

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from County

S.C. SUPREME COURT

Honorable R. Scott Sprouse, Circuit Court Judge

CHRISTOPHER WILDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001557

APPENDIX

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ATTORNEYS FOR RESPONDENT

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INDICTMENT67

1 State of South Carolina
2 County of Oconee In the Court of General Sessions

3
4 State of South Carolina,)
5) 2014-GS-37-1135
6 -vs-) October 20, 2014
7 Christopher T. Wilder,)
8 Defendant.)
9) Transcript of Record

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B E F O R E:
The Honorable Alison Renee Lee, Judge

A P P E A R A N C E S:
Lindsey Satterfield Simmons, Assistant Solicitor
Attorney for the State
W. Wilson Burr, Esquire
Attorney for Defendant

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
None offered.				

E x h i b i t s

<u>Marked</u>	<u>Description</u>	<u>I.D.</u>	<u>Admitted</u>
None offered.			

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:57 a.m.)

4 THE COURT: Okay. Tommy Moore, Andrew Gibbs,
5 Christopher Wilder, and Brandon Payne.

6 Good morning again. Ladies and gentlemen, as you
7 stand before me this morning, even though you may be
8 charged with certain crimes, you are still innocent of
9 those charges and you remain innocent unless and until
10 the State is able to convince a jury that you are
11 guilty of the charge that's pending against you.

12 In connection with those charges, you have certain
13 constitutional rights. First of all, if your charge or
14 charges have not been presented to the Grand Jury, you
15 have the right to require the State to produce evidence
16 of that charge to a Grand Jury. The Grand Jury is made
17 up of 18 people. Their function is to determine
18 whether there's reason to believe that a crime has been
19 committed and whether there's reason to believe that
20 you committed that particular crime.

21 What happens is the solicitor's office will go in
22 to the Grand Jury and will present evidence about the
23 charge. After hearing that evidence, then 12 of those
24 18 Grand Jurors would have to agree and return a true
25 bill in order for you to be formally indicted. If they

1 return a true bill, then the criminal justice process
2 continues on. If 12 of those 18 people do not agree,
3 then they return a no bill or a no true bill, and under
4 those circumstances, nothing further would become of
5 those charges and you would be free to go.

6 By coming here today and by offering a plea of
7 guilty to the charge or charges that are pending
8 against you, you give up the right to have the Grand
9 Jury make the initial decision as to whether or not you
10 should be charged with that particular charge.

11 Additionally, you have the right to remain silent.
12 That's known as your right against self-incrimination.
13 That is your right not to say anything or do anything
14 that would give evidence yourself. That means that you
15 don't have to talk to anyone in law enforcement about
16 the charges, you don't have to talk to anyone in the
17 solicitor's office, you don't have to discuss the
18 charge or charges with me. But by coming here this
19 morning and by offering to plead guilty, you give up
20 that right to remain silent because you will be
21 required to make statements that are against your
22 interest.

23 You also have the right to a jury trial. That's
24 your right to have 12 jurors decide your guilt or your
25 innocence. And just as I told you this morning that

1 you are innocent as you stand here, the jury is told
2 the same thing, that you are innocent of those charges
3 and that you remain innocent unless and until the State
4 can convince all 12 of those jurors that you are
5 guilty. And before the jury can find you guilty on the
6 charge, the State has to produce enough evidence to
7 convince a jury that you are guilty beyond a reasonable
8 doubt.

9 In connection with that right to a jury trial, you
10 also have the right to be able to put up a defense.
11 That's normally done, of course, during the jury trial.
12 You may call witnesses who may testify on your behalf.
13 You can get on the witness stand and testify for
14 yourself if that's what you wish to do.

15 You also have the opportunity before the trial
16 begins to raise any legal challenges to the charge or
17 to the evidence. So, for example, if you've been
18 searched for whatever reason or your property has been
19 searched, you can have a hearing to determine whether
20 it was a valid search or whether the evidence that came
21 about as a result of that search can be used against
22 you.

23 If you have made statements to law enforcement
24 officers, you can have a hearing to determine whether
25 those statements could be used against you during the

1 course of a trial. If there's any other reason that
2 you and your attorney believe that you have to
3 challenge either the charge or to challenge the
4 evidence, the time that you would do that would be
5 right before the jury trial begins.

