

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

G. Edward Welmaker  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Case No. 2010-CP-23-9791

State of South Carolina ----- Respondent

v.

Wayne David Bennett ----- Appellant

NOTICE OF APPEAL

Wayne David Bennett appeals the judgment of the Honorable G. Edward Welmaker, dated October 8<sup>th</sup>, 2010. Appellant received written notice of this judgment on October 12<sup>th</sup>, 2012.

November 6<sup>th</sup>, 2012



Wayne D. Bennett, #188393  
Evans Corrections Institute, F3-B-142  
610 Hwy 9 West  
Bennettsville, SC 29512

Attorney for Respondent

Karen C. Ratigan  
PO Box 11549  
Columbia, SC 29211

RECEIVED

NOV 13 2012

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

RECEIVED

NOV 13 2012

S.C. SUPREME COURT

G. Edward Welmaker  
Chief Administrative Judge

Case No. 2010-CP-23-9791

State of South Carolina ----- Respondent

v.

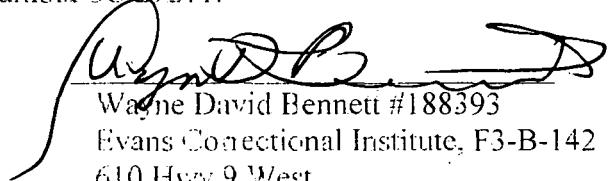
Wayne David Bennett ----- Appellant

PROOF OF SERVICE

I certify that I have served the NOTICE OF APPEAL and EXPLANATION BRIEF, on the State of South Carolina, by depositing it in the United States Mail, postage paid at Evans Correctional Institute, on November 7<sup>th</sup>, 2012 addressed to the attorney of record for the respondent, Karen C. Ratigan, PO Box 11549, Columbia SC 29211.

November 5<sup>th</sup>, 2012

and E

  
Wayne David Bennett #188393  
Evans Correctional Institute, F3-B-142  
610 Hwy 9 West  
Bennettsville, SC 29512

Counsel of Record

William SF Freeman  
PO Box 383  
Greenville, SC 29602  
(Appellant)

Karen C. Ratigan  
PO Box 11549  
Columbia, SC 29211  
(Respondent)

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

FILED-CLERK OF COURT  
PAUL B. WICKS

COUNTY OF GREENVILLE

2012 SEP 28

) THIRTEENTH JUDICIAL CIRCUIT

P 3:06

Wayne David Bennett,  
a/k/a Dewayne David Bennett,  
SCDC No 188393

) civil action number: 2010-CP-23-9791

Applicant,

-vs-

) **MEMORANDUM IN OPPOSITION**  
) **TO PROPOSED FINAL DISMISSAL**

State of South Carolina

Respondent.

YOU WILL PLEASE TAKE NOTICE that the Applicant in the above-captioned case hereby opposes the entry of a final order dismissing his case. The State submitted a proposed final order on September 20, 2012.

Applicant opposes the issuance of a final order for the reasons set forth in his memorandum filed in August, 2012; and requests the Court correct the scrivener's typographical error that is negatively impacting his incarceration.

In the alternative, Applicant requests a hearing to present these arguments to the Court.

Respectfully submitted,



September 27, 2012  
Greenville, South Carolina

William S. F. Freeman (#16676)  
Post Office Box 383  
Greenville, South Carolina 29602  
telephone: (864) 271-3838  
fax: (864) 271-2828  
ATTORNEY FOR APPLICANT

IN THE STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
 COUNTY OF GREENVILLE THIRTEENTH JUDICIAL CIRCUIT

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENS, CLERK  
 2012 SEP 28 P 3:06


Wayne David Bennett, ) civil action number: 2010-CP-23-9791  
 a/k/a Dewayne David Bennett, )  
 SCDC No 188393 )  
 Applicant, )  
 -vs- )  
 State of South Carolina ) **CERTIFICATE OF SERVICE**  
 Respondent. )

The undersigned hereby certifies that the documents identified below were mailed to the persons identified below on the date identified by to the address identified below. Said mailing was made by first class mail with sufficient postage.

