they were gonna dismiss the charges?

16 A. Well dismiss the charges at the beginning when before I,
17 when I sign the paper it it means that they was going immune
18 the, dismiss the whole charge and I was gonna be clean on any
19 record.

20 Q. Alright, and that was communicated to you when you were
21 in jail after you're picked up in June of 2011?

22 A. Yes.

23 Q. And you're saying that that was communicated to you by
24 Ms. Robinson?

25 A. Scott Robinson.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Alright. And your understanding of immigration rules at
2 that point in time is that you could have stayed in the
3 country because the fact that you were married to an American
4 citizen.

5 A. Not only that because I was gonna be free of the
6 charge.

7 Q. Alright. Then what changed? In other words, what what
8 happened with the fact that you came to court?

9 A. Well everything changed the Sunday night as I repeat when
10 he came to see me and tell me that I had to plead guilty
11 'cause I already sign the paper and there was no other way
12 out.

13 Q. And what paper do you remember signing?

14 A. Uh, I remem -- I don't really recall the paper, I just
15 went and and signed it and then he he, as as I signed it he
16 went and also signed himself and then he left and that was
17 actually on a Thursday when he -- when I sign the paper on on
18 the common.

19 Q. Okay, so he signed a piece a paper and you signed a piece
20 a paper?

21 A. I signed it and then he went and signed.

22 Q. Did you ever see that piece a paper again?

23 A. No.

24 Q. Do you know whether or not it was a guilty plea sheet?

25 A. Well I came to find out after I've been incarcerated for

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 this whole time when I received discovery that's when I,
2 that's the first time that I ever saw that it was a plea.

3 Q. Okay. And was that what you signed that day in jail?

4 A. Yeah.

5 MR. RECKENBEIL: May I approach the witness, Your
6 Honor?

7 THE COURT: (No audible response.)

8 BY MR. RECKENBEIL:

9 Q. Does that (indicating) look like what you signed when you
10 were in jail after the pick up in June of 2011?

11 A. I really don't recall if that's exac -- exactly same
12 paper that I signed but, I mean, I know I did sign something
13 but I just don't recall what paper it was.

14 Q. Okay. Now the -- did you know whether or not that there
15 was a possibility you were gonna go to a jury trial that week
16 in August?

17 A. Yeah, I I knew 'cause we had a a prime hearing on June
18 23rd which he say we needed to see that, uh, if the victim was
19 able to testify on on on another courtroom and I was gonna be
20 represented by him and the, and the Court's appointed another
21 counsel so he can speak with me and he was gonna be in the
22 other courtroom with the victim through video conference and,
23 uh, we were set to go to trial except for after the day when
24 he made me sign the paper that's when everything changed.

25 Q. So what what you were actually describing you're saying

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 that in June of two thousand ---

2 A. '10.

3 Q. --- in in 2011 ---

4 A. 2011.

5 Q. Um-hum.

6 A. 2011.

7 Q. --- there was a hearing to determine whether or not Victim
8 would have to testify in open court or whether or not she had
9 to testify in the judge's chambers or by video conference, you
10 remember that?

11 A. Yes.

12 Q. And you're saying that you were present and Mr. Robinson
13 was present?

14 A. Everyone present.

15 Q. And was there another counsel appointed for you?

16 A. Not at that, not at that time but he also came and see me
17 in the county when I was arrested told me that there's a
18 counselor that was appointed and I recall his name was, uh,
19 Will, uh, Goo (phonetic), Will something, I just don't recall
20 it.

21 Q. Okay. And at that hearing was there a ruling as to
22 whether or not Victoria, or sorry Victim , would testify in open
23 court or in the judge's chambers or by video conferencing?

24 A. It was by video conference.?

25 Q. Did you have an opportunity to observe Victim testify that

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 day?

2 A. No.

3 Q. Who who all testified at that hearing?

4 A. On that hearing the on -- the grandma was the only one
5 that testified and, uh, and the Cris, uh, the lady from the
6 Cris, uh, Rape ---

7 Q. Crisis Center.

8 A. --- Center.

9 Q. Alright. Did you have an ability to ask the grandmother
10 questions that day?

11 A. No.

12 Q. Alright. Did anybody on your behalf have an opportunity
13 to ask questions that day?

14 A. No.

15 Q. Uh, was ---

16 A. Well ---

17 Q. Go ahead, I'm sorry.

18 A. --- uh, did in fact, uh, Scott did but Mr. Scott did but
19 he als -- he only ask questions to, uh, that, uh,
20 professional, is a doctor or or therapist, whatever she was,
21 he asked her a couple of questions.

22 Q. Okay. Uh, did you ever ask, uh, Mr. Robinson or this
23 other attorney who you said was appointed to you, uh, to get
24 that transcript of that hearing for you to review?

25 A. Um, unless or really not 'cause 'cause to my knowledge I

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 really never knew what a Rule 5 was or what a transcript mean
2 'cause I was, I know it is no excuse but, I mean, you know,
3 you only learn your lesson after you fall.

4 Q. And at that point in time you don't recall whether or not
5 the grandmother provided testimony as to whether or not she
6 coerced her or not coerced her.

7 A. No.

8 Q. And you don't recall whether or not Mr. Robinson or any
9 other attorney asked her questions on the record that day.

10 A. No.

11 Q. Uh, to your, uh, knowledge did you ever review the case
12 file or what we call "discovery", did you ever review that?

13 A. No.

14 Q. Okay. Uh, when you and I have discussed this over the
15 last period of 18 months or so, uh, I showed you some letters,
16 uh, that were mailed by Mr. Robinson, uh, were the addresses
17 the proper address as to when those letters were coming out
18 with discovery?

19 A. No.

20 Q. Okay, and why's that?

21 A. 'cause I I didn't supposed to have contact with the
22 victim when she was staying, residing in the address with with
23 my wife at the time.

24 Q. Okay, so the, so the letters that contained the discovery
25 for you to review that you observed, uh, were sent to your old

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 house ---

2 A. Yes.

3 Q. --- and that was where Victim the victim lived?

4 A. Yes.

5 Q. And you were ordered by the Court that you could not
6 be ---

7 A. I ---

8 Q. --- there.

9 A. --- could not be or trespass or be near that that
10 address.

11 Q. Okay. And you were residing ---

12 A. On my ---

13 Q. --- where at that point in time?

14 A. I was staying with my mother, uh, 13 Blass -- 13 Bragg
15 (phonetic) Street ---

16 Q. Okay.

17 A. --- it's in Greenville, South Carolina.

18 Q. Do you know whether or not that that, uh, discovery
19 materials were ever forward on to you, uh, at your new address
20 that was sent to the old address?