6 So by coming here today and by offering to plead
7 guilty, you would be giving up not only your right to a
8 jury trial, but you would be giving up your right to
9 challenge the evidence and to challenge the charges
10 that are pending against you.

11 You also have the right to confront your accusers.
12 That's known as your right of confrontation. That's
13 your right to require the State to bring in the
14 witnesses who would testify against you. They're
15 required to come to court. They would be placed under
16 oath and give testimony from the witness stand during
17 the trial. You, through your attorney, you have the
18 opportunity to cross-examine them and ask them
19 questions while they're under oath. So you have the
20 opportunity to see exactly who those witnesses are and
21 to hear exactly what they have to say in offering
22 evidence against you. Again, by pleading guilty at
23 this particular point, you would also be giving up your
24 right to confront your accusers.

25 Additionally, ladies and gentlemen, if I accept

1 your plea today and I impose a sentence, you have 15 --
 2 I'm sorry, ten days from today's date in order to file
 3 an appeal. An appeal from a guilty plea is very
 4 limited in nature because this is not a hearing in
 5 which all of the evidence is being presented. It's not
 6 a trial. You do not have the opportunity to challenge
 7 the evidence that the State could have brought against
 8 you or could have produced during the course of a
 9 trial, but you still have the right to have an appeal
 10 from a guilty plea.

11 If you decide that you wish to have an appeal, you
 12 must let your attorney know very clearly to file an
 13 appeal on your behalf. If it is not filed within that
 14 ten-day period, then you will lose the opportunity to
 15 have an appeal in this matter.

16 I'm going to ask if y'all have understood the
 17 rights that I have explained to you. I ask that you
 18 answer out loud so I can hear you, please.

19 Have you all understood the rights I have
 20 explained to you this morning?

21 (All defendants responded affirmatively.)

22 THE COURT: Thank you. You may have a seat and
 23 we'll take up your matters individually.

24 (WHEREUPON, the Court takes up other matters.)

25

--o0o--

1 MS. SIMMONS: Judge, this is Christopher Wilder.
2 He's here on 2014-GS-37-1135 for criminal sexual
3 conduct first degree. I spoke with the victim by phone
4 a couple times last week. She does not wish to be
5 present.

6 (WHEREUPON, the defendant was sworn.)

7 MR. BURR: There's also a probation matter in this
8 case.

9 THE COURT: How old are you, sir?

10 THE DEFENDANT: 28.

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

12 THE DEFENDANT: Tenth grade.

13 THE COURT: Before you were arrested, were you
14 employed?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Are you currently under the influence
17 of any drugs or alcohol or prescription medicines?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Do you have any physical or mental
20 conditions that would prevent you from being able to
21 understand your plea here today?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Mr. Wilder, do you understand that you
24 have been charged with criminal sexual conduct first
25 degree which carries a maximum term of imprisonment of

1 30 years; do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that that offense
4 also constitutes a strike, so that if you are
5 subsequently convicted of other crimes, that's
6 considered to be a most serious crime. If you are
7 subsequently convicted of other offenses that carry a
8 serious or most serious designation, then at some
9 particular point the State could decide to serve you
10 with notice of they intend to seek life without the
11 possibility of parole. Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: You are represented by Mr. Burr; is
14 that correct?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Has he had the opportunity to explain
17 this charge to you?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Did he explain to you the penalties
20 and the possible consequences?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Did he also explain to you evidence
23 that the State has against you on this charge?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Did he explain to you in more detail

1 your constitutional rights?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Mr. Burr, you have heard your client
4 indicate that you have had those conversations with
5 him; is that correct?