DOCUMENTS SERVED: memorandum in opposition to final order

PERSONS SERVED:

Karen Ratigan  
 South Carolina Attorney General's Office  
 Post Office Box 11549  
 Columbia, South Carolina 29211-1549  
 DATE: <sup>October 1</sup> ~~September 27~~, 2012  
 Greenville, South Carolina <sup>28</sup>

  
 Jared A. Crane  
 WILLIAM S. F. FREEMAN, LLC  
 Post Office Box 383  
 Greenville, South Carolina 29602  
 telephone: (864) 271-3838  
 fax: (864) 271-2828

ATTORNEY FOR MR. BENNETT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Wayne David Bennett, )  
 a/k/a Dewayne David Bennett, )  
 S.C.D.C. No. 188393, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2010-CP-23-9791

**FINAL ORDER OF DISMISSAL**

FILED  
 2014 APR 12

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 30, 2010. The Respondent made its return and partial motion to dismiss on April 12, 2011 and an amended return and motion to dismiss on July 30, 2012, requesting the application be summarily dismissed based upon the expiration of the statute of limitations and the presumption against successive PCR applications.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed August 8, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. On August 8, 2012, the Greenville County Clerk of court served the above-mentioned Conditional Order of Dismissal on both the Respondent and the Applicant's attorney.

In a document captioned "Memorandum in Opposition to Conditional Dismissal" and filed August 29, 2012, counsel for the Applicant argues the sentencing sheet for indictment

1 

2002-GS-23-7954 for second-degree criminal sexual conduct with a minor contains a typographical error listing the date of offense as 1996 – which would have made the victim eighteen years old. Counsel for the Applicant argues the sentencing sheet issue is newly-discovered evidence and the PCR application should not be dismissed.

This Court has reviewed the Applicant's response to the Conditional Order of Dismissal in its entirety, in conjunction with the original pleadings, and finds a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court notes the Applicant was convicted and sentenced on March 2, 2005 and the South Carolina Court of Appeals dismissed his appeal on May 11, 2007. As this action was filed on November 30, 2010, it was clearly filed outside the expiration of the statute of limitations. See S.C. Code Ann. § 17-27-45(a) (Supp. 2003). This is the Applicant's second application for post-conviction relief. This Court notes successive PCR applications are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). This Court finds the Applicant had the opportunity to litigate all issues related to his case at the evidentiary hearing for his first PCR application on September 25, 2008. See Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999) (“[A]n applicant is entitled to a full adjudication on the merits of the original petition, or ‘one bite at the apple.’”).

This Court finds the Applicant's allegation that a scrivener's error on a sentencing sheet merits post-conviction relief is without merit. Arrest warrant G-453995 issued on October 3, 2001 indicates the 22 year old victim stated the sexual battery occurred between the ages of 12 and 15 and corresponding indictment 2002-GS-23-7954 indicates the offenses occurred between November 1, 1990 and November 9, 1994. As such, the Applicant was properly indicted on the

A handwritten signature in black ink, appearing to be "C. W. [unclear]", is written over the page number.

offense of second-degree criminal sexual conduct with a minor. See S.C. Code Ann. § 16-3-655(B) (2003). The indictment put the Applicant and his trial counsel on notice of the charge he faced. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). This Court finds a mere scrivener's error of an offense date of November 9, 1996 on the sentencing sheet does not entitle the Applicant to a reversal of that conviction and a new trial.

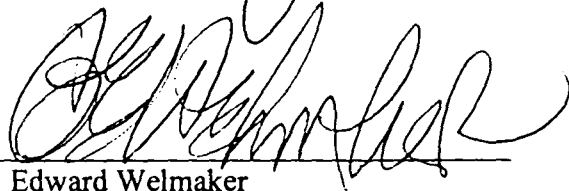
This Court finds the claim of newly-discovered evidence is without merit. For an applicant to be granted a new trial on this basis, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted). The Applicant has not shown that the alleged evidence meets any of the requirements for newly -discovered evidence.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in this Court's Conditional Order of Dismissal, the PCR application is 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.

A handwritten signature in black ink, appearing to be "CWA 3", is written over the page number.

AND IT IS SO ORDERED this 27 day of Sept 28, 2012.



G. Edward Welmaker  
Chief Administrative Judge  
Thirteenth Judicial Circuit

, South Carolina.