21 A. No.

22 Q. And so you're saying here under oath today that you never
23 had an opportunity to review the entire case file that we now
24 know is what you call discovery.

25 A. No.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Okay. Do you recall how many times you had the
2 opportunity to, uh, speak with Mr. Robinson over the course a
3 representation in this matter?

4 A. I mean, I spoke with him couple a times but we actually
5 never had a time to sit down and go through the, through the
6 discovery. Every time I go to the office it just be to give
7 him money and and me I was asking for receipts of how how much
8 money that I still owe him or or that I need to stop paying
9 him or there was but I I really never ask him about discovery
10 'cause at that point I really have no money so . . .

11 Q. Okay, alright. Now you you wanted to submit an amended,
12 uh, PCR ---

13 A. Yes, sir.

14 Q. --- application, okay, ---

15 A. Yes.

16 Q. --- you have that with you today?

17 A. Yes.

18 Q. Okay. Is there additional allegations or anything that
19 you would like to submit?

20 A. This -- I'm not gonna speak of all the claims but I do
21 wanna submit it, I just wanna speak of the claims that I
22 believe, uh, Will made.

23 Q. Okay. Well understand, Wilfredo, this is your one bite
24 at the apple so I want you to have the opportunity. Is there
25 anything else that we have not discussed that is in your

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 amended application that you would like to set forth to the
2 Court?

3 A. Yes.

4 Q. Go ahead.

5 A. I'm gonna do the claims that I think I might wanna let
6 you, let you ---

7 Q. I -- well we've had discussions about this back and
8 forth, uh, and ---

9 A. Of course, I I want, uh, Your Honor, if I can address
10 Your Honor that my Eng -- my reading English and my English is
11 not very good so, uh, if I can have somebody to read for
12 me ---

13 Q. I I would be happy ---

14 A. --- of course.

15 Q. --- to.

16 A. And I wanna s -- this

17 Q. So you're, first off, you would agree with me that what
18 you've already discussed the fact that your trial counsel
19 failed to disclose to you discovery materials that you didn't
20 have the opportunity to review.

21 A. Yes.

22 Q. Okay. Uh, and the fact that, uh, you didn't have the
23 opportunity to review the videotape of Victim when she provided
24 testimony or however else it was her evaluations you never had
25 a chance to review that.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. No, but I think I also have a a a motion where he
2 submitted on on May, May, uh, si -- May May 5th that, uh, no
3 judge rule or or ruled on an order for him to get the video so
4 I don't see how it's supposed to go for him to get the video
5 without without a judge order.

6 Q. So what you're saying is is that the clerk a court's file
7 at, uh, here ---

8 A. He file a motion ---

9 Q. Bear with me a second. You're saying that the clerk a
10 court's file is deficient of a signed order of the protective
11 order allowing your counsel to get that video, is that what
12 you're claiming?

13 A. Yes.

14 Q. Okay, alright. And you're also saying that the clerk a
15 court's file is -- doesn't contain your discovery motion filed
16 by your attorney?

17 A. Yes.

18 Q. It doesn't contain the filings from the solicitor's
19 office as to the notice of alibi?

20 A. Yes.

21 Q. And is it also, uh, deficient and does not contain the
22 motion filed by the State for your counsel to turn over any
23 other information pertinent?

24 A. Yes.

25 Q. Okay. Okay. Understand the fact that we've had prior

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 discussions, uh, during previous testimony about the lesser
2 cluded [sic] infla -- offense but you wanted to make it ---

3 A. Put it, ---

4 Q. --- on the record ---

5 A. --- put it on the record ---

6 Q. --- about the fact that you don't think that the Court
7 had jurisdiction over your plea with the lesser cluded
8 offense.

9 A. Yes.

10 Q. We've also had discussions of the victim impact
11 statement.

12 A. Can can you read what what I say on on my paperwork so it
13 be on the record or or will you want me to ---

14 Q. Uh, ---

15 A. --- read it?

16 Q. --- what I'm gonna do is can I make this part a the
17 record, Your Honor, afterwards?

18 THE COURT: Yeah, you got any objection to it? I
19 mean, ---

20 MS. RATIGAN: I ---

21 THE COURT --- it's certainly not timely.

22 MS. RATIGAN: --- I was gonna object first of all it's
23 not timely and second of all this is getting into hybrid
24 representation and, you know, he has ---

25 THE COURT: Yeah.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 MS. RATIGAN: --- an attorney who can file legal
2 documents for him.

3 MR. RECKENBEIL: And, Your Honor, while I I I would agree
4 with that, uh, I think everything has been discussed but of
5 course given him his obviously one time opportunity ---

6 THE COURT: Yeah, go ahead, just read it in.

7 MR. RECKENBEIL: I'll be happy to read it to the Court if
8 that's okay.

9 THE COURT: Well I don't want -- just paraphrase, ---

10 MR. RECKENBEIL: I don't mind paraph ---

11 THE COURT: --- I don't wanna ---

12 MR. RECKENBEIL: And, Your Honor, I am paraphrasing it,
13 I'm already to Claim Number 6, uh, ---

14 THE COURT: Outta how many?

15 MR. RECKENBEIL: Uh, I believe six outta six, ---

16 THE COURT: Okay.

17 MR. RECKENBEIL: --- so 'cause I think that they've been
18 discussed, uh, but of course I wanted him to have every
19 opportunity to talk about, uh, each claim.

20 THE COURT: Well he's pretty much talked about everything
21 we've talked about so far.

22 BY MR. RECKENBEIL:

23 Q. And the victim, the thing that I was wanting to talk
24 about was the victim impact statement, ---

25 A. Yeah.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. --- that you feel that, uh, Mr. Robinson should have
2 objected to that.

3 A. Objected to it's under that, uh, rules that everybodys
4 who have the chance to review, to review, uh, the paperwork
5 before going into into court which I never had a chance to
6 review and that you see in the transcript there's no record
7 where he als -- where he review it, he just went and say I
8 have not seen it and I don't know what the purpose of it and
9 he he really -- I really know why -- I really don't what the
10 letter contained.

11 Q. Alright. And the objection or the claim that you have as
12 to whether or not of no contact direct or indirect what do you
13 wanna state to the Court about that? Did that hamper the
14 investigation?

15 A. What claim would you say it be?

16 Q. Uh, Number 6.

17 A. Number 6. Uh, it's a crime, a a crime defendant entering
18 a guilty plea must be aware of the nature concerning elements
19 of of the offense the maximum and the minimum mandatory
20 penalties, that's, uh, *Pittman vs. State* ---

21 Q. Okay, ---

22 A. --- which ---

23 Q. --- and you're saying that the record is deficient of
24 that?

25 A. Uh, yes.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. In other words, during your guilty plea that there was
2 no, uh, advisement of yours as to what the possibility of
3 sentencing could be?

