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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County

Honorable Frank R. Addy, Circuit Court Judge

DEITRICH FUNCHESS

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000493

APPENDIX

JOHN H. STROM
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

RUSTON NEELY
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
 County of Orangeburg) 2013-GS-38-00360; 00359

State of South Carolina,)
)
 Plaintiff,)
)
 Vs.) Transcript of Record
)
 Deitrich Funchess,)
)
 Defendant.)
)
 _____)

December 11, 2013
 Orangeburg, South Carolina

B e f o r e:

The Honorable Edgar W. Dickson, Judge

A p p e a r a n c e s:

Thomas Scott III, Esquire
 Attorney for the Plaintiff

Peggy Hinds, Esquire
 Attorney for the Defendant

Bonnie H. Kelly, CVR
 Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- No Exhibits Entered --

1 MR. SCOTT: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. SCOTT: The State calls Deitrich Funchess.

4 (Mr. Funchess comes forward.)

5 MR. SCOTT: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. SCOTT: Your Honor, standing before you is
8 Deitrich Tremayne Funchess. He's represented by Ms. Peggy
9 Hinds. Mr. Funchess, Your Honor, is pleading guilty to one
10 count of criminal sexual conduct in the first degree. It's
11 2013-GS-38-359. He's also pleading guilty to one count of
12 kidnapping; 2013-GS-38-360.

13 Both of these offenses, Your Honor, are violent
14 offenses; they are most serious offenses.

15 The State and the Defense have -- are -- are asking
16 Your Honor today to accept the negotiated sentence of -- of
17 17 years.

18 Deitrich FUNCHESS, having been
19 first duly sworn, testifies as follows:

20 DIRECT EXAMINATION BY THE COURT:

21 Q All right. Mr. Funchess, my sentencing sheet
22 indicates you're 21; is that correct?

23 A Yes, sir.

24 Q Okay. Now, you need to speak up for me, please, sir.
25 Okay.

1 A Yes, sir.

2 Q Thank you, sir. I appreciate it.

3 Before you were arrested, were you working anywhere?

4 A Yes, sir.

5 Q Where?

6 A Husqvarna.

7 Q Okay. How long did you work at Husqvarna?

8 A About two years.

9 Q Two years? Okay. All right, sir. How far did you go
10 in school?

11 A Tenth grade; tenth.

12 Q Okay. And where were you going to school?

13 A Orangeburg-Wilkinson.

14 Q Okay. Why did you stop in the tenth grade?

15 A I don't know.

16 Q Okay. Have you gotten your GED?

17 A No, sir.

18 Q All right, sir. Have you ever been treated for any
19 mental health issues?

20 A No, sir.

21 Q Okay. All right, sir. Taking any kind of medication?

22 A No, sir.

23 Q Are you under the influence of any alcohol or illegal
24 drugs?

25 A No, sir.

1 Q Okay. You're thinking clearly here today?

2 A Yes, sir.

3 THE COURT: Okay. Ms. Hinds, let me ask you a couple
4 of questions, if you don't mind.

5 MS. HINDS: Yes, sir.

6 THE COURT: Ms. Hinds, you have met with him and gone
7 over the evidence the State has against him?

8 MS. HINDS: I have on numerous occasions.

9 THE COURT: Okay. You've advised him of the law that
10 applies in each one of these situations?

11 MS. HINDS: I have.

12 THE COURT: Okay. And you've explained his
13 constitutional rights to him?

14 MS. HINDS: Yes, sir.

15 THE COURT: Okay. You believe he's understood
16 everything you'd told him?

17 MS. HINDS: I do.

18 THE COURT: Okay. He indicated, after y'all's many
19 discussions, that he wishes to plead guilty to this charge?

20 MS. HINDS: He does.

21 THE COURT: Okay. My understanding is a negotiated
22 17-year sentence?

23 MS. HINDS: That's correct.

24 THE COURT: You believe it's in his best interest for
25 him to -- to plead guilty to this charge?

1 MS. HINDS: I do.

2 THE COURT: Okay. All right.

3 DIRECT EXAMINATION BY THE COURT (continues):

4 Q Mr. Funchess, back to you. The -- you've heard --
5 it's my understanding you're pleading guilty to a
6 kidnapping charge and a criminal sexual conduct first
7 degree charge; is that correct?

8 A Yes, sir.

9 Q The -- I have been told that they have negotiated a
10 17-year sentence; is that your understanding?

11 A Yes, sir.

12 Q Okay. You understand my job at this time is just to
13 decide whether or not I'm going to accept it or not; you
14 understand that, not to modify it?

15 A Yes, sir.

16 Q Okay. All right, sir. Other than that negotiated
17 sentence, has anybody promised you anything, threatened or
18 forced you in any way to get you to plead guilty here
19 today?

20 A No, sir.

21 Q You're doing this freely and voluntarily?

22 A Yes, sir.

23 Q Okay. Ms. Hinds has indicated that she met with you
24 and went over the evidence that the State has against you
25 regarding these two charges; is that true?

1 A Yes, sir.

2 Q Okay. She also indicated that she told you about the
3 law that applies to each one of these situations; is that
4 correct?

5 A Yes, sir.

6 Q Okay. You understand that these are violent -- each
7 one is a violent and a most serious offense. You
8 understand that?

9 A Yes, sir.

10 Q And they count as strikes against you. You understand
11 that as well?

12 A Yes, sir.

13 Q Okay. She also explained your constitutional rights
14 to you, correct?

15 A Yes, sir.

16 Q Did you understand everything she told you?

17 A Yes, sir.

18 Q Are you satisfied with her services as your attorney?

19 A Yes, sir.

20 Q Do you need any more time to talk with her?

21 A No, sir.

22 Q Do you want a jury trial on either one of these
23 charges?

24 A No, sir.

25 Q You want to go forward with this guilty plea.

1 A Yes, sir.

2 Q Okay.

3 THE COURT: Mr. Scott.

4 MR. SCOTT: Thank you, Your Honor. Your Honor, this
5 incident took place on January 26 of 2013. Happened about
6 3 a.m. The victim in this case is Mr. Robert Jones. At
7 the time of this incident he was 20 years of age.

8 Mr. Jones told the police, and he told me basically,
9 that he was walking that night. He was walking from one
10 relative's house to another relative's house. He was over
11 in the area of Golf Avenue.

12 As he was walking, Your Honor, a car, a black car
13 pulled up next to him. The driver of the vehicle -- which
14 was later identified as Mr. Funchess -- asked Mr. Jones,
15 "Do you need a ride?" Mr. Jones stated "no," that he did
16 not need a ride.

17 At that point, Your Honor, the victim says the driver
18 of the vehicle pulled out a handgun and asked him again,
19 "Do you need a ride?" Based on that, Your Honor, based on
20 seeing the firearm, the victim got into the vehicle against
21 his will.

22 According to the victim, Your Honor, the driver of the
23 vehicle drove around a little bit. He began asking the
24 victim, Mr. Jones, if he liked girls. Mr. Jones said
25 "yes."

1 The driver said, "Do you like boys?" Mr. Jones said
2 "no." At that point the driver said something to the
3 effect of, "Well, you're going to like boys tonight."