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Wayne David Bennett, 188393 )  
a/k/a Dewayne David Bennett )  
 Plaintiff )

v. )

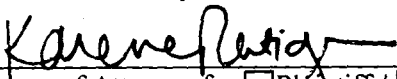
State Of South Carolina )  
 Defendant. )

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-23-9791

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney: William S. F. Freeman, Esquire, Bar No. Address: Post Office Box 383 Greenville SC 29602 phone: (864) 271-3838 fax: e-mail: other:	Defendant's Attorney: Karen C. Ratigan, Bar No. 68331 Address: Post Office Box 11549 Columbia SC 29211-1549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: KRatigan@scag.gov other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	September 20, 2012 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Date Filed: _____ Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED: _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2010CP2309791

IN THE COURT OF COMMON PLEAS

PM 10 12

Wayne David Bennett vs. South Carolina State Of

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.
- 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;  Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 8th day of October, 2012.

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 8th day of October, 2012, and a copy mailed first class this 8th day of October, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

David Wayne Bennett Evans Corr Instit 610 Hwy West Bennettsville, SC 29512

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA

COUNTY OF Greenville  
STATE VS.

Wayne Bennett

CA: \_\_\_\_\_

Race: W Sex: M Age: 47

DOB: 04-12-1957 SS#: 248-41-8169

Address: 229 WAGON FORD RD  
EASLEY, SC 29640

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2002GS2307954

A/W#: G453995

Date of Offense: 11-09-1996

S.C. Code § : 16-03-0655(3)

CDR Code #: 0397

CASE RESTORED  
SENTENCE

PLEA  TRIAL

CONVICTED OF or  PLEADS

In disposition of the said indictment comes now the Defendant who was  
TO: CRIM SEX COND. 2ND DEGREE W/MINOR

in violation of § 16-03-0655(3) of the S.C. Code of Laws, bearing CDR Code # 0397

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

*[Signature]*  
Solicitor

\_\_\_\_\_  
Defendant

*[Signature]*  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

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

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered

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

Payment Terms: \_\_\_\_\_

set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

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

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

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

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

§ 35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

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

§ 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in instalments) \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

*[Signature]*  
Clerk of Court/ Deputy Clerk

Court Reporter: *[Signature]*

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Appointed PD or appointed other counsel, § 35.13 TP

Requires \$500 be paid to Clerk during probation.

\_\_\_\_\_

\_\_\_\_\_

PRESIDING JUDGE *[Signature]*

Judge Code: 2111310

Sentence Date: 3/2/05

WITNESSES

T.D. BRACKEN

*Handwritten signature*

GCSO

03/28/02

ARREST WARRANT NUMBER

G 453995

ACTION OF GRAND JURY  
TRUE BILL

*Handwritten signature*

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

VERDICT

*BENCH TRIAL - GUILTY*

*Handwritten signature*

*3/2/05*

*Foreperson of Petit Jury*

*Date:*

DOCKET NO. 2002-GS-23-

LMM 007954

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

AUGUST TERM 2002

THE STATE  
**GUILTY**  
vs.

WAYNE DAVID BENNETT

**BW**

**SEP 30 2002**

Indictment for

0397

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
SECOND DEGREE

VIOLATION § 16-3-655

*709*

*certified copy  
Paul B. Waldman  
Clerk of Court C.P. & G.S.  
Greenville County, SC  
Date 12-14-02*

**SCANNED**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

AMENDED INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR  
SECOND DEGREE

At a Court of General Sessions, convened on DECEMBER 14, 2004 the

Grand Jurors of Greenville County present upon their oath:

That WAYNE DAVID BENNETT did in Greenville County, between the 1st day of November, 1990, and the 9th day of November, 1994, engage in sexual battery with Sylvia Vanmastright, who was less than sixteen years of age, and that he did so in a position of familial, custodial, or official authority to coerce the victim to submit, and/or he was older than the victim. This is in violation of South Carolina Code of Laws Section 16-3-655(2) and (3).

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

*J. Mark King*  
\_\_\_\_\_  
SOLICITOR

Staat: KONINKRIJK DER NEDERLANDEN	Gemeente: ROTTERDAM	<span style="font-size: 4em; font-weight: bold;">A</span> <span style="font-size: 3em; font-weight: bold; position: absolute; top: -20px; right: -20px;">3</span>
Etat: ROYAUME DES PAYS-BAS	Commune de	
Staat: KÖNIGREICH DER NIEDERLANDE	Gemeinde	
State: KINGDOM OF THE NETHERLANDS	Municipality	
Estado: REINO DE HOLANDA	Municipio de	
Stato: REGNO DEI PAESI BASSI	Comune di	
Devlet: HOLLANDA KRALLIGI	Köy veya mahalle	