4 A. Yes.

5 Q. Okay. We've already discussed the fact of the notice of
6 alibi claim that you didn't receive, correct?

7 A. Yes.

8 Q. And you would agree with me that a lot of your, uh,
9 amendment to your PCR goes to the big discrepancies and facts
10 of ---

11 A. Discrepancies ---

12 Q. --- in the, in in the investigation?

13 A. Well not only the discrepancies of the allegations itself
14 but dates and time vary from from the very beginning 'cause
15 this that the victim keeps cha -- keep changing the story from
16 from the doctors to the, to to the, uh, police, to the
17 sheriff's department to the Cris Centers and to the forensic
18 the event -- the dates and and allegations varyin' which is
19 not consistent.

20 Q. And bear with me on this question, Wilfredo, these
21 things that you've alleged in this ---

22 A. Yes.

23 Q. --- PCR amendment are things that you've learned from the
24 discovery that I provided you after your conviction?

25 A. Yes.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. And these are discrepancies that you've noted, correct?

2 A. Yes.

3 Q. Alright.

4 A. Also have ---

5 Q. And ---

6 A. --- a ch ---

7 Q. --- which which gets to Claim Number 7, is that your
8 claim that your guilty plea was not voluntarily and it was
9 involuntarily made.

10 A. Yes.

11 Q. Do you base that upon the fact of lack of knowledge ---

12 A. Yes.

13 Q. --- of the, of the case file and reviewing it with your
14 attorney that you didn't really know what you were being
15 accused of and then all the discrepancies that you were noting
16 in the file?

17 A. Yes, yes, but also like I say not knowing the maximum and
18 the minimum mandatory but either either, uh, charge.

19 Q. I know that you've got one claim here that without
20 negotiations or recommendations but you realize is that the
21 sentencing range is up to a judge when you ---

22 A. I u ---

23 Q. --- good go in front of a judge for a plea, correct?

24 A. Yeah, I understand that but it's also the solicitor
25 promised not to recommend and she should not recommend a

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 specific sentence in court when she already promised not to
2 recommend a specific sentence.

3 Q. And and you're saying that the -- there was no objection
4 noted by your counsel when the prosecution, uh, ---

5 A. Scott didn't do it.

6 Q. --- asked for the maximum amount of time?

7 A. Yes.

8 Q. And what i -- the last one what is your argument as to
9 the motion to quash the indictment?

10 A. Well the last one, the last one I had a a known, uh,
11 constitute how to file a motion to squash the indictment
12 before coercing me into pleading guilty to to due to the fact
13 that there is a varies as to this offense. Every indi --
14 every indictment should be deemed and judged sufficient as
15 good in the law which is additional to allegations as to time
16 and place as required by the laws.

17 Q. Okay. Wilfredo, one kind of final question to wrap
18 everything up. Everything that you've had a chance now to
19 review: hearing Victoria come forth before this court and
20 testifying, if you would have known this before you went to
21 court August 8th 2011 would you have pled guilty?

22 A. No.

23 Q. And do you think that, uh, you should have known these
24 facts, uh, based upon hiring your attorney?

25 A. Yes.

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. Okay. Please answer any questions that the, uh, Attorney
2 General might have for you.

3 CROSS-EXAMINATION BY MS. RATIGAN:

4 Q. So you're testifying you've never looked at any of the
5 evidence in the case?

6 A. Yes.

7 Q. You didn't look at any police reports?

8 A. No.

9 Q. The report from the medical doctor?

10 A. The medical doctor I never just actually saw a report.
11 The only thing that I heard from my wife it was that the
12 doctor said it was only a rash for -- from, uh, not wiping or
13 or or not cleaning her, uh, ---

14 Q. Okay.

15 A. --- herself.

16 Q. You never saw any statements from the victim?

17 A. No.

18 Q. You never saw anything at all?

19 A. No.

20 Q. Okay. Did you review the criminal sexual conduct with a
21 minor first degree charge with Mr. Robinson, did he tell you
22 kinda what that charge was and what it meant?

23 A. Uh, not, not.

24 Q. Okay. Well why did you tell the judge that day that you
25 had discussed the charge with him?

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 A. He, the judge addressed the lewd act ---

2 Q. Okay, so you did ---

3 A. --- and ---

4 Q. --- discuss ---

5 A. --- that he only a ---

6 Q. I'm sorry.

7 A. --- he only asked me if I wo -- if he talked to me about
8 the sex registration.

9 Q. Okay, so Mr. Robinson explained lewd act to you?

10 A. Lewd act at ---

11 Q. Yes.

12 A. --- at the point not, all he told me that I was just
13 gonna be deported, at that time that's all I knew.

14 Q. So he never explained lewd act to you?

15 A. No.

16 Q. He never explained to you the sentence you could
17 receive?

18 A. Uh, he did, he say, he say it was 0 to 15 but he never, I
19 mean, I I -- he kept telling me that I was just gonna be
20 deported.

21 Q. Okay. Well well I'll ask you then why did you tell Judge
22 Verdin that, uh, why did you agree with her when she said
23 that, uh, you know, asked you if you had discussed the lewd
24 act charge with Mr. Robinson, why did you say you discussed
25 it?

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 A. The lewd act?

2 Q. Yeah.

3 A. 'cause that's all he told me on the lewd act that it was
4 only, uh, 0 to 15 and that was it but to discuss a lewd act we
5 never got to discuss a lewd act, all I know it was 0 to 15.

6 Q. Okay. And you told Mr. Robinson you didn't, uh, touch
7 the victim, you didn't do it?

8 A. Yes.

9 Q. And you're saying today you didn't know your wife was
10 going to assist your defense?

11 A. Yes.

12 Q. How is that possible?

13 A. 'cause, uh, after that I wasn't able to be with my wife.
14 She was living with my two kids herself and I would only talk
15 to her every now and then to go see my kids.

16 Q. So you never talked to her about the case at all?

17 A. Actually not but she was over by my side but we never
18 discuss no case 'cause I really never review no no evidence so
19 it was really nothing to talk about.

20 Q. And you didn't know that she'd given Mr. Robinson a
21 statement?

22 A. Uh, at that point not 'cause I was already incarcerated
23 on, uh, Greenville County which I said that I never got to see
24 it.

25 Q. Okay. So today is the first time you're hearing that she

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 thought the victim was lying.