4 At that point, Your Honor, the driver of the vehicle -
5 - later identified as Mr. Funchess -- pulled out a firearm,
6 forced the victim to have -- to perform oral sex on the
7 defendant.

8 At one point, Your Honor, the defendant pulled over
9 behind a residence off Belleville Road, made the -- the
10 victim disrobe and then exit the vehicle. At that point,
11 Your Honor, the defendant performed anal sex on the victim.
12 Once he was finished, the defendant got into his vehicle
13 and drove off.

14 The victim, Your Honor -- his -- his clothing items
15 and his cell phone were -- were still inside of the
16 vehicle. He tried to, I guess, grab onto the car and --
17 and try to get his items back. At that point he ended up
18 being dragged through the yard. He suffered lots of
19 scarring, I guess, on his legs.

20 At that point, Your Honor, the -- the victim went
21 house to house asking people to call the police.
22 Eventually somebody answered the door and agreed to call
23 the police.

24 EMS responded; they transported him to the hospital.
25 Investigators responded, both to the hospital as well as to

1 the incident location.

2 At the incident location, Your Honor, investigators
3 were able to retrieve a used condom which was taken into
4 evidence. At the hospital, Mr. Jones -- they -- they
5 performed a rape protocol kit on Mr. Jones. All of those
6 items were sent to SLED.

7 A few days after the incident, Your Honor, the victim
8 and his family sort of assisted in their own investigation.
9 I -- I believe, where the victim was picked up that night
10 by the defendant, they -- they went back to that location
11 because they believed the car sort of belonged to a house
12 near that incident location.

13 And they touched base, I think, with the defendant's
14 sister, and they were able to describe the vehicle that was
15 involved -- that the victim, on the night of the incident,
16 had actually gotten the -- the letters "I" and "V" out of
17 the license plate of the vehicle.

18 And they began describing this vehicle, I believe, to
19 the defendant's sister. And the defendant's sister told
20 the victim's sister that, "That sounds like my brother,
21 Deitrich Funchess's vehicle."

22 The victims [sic] gave that information to law
23 enforcement. With that information, law enforcement put
24 Mr. Funchess into a photo lineup. Mr. Funchess was picked
25 out of that photo lineup by the victim.

1 More recently, Your Honor, the SLED results came back,
2 and basically, they were DNA profile matches from the
3 defendant, I believe, both on the condom as well as on some
4 -- some rectal swabs taken from Mr. Jones.

5 He does not have much of a prior record. I think he's
6 got a receiving stolen goods conviction.

7 I have been in contact with law enforcement. I spoke
8 with the investigator on this case, Lori Garrison -- I
9 thought she was going to be here -- as well as Investigator
10 Shumpert, who is present in the courtroom.

11 I've also spoken on numerous occasions with the
12 victim, Mr. Jones. We talked about what we think an
13 appropriate sentence would be in this case. And based on
14 those conversations, that is how we arrived at a negotiated
15 sentence of 17 years.

16 THE COURT: All right.

17 DIRECT EXAMINATION BY THE COURT (continues):

18 Q Mr. Funchess, you've heard what the solicitor's told
19 me about the circumstances that led to your arrest on this
20 charge.

21 A Yes, sir.

22 Q And -- and how we got to the point of this negotiated
23 plea; is that correct?

24 A Yes, sir.

25 Q You generally agree with what I was told?

DIRECT EXAMINATION BY THE COURT - DEITRICH FUNCHESS

13

1 A No, sir.

2 Q You don't? Okay.

3 MS. HINDS: He -- he would ---

4 THE COURT: Tell me what the dispute is.

5 MS. HINDS: We would -- he would agree with the gist
6 of the story --

7 THE COURT: Uh-huh.

8 MS. HINDS: -- or the -- I mean, that's why he's here
9 taking responsibility.

10 There are some details, that do not affect his guilt
11 or innocence, that he would say did not occur exactly as
12 the solicitor stated.

13 THE COURT: Okay.

14 (Ms. Hinds confers with the defendant.)

15 DIRECT EXAMINATION BY THE COURT (continues):

16 Q Is that correct, Mr. Funchess?

17 A Yes, sir.

18 Q Okay. All right, sir. Well, then let me go over each
19 one of these charges.

20 The Indictment No. 2013-GS-38-360 is an indictment for
21 kidnapping. It was true billed by the grand jury on
22 September 4, 2013. The allegations are that you did, in
23 Orangeburg County, on or about January 26, 2013, unlawfully
24 seize, confine, kidnap, abduct, or carry away the victim,
25 Robert Jones, without authority of law and in violation of

1 the laws of this state.

2 You understand the allegations contained in this
3 indictment?

4 A Yes, sir.

5 Q Okay. All right, sir. How do you plead to this
6 charge of kidnapping?

7 A Guilty.

8 Q Sir?

9 A Guilty.

10 Q Thank you, sir. Next indictment I have is Indictment
11 No. 2013-GS-38-359, criminal sexual conduct in the first
12 degree, true billed by the grand jury also on September 4,
13 2013. Allegations are, Mr. Funchess, that you did, in
14 Orangeburg County, on or about January 26, 2013, engage in
15 sexual battery upon the victim, Robert Jones; and that you
16 did use aggravated force to accomplish the sexual battery,
17 again in violation of the laws of this state.

18 You understand the allegations contained in this
19 indictment?

20 A Yes, sir.

21 Q All right, sir. How do you plead to this charge of
22 criminal sexual conduct in the first degree?

23 A Guilty.

24 Q All right, sir. Mr. Funchess, you understand, if I
25 accept your guilty plea, it will be two convictions on your

1 record. You understand that?

2 A Yes, sir.

3 Q You understand that each one of these is a violent and
4 a most serious offense, and counts as a strike?

5 A Yes ---

6 Q Do you ---

7 A --- sir.

8 Q --- understand that?

9 You understand if I accept your guilty plea, you -- I
10 will impose the negotiated 17-year sentence on you?

11 A Yes, sir.

12 Q Do you want me to accept your guilty pleas?

13 A Yes, sir.

14 THE COURT: All right. Mr. Funchess, I find that your
15 decision to plead guilty to these two charges is freely,
16 voluntarily, intelligently made. I find you've had the
17 advice and counsel of a competent lawyer. I find that
18 you're satisfied with the services of your lawyer. I find
19 that there's a factual basis for you to plead guilty to
20 both these charges, and I will accept your guilty plea to
21 both of them.

22 Ms. Hinds.

23 MS. HINDS: Your Honor, as you've heard, he's 21 years
24 old. He is the father to two boys: a two-year-old and a
25 three-month-old that was born while he's been incarcerated.

1 As he told you, he went through the 10th grade at O-W.
2 What he didn't go on to explain, however, is he was taking
3 GED classes at OC Tech to try to get his GED and further
4 his education.

5 He had worked for Husqvarna for approximately two
6 years. In addition to that, he worked with his uncle, for
7 a business called All-in-One Landscaping, so he was working
8 and a productive citizen.

9 Your Honor, I would -- I would let the Court know he's
10 extremely nervous here this morning. Basically, he is
11 accepting responsibility for his part in this incident.
12 And he knows that this is a very severe sentence and he's
13 going to be incarcerated for almost the same amount of time
14 that he's been alive. And he takes that very seriously,
15 and -- but he is here accepting responsibility.