**Uittreksel uit de registers van de burgerlijke stand omtrent een geboorte**

Extrait des registres de l'état civil concernant une naissance - Auszug aus dem Geburtsregister - Extract of the register of births -  
 Extracto del registro de nacimientos - Estratto del registro delle nascite - Doğuma ait nüfus kayıtlı hülâsası sureti

a. plaats van geboorte: lieu de naissance - Geburtsort - place of birth - lugar de nacimiento - luogo di nascita - doğum yeri	Rotterdam---
b. datum van geboorte: date de naissance - Geburtsdatum - date of birth - fecha de nacimiento - data di nascita - doğum tarihi (successively: day, month, year)	9-11-1978---
c. geslacht van het kind: sexe de l'enfant - Geschlecht des Kindes - sex of the child - sexo del niño - sesso del bambino - çocuğun cinsiyeti	F---
d. familienaam van het kind: nom de famille de l'enfant - Familienname des Kindes - surname of the child - apellido del niño - cognome del bambino - çocuğun soyadı	van Maastricht---
e. voornamen van het kind: prénoms de l'enfant - Vornamen des Kindes - christian names of the child - nombres de pila del niño - prenomi del bambino - çocuğun adı	Sylvia---
f. familienaam van de vader: nom de famille du père - Familienname des Vaters - surname of the father - apellido del padre - cognome del padre - babasının soyadı	van Maastricht---
g. voornamen van de vader: prénoms du père - Vornamen des Vaters - christian names of the father - nombres de pila del padre - prenomi del padre - babasının adı	Huibert---
h. meisjesnaam van de moeder: nom de jeune fille de la mère - Mädchenname der Mutter - maiden name of the mother - apellido de soltera de la madre - nome di signorina della madre - anasının evlenmeden önceki soyadı	Ouwens---
i. voornamen van de moeder: prénoms de la mère - Vornamen der Mutter - christian names of the mother - nombres de pila de la madre - prenomi della madre - anasının adı	Alida Johanna---

Datum van afgifte, ondertekening en zegel van de bewaarder:

Rotterdam, 14-5-1985---

Date de délivrance, signature et sceau du dépositaire  
 Ausstellungsdatum, Unterschrift, und Dienstsiegel des Registerführers  
 Date of issue, signature and seal of keeper  
 Fecha de expedición, firma y sello del depositario  
 Data in cui è stato rilasciato l'atto, con firma e bollo dell'ufficio  
 Verilindiği tarih, nüfus (ahvali şahsiyet) memurunun imzası ve mührü

De ambtenaar van de burgerlijke stand,  
 L'officier de l'état civil -  
 Der Standesbeamte - The registrar - Official  
 del registro civil -  
 L'ufficiale di stato civile - Nüfus memuru



Leges f. 2,50 voldaan



*M.W. Otto-Koch*

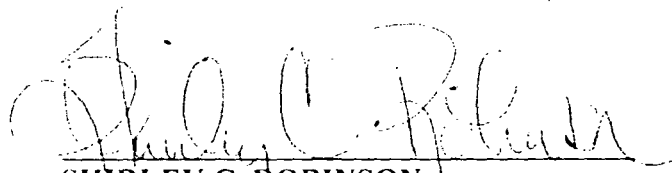
M.W. Otto-Koch.



with his concerns. The Department's sentencing classifications are rightly controlled by the Sentencing Sheet.

Based upon the foregoing, the decision of the Department is **AFFIRMED**.

**AND IT IS SO ORDERED.**

  
**SHIRLEY C. ROBINSON**  
Administrative Law Judge

October 12th, 2011  
Columbia, South Carolina

REGISTRAR OF PROBATION  
In the event of an emergency, the undersigned is authorized to take  
any action which the undersigned is authorized to take in the  
absence of the undersigned, including the issuance of a writ of  
habeas corpus or discharge from the agency.  
My office is located at the Department of Corrections, 1000  
10th Street, Columbia, South Carolina 29201.  
Shirley C. Robinson  
Administrative Law Judge

State of South Carolina  
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8147  
Teletax: 864-467-8610



Solicitor

Greenville County Courthouse  
305 E. North Street, Suite 275  
Greenville, SC 29601-2185

August 29, 2011

Mr. Dewayne Bennett  
Inmate # 188393  
Evans Corr. Inst. F3/B/142  
610 Hwy 9 West  
Bennettsville, SC 29512

RE: Sentencing Sheet

Dear Mr. Bennett:

I received your letter in which you informed us that there is a typographical error on your sentencing sheet regarding the incident dates. I do not believe that we will be able to void your sentencing sheet and substitute a new one as you requested. However, I will be happy to clear up the problem, if there is one. Please let me know the name(s) and contact information for whomever I would need to communicate with regarding this issue.