2 A. Yes.

3 Q. Okay. When were you arrested on this charge?

4 A. On this charge it was, uh, April the 27th ---

5 Q. And that ---

6 A. --- of ---

7 Q. --- was what year?

8 A. --- 2010.

9 Q. Okay. And did you make bond?

10 A. Yes.

11 Q. And did you end up being arrested again?

12 A. Yes.

13 Q. When was that?

14 A. That was, uh, June June 27th of 2011.

15 Q. Okay. Why were you arrested again?

16 A. Uh, 'cause, uh, somebody call immigration and say that I
17 was sellin' drugs.

18 Q. Okay. When did Mr. Robinson tell you the State was not
19 gonna go forward with the criminal sexual conduct charge and
20 instead it be lewd act, when did he tell you that?

21 A. That was, uh, actually four days prior to that to
22 August 8.

23 Q. Okay. When you pled guilty that day, were you satisfied
24 with the work that Mr. Robinson had done for you?

25 A. Um, I know that I say yes but now that I know the facts.

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 the, uh, answer woulda been different.

2 Q. Okay, so you were satisfied at the time but now you've
3 had some time to think about it you're not satisfied anymore.

4 A. Now that I reviews my case myself, yes.

5 Q. Why didn't you tell the judge that day that the facts
6 were wrong and that you weren't guilty?

7 A. Well, 'cause on on my mind like I say it was that I was
8 gonna get deported, that I was gonna get no time. If I woulda
9 been deported then, I mean, even though I wasn't gonna be able
10 to come back to the U.S. anymore I would still make a life in
11 in my hometown in Mexico.

12 Q. So you believed if you went ahead and pled guilty you'd
13 get deported and get no time and not have to serve any kind of
14 sentence for this charge?

15 A. Yes.

16 Q. Okay. And is that something Mr. Robinson told you or
17 just something you believed would happen?

18 A. That's something Mr. Robinson told me.

19 Q. He told you if you pled guilty you'd serve no time.

20 A. N -- well not time but he say that I was gonna be
21 deported.

22 Q. Okay. So he didn't tell you you'd serve no time, he just
23 told you you'd be deported.

24 A. That well matter of fact the quote is no time 'cause I
25 wo -- I already had, uh, the immigration hold which they was

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 gonna deport me for the same month 'cause I was gonna go to
2 court on the federal charges and they was gonna give me time
3 served so as soon as they give me time served that they were
4 just gonna deport me.

5 MS. RATIGAN: That's all I have, Your Honor.

6 THE COURT: You know if you win this you come back, start
7 over and you're lookin' at 25 to life, you know that?

8 THE APPLICANT: Yes.

9 THE COURT: Okay. You can step down, thank you.

10 (Whereupon the applicant left the stand.)

11 MR. RECKENBEIL: That would be the applicant's showing,
12 Your Honor.

13 THE COURT: Alright, anything from the State?

14 MS. RATIGAN: We rest on the record, Your Honor.

15 THE COURT: Okay.

16 MR. RECKENBEIL: Your Honor, if I could just have one 30
17 second, uh, ---

18 THE COURT: Yeah, go ahead.

19 MR. RECKENBEIL: *State vs. Hyman*, Your Honor, I think
20 it's been something that has brought out, uh, about videotapes
21 and undercover informants and confidential re -- ref --
22 formants [sic] and when the Court looked at that it basically
23 said, You know what, if your trial counsel is looking at the
24 drug buys and they see that you're on the videotape and then
25 they review that with the defendant, the defendant has the



MOTIONS AND MATTERS

1 opportunity to review that videotape then we're gonna say it's
2 okay. It's a -- the relying upon *State vs. Hyman* with a
3 little bit of a stretch I think it might be analogous in this
4 matter. If if he's locked up, doesn't have the opportunity to
5 view that videotape of the the person that's really gonna be
6 the accuser 'cause if I think throughout the course of this
7 PCR we've learned that really Victim never ever has been viewed
8 in coming forth and testifying and so in reliance upon *State*
9 *vs. Hyman* I think that that videotape is key, giving him the
10 opportunity to view that videotape would see his accuser, I
11 don't think he ever had that opportunity to do that. In light
12 of that I think his guilty plea then would have been
13 involuntary and then be ineffective assist of counsel
14 underneath the objective standard.

15 THE COURT: So you're saying that nobody ever viewed the
16 videotape.

17 MR. RECKENBEIL: Well saying that Mr. Robinson's
18 testimony obviously he said that he view -- viewed the
19 videotape.

20 THE COURT: Yeah, well it concerns the Court that he
21 said that your client came to his office and viewed the
22 videotape ---

23 MR. RECKENBEIL: Yes, sir.

24 THE COURT: --- when clearly that was impossible.

25 MR. RECKENBEIL: Yes, sir. Yes, sir, Your Honor, and and

MOTIONS AND MATTERS

1 that's the Court's conclusion and ---

2 THE COURT: That is a fiction that just is very
3 disturbing ---

4 MR. RECKENBEIL: Uh, so ---

5 THE COURT: --- but ---

6 MR. RECKENBEIL: Thank you. Yes, Your Honor, uh, in in
7 light of that that's where we feel that there is . . .

8 THE COURT: Well, State anything you want to, anything
9 you got?

10 MS. RATIGAN: He needs to be able to prove prejudice,
11 Your Honor, there's been nothing brought here today about any
12 of the allegations. The victim impact statement we don't know
13 how prejudicial it was 'cause we didn't see it, obviously it's
14 not discovery so that kinda knocks that out. This transcript
15 about a prior hearing the question was asked, Did any of your
16 attorneys ask for the transcript, well it hasn't been produced
17 today so we can't speculate as to its potential prejudicial
18 nature. The videotape hasn't been produced today, again, we
19 can't speculate again to its prejudicial nature and and I
20 think this argument of, ya know, no one's ever seen her
21 testify, I I don't really see ---

22 THE COURT: Well ---

23 MS. RATIGAN: --- that that ---

24 THE COURT: --- it would carry some weight if he went to
25 trial but he pled guilty, when he did that he gave up all his

MOTIONS AND MATTERS

1 rights, uh, and I I agree with the State that there's been no
2 prejudice here. I mean, he he dodged a a serious, uh, to to
3 you not -- he "dodged a bullet" to use a a little phrase, uh,
4 when he got the "reduction" in the charge and so I'm I'm not
5 gonna grant his application but I am really concerned about
6 testimony from an officer of the Court that clearly couldn't
7 have happened, so in any event I deny it, ask you to prepare
8 an order.

9 MS. RATIGAN: Thank Your Honor.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 23, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 65, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

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

May 21, 2014

Margaret A. Woods

Margaret A. Woods, Court Reporter

in and for the State of South Carolina at Large.