16 He has been incarcerated since January 30 of 2013. By
17 my math, it's 315 days.

18 I would like the Court to know that his mother stands
19 behind him, as well as his sister. His girlfriend is also
20 present in the courthouse. She's outside with their child.
21 They do not wish to address the Court, but they wanted you
22 to know that he does have family support.

23 And again, I would reiterate part of the reason for
24 his nervousness is he's -- basically, the only conviction
25 he's had as an adult was for receiving stolen goods in

1 magistrate court. So unfortunately, we're here today going
2 from relatively minor to very, very serious. He
3 understands that.

4 I've gone over the strike laws with him. He
5 understands that he will be on the sex registry. He
6 understands all the ramifications. And we would just ask
7 you to accept the negotiations.

8 THE COURT: All right. Mr. Funchess, I am going to
9 accept the negotiated plea. The sentence of this Court in
10 each one of these charges is that you are committed to the
11 State Department of Corrections for a period of 17 years.

12 The sentences are concurrent, and I give you credit
13 for the time you have served.

14 MS. HINDS: Thank you, Your Honor.

15

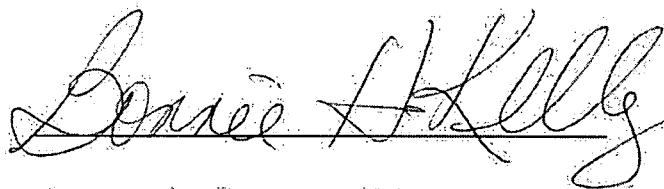
16

-- END OF TRANSCRIPT OF RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court for Orangeburg County, South Carolina, on the 11th day of December, 2013.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

October 21, 2014

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF)
 Deitrich Funchess 358169)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2014-CP-38-00906

APPLICATION FOR

POST-CONVICTION RELIEF

①

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee County Correctional Institution
2. Name and location of Court which imposed sentence Orangeburg County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-38-00360
 - (b) 2013-GS-38-00359
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____ 12/1/13 (17 years)
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Trial counsel failed to appeal
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective assistance of counsel

- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) failed to investigate
- (b) failed to inform me of my right to an appeal
- (c) Due process violation and involuntary guilty plea
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof: N/A
- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition: N/A

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) Trial Counsel failed to appeal

(b) _____

(c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Margaret Hinds ; 190 Gibson Street P.O box 1112
room 110 Orangeburg SC 29116
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea, and sentencing
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Parard for trial or renegotiate new plea
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, _____, 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.

Deitch Furchess

SWORN to and subscribed before me this 22
day of July, 2014.

Diana Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

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

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

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

Deviach Funches
Applicant

SWORN or affirmed to and subscribed before me this
22 day of July, 2014.

Debra Sims
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Dietrich Funchess, #358169,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-0906

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed July 23, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the September 2013 term of the Court of General Sessions for Orangeburg County for Criminal Sexual Conduct First Degree (2013-GS-38-0359), Kidnapping (2013-GS-38-0360), Possession of a Weapon During the Commission of a Violent Crime (2013-GS-38-0361), and Armed Robbery (2013-GS-38-0362). Applicant was represented by Margaret Hinds, Esq. On, December 11, 2013, Applicant pled guilty to CSC and Kidnapping before the Honorable Edgar W. Dickson. The weapon charge and robbery charge were nolle prossed. Judge Dickson sentenced Applicant to concurrent terms of seventeen (17) years' imprisonment for each offense. Applicant did not appeal his plea or sentence.

Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject conviction(s), the transcript from

Applicant's plea hearing and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance Counsel, in that;
 - a. Counsel "failed to investigate,"
 - b. Counsel "failed to inform me of my right to an appeal";
2. Involuntary Guilty Plea;
3. Due Process Violation

III.

Applicant's first claim is an allegation of ineffective assistance of trial counsel. Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that 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, 305 S.E.2d 247 (1983).

IV.

Respondent further submits Applicant's allegation 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. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant 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) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

The Applicant has alleged that he is entitled to a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (U.S. 2000.) The Respondent submits that the Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the

Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue.

VI.

Applicant also alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must specifically set forth the grounds upon which the application is based. Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for Post-Conviction Relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCF 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the

inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

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

IX.

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

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 16th, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
)
)
 DEITRICH FUNCHESS, #358169)
)
)
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 Applicant,)
)
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 vs)
)
 STATE OF SOUTH CAROLINA,)
)
)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS


2014-CP-38-00906

AFFIDAVIT OF SERVICE BY MAIL

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

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia SC 29201

DATED this 16th day of June, 2015.


 Sara B. Moore, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

DEITRICH FUNCHESS,) TRANSCRIPT OF RECORD
APPLICANT,) 2014-CP-38-00906

V.)

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

OCTOBER 27, 2015

ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., PRESIDING JUDGE

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

JONATHAN D. WALLER, ESQUIRE

ATTORNEY FOR THE APPLICANT

J. CLAYTON MITCHELL, ASSISTANT ATTORNEY GENERAL

ATTORNEY FOR THE STATE

SHARON L. VIZER

CIRCUIT COURT REPORTER

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*** NO EXHIBITS WERE MARKED ***

1 MR. WALLER: Thank you, Your Honor. May it please
2 the Court?

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. WALLER

6 Q. Good morning, Mr. Funchess. How are you?

7 A. I'm all right.

8 Q. Mr. Funchess, I guess I'll jump right into it.

9 What were you originally arrested for?

10 A. Criminal sexual conduct, robbery, possession of a
11 weapon and kidnapping.

12 Q. Okay. And how did Ms. Hinds come to be your
13 attorney?

14 A. Appointed by the Court.

15 Q. Okay. Was she the first attorney that was
16 appointed to represent you?

17 A. Yes.

18 Q. So she was there from the beginning of your case?

19 A. Yes, sir.

20 Q. Okay. How many times do you think you met with
21 Ms. Hinds?

22 A. About three times.

23 Q. Okay. And when y'all met did y'all discuss each of
24 those four charges that you had against you?

25 A. Yes.

1 Q. Okay. Did you go over each of the -- you know,
2 what the State would have to prove for each charge?

3 A. No.

4 Q. Okay. Did y'all talk about the elements of each of
5 those charges?

6 A. No.

7 Q. Okay. In particular with the criminal sexual
8 conduct charge did y'all talk about the term sexual
9 battery at all?

10 A. No.

11 Q. Did you understand what that meant?

12 A. No.

13 Q. Okay. What did you and Ms. Hinds talk about?

14 A. Really, we didn't really talk about a lot, really,
15 because I didn't really see her like that. We talked
16 about the charge -- we talked about the charges but I was
17 trying to explain, like, what really went on. You know
18 what I'm saying? But...

19 Q. Okay. And we are going to get to that in just a
20 second. When you and Ms. Hinds discussed your case did
21 you all talk about the evidence that the State had or
22 what they said they had?