Truly Yours,

A handwritten signature in black ink, appearing to read "L. Mark Moyer".

L. Mark Moyer  
Assistant Solicitor



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

Edward W. Miller  
Judge

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

September 8, 2010

Wayne D Bennett  
#188393  
Evans Correctional Institution  
610 Highway 9 West  
Bennettsville, SC 29512

Dear Mr. Bennett:

I received your letter dated August 31, 2011 in which you ask the Court to change a typographical error on your sentence sheet and provide you with a corrected sentencing sheet.

Unfortunately, your letter is considered an *ex parte* communication, and I am prohibited from responding to *ex parte* matters like yours. There are proper methods for legal communication that must be followed, and you should contact your lawyer if you have any questions. I am sorry that I am unable to help you, and I wish you the best of luck.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Edward W. Miller".

Edward W. Miller

EWM/jbm

7  
1 CHARGE SINCE THE FACTS ON ALL THREE INDICTMENTS ARE THE  
2 SAME, THE ELEMENTS ALLEGED.

3 THE COURT: SAME VICTIM, SAME CONDUCT.

4 MR. MOYER: IF IT PLEASE THE COURT? WHAT WE HAVE  
5 THOUGH IS THE LAW IS DIFFERENT FOR THOSE THREE. AND SO THE  
6 TESTIMONY THAT YOUR HONOR'S GOING TO HEAR IS THAT THIS  
7 ACTION TOOK PLACE OVER A PERIOD OF ABOUT SEVEN YEARS.

8 THE CRIMINAL SEXUAL CONDUCT WITH A MINOR CHARGE COVERS  
9 THAT PERIOD OF TIME UP UNTIL HER SIXTEENTH BIRTHDAY.  
10 CRIMINAL SEXUAL CONDUCT, SECOND DEGREE, COVERS THAT PERIOD  
11 OF TIME FROM AGE SIXTEEN UNTIL THE CONDUCT STOPPED. AND  
12 THEN INCEST, WHICH IS A DIFFERENT ELEMENT, COVERS THAT  
13 ENTIRE TIME-FRAME SINCE THERE'S NOT AN AGE LIMIT.

14 SO, YOUR HONOR, THE ELEMENTS FOR EACH OF THOSE CRIMES  
15 IS DIFFERENT. IT'S LIKE A HOST OF OTHER SITUATIONS THAT  
16 COME BEFORE THE COURT WHERE SIMILAR CONDUCT VIOLATES  
17 MULTIPLE STATUTES UNDER SOUTH CAROLINA LAW. AND THAT IS  
18 WHAT WE'RE GOING WITH.

19 THE COURT: ALL RIGHT. I'LL TAKE IT UNDER ADVISEMENT.

20 MS. MANIGAULT: YOUR HONOR, THE SECOND MOTION IS THAT  
21 IF THE COURT DOES NOT MOVE TO MAKE THE SOLICITOR ELECT ONE  
22 OF THE CHARGES, THEN OUR SECOND MOTION IS TO SEPARATE THE  
23 TRIALS ON EACH INDICTMENT. IF THEY ARE IN FACT ALLEGING  
24 SEPARATE AND DISTINCT TIMES ON EACH INDICTMENT, AND EVENTS,  
25 AND DIFFERENT STATUTES WE'RE ASKING THE COURT TO SEPARATE

1 THE CHARGES FOR A TRIAL ON EACH CHARGE.

2 THE COURT: MOTION FOR SEVERANCE. WHAT'S YOUR  
3 RESPONSE, SOLICITOR?

4 MR. MOYER: YOUR HONOR, THE RESPONSE IS THAT THE  
5 CONDUCT IS ONE CONTINUOUS CHAIN OF EVENTS. IT STARTED WHEN  
6 SHE WAS TWELVE YEARS OLD AND ENDED WHEN SHE WAS SEVENTEEN.  
7 THESE SHOULD BE TRIED TOGETHER BECAUSE THERE WOULD BE  
8 DUPLICATE TESTIMONY IN EACH OF THOSE TRIALS, PARTICULARLY  
9 WITH REGARD TO THE FACT THAT WE HAVE AN INCEST INDICTMENT.  
10 THAT INCEST INDICTMENT DOES NOT DELINEATE THE TIME -- IT  
11 COVERS THE WHOLE TIME-FRAME. SO WHEN THE JUDGE OF THE FACTS  
12 HEARS THIS CASE, IN PARTICULAR THE INCEST INDICTMENT, THAT  
13 PERSON'S GOING TO HEAR THE CONDUCT THAT COVERS THIS ENTIRE  
14 THING.