Greenville County Government
onlineDetentio
Inmate

Home | Employment | Incarcerated Inmates | Mail | Medical | Money | Mission Stmt. | Notices | Operations | Org. Chart | Psychological | Telepho

Inmate Search: Details

Inmate Description and Location:



Name / ID Number: SALAS-HERNANDEZ, WILFREDO / 0221

Gender: MALE

Race: HISPANIC

Date of Birth: 12/08/79

Hair Color: BLACK

Eye Color: BROWN

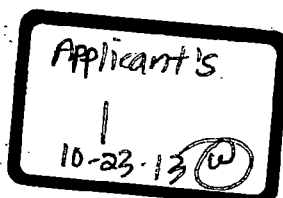
Height: 5' 09"

Weight: 201 lb

Picture Date: 6/27/11

Housing Unit: M2 (Building Two)

Inmate Charges:

THE CHARGE IS AS FOLLOWS:**Charge 1 :** PRISONER IN TRANSIT: FEDERAL **Charge Date:** 6/27/11 **Warrant:** DUSM**Arresting Agency:** FEDERAL GOVERNMENT **Trial Judge:** FEDERAL **Committing Judge:** FEDERA**Sentence:** 06/27/2011 - No Bond set by Judge

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2012-CP-23-3341

Wilfredo Salas,)
S.C.D.C. No. 347611,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

RECEIVED

FEB 05 2014

SC Court of Appeals

2014 JAN 8 PM 4 20

PAUL B. WICKENSIMER

GREENVILLE CO. S.C.

FILED-CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 17, 2012. The Respondent made its return on August 31, 2012. An evidentiary hearing into the matter was convened on October 23, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by John G. Reckenbeil, 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 Victoria Salas and the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant waived presentment to the Greenville County Grand Jury for the charge of lewd act on a minor (2011-

GS-23-6255A). Scott D. Robinson, Esquire represented the Applicant.

On August 8, 2011, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to fifteen years imprisonment. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failure to obtain discovery.
 - b. "[M]islead applicant about the conditions of the plea."
 - c. "[F]ailed to investigate the discrepancies and evidence of which concerns these allegations in this case."
 - d. "[F]ailed to investigate discrepancies of which concerns the date of offense in this case."
2. Involuntary guilty plea.

At the PCR hearing, the Applicant's attorney stated they were proceeding solely upon issues of ineffective assistance of counsel, lack of subject matter jurisdiction, and after-discovered evidence.

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).

The Applicant stated he met with plea counsel three times while he was in jail and never reviewed any of the evidence (including the victim's videotaped interview) in his case. The Applicant stated he told plea counsel he was innocent and counsel said he had to plead guilty. The Applicant stated he believed the State would dismiss the case when he pled guilty. The Applicant stated plea counsel said he would be deported and not serve any time. The Applicant stated plea counsel should have filed a motion to quash the indictment. The Applicant stated plea counsel should have objected to the victim impact statement being introduced at the plea hearing. The Applicant stated plea counsel should have objected when the State asked for the maximum sentence because there was no recommendation in this case. The Applicant admitted he told the plea judge that he was satisfied with plea counsel's performance, but said that – after he has reviewed his case – he has decided he is unsatisfied. The Applicant also admitted that he did not dispute the State's version of the facts at the plea hearing, but said it was because he

believed he was being deported.

Plea counsel testified he filed discovery motions after he was retained. Plea counsel testified he reviewed the discovery materials with the Applicant and the Applicant said he was innocent. Plea counsel testified they reviewed the sentence ranges for both first-degree criminal sexual conduct with a minor and lewd act upon a child. Plea counsel testified he and the Applicant watched the videotape of the victim's forensic interview while he was out on bond. Plea counsel testified the Applicant also had a pending federal charge and a potential ICE hold and that he knew there was a possibility he would be deported. Plea counsel testified he received the victim's impact statement the day of the plea hearing and that the Applicant and plea judge looked at it. Plea counsel testified he did not object to the statement because he did not see the purpose of it and did not believe the State did anything inappropriate.

The Applicant told the plea judge he wanted to plead guilty and did not dispute the State's factual recitation. (Plea transcript, p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.4-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly prepare the case. This Court finds the Applicant and plea counsel had meetings about the case while the Applicant was in jail. This Court finds the Applicant told plea counsel he was innocent of the charges. This Court finds the Applicant clearly changed his mind and decided to plead guilty because the plea transcript in this case is evidence that the Applicant entered a free and voluntary guilty plea. There is no credible evidence to support the Applicant's contention that plea counsel told him he would merely be deported if he pled guilty. The Applicant was, in fact, advised of the potential sentence he could receive – the Applicant testified plea counsel

informed him that he faced a sentence of 0-15 years.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have moved to quash the indictment. The Applicant has failed to articulate a valid basis upon which plea counsel could have made such a motion.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected at the plea hearing to both the victim impact statement and the State's request for the maximum sentence. While the victim was in the courthouse, she was not in the courtroom during the guilty plea hearing. The State passed up an "age-appropriate type letter" to the plea judge as a victim impact statement. (Plea transcript, pp.13-14). This Court finds there was no valid reason for plea counsel to have objected to the submission of this statement from the minor victim. The State also requested the plea judge levy the maximum sentence. (Plea transcript, p.12). This Court finds the Applicant has failed to articulate a valid reason for trial counsel to have objected to the State's request, as the Applicant was pleading guilty without a sentence recommendation from the State.

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 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.

Subject Matter Jurisdiction

Plea counsel testified the Applicant was originally charged with first-degree criminal sexual conduct with a minor but that the State eventually agreed to drop this charge if the Applicant would waive presentment (and plead guilty to) the charge of lewd act upon a child. The Applicant admitted plea counsel told him a few days before the plea hearing that the State was dropping one charge and he would plead guilty to another.

This Court finds the Applicant has failed to meet his burden of proving the plea court lacked subject matter jurisdiction. It is clear the Applicant pled guilty to lewd act upon a child as a new charge – not as a lesser-included offense of the original charge. (Plea transcript, p.11). The Applicant waived presentment of the lewd act charge to the Greenville County Grand Jury. (Plea transcript, p.6). The Applicant knew he was pleading guilty to lewd act upon a child instead of first-degree criminal sexual conduct with a minor several days before he pled guilty and the waiver of presentment and the indictment were clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005).