6 MR. BURR: Yes, ma'am.

7 THE COURT: Did you, in fact, explain this charge
8 to him as well as the penalties and the possible
9 consequences?

10 MR. BURR: I did, your Honor.

11 THE COURT: Did you explain to him about the
12 strikes?

13 MR. BURR: Yes, your Honor.

14 THE COURT: Did you also explain to him his
15 constitutional rights?

16 MR. BURR: Yes, ma'am, I did.

17 THE COURT: And did you explain to him the
18 evidence that the State has against him?

19 MR. BURR: I have.

20 THE COURT: Do you believe that he understood all
21 the discussions that you had with him?

22 MR. BURR: I think he did, your Honor.

23 THE COURT: Mr. Wilder, you were present earlier
24 today when I explained to you your constitutional
25 rights; is that correct?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Did you understand those rights as I
3 explained them to you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: On the front of this indictment, there
6 is a place here that says "action of the Grand Jury,"
7 and there is a "true bill" written here, and then there
8 is a signature of the foreperson of the Grand Jury. So
9 that tells me that the the Grand Jury had the
10 opportunity to consider this charge and decide that you
11 should be formally charged. Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that by coming here,
14 by pleading guilty to this charge, you will be giving
15 up your right to remain silent, you will be giving up
16 your right to confront your accusers and your right to
17 a jury trial?

18 THE DEFENDANT: Yes, ma'am..

19 THE COURT: Has anyone promised you anything or
20 threatened you to get you to plead guilty?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Has anyone threatened you or coerced
23 you to plead guilty?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Has there been any hope or promise of

1 any type of reward or benefit to you in pleading
2 guilty?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Then before I accept your plea, I'll
5 hear from the State about the facts.

6 Yes, ma'am.

7 MS. SIMMONS: Thank you, Judge. This occurred on
8 June 21st, 2014, here in Oconee County. The victim was
9 at her home in the city of Seneca, and she heard a
10 knock on the door late at night. She assumed it would
11 be a friend and caregiver of hers, Brittney Christian.
12 It was not. When she went to the door, it was this
13 defendant. She recognized him. She did know some of
14 his friends. She let him in the home. They proceeded
15 to drink beer and socialize for a period of time.

16 At some point I think the defendant became
17 intoxicated and made some sexual advances towards the
18 victim. Those were rejected. Then he became much more
19 forceful with her and eventually ended up digitally
20 penetrating her vagina. There was somewhat of a
21 struggle. During the course of the struggle, threats
22 of violence with a hammer-like object or a pocketknife
23 were also conveyed to the victim.

24 The victim did report this the same day and was
25 taken to the hospital, and there is restitution for her

1 hospital visit on the sentencing sheet.

2 THE COURT: Mr. Wilder, you heard the facts as
3 they have been stated. Is there anything you wish to
4 add or change or correct about what's been stated?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: So you admit that back in June earlier
7 this year that you engaged in nonconsensual sexual
8 battery on the plaintiff -- or the victim in this
9 matter?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And you made threats to her; is that
12 correct?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: So you didn't threaten her at all --

15 THE DEFENDANT: No, ma'am, I didn't threaten her.

16 THE COURT: -- or anything along those lines?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: And what type of force did you use?
19 You just held her down or what?

20 THE DEFENDANT: That's what she say I did.

21 THE COURT: Well, what do you say you did since
22 you're pleading guilty to it?

23 THE DEFENDANT: I mean, it didn't go like that,
24 but not the force, hold down part.

25 THE COURT: You were aware of the fact that she

1 was not interested in your sexual advances?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And you continued to anyway?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: And even if you didn't necessarily
6 hold her down, you did force yourself upon her?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Mr. Wilder, have you had enough time
9 to discuss this matter with your attorney?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Have you cooperated with him so he
12 could prepare a defense for you?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Has he done everything that you've
15 asked him to do in connection with this particular
16 charge?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Mr. Wilder, are you pleading guilty
19 freely and voluntarily?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Are you pleading guilty to the
22 criminal sexual conduct first degree because you are
23 guilty of that charge?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: I will accept your plea; find it's

1 freely and voluntarily made and that you understand
2 that you're giving up your constitutional rights
3 including your right to a jury trial.

4 Before I hear from you, Mr. Burr, let me hear
5 about the probation matter.

6 PROBATION OFFICER: Mr. Wilder is currently under
7 supervision for CDV second. He was sentenced in
8 Anderson County on April 24, 2014, to ten years
9 suspended to two years probation. Then he is also on
10 probation on another active case in three indictments
11 for -- two for common law robbery and one for assault
12 of a high and aggravated nature. On these collectively
13 he received ten years on three years probation. On
14 three of those. The warrant -- are you ready for me to
15 tell you about our warrant?