15 SO THERE'S NO PREJUDICE TO THE DEFENDANT TO HAVE HIM  
16 TRIED FOR THE CRIMINAL SEXUAL CONDUCT CASES ALONG WITH THE  
17 INCEST INDICTMENT. THE JURY'S GOING TO HEAR ALL THIS  
18 EVIDENCE ANYWAY, OR THE JUDGE, WHICHEVER THE CASE MAY BE.  
19 SO, YOUR HONOR, WE FEEL IT IS APPROPRIATE TO TRY THEM ALL  
20 TOGETHER. IN ADDITION, I THINK UNDER 404 B, IF WE TRIED ONE  
21 OR OTHER OF THE CRIMINAL SEXUAL CONDUCT CASES, THE TESTIMONY  
22 FROM THE OTHER WOULD COME INTO PLAY. SO WE SEE NO PREJUDICE  
23 TO THE DEFENDANT.

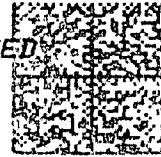
24 THE COURT: ALL RIGHT. ANYTHING ELSE? WHERE ARE YOU  
25 PREJUDICED?

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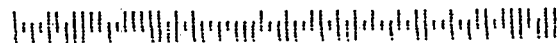
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CLERK OF COURT

IN THE STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE ) THIRTEENTH JUDICIAL CIRCUIT

Wayne David Bennett, ) civil action number: 2010-CP-23-9791  
a/k/a Dewayne David Bennett, )  
SCDC No 188393 )  
) )  
Applicant, )  
- vs- ) **MEMORANDUM IN OPPOSITION**  
) **TO CONDITIONAL DISMISSAL**  
State of South Carolina )  
) )  
Respondent. )  
\_\_\_\_\_ )

YOU WILL PLEASE TAKE NOTICE that the Applicant in the above-captioned case hereby opposes the conditional dismissal of his case. The conditional dismissal was filed August 8, 2012 and was received August 9, 2012.

The reasons for opposing the conditional dismissal are 1) all those set forth in the record; 2) those filed with the Court; and 3) those set forth in this memorandum.

The State's arguments center around the successive nature of the PCR application and the one year statute of limitations. Since this case involves new evidence, these are inapplicable defenses. In the alternative, these should be waived in light of the facts of the case.

**the sentencing sheet contains a "typo"**

Sentencing sheets are very important documents. See State v. Bennett, 375 S.C. 165, 650 S.E.2d 490 (S.C.App. 2007) (where the sentencing sheets controlled over conflicting CDR Codes). The Department of Corrections relies heavily on them. In this case, the typographical error has had a negative impact on Applicant, as set forth below.

The Victim in this matter testified she was born November 9, 1978.<sup>1</sup> This is not controverted by Applicant.

The indictment in case number 2002-GS-23-7954 was for "CRIM SEX COND. 2<sup>ND</sup> DEGREE W/MINOR". The indictment identifies the "Date of Offense" as "11-09-1996." Critically, this means the sentencing sheet identifies the Victim as being 18 at the time of the wrongful act.

The Applicant was sentenced under S.C. Code Ann. 16-3-655(3). The Legislative History of the enacting Act provides that at the time of sentencing, the criminal activity only reached persons who were "less than sixteen years of age."<sup>2</sup>

Presumably, the Court meant to enter 1990 to 1994 as the dates of offense. See Indictment; otherwise the Applicant would not be in violation of the law.

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<sup>1</sup> See Transcript, page 12, lines 16-18 attached as an Exhibit.

<sup>2</sup> Act 509 provides as follows:

(A509, R620, S2821)

AN ACT TO AMEND ACT 157 OF 1977, AS AMENDED, RELATING TO THE CRIMES OF CRIMINAL SEXUAL CONDUCT, SO AS TO FURTHER PROVIDE FOR THE CRIMES OF CRIMINAL SEXUAL CONDUCT IN THE FIRST OR SECOND DEGREE WHEN MINORS ARE INVOLVED.