23 A. They said they had DNA.

24 Q. Okay. Did y'all talk about anything else they said
25 they had? Did they have any witness statements or

- 1 anything like that?
- 2 A. No, sir.
- 3 Q. How about a statement from the victim?
- 4 A. I didn't see a statement he wrote either.
- 5 Q. Okay. So you never saw any of those things?
- 6 A. I looked at the DNA. I saw the DNA.
- 7 Q. Okay. Y'all talked about that?
- 8 A. Uh-huh.
- 9 Q. Okay. Did you -- in talking to Ms. Hinds did you
10 give her any information about what you say happened that
11 night?
- 12 A. Yes, I told her.
- 13 Q. Okay. What did you tell her?
- 14 A. I told her that -- I told her it was consensual.
- 15 Q. Okay. Did you give her the names of any potential
16 witnesses or anything that she could use to do some
17 investigation in your case?
- 18 A. Yes.
- 19 Q. Okay. What information did you give her that she
20 could have investigated?
- 21 A. I gave her a statement. He had wrote a statement I
22 took to her.
- 23 Q. Did y'all talk about it?
- 24 A. Not really.
- 25 Q. Okay. What did she say when you gave it to her?

1 A. She said she was going to call, she was going to
2 call him and talk to him or his attorney.

3 Q. Okay. Who are you talking about?

4 A. Joshua Walk.

5 Q. Okay. And who is Joshua Walk?

6 A. When I was in the county he approached me. He was
7 like -- came to me, like, you Deitrick?

8 And I was like, Yeah.

9 He goes, I know about your case because from my
10 understanding he stayed with Robert. He was like, I know
11 everything about your case. He told me that it was set
12 up and he was trying to get you in trouble, whatnot, like
13 that, and that was on the statement as well.

14 Q. Okay. And Robert was the alleged victim in this
15 case?

16 A. Yes, sir.

17 Q. Okay. Do you know if she ever spoke with Joshua
18 Walk?

19 A. I know one time she spoke with him.

20 Q. Did you give her any more information or anything
21 that she could follow up on?

22 A. No.

23 Q. Okay. Were you identified by someone, to the best
24 of your knowledge, at least, by someone that said they
25 were your sister?

- 1 A. Yes. That's what -- that's what they said.
- 2 Q. Is it actually your sister?
- 3 A. No, sir.
- 4 Q. Okay. Did you bring that to Ms. Hinds' attention?
- 5 A. No, sir.
- 6 Q. Okay. When you and Ms. Hinds were discussing the
- 7 DNA results, okay, had you always been truthful with
- 8 Ms. Hinds about your version of what was going on?
- 9 A. Yes, sir.
- 10 Q. Okay. What did y'all talk about the DNA?
- 11 A. She just told me that it was my DNA.
- 12 Q. Did you have any issues with the DNA?
- 13 A. I really didn't -- I didn't -- I really didn't
- 14 really understand what everything that was going on. I
- 15 really -- I didn't have issue because I know my DNA was
- 16 there, so I didn't. You know what I'm saying?
- 17 Q. Okay. Okay. And you ended up pleading guilty to a
- 18 negotiated sentence; is that right? Did you understand
- 19 what a negotiated sentence was?
- 20 A. No, because I ain't really negotiated nothing.
- 21 Q. Okay. Do you know if she was negotiating on your
- 22 behalf?
- 23 A. I guess she did.
- 24 Q. Okay. The State dismissed some of the charges
- 25 against you when you pled guilty; is that right?

1 A. Yes, sir.

2 Q. Okay. Did you talk to Ms. Hinds about those
3 charges before you pled guilty, that were dismissed?

4 A. No. I didn't know they was getting dismissed until
5 the day before I -- the day before I pled, the day before
6 I went to court.

7 Q. Okay. Did you and Ms. Hinds discuss the
8 constitutional rights that you would have to waive when
9 you pled guilty?

10 A. I didn't know I was waiving constitutional rights.

11 Q. Did y'all discuss that you would have to waive your
12 right to a jury trial?

13 A. No, sir.

14 Q. Did y'all discuss that you would have to waive your
15 right to remain silent?

16 A. No, sir.

17 Q. Y'all discuss that you would have to waive your
18 right to challenge the State's evidence against you?

19 A. No, sir.

20 Q. Did y'all discuss that you would have to waive your
21 right to question any of the State's witnesses and
22 cross-examine them?

23 A. No, sir.

24 Q. Mr. Funchess, what part of your conversations with
25 Ms. Hinds, could you tell the Court here today that you

1 -- that there was a consensual act? What in your
2 discussions with Ms. Hinds led you to plead guilty?

3 A. Because she really -- she really was telling me
4 that was the best thing to do because they had my DNA,
5 and I really didn't want to plead but she was my attorney
6 so I just went ahead. She said that was the best thing
7 to do so I went ahead with it.

8 Q. Okay. But you had told her that you weren't guilty
9 of these crimes; is that right?

10 A. Yes, sir.

11 Q. And that's what you are saying here again today?

12 A. Yes, sir.

13 Q. So what in your conversations with Ms. Hinds led
14 you to standing in front of the Judge and saying, Judge,
15 I am guilty?

16 A. I really couldn't even tell you. I didn't really
17 want to -- the day that I pled I didn't want to plea. I
18 really didn't want to plead that day but I just -- I went
19 ahead -- I tell you -- I'll say it again. I went ahead
20 with it because she was my attorney and I guess she had
21 the best advice I could go with.

22 Q. Okay. You've sat here today and now you testified
23 that you told Ms. Hinds the same thing, that it was a
24 consensual act between you and the alleged victim. What
25 did you tell Ms. Hinds that she could have used to

1 investigate what you were saying?

2 A. You want me to say exactly what happened? Can you
3 repeat that question again?

4 Q. Yes. What did you tell -- you've told the Court
5 here today that it was a consensual act between you and
6 the alleged victim, and you testified today that you told
7 Ms. Hinds back when she was still representing you on
8 these charges that you told her the same thing. What
9 information did you give her that she could have
10 investigated to help show that, that it was consensual
11 and that you weren't guilty of these crimes?

12 A. You want me to tell the story how it went down,
13 everything like that? That's all I just told her. You
14 know what I'm saying?

15 Q. What information did you give Ms. Hinds that she
16 would have been able to use?

17 A. I told her -- I told her where we met at. Where we
18 went at, and that was about it.

19 Q. Okay. Did you know the alleged victim before this?

20 A. No.

21 Q. Okay. Did anybody see you and the alleged victim
22 together?

23 A. A Jasmine.

24 THE COURT: What did he say?

25 A. Jasmine.

- 1 Q. Did you provide Ms. Hinds with Jasmine's name?
- 2 A. No, sir.
- 3 Q. Did you tell Ms. Hinds where you and the alleged
4 victim went that night?
- 5 A. Yes, sir.
- 6 Q. Okay. Did you know if she followed up on any of
7 that?
- 8 A. No, sir.
- 9 Q. Did you tell her anything else about what you are
10 saying happened that night?
- 11 A. No, sir.
- 12 Q. Okay. When you and Ms. Hinds discussed the charges
13 did you understand the potential penalties of each of
14 those charges?
- 15 A. No, sir.
- 16 Q. Did you know the time that they possibly carried?
- 17 A. I didn't know the maximum or the minimum.
- 18 Q. Did y'all discuss the sex offender registry?
- 19 A. No. I didn't know about that.
- 20 Q. Okay. Mr. Funchess, what do you think Ms. Hinds
21 could have done in your case that she didn't do?
- 22 A. I think if she would have explained, like, the
23 sexual battery, like what that meant, and let me know,
24 like, the elements, the crucial elements of the crime I
25 would never have pled. I would have insisted on going to

1 trial because it really -- they didn't really -- only
2 thing they had was the DNA, and like I said, I told -- I
3 told her my DNA was there. I told the investigator all
4 that, the DNA was there.