After-Discovered Evidence

The Applicant's wife, Victoria Salas,¹ stated the victim was five years old at the time of the incident. Salas stated the victim made two disclosures of abuse (and that she first disclosed to the grandmother) and that she took the victim to the doctor after the second disclosure. Salas stated the Applicant never picked the victim up from school and that there were other people in the house at the time the abuse would have occurred. Salas stated she made a statement to this effect to plea counsel. Salas stated she did not believe any abuse happened and that she never

¹ This witness is also the victim's mother.

had an opportunity to speak to the victim about the abuse. Salas admitted she was assisting the defense team before the plea hearing.

The Applicant stated he did not know Salas had been helping the defense in his case. The Applicant stated he did not know until the day of the PCR hearing that Salas believed the victim was lying.

Plea counsel confirmed Salas had given a statement to him that she did not believe the victim. Plea counsel testified Salas said she believed her mother may have influenced the victim. Plea counsel also confirmed Salas had been assisting in the Applicant's defense.

This Court finds Victoria Salas's testimony does not constitute after-discovered evidence. See Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Most importantly, Salas's opinion (that the victim was lying and had been influenced by her mother) was known to the defense before the Applicant pled guilty. It is clear the parties both knew Salas was assisting the Applicant with his defense – Salas admitted this in her testimony and the assistant solicitor also pointed it out to the plea judge. (Plea transcript, p.11). As such, Salas's testimony cannot be considered to be after-discovered evidence. This Court further finds both Salas and the Applicant are not credible on this issue. Salas stated she never discussed the abuse with the victim (her five-year-old daughter) and the Applicant stated he did not know Salas was assisting in his defense. This Court finds this testimony to be patently unbelievable. See State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("The credibility of newly-discovered evidence is for the trial court to determine.").

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

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E

present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

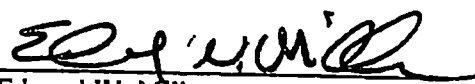
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. 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 7 day of January, 2014.


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

 South Carolina.

WITNESSES

Lorraine Henderson

Greenville County Sheriffs Office

DOA: 4/27/2010 H/M DOB:12/8/1979

SSN: 567-34-2151

**ARREST WARRANT NUMBER
DIRECT PRESENTMENT****ACTION OF GRAND JURY***Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury
Date:*DOCKET NO. 2011-GS-23- **6255A**

KBF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2011

S-8-11

THE STATE

vs.

WILFREDO SALAS

Indictment for

✓
2468**LEWD ACT UPON A CHILD**

VIOLATION § 16-15-0140

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

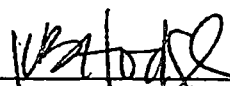
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That WILFREDO SALAS did in Greenville County, between the 2nd day of July, 2009 and the 19th day of March, 2010, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of D.G., a child who was less than eleven years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the defendant or such child. This is in violation of §16-15-0140 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Wilfredo Salas, #347611,

Applicant,

v.

State of South Carolina,

respondent

IN THE COURT OF COMMON

Case No.: 2012-cp-23-3341

MOTION TO VACATE JUDGMENT
 PURSUANT TO SCRCP Rule 60(b)
 (4), (5)

Comes Now Wilfredo Salas, the Applicant in the aboved
 captioned matter respectfully moving this Honorable Court on
 a motion to vacate judgment pursuant to SCRCP Rule 60(b), (4), (5).
 Applicant would show this Court the following:

PROCEDURAL BACKGROUND

The Applicant plead guilty in Greenville County August
 8, 2011, to Lewd Act on a minor. See Enl The Applicant received
 a maximum sentence of fifteen (15) years. (2011-GS-23-6255).
 Scott D. Robinson, Esquire represented the applicant. On August
 17, 20011 Counsel filed a timely "post-trial" motion to
"Reconsider the sentence" See Attachment (A) (Motion for
 Reconsideration of sentence). As to this date an Order has
 not been issued concerning this motion. See Attachment (B)
 (Letter from Clerk of Court dated January 5, 2015)

On May 17, 2012 Applicant filed a post-conviction relief
 application and on August 31, 2012 the State made its return.

Enl The Applicant was originally charged with criminal sexual conduct with
 a minor less than ten years of age. The State agreed to reduce the charge
 in exchange for Lewd Act on a minor.

An evidentiary hearing into the matter was convened on October 23, 2013 at the Greenville County Courthouse. The Honorable Edward W. Miller issued an Order dated January 7, 2014 filed January 8, 2014. Before the time expired to perfect an appeal PCR Counsel filed a Notice with intent to Appeal. Wifredo Salas v. State, Appellate Case No.: 2014-000240. The South Carolina Supreme Court dismissed the appealed by way of an Order filed December 10, 2014.

Applicant has filed a second post-conviction relief application dated January 16, 2015. Wilfredo Salas v. State of South Carolina, Case No.: 2015-cp-23-00985

ARGUMENT

Applicant hereby asserts that the judgment issued in this case is void ab initio as a matter of law and no longer equitable that the judgment should have prospective application because this court was without subject matter jurisdiction and the authority to issue an order in the instant case where applicant's guilty plea counsel filed a motion for "Reconsideration of Sentence" on his behalf under Rule 29(a) SCr.Crimp which is still pending at this current time. See Attachment (B) (Letter from Clerk of Court) Therefore, the court of common pleas was without the authority and subject matter jurisdiction to issue an order pursuant to S.C.R.Civ.Proc. Rule 71.1 (b) "Time and form of application" (An application for post-conviction relief "[c]annot" be made while an appeal from conviction or sentence is pending or "during the time in which an appeal may be perfected". Al-Shabazz, 527 S.E.2d

747 (S.C.2000)(Holding Applicant may not bring a PCR action while a direct appeal is pending.Rule 71.1(b),the focus usually is upon alleged errors made by trial or plea counsel.)

Its Clear Applicants application was filed and Ruled upon during which time an appeal may be perfected. The PCR Court order could impact upon applicant's rights to adjudicate his ineffective assistance of plea counsel claims on PCR after the ruling on the motion to Reconsider his sentence and impact his jurisdictional claims in the Appellate court once the motion to Reconsider the sentence is finalize in the General Sessions court..See Fn2 Therefore,the judgment should ^{be} vacated as it is no longer equitable that the judgment should have prospective application where the court was without subject matter jurisdiction pursuant to Rule 71.1(b)-Al-Shabazz, supra. Linda McCompany Inc. V. Shore, (S.C. App.2007) 375 S.C. 432,653 S.E.2d 279 (The definition of "void under voidness provision of relief from judgment rule only encompasses judgments from courts which failed to provide proper due process,or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction);Saro Investments v. Ocean Holiday Partnership, (S.C. APP.1994) 314 S.C. 116,441 S.E.2d 835 (Generally,standard to be applied in determining whether an order or judgment has prospective application,within meaning of rule providing for relief from judgment on ground that it is no longer equitable that judgment have prospective application,is whether it is excutory or involves supervision of changing conduct or condition by court.)