Be it enacted by the General Assembly of the State of South Carolina:

**Crimes of criminal sexual conduct**

SECTION 1. Section 5 of Act 157 of 1977, as amended by Act 639 of 1978, is further amended to read:

"Section 5. (1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim who is less than eleven years of age.

(2) A person is guilty of criminal sexual conduct in the second degree if the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age.

(3) A person is guilty of criminal sexual conduct in the second degree if the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim."

Time effective

SECTION 2. This act shall take effect upon approval by the Governor.

**not catching the typo is ineffective assistance of counsel and there's a reasonable probability the result would have altered the sentence**

The Court has been faced with an analogous situation before and granted the PCR relief sought in that case.

It is ineffective assistance of counsel not to raise inconsistencies in the sentencing sheets. See Boan v. State, 388 S.C. 272, 695 S.E.2d 850 (S.C. 2010). In Boan, the Court orally sentenced the Defendant to a twenty year sentence; however, the sentencing sheets reflected a thirty-year sentence. The Court found it was ineffective assistance of counsel to not object.

Further, the Boan court found that this failure was not trivial--instead, there existed a reasonable probability the result would have altered the sentence.

Finally, see Dervin v. State, 386 S.C. 164, 687 S.E.2d 712 (S.C. 2009). In that case, the Court remanded the applicant for resentencing when applicant/defendant was given a 25-year sentence but 10 years was the maximum allowed for the offense.

**the effect**

Because the sentencing sheet is incorrect, the Department of Corrections has indicated that Applicant is only eligible for the 85% reduction in sentence (not 50%). However, if the sentencing sheet is correct, then the charged crime was not committed.

On the other hand, if the sentencing sheet were altered to reflect a different date of offense, this would place the offense earlier than the change in the law. It would make Applicant eligible for a 50% reduction in sentence because the Department of Corrections calculates from the date of offense, not the date of sentencing.

And at the time of the offense, the law classified the offense as "non-violent".

The effect of the typo has been to cause the Applicant to (a) be ~~is~~ properly classified as a violent offender; (b) serve an 85% sentence *not* a 50% sentence; (c) to not be allowed to earn good time and work credits ~~as a non-violent offender~~; and (d) being denied parole eligibility.

Because of the nature of the charge (criminal sexual conduct with a minor), this charge is the driving force in the Applicant's incarceration. It is the only crime listed as "violent" and "most serious" on the sentencing sheets (all three of which are enclosed for the Court's review).

**it is appropriate for this Court to review the matter**

The PCR Code provides that challenges that "an applicant's sentence has expired" are appropriate for a PCR Court. Al-Shabazz v. State, 338 S.C. 354; 527 S.E.2d 742 (S.C. 2000).

As an additional grounds, the Applicant has tried to bring the typo to the attention of Department of Corrections personnel. You will see from the enclosed that the Warden found no error. At the "Step 2" inmate grievance phase, you will see that the appealing official denied the relief sought on October 5, 2010. The official relied on the typo in making this decision and denying the relief sought, stating in part:

...The date of offense on your conviction for Criminal Sexual Conduct with a Minor 02-GS-2307954 has an offense date of 11/9/1996, not between 1990 and 1994 as you allege. Your conviction is properly entered and calculated as an 85%, non-parolable offense....

The appeal under the Administrative Procedures Act was also stymied by the typographical error. The Court wrote (underlined emphasis added):

If the Appellant [Applicant] feels that his Sentencing Sheet includes incorrect information, Appellant should contact the sentencing judge with his concerns. The Department's sentencing classifications are rightly controlled by the Sentencing Sheet.

Letters to the Court and the Solicitor did not result in the typographical error being fixed. See correspondence attached.

**the evidence was only recently discovered**

Applicant filed on November 30, 2010 and raised these issues. Applicant's initial and amended applications and memorandum in opposition reference that this is newly discovered evidence.

Applicant only recently discovered (1) the error and (2) *the effect of the error* in the sentencing sheets in connection with the inmate grievance form. You will see from those forms (attached as Exhibits) that the Step 2 decision was only handed down the month before the Applicant filed the current PCR.

**the administrative relief has not been granted**

As noted above, Applicant has not succeeded in his efforts to fix the typo using the internal grievance and APA appeals available to him.

**newly discovered evidence**

The PCR Code<sup>3</sup> specifically contemplates that the statute of limitations only starts running within one year of when new evidence should have been uncovered: “If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.” S.C. Code Ann. §17-27-45(C).