5 Q. Okay. So you weren't worried about the DNA because
6 you told them it was there?

7 A. Yeah.

8 Q. Okay. And you are saying that if Ms. Hinds had
9 better informed you of the nature of the charges and what
10 the State would have to prove that you would not have
11 pled guilty, you would have gone to trial?

12 A. Yes, sir.

13 Q. Mr. Funchess, I've asked all questions that I have.
14 Is there anything that you think I've left out or that
15 the Court needs to be aware of?

16 A. No, sir.

17 Q. Please answer any questions Mr. Mitchell has.

18 THE COURT: Attorney General?

19 CROSS-EXAMINATION

20 BY MR. MITCHELL:

21 Q. All right, Mr. Funchess. You pled guilty to CSC
22 first and kidnapping, right?

23 A. Yes, sir.

24 Q. And that was before Judge Dickson?

25 A. Yes, sir.

1 Q. Okay. Now, when you went through all this there's
2 no point in the transcript where you say, Hold on, you
3 know, I don't want to plead guilty. I mean, there's no
4 question you pled guilty, right?

5 A. Yes. I pled guilty but when the Judge asked me did
6 I agree with everything I told him no. If I could have
7 got a chance to elaborate why I told him no I would have
8 let him know I didn't want to plead with my attorney --

9 Q. Well, right. After that Judge Dickson asked you --
10 he reads the indictment, the allegations set forth in it
11 and asked you how you want to plead and you said guilty,
12 and that's directly after that.

13 A. Because my attorney told me to just go ahead and
14 agree.

15 Q. So you relied on Ms. Hinds' advice that it was in
16 your best interest to plead guilty?

17 A. That was my attorney, yes, sir.

18 Q. Okay. Now, her advice to you was that you would
19 likely be convicted if you were to go to trial; is that
20 right?

21 A. Yes, sir.

22 Q. So she thought that the case -- the State had a
23 strong case, right?

24 A. That was what she thought, yes, sir.

25 Q. So it's your testimony that she did not discuss

1 with you the penalties or how much time you might do?

2 A. She didn't discuss with me the penalty, the maximum
3 or the minimum. She didn't accurately define sexual
4 battery to me. She didn't let me know the nature of the
5 crucial elements of the crimes either.

6 Q. Did she advise you -- so she brought this plea
7 agreement to your attention though, right?

8 A. Yes.

9 Q. And you knew that was going to be for 17 years,
10 right?

11 A. Yes.

12 Q. So you knew Judge Dickson was either going to take
13 it or not, right?

14 A. I thought -- I didn't know he couldn't take it.
15 You know what I mean?

16 Q. But he had to sentence you to 17 years, right? You
17 knew that?

18 A. Yes.

19 Q. Okay. And you agreed to that?

20 A. Yes.

21 Q. Okay. So the evidence against you was the DNA
22 match on the condom and from the rape kit; is that right?

23 A. Yeah.

24 Q. But it's your contention today that that was
25 consensual?

- 1 A. It was from day one.
- 2 Q. Okay. And you told Ms. Hinds that?
- 3 A. Yes.
- 4 Q. So law enforcement kind of got a tip from someone
5 they said was your sister. Is that the Jasmine you are
6 referring to?
- 7 A. No.
- 8 Q. Okay. But you knew when you were pleading guilty
9 that you were waiving your rights to a trial, didn't you?
- 10 A. No, sir.
- 11 Q. You didn't? You thought you could still go to
12 trial and plead guilty?
- 13 A. I really -- I told you I wanted to go to trial.
- 14 Q. Okay.
- 15 A. But I went on my attorney advice.
- 16 Q. Okay. So it's also your testimony that Ms. Hinds
17 did not advise you that you'd be put on the sex offender
18 registry if you pled guilty?
- 19 A. Yes, she did. She told me that. I already know
20 that. I knew that.
- 21 Q. Okay. You did know that?
- 22 A. Yes, sir.
- 23 Q. Did you also know that pursuant to the plea
24 agreement that the State was going to dismiss other
25 charges?

1 A. I didn't know that until -- I didn't really know --
2 I didn't know that until the day before. When I went to
3 Court I didn't know that.

4 Q. Okay. Is that kind of when this whole plea thing,
5 that's when it kind of came about?

6 A. I got the plea the day before.

7 Q. Okay.

8 A. The day before I went to court. That's when I
9 found out that they were dismissing two charges.

10 Q. Got you. Got you. All right. No further
11 questions. Thank you.

12 THE COURT: Redirect?

13 MR. WALLER: Just briefly, Your Honor.

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. WALLER:

17 Q. Mr. Funchess, you testified that you relied on
18 Ms. Hinds' advice to tell you to plead guilty. Did she
19 ever tell you that it was your decision whether to plead
20 guilty or go to trial?

21 A. I didn't -- she didn't -- she told me I could go to
22 trial, but she told me I could go to trial, this was
23 before, you know what I'm saying, before we were supposed
24 to plea, came up, she told me I could of gone to trial
25 but then when the DNA and all that came she was like, You

1 don't need to go to trial because you got, you know what
2 I'm saying, DNA, the evidence of the State you're going
3 to get convicted. So I went with her. It was going to
4 be over 17. She told me it was going to be over what I
5 was getting, so she said the best thing to do was go with
6 17.

7 Q. Okay. But did you understand that if you had
8 wanted to go to trial that she would have represented you
9 at trial? Did you understand that?

10 A. I know she would have represented me. Yes, sir.

11 Q. Okay. Did you know that you had the choice to go
12 to trial if you wanted to?

13 A. I didn't know I could go to trial after I done had
14 signed the agreement.

15 Q. Okay. In the story you gave to Ms. Hinds, and that
16 you are saying now, you and the alleged victim did get
17 into an altercation; is that right?

18 A. Yes, sir.

19 Q. And that was after the sexual act took place; is
20 that right?

21 A. Yes, sir.

22 Q. Okay. Did you and Ms. Hinds talk about the -- kind
23 of the shift in time from the sexual act taking place and
24 the altercation that you and the alleged victim got into?

25 A. No, sir.

1 Q. Okay. Did y'all discuss how that would play into a
2 criminal sexual conduct charge?

3 A. No, sir.

4 MR. WALLER: No further questions. Thank you, Your
5 Honor.

6 THE COURT: Thank you, sir. You can step down.

7 Call your next witness.

8 MR. WALLER: No further witnesses.

9 THE COURT: Attorney General?

10 MR. MITCHELL: Your Honor, the State calls

11 Ms. Margaret Hinds.

12 MARGARET HINDS, after having been duly

13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 Q. Good morning, Ms. Hinds.