16 THE COURT: Yes, ma'am.

17 PROBATION OFFICER: Our warrant was a probable
18 cause warrant based on the facts of the offense as
19 Ms. Simmons indicated, but also because he failed to
20 attend and complete his anger management group and also
21 attend the Alcoholics Anonymous meetings that the Court
22 ordered. He didn't pay any of his financial
23 obligations and he didn't work. We felt a period of
24 time after he had been under supervision that he had a
25 severe alcohol problem, and he was told not to consume

1 alcohol. And according to the arrest report at the
2 time this incident occurred and when he was picked up,
3 he was intoxicated.

4 THE COURT: And, Mr. Wilder, you understand that
5 pleading to the charge today would automatically be a
6 violation of your probation; do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: It says here that you didn't complete
9 or didn't attend your anger management classes or
10 attend the AA/NA meetings; is that correct?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And you knew that you were supposed to
13 do those as part of your probation?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Is there any reason why you weren't
16 able to do that?

17 THE DEFENDANT: The day when I was supposed to
18 attend my first meeting is the day that I got arrested
19 for these current charges.

20 THE COURT: What about the AA meetings, was that
21 ongoing?

22 THE DEFENDANT: No, it wasn't started yet.

23 THE COURT: So, basically, what you're telling me
24 is that you didn't attend those because you had been
25 arrested and you have been incarcerated ever since?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Yes, sir, Mr. Burr.

3 MR. BURR: May it please the Court, your Honor.

4 I'd like to explain Mr. Wilder's issues with the
5 amount of force used. There was discussion of a
6 weapon. The only weapon confiscated or allegedly used
7 here was a hammer that was under the couch that the
8 victim reached for, not Mr. Wilder. I don't think
9 there was any injuries other than the sexual assault
10 itself.

11 Mr. Wilder is not disputing it was an unwelcome
12 advance and penetration. He's also not disputing he
13 does have a drinking problem. Alcohol has kind of been
14 the root of all his problems throughout his life, or
15 his adult life.

16 Your Honor, we'd ask -- there is a recommendation
17 of 15 years suspended on seven years with five years
18 probation. We'd ask the Court to accept that
19 recommendation. And I also discussed probation with
20 Ms. Newton this morning and this agreement. They would
21 go along with a seven-year revocation and terminate
22 that probation because if the Court accepts the new
23 recommendation, it includes five-year probation after
24 the seven years.

25 THE COURT: So with probation, you would agree

1 that he didn't attend the meetings because he was
2 arrested and didn't have a chance to attend them?

3 PROBATION OFFICER: No, ma'am. He went to a prior
4 revocation hearing where the judge had told him that he
5 needed to attend AA on a regular basis, but the anger
6 management was part of the original sentence, so he
7 never did it. And he's right. He was in and out of
8 jail a good bit, so he was in there back in May for a
9 public disorderly conduct, so it could be that he was
10 in jail at the times when he was supposed to start it.

11 We would request that that be a condition on his
12 new probation case, if the Court would decide that.

13 THE COURT: So the department is not opposed to
14 putting him back on probation?

15 PROBATION OFFICER: That would be at the Court's
16 discretion, ma'am.

17 THE COURT: Well, I understand it's always at the
18 Court's discretion, but generally the department would
19 weigh in and say either he's not a good candidate for
20 probation or he is.

21 PROBATION OFFICER: He's not a good candidate, but
22 at the same time, when he comes out of prison, he needs
23 to be on some sort of structured program.

24 THE COURT: Well, he would be on parole then,
25 wouldn't he?

1 PROBATION OFFICER: Maybe. Sometimes they max out
2 and don't come out on parole.

3 THE COURT: I think this is an 85 percent.

4 MR. BURR: Yes.

5 PROBATION OFFICER: He would be on community
6 supervision, and probation would just be held.

7 THE COURT: Can't do both.

8 PROBATION OFFICER: No.

9 THE COURT: I think the case law now says you
10 can't do both. So that answered that question.

11 MS. SIMMONS: Judge, just for the record, I did
12 discuss all this with the victim. She's not here. She
13 has COPD and agoraphobia. She's significantly older
14 than Mr. Wilder. She has health issues that she was
15 not able to be here. She informed me that -- we talked
16 about the recommendation. She said she's okay with it.
17 She plans to move out of the area before he is
18 released, but she does ask for a no contact order
19 because she's absolutely terrified of him.