In the present case, the Applicant only learned about the effect of the typo in the month and a half before he filed. In the alternative, a hearing is appropriate to determine when the newly discovered evidence was learned by Applicant; to take testimony regarding the error in the sentencing sheets; to take testimony regarding the effect of the error; and other matters.

---

<sup>3</sup> **§ 17-27-45. Filing procedures for post conviction relief applications**

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

**statute of limitations should not be a bar**

In the alternative, with respect to the statute of limitations, this should not be a bar. The Court has made clear that every PCR applicant is entitled to “one bite at the apple” Odom v. State 337 S.C. 256; 523 S.E.2d 753 (S.C. 1999) and that technical considerations (such as the statute of limitations) will not serve as a bar to a PCR where an applicant was denied that bite at the apple.

Thus, the Court in Odom v. State 337 S.C. 256; 523 S.E.2d 753 (S.C. 1999) held that the one year statute of limitations does not apply to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (S.C. 1991) situations (where counsel failed to file a timely appeal following the denial of the petitioner’s PRC application).

Moreover, the Court in Wilson v. State 348 S.C. 215, 559 S.E.2s 581 (S.C. 2002) extended the rule to make clear that every defendant has a right to file a direct appeal and one PCR application. In that case, the Court had no problem extending the statute of limitations because “policy would be frustrated if the one year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel, and then was denied his right to a PCR application because of the one year statute of limitations.”

Finally, the Court in Ferguson v. State, 382 S.C. 615, 677 S.E.2d 600 (S.C. 2009) noted that where an inmate was mentally incompetent and thereby was prevented from filing for PCR, then the inmate’s statute is tolled during the period of his incompetency. To do otherwise would be to deny an inmate his “right” to one bite at the apple.

In the present case no Court has ever reviewed the incorrect sentencing sheet issue. Accordingly, Applicant has not been granted his right to one bite at the apple on this issue.

Therefore, for the foregoing reasons the Applicant petitions the Court to change the typographical error. Applicant also petitions the Court to reverse its conditional dismissal and instead conduct a hearing on these matters.

Finally, Applicant petitions the Court for all the relief set forth in all documents filed by Applicant or on behalf of Applicant.

Respectfully submitted,



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Greenville, South Carolina 29602  
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fax: (864) 271-2828  
ATTORNEY FOR APPLICANT

August 28, 2012

Greenville, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 )  
 -VS- )  
 )  
 WAYNE BENNETT, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2002-GS-23-7953, 7954  
2004-GS-23-9126

TRANSCRIPT OF RECORD

MARCH 2, 2005  
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

L. MARK MOYER, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

DOROTHY MANIGAULT, ESQUIRE

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

1 MS. MANIGAULT: THANK YOU, YOUR HONOR.

2 THE COURT: ALL RIGHT. YOU READY?

3 MR. MOYER: YES, SIR. YOU WANT US TO CALL THE FIRST  
4 WITNESS?

5 THE COURT: YEAH.

6 MR. MOYER: I CALL SYLVIA VANMASTRIGT.

7 SYLVIA VANMASTRIGT, BEING  
8 DULY SWORN TESTIFIED AS FOLLOWS:

9 THE COURT: COULD YOU SPELL YOUR LAST NAME FOR ME,  
10 MA'AM?

11 MS. VANMASTRIGT: IT'S V-A-N-M-A-S-T-R-I-G-T.

12 DIRECT EXAMINATION BY MR. MOYER:

13 Q. ALL RIGHT, MS. VANMASTRIGT. YOU JUST STATED YOUR NAME  
14 AND SPELLED IT. HOW OLD ARE YOU?

15 A. TWENTY-SIX.

16 Q. WHEN IS YOUR DATE OF BIRTH?

17 A. 11/9/78.

18 Q. NOVEMBER THE 9TH OF 1978. HOW FAR DID YOU GO IN  
19 SCHOOL?

20 A. I FINISHED HIGH SCHOOL.

21 Q. WHERE DID YOU GO TO HIGH SCHOOL?

22 A. TRAVELER'S REST HIGH SCHOOL.

23 Q. OKAY. AND YOU TOOK SOME CLASSES AT GREENVILLE TECH AS  
24 WELL?

25 A. YES, SIR.



3 Carr. Inst., F3-B-142  
Hwy 9, WEST  
NETTSVILLE, SC 29512



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