16 A. Good morning.

17 Q. Thank you for being here today. You were appointed
18 on this case through your role as a public defender in
19 the Orangeburg County PD's Office?

20 A. I was.

21 Q. Okay. When you first met -- what did you discuss
22 with Mr. Funchess when you first met with him?

23 A. I was appointed on March 7th, I believe. Our first
24 meeting was actually on April 26th -- no. Excuse me.

25 That's on the other charges. I had previously met with

1 him. He had other sets of charges that we ultimately
2 were able to get resolved. But the first time I would
3 have met with him on this charge -- or these charges
4 would have been on the 8th, the day after I was
5 appointed.

6 Q. What year is that?

7 A. 2013.

8 Q. So in those discussions did you review the charges
9 that he had against him which were CSC, kidnapping?

10 A. That would have been the bulk of the interview. At
11 that point I did not have any discovery so we couldn't
12 really go over the facts of the case. The initial
13 interview would have been background information on him
14 and specifically going over what he was charged with,
15 what the elements were, how much exposure he was looking
16 at, those kinds of things.

17 Q. Okay. And did you believe he understood what you
18 were telling him at the time?

19 A. I did.

20 Q. When you got discovery in the case did you review
21 that with Mr. Funchess?

22 A. Absolutely.

23 Q. What was in that discovery?

24 A. In terms of there was multiple police reports,
25 pictures, the normal kinds of things that come in

1 discovery.

2 Q. So I guess the DNA testing results would have been
3 in there?

4 A. No. That came much later.

5 Q. So that came later, yeah.

6 A. Yeah.

7 Q. So it would have been the victim's statement to law
8 enforcement?

9 A. Correct, and the detectives' narratives.
10 Throughout -- as I told you, I was appointed in March.
11 It wasn't until October when the DNA came back, when the
12 results I actually got and had a chance to discuss them
13 with Mr. Funchess that suddenly it became consensual sex.
14 In every one of our meetings prior to that it was, I
15 didn't do it.

16 Q. So your initial meetings he denied the acts
17 altogether?

18 A. Correct.

19 Q. And then when confronted with DNA evidence he then
20 changed his story to say that it was consensual?

21 A. That would be correct.

22 Q. Okay. At that point what was your advice on --
23 well, how did these plea negotiations come about? Start
24 there.

25 A. We had started plea negotiations a little bit prior

1 to the DNA results coming back. The case was getting
2 old. We knew we should be getting results any time.
3 Didn't really come up with anything at that point in
4 time. In the meantime, once he told me that it was
5 consensual he wanted to be polygraphed. I arranged for a
6 polygraph exam. That did not go well.

7 At that point, in mid November, November 14th to be
8 exact, we actually had an in-chambers meeting, the
9 Solicitor, Tommy Scott, and myself with Judge Dickson.
10 Basically, he told us that he would -- based on what the
11 two sides had presented that he would most likely give
12 somewhere between 15 and 20.

13 He was leaning toward the 20 but Judge Dickson
14 usually does not give a single number. He'll give a
15 range because he believes in actually having the
16 defendant in front of him and if he can be impressed it
17 may be the lower end of the range and if not it might be
18 the higher end, but my indication was he was leaning
19 toward 19 or 20. At that point in time I discussed that
20 with Mr. Funchess.

21 On December 9th, Mr. Funchess actually said he
22 would plead today for 15. At that point, I went back the
23 following day, negotiated a little harder with Mr. Scott.
24 He would not buy the 15; however, that's when it became
25 instead of any kind of recommendation a negotiation.

1 What he said was we could negotiate 17 and if
2 Mr. Funchess was satisfied with that we could go with
3 that. I met with Mr. Funchess, explained all that and
4 that's how we ended up pleading on December 11th.

5 Q. Okay. I know you mentioned a lot about Judge
6 Dickson but this is for the record. Judge Dickson is a
7 resident judge in Orangeburg and who you appear before
8 very regularly?

9 A. Very regularly.

10 Q. And a part of those negotiations were to dismiss
11 other charges?

12 A. Yes.

13 Q. Okay. And Mr. Funchess made his intention clear to
14 you that he did want to plead guilty?

15 A. Yes.

16 Q. And he brought up a witness statement, a witness by
17 the name of Joshua Walk. Were you able to look into
18 that?

19 A. I was. I actually got -- I think I got some kind
20 of, like, scrap of paper from the jail from Mr. Funchess
21 telling me that this Joshua Walk might potentially help
22 in his case. That would have been -- I received that I
23 think beginning of October.

24 I was not able to catch up with Mr. Walk until
25 November 19th, but at which point we did speak. The gist

1 of what he was saying was basically that he would vouch
2 for Mr. Funchess. He knew Mr. Funchess couldn't have
3 done anything like that, and that he was saying that the
4 victim in the case was telling people he was lying about
5 what had happened. But when I tried to get -- press him
6 for any names or any further witnesses that I could go to
7 to follow that up I couldn't get any more information out
8 of him.

9 In addition, he did talk to me about he thought he
10 had some text messages that possibly could be helpful.
11 When we were able to get ahold of that cell phone
12 Mr. Walk said that unfortunately the texts that he
13 thought would be there were not there. So that kind of
14 did not pan out. And he was not any kind of alibi
15 witness. He could not put Mr. Funchess any place else on
16 the date in question.

17 Q. So his testimony wasn't going to be very helpful,
18 in your opinion?

19 A. No.

20 Q. Did you advise Mr. Funchess the rights that he
21 would be waiving by pleading guilty?

22 A. Absolutely.

23 Q. And that would include his right to a trial, right
24 to challenge evidence, cross-examination, the basic
25 litany of rights?

1 A. Yes, sir.

2 Q. Okay. Is it your opinion that he understood that
3 he was waiving those rights?

4 A. It was my opinion he did.

5 Q. Did you also advise him that he was going to be on
6 the sex offender registry?

7 A. Yes. We had a long discussion about that. I'm not
8 a fan of that particular law but it has such draconian
9 implications that if I feel somebody who is going to get
10 on there needs to really know what to look out for, and
11 on top of that to make sure that they keep up with any
12 changes to make sure they are always in compliance, so we
13 had a long discussion about that.

14 Q. I have no further questions. Please answer
15 anything Mr. Waller has. Thank you.

16 THE COURT: Mr. Waller?

17 MR. WALLER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. WALLER:

20 Q. Ms. Hinds, you testified that he -- that
21 Mr. Funchess said it wasn't him at the beginning of the
22 case?

23 A. Correct.

24 Q. Beginning of representation. Then once the DNA
25 came back he said it was a consensual act?

- 1 A. Correct.
- 2 Q. He never made any alligations that the DNA results
3 were invalid or anything like that, did he?
- 4 A. No.
- 5 Q. Did you -- once he told you that it was a
6 consensual act what steps did you take to follow up on
7 his story?
- 8 A. It basically was not a lot of way to go. I mean,
9 it was basically going to be his word against the
10 victim's word.
- 11 Q. Okay.
- 12 A. My understanding from him and from the discovery it
13 wasn't like there were witnesses around or anybody else
14 that could have looked.
- 15 Q. So there were no other witnesses --
- 16 A. Not that I'm aware of.
- 17 Q. -- that you were aware of?
- 18 A. Uh-uh.
- 19 Q. Did you follow up on the name that he gave you of
20 Jasmine?
- 21 A. He never give me that name. I don't who he is
22 talking about.
- 23 Q. Okay. What information did he provide you that you
24 would have been able to investigate?
- 25 A. He really didn't give me anything to investigate.