Fn2 A timely motion to Reconsider sentence toll time to file an appeal.Rule 203(b),(2) Wilder State,696 S.E.2d 587 (2010)

CONCLUSION

It is respectfully asked that this Honorable Court vacate its judgment as a matter of law due to applicant's motion to Reconsider sentence is still pending in the General Sessions court and could impact upon his rights to seek and appeal and post-conviction relief application.

This 10th Day of July, 2015

Wilfredo Salas

Wilfredo Salas, #347611

STATE OF SOUTH CAROLINA

Wilfredo Salas, #347611,

Applicant,

v.

State of South Carolina

Respondent

IN THE COURT OF COMMON

Case No.: 2012-cp-23-3341

Certificate of

I, Wilfredo Salas, do hereby certify that
the within judgment is a true and correct
copy of the original as the same appears in the
records of the Court.

Attorney General Office

Allen

P.O. Box 115

Columbia, South Carolina 29211

by deposing a copy

this 10th day, 2015

In the above captioned
matter, I have served his motion to vacate

Wilfredo Salas

es,

611

Defendant.

FILED-CLERK OF COURT
PAUL E. JOHNSON
COURT HOUSE 600 SC

2011 AUG 17 PM 4: 22

1. Contrary to what the State seemed to allege at the hearing, there was no record of any penetration either penile or digital;
2. Contrary to what the State seemed to allege at the hearing, there was no record of "vaginitis; "
3. Contrary to what the State seemed to allege at the hearing, there was no record of the child being affected negatively by any action allegedly taken by the defendant. In fact, the documents filled out by the maternal grandmother indicated no depression, acting out or talk of sex by the minor child;
4. The interests of justice and fairness would be served if the court were to reconsider her sentence and convene a hearing on the matter;

5. The criminal record of the defendant is minor; and
6. The defendant is the father of two minor children with the mother of the child that made the allegation against him.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott D. Robinson', with a long horizontal flourish extending to the right.

Scott D. Robinson (SC Bar ID # 65351)
9 East Avenue
Greenville, SC 29601
ATTORNEY FOR DEFENDANT

Dated: 8/17/11



Office of the Clerk of Court
Greenville, South Carolina

Paul B. Wickensimer
Clerk of Court

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601
(864) 467-8551 FAX (864) 467-8540

App. P.123

Attachment (b)

January 5, 2015

Wilfredo Salas #347611
Kershaw C.I.
4848 Goldmine Hwy
Kershaw, SC 29067

Re: I479542

Dear Mr. Salas:

Your letter postmarked 12-31-2014 was received 1/2/2015. As of today's date, no order in relation to the Motion for Reconsideration of Sentence filed 8/17/2011 has been filed with the Clerk of Court for the above referenced charge.

Sincerely,
Clerk of Court
Greenville County General Sessions

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Wilfredo Salas, #347611
Petitioner,

C/A 2012-cp-23-3341

v.

NOTION FOR SUMMARY JUDGMENT PURSUANT

State of South Carolina

TO RULE 56(c) ,SCRCP

Respondent.

ENTERED COMPUTER

Comes Now Wilfredo Salas, the Petitioner in the above caption matter respectfully moving this Honorable Court on a motion for summary judgment pursuant to Rule 56(c), SCRCP. Petitioner will show unto this Court the following:

FACTUAL/PROCEDURAL BACKGROUND

Petitioner plead guilty in Greenville County on August 8, 2011, to lewd act on a minor. See Fn1 The Petitioner received fifteen years of imprisonment without negotiations or recommendation. (2011-GS-23-6255A). On August 17, 2011, Counsel Scott D. Robinson, Esquire filed a timely post-trial motion to reconsider sentence. See Attachment (a) (Motion for reconsideration of sentence).

On May 17, 2012, Petitioner filed a post-conviction relief application raising several grounds of ineffective assistance of counsel. The Respondent made it return on August 31, 2012. An evidentiary hearing into the matter was convened October 23, 2013 at the Greenville County Courthouse. The Honorable Edward W. Miller issued an Order dated January 7, 2014, filed January 6, 2014. PCR Counsel filed a Notice with intent to appeal. Wilfredo v. State, Appellate Case No.: 2014-000240. The South Carolina Supreme Court dismissed the appealed by way of an order filed December 10, 2014. See Fn2

Fn1 Petitioner was originally indicted for criminal sexual conduct with a minor less than ten years of age.

Fn2 Petitioner filed a Motion to Vacate PCR judgment dated July 10, 2015. The Respondent has not responded to the motion to vacate judgment.

Forward copy to Judge [illegible] [illegible]

Petitioner has a second PCR application pending. Wilfredo Salas v. State, Case No.:2015-cp-23-00985.

ARGUMENT

In the instant case Petitioner plea counsel filed a timely post-trial motion to reconsider Petitioner's sentence. See Attachment (a), supra. However, at the time the PCR Court issue its Order in Petitioner's first PCR application the Court of General Sessions had not issued an order adjudicating the motion for reconsideration of sentence. See Attachment (b), (c) (Letters from the Clerk of Court). Pursuant to Rule 203(b), (2)/SCRAC and Rule 71.1(b) the PCR Court was without the authority and jurisdiction over the subject matter and Petitioner because jurisdiction still belonged to general sessions. Rule 71.1(b) provide in relevant part:

AN APPLICATION FOR POST-CONVICTION RELIEF CANNOT BE MADE WHILE AN APPEAL FROM THE CONVICTION OR SENTENCE IS PENDING OR **DURING THE TIME AN APPEAL NAT BE PERFECTED.**

It is clear Petitioner's application was ruled upon during the time an appeal could have been perfected. In Wilder v. State, 696 S.E.2d 587 (2010) the Court held "a motion to reconsider sentence toll time to file an appeal. Rule 203(b), (2)". Therefore, the judgment in Petitioner's **first PCR** is void ab initio and should be vacated. Linda McCompany Inc. v. Shore, 375 S.C. 432, 653 S.E.2d 279 (S.C.App.2007) (The definition of void under voidness provision of relief from judgment rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction).

Summary Judgment Standard

Rule 56 of the South Carolina Rules of Civil Procedure states, as to a party who has moved for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions of file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 56(c). A fact is "material" if proof of its existence would affect disposition of the case under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242/248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the nonmovant. *Id.* at 257. When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. United States v. Diebold, Inc., 369 U.S. 654/655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317/323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. *Id.* at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. Anderson, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. Ross v. Commc'ns Corp., 759 F.2d 355, 365 (4th Cir.1985). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted". Anderson, 477 U.S. at 248.