1 As I said, for months it wasn't him but yet he did not
2 have an alibi, but, you know, that happens. But there
3 wasn't anything else he was giving me. Then when it was
4 consensual it was basically again we were down to his
5 word against the victim's word.

6 Q. What did you and Mr. Funchess discuss in leading up
7 to his decision to plead guilty?

8 A. Well, basically, obviously, the DNA was a game
9 changer because it corroborated somewhat the victim's
10 story, and the condom was found where the victim said it
11 would be. When the DNA came back implicating
12 Mr. Funchess obviously that was not good for our side.

13 We started negotiating or talking more about where
14 we were going to go with this case probably end of
15 October into November. It was in that period of time
16 that, as I said, I had him polygraphed trying to follow
17 up on the consensual aspect on that but I was not able to
18 get a test that helped him.

19 On the 19th of November we went over everything
20 again from start to the finish in terms of plea versus
21 trial, what he was looking at, what I believed was in his
22 best interest, the sex offender registry, appealing,
23 everything to do with the case, and then after that was
24 when I began trying to negotiate with Judge Dickson and
25 with the solicitor.

1 Q. Okay. You testified that you discussed -- at your
2 first meeting you would have discussed the charges and
3 the elements of those crimes with him?

4 A. Correct.

5 Q. Did you go over his constitutional rights with him?

6 A. In terms of not in any great length but in terms of
7 as a criminal defendant it's going to be his choice how
8 we handled this, that he always has the right to a trial.

9 Q. How about the constitutional rights that he would
10 have to waive to plead guilty, the right to remain
11 silent, right to a jury trial?

12 A. We talked very extensively about that once it
13 looked like this was going to be something that would be
14 in his best interest to work out.

15 Q. And did you feel that he understood those?

16 A. I did.

17 MR. WALLER: Beg the Court's indulgence, please.

18 THE COURT: Yes, sir.

19 (Mr. Waller has a private discussion with the
20 applicant.)

21 MR. WALLER: No further questions.

22 THE COURT: Anything on redirect?

23 REDIRECT EXAMINATION

24 BY MR. MITCHELL:

25 Q. And the polygraph examination, that took place

1 after the DNA testing results came out?

2 A. Correct. The polygraph took place -- the DNA
3 results I received October 3rd, 2013. We did the
4 polygraph somewhere between the 25th of October and the
5 29th. The 29th is when I got results but I don't
6 remember if that was the same day that he took the exam
7 or a couple days later for my polygrapher to get back to
8 me. But it was on the 29th of October that I found out
9 that the polygraph was not helpful.

10 Q. So at that point he was alleging that it was
11 consensual?

12 A. Yes.

13 Q. Okay. No further --

14 A. He was alleging it was consensual once we got the
15 DNA back.

16 Q. Okay. I got you. No further questions. Thank
17 you.

18 THE COURT: Anything on recross?

19 MR. WALLER: Nothing, Your Honor.

20 THE COURT: Thank you very much. You can step
21 down.

22 Any other additional witnesses?

23 MR. MITCHELL: The State has no further witnesses.

24 THE COURT: Anything from the applicant?

25 MR. WALLER: Just briefly in summation, Your Honor.

1 THE COURT: Yes, sir.

2 MR. WALLER: Your Honor, I believe the testimony
3 was that Mr. Funchess provided information that it was a
4 consensual in nature sexual act between himself and the
5 alleged victim and Ms. Hinds did not follow up on the
6 information that was provided to her. And, additionally,
7 when he did plead guilty he did not understand what he
8 was giving up and the nature of the guilty plea.

9 Your Honor, he testified that if -- he believes
10 that if the information had been followed up on and the
11 investigation had been completed and also he understood
12 the rights he was waiving he would have not pled guilty
13 but would have proceeded to trial.

14 THE COURT: Thank you very much. No argument from
15 the State?

16 MR. MITCHELL: No argument from the State, Your
17 Honor.

18 THE COURT: Very good. Allow the Court to take it
19 under advisement and I'll have y'all an order before I
20 leave St. George this week.

21 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 27th day of October 2015.

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

May 23, 2016

s/Sharon L. Vizer

SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Deitrich Funchess, #358169,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2014-CP-38-00906

ORDER OF DISMISSAL

FILED FOR RECORD
MINNIFA B. CLARK
2016 JAN 13 P 12: 01
CLERK OF COURT
ORANGEBURG, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 23, 2014. Respondent made its Return on June 17, 2015, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk's Office to represent Applicant. An evidentiary hearing was held on October 27, 2015, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Orangeburg County. Applicant was indicted at the September 2013 term of the Court of General Sessions for Orangeburg County for Criminal Sexual Conduct First Degree (2013-GS-38-0359), Kidnapping (2013-GS-38-0360), Possession

MINNIFA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

of a Weapon During the Commission of a Violent Crime (2013-GS-38-0361), and Armed Robbery (2013-GS-38-0362). Applicant was represented by Margaret Hinds, Esq. On, December 11, 2013, Applicant pled guilty to CSC and Kidnapping before the Honorable Edgar W. Dickson. The weapon charge and robbery charge were nolle prossed. Judge Dickson sentenced Applicant to concurrent terms of seventeen (17) years imprisonment for each offense. Applicant did not appeal his plea or sentence.

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

1. Involuntary and unintelligent guilty plea in that Counsel failed to review the nature of the charges, penalties, and constitutional rights with Applicant.
2. Ineffective assistance of counsel in failing to file a notice of appeal.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

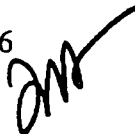
This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty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

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Involuntary and Unintelligent Guilty Plea

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

Applicant claims he did not plead guilty voluntarily because he was not advised by Counsel of the charges, potential penalties, and of his constitutional rights. This Court finds this contention meritless. This Court finds the record reflects Applicant was fully advised that he was pleading guilty and waived all challenges to the evidence against him. The plea court's very thorough colloquy with Applicant demonstrates that he understood the charges, penalties, and his



rights. Applicant testified that Counsel did not review the elements of the charges and that there was a lack of communication between him and Counsel. This Court finds Applicant's testimony not credible. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case. The record further reflects Applicant fully admitted his guilt to the plea court. Counsel also fully discussed and reviewed the discovery involved in the case, and Counsel's investigation also was full and complete. Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made.

Ineffective Assistance of Counsel

Applicant also alleges Counsel was ineffective in failing to file a notice of appeal. This Court further finds Applicant has failed to carry his burden of proving Counsel was ineffective in failing to file a notice of appeal or motion for reconsideration. Applicant did not argue these grounds during his testimony and did not indicate that he requested Counsel to file either. Accordingly, no evidence was submitted to support these allegations, so they are abandoned. Furthermore, upon a full review of the record, the Court finds that no grounds existed for an appeal, so any appeal would have been futile.