Petitioner has shown via the record that summary judgment is proper in the instant case because no genuine issue as to any material fact existed and he

is entitled to judgment as a matter of law. Rules 56 Civ.Proc. Sloan v. Friends of Hunley, Inc, 369 S.C. 20,630 S.E.2d 474 (S.C.2006).

CONCLUSION

Wherefore, based upon the foregoing, the Petitioner's motion for summary judgment be granted and the Motion to Vacate Judgment be granted.

Respectfully Submitted

Wilfredo Salas, 347611
4848 Goldmine Hwy
Kershaw, South Carolina 29067

This 23, June 2016

Wilfredo Salas

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wilfredo Salas, #347611,
Petitioner,

C/A No.: 2012-cp-23-3341

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL E. MOKE
2016 JUN 28 AM 9 42

v.

State of South Carolina,
Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas, the Petitioner in the above caption matter hereby certify that I did serve motion for summary judgment on:

South Carolina Attorney General Office
Alan Wilson
P.O. Box 11549
Columbia, South Carolina 29211

by depositing a copy in the mail with sufficient funds on this 23 day of June 2016.

Wilfredo Salas

Wilfredo Salas, #347611
4848 Goldmine Hwy
Kershaw, South Carolina 29067

Attachment (A)

STATE OF SOUTH CAROLINA)

IN THE GENERAL SESSIONS

COUNTY OF GREENVILLE)

C.A. NO.: I-479542

State of South Carolina,)

vs.)

Wilfredo Salas,)

Defendant.)

FILED-CLERK OF COURT
PAUL E. WILKINSON
COURT CLERK
COURT OF CO. SC

2011 AUG 17 PM 4:22

MOTION FOR RECONSIDERATION OF SENTENCE

The defendant, by and through undersigned attorney, moves the Court to reconsider his sentence in the above-mentioned matter. On August 8, 2011, the defendant pled guilty to the crime of Lewd Act on a Minor and received the maximum sentence of fifteen (15) years. The defendant believes that the sentence is harsh and unfair considering the following:

1. Contrary to what the State seemed to allege at the hearing, there was no record of any penetration either penile or digital;
2. Contrary to what the State seemed to allege at the hearing, there was no record of "vaginitis; "
3. Contrary to what the State seemed to allege at the hearing, there was no record of the child being affected negatively by any action allegedly taken by the defendant. In fact, the documents filled out by the maternal grandmother indicated no depression, acting out or talk of sex by the minor child;
4. The interests of justice and fairness would be served if the court were to reconsider her sentence and convene a hearing on the matter;

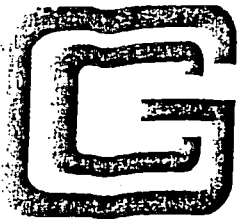
5. The criminal record of the defendant is minor; and
6. The defendant is the father of two minor children with the mother of the child that made the allegation against him.

Respectfully submitted,



Scott D. Robinson (SC Bar ID # 65351)
9 East Avenue
Greenville, SC 29601
ATTORNEY FOR DEFENDANT

Dated: 8/17/11



**Greenville
County**

Office of the Clerk of Court
Greenville, South Carolina

Paul B. Wickensimer
Clerk of Court

App. P.131

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601
(864) 467-8551 FAX (864) 467-8540

Attachment (b)

January 5, 2015

Wilfredo Salas #347611
Kershaw C.I.
4848 Goldmine Hwy
Kershaw, SC 29067

Re: I479542

Dear Mr. Salas:

Your letter postmarked 12-31-2014 was received 1/2/2015. As of today's date, no order in relation to the Motion for Reconsideration of Sentence filed 8/17/2011 has been filed with the Clerk of Court for the above referenced charge.

Sincerely,
Clerk of Court
Greenville County General Sessions



Office of the Clerk of Court
Greenville, South Carolina
Paul B. Wickensimer
Clerk of Court

App. P132

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601
(864) 467-8551 FAX (864) 467-8540

Attachment (C)

April 21, 2016

Wilfredo Salas #347611
Kershaw Correctional Inst.
4848 Goldmine Highway
Kershaw, SC 29067

Dear Mr. Salas:

Your letter postmarked 3/18/2016 was received 3/29/2016. We are unable to fulfill your request for copies. No order ruling on the "Motion of Reconsideration of Sentence" filed 8/17/2011 was filed with the Clerk of Court for the warrant/indictment numbers you provided.

Sincerely,
Clerk of Court
Greenville County General Sessions

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FORM GREENVILLE
COURT OF COMMON PLEAS
STILWELL ROBIN PRESIDING JUDGE
CASE NO. 2012-CP-23-3341

WILFREDO SALAS,

PETITIONER,

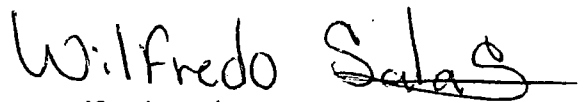
Vs

STATE OF SOUTH CAROLINA

RESPONDENT.

NOTICE OF APPEAL

Wilfredo Salas, appeals the order of Honorable Stilwell Robin
Dated 7-1-2016 which denied Petitioner's Rule 60(b), (4) and (6)
Motion and Motion for Summary Judgment Pursuant to Rule
56(c). Petitioner received this Form 4 on July 8, 2016


Wilfredo Salas, #347611

Other counsel of record:

4848 Goldmine Hwy

Alan Wilson

Kershaw, S.C 29067

Attorney General Office

P.O. Box 11549

Columbia, S.C 29211.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
APPEAL FROM GREENVILLE
COURT OF COMMON PLEAS
STILWELL ROBIN PRESIDING JUDGE
CASE No. 2012-CP-23-3341

Wilfredo Salas,

Petitioner,

Vs

State of South Carolina

Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas the applicant in the above captioned matter hereby
certify that I did serve his Motion of Notice of Appeal on:

Attorney General Office

Alan Wilson

P.O. Box 11549

Columbia, S.C 29211

By depositing a copy in the U.S. mail with sufficient funds this 13th

Day of July, 2016

Wilfredo Salas
Wilfredo Salas

FORM 4

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

Wilfredo Salas, #347611

App. P.135
JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2303341

State of South Carolina

ENTERED COMPUTER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

The Petitioner's Motion to Vacate Judgment Pursuant to Rule 60(b), (4), and (6) and Motion for Summary Judgment Pursuant to Rule 56(c) are respectfully denied for failure to comply with the South Carolina Rules of Civil Procedure and for lack of merit.

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

137

2158

7/1/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

7-1-16
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows: 7-1-16

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