All Other Allegations

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



V. CONCLUSION

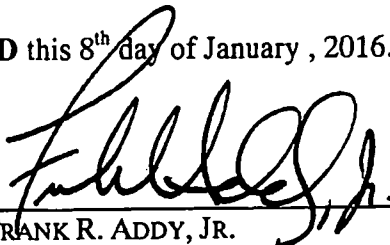
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsel's performance was unreasonable under prevailing professional norms. Cherry,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

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

IT IS THEREFORE ORDERED THAT:

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

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


FRANK R. ADDY, JR.
Presiding Judge

Greenwood, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Deitrich Funchess, #358169,)
)
 Applicant,)
 vs.)
)
 State of South Carolina,)
)
)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

**MOTION PURSUANT TO RULE 59(e)
 SCRPC, TO AMEND**

Case No. 2014-CP-38-00906

FILED
 CLERK OF COURT
 ORANGEBURG COUNTY
 SOUTH CAROLINA
 JAN 21 2016
 P 11:51

YOU WILL PLEASE TAKE NOTICE that the Applicant, Deitrich Funchess, by and through his undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 59(e), SCRPC, for an Order of the Court to alter or amend its prior Order filed January 13, 2016 and served on counsel by letter dated January 20, 2016.

The Applicant filed a timely application for post-conviction relief (PCR) on July 23, 2014. In his application, Applicant indicated that his plea was involuntary and unintelligently made. A hearing was held October 27, 2015, wherein, Applicant as well as plea counsel testified. During the course of the hearing, testimony was presented as evidence that counsel was ineffective for failure to investigate the facts and circumstances surrounding applicant's case and that counsel was ineffective for advising a plea of guilt under those circumstances.


Specifically, Applicant testified that the sexual battery which he plead guilty to was in fact a mutual act and that plea counsel failed to inform him of the legal definition of sexual battery or he would not have plead guilty. Additionally, applicant testified that he provided the names of witnesses to plea counsel, including the roommate of the alleged victim. Applicant testified that, to the best of his knowledge, counsel never spoke to these witnesses.

Applicant contends that counsel's actions and errors constitute ineffective assistance of counsel in that he had a valid defense that no crime actually occurred (mutual sexual act), his counsel failed to investigate the facts and circumstances surrounding his case, and that counsel failed to properly advise him as to the elements of the charges against him which resulted in an involuntary and unintelligently made plea.

Applicant respectfully requests this Court to amend its prior Order pursuant to Rule 59(e), SCRPC to include a specific legal and factual ruling on the issues presented.

Respectfully submitted,

By: _____



Jonathan D. Waller
Giese Law Firm, LLC
1315 Blanding Street
Columbia, South Carolina 29201
Telephone: 803-708-6767
Facsimile: 803-708-6769
E-mail: jwaller@thegieselawfirm.com

ATTORNEY FOR THE APPLICANT

January 29, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Deitrich Funchess, #358169,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

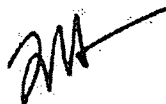
2014-CP-38-00906

**ORDER DENYING APPLICANT'S
MOTION FOR RECONSIDERATION**

This matter comes before the Court pursuant to Applicant's Rule 59(e) SCRCP motion for reconsideration dated January 29, 2016. In his motion, Applicant did not request a hearing, and the court does not feel that a hearing is necessary or would be helpful as the court has retained a good recollection of the testimony from the hearing. Applicant seeks reconsideration of the court's prior Order of Dismissal which was filed on January 13, 2016. Essentially, Applicant states that the court failed to rule on the issue of failure to investigate Applicant's consensual sex defense.

Although the court believes this allegation was addressed on page 5 of the court's order, the court will entertain this motion and address this ground for relief in greater detail. Having reviewed the court's notes and considered the argument of Applicant in his motion, the court supplements its prior order and finds as follows:

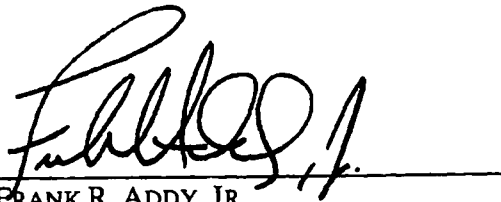
1. Concerning the assertion that the court did not address Applicant failure to investigate claim regarding the defense of consensual sex, plea counsel unequivocally stated that Applicant did not inform her of additional witnesses. As stated in the court's Order of Dismissal, the court found plea counsel's testimony substantially more credible than that of Applicant.



2. Significantly, plea counsel testified that Applicant initially denied having intercourse with the victim. Once the DNA results came back, Applicant's story changed to one involving consensual intercourse, and the DNA results corroborated the victim's account. In short, plea counsel was not ineffective for failing to investigate Applicant's consent defense because Applicant gave her no information concerning the witnesses with whom she should speak. Applicant was fully advised of the elements of the crime by plea counsel, and his plea was not the result of erroneous advice or any deficient performance on counsel's part.

In all other respects, the court's prior order denying Applicant relief is reaffirmed.

IT IS SO ORDERED.



FRANK R. ADDY, JR.
Presiding Judge

February 19, 2016
Greenwood, South Carolina

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury. 74

Defendant

DOCKET NO. 2013GS38-0359

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS
September 9, 2013 TERM

THE STATE
vs.

Dietrich Tremayne Funchess

Indictment for
CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE

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

SC Code: 16-3-652

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2013A3810700190

Arrested: January 30, 2013

ACTION OF GRAND JURY
TRUE BILL
Allyson Howard
Date SEP 04 2013
Foreperson of Grand Jury
Date: September 4, 2013

VERDICT

Foreperson of Petit Jury
Date:

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

Defendant

Witness:

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

2013 SEP -4 11:10

FILED FOR
WINNIP B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC

Winnipa B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2013GS38-0359

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Orangeburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about January 26, 2013, the Defendant, Dietrich Tremayne Funchess, did engage in a sexual battery with the victim, R [REDACTED] J [REDACTED], and the defendant did use aggravated force to accomplish the sexual battery, and as a result violated Section 16-03-652 of the South Carolina Code of Laws, as amended.

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

Th B. Scott III

Thomas B Scott, III, Solicitor

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury. 76

Defendant

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

Defendant

Witness:

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

2013 SEP -4 AM 10: 39

FILED FOR RECORD
WITNESS
CLERK OF COURT
ORANGE COUNTY, SC

Winnifia B. Clark
CLERK OF COURT
ORANGE COUNTY, SC

DOCKET NO. 2013GS38-0360

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 9, 2013 TERM

THE STATE vs.

Dietrich Tremayne Funchess

Indictment for

ATTEST: TRIPLE COPY

Winnifia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-3-910

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2013A3810700191

Arrested: January 30, 2013

ACTION PROCEEDING
Macey's Sheriff
SEP 04 2013
Date

Foreperson of Grand Jury
Date: September 4, 2013

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2013GS38-0360

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Orangeburg County present upon their oath:

KIDNAPPING

That in Orangeburg County, South Carolina, on or about January 26, 2013, the Defendant, Dietrich Tremayne Funchess did unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, R [REDACTED] J [REDACTED], without authority of law, this offense in violation of Section 16-03-910, of the South Carolina Code of Laws, as amended

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

Th B. Scott, III

Thomas B Scott, III, Solicitor