20 THE COURT: Mr. Wilder, you understand that this
21 offense is basically a no parole offense. So what that
22 means is whatever sentence is imposed, you would be
23 required to serve a minimum of 85 percent of whatever
24 time that is before you would be eligible to be
25 released from the Department of Corrections. Whether

1 or not you're actually released after 85 percent
2 depends on how well things go while you're in the
3 Department of Corrections.

4 Upon your release, you would be released to
5 community supervision. That is, they give you a
6 two-year period so you can be supervised in the
7 community to make sure that you can reintegrate into
8 the community without a problem. If during the course
9 of those two years there are any problems that come up,
10 I guess it's similar to probation but not really, you
11 would come back before the Court on any of those
12 violations.

13 If you -- if you are found to have violated
14 community supervision, you would be returned to the
15 Department of Corrections for up to a year before you
16 would be eligible to be released. Then when you are
17 released again, you would have to start your two-year
18 period over again. In other words, upon your release,
19 you have to have two years where there's no
20 infractions, no issues, no problems before you would
21 then be able to terminate any responsibilities as it
22 relates to the Department of Corrections or the
23 department of probation or parole, pardon, whatever --
24 Probation Pardon Parole Services.

25 And so, basically, despite the recommendation that

1 you be placed on five years probation, you would not be
2 eligible for five years probation on this particular
3 charge. Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. So on this particular charge,
6 I'm going to sentence you to the Department of
7 Corrections for a period of ten years.

8 On the revocation, I will revoke the balance of
9 the time. I will revoke in full. And so I can't give
10 you 15 years suspended upon the service of seven and
11 five years probation, so I'm just going to give you
12 straight ten years. 85 percent will probably be
13 somewhere around that seven-year period or a little bit
14 later. And once you're released, you would be on
15 community supervision for those two years that you
16 would have to follow that.

17 And so are there any questions about that?

18 MR. BURR: No, ma'am.

19 THE COURT: Good luck to you.

20 And no contact order upon release.

21 (WHEREUPON, the hearing ended at 2:56 p.m.)

22 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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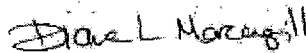
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 20th day of October 2014.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

September 28, 2015



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT THE COURT OF COMMON PLEAS

COUNTY OF Oconee County

Christopher T. Wilder # 303905
Full name and prison number (if any) of Applicant.

2015 AUG 10 A 10:04

Common Pleas # 2015 - cp - 37 - 595

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

§ 17-27-45(A)

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 veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make cl~~e~~r 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, exers~~e~~ 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 th~~e~~es 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 Evans Corr. Inst, P.O. Box 2951202 Bennettsville, SC 29512
2. Name and location of Court which imposed sentence Oconee County Court House 10th Circuit
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) No. 2004-GS-39-752, 753, 1551 Violation Probation
 - (b) No. Charge CSC 1st degree
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-20-14 10 years
 - (b) _____

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty xxx
 - (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. NA
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. NA
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. NA
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NA
 - ii. _____
 - iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Unadvised of counsel
 - (b) Criminal Law (419) (1) A well settled exception to hearsay rule
 - (c) to allow limited hearsay evidence to corroborate victim's testimony

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
i.e., when the victims testified evidence

- (a) I was withheld from my motion of discovery to show me
 - (b) concrete evidence on my case, I would not have plead guilty
 - (c) when I believe the solicitor would neither advise nor recommend for the
11. Seven years I sign for as a Plea (297.8) at 54, 371 SE, 2d. 47 685
 State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) when defendant's lack's knowledge of material evidence in the prosecution's
 - (b) possessions, the waiver of Constitutional rights cannot be held, deemed knowing
 - (c) and Voluntary Sanchez so F. 3d 47 1483; accord 1st. to 11, United States 855 F2d,
12. 416 420-22 (8th Cir 1988) adopting same principle; m. 110 v Anglikor) 848 F 2d. 1312, 1314
 Prior to this application have you filed with respect to this conviction:
-20 (2d Cir 1988) adopting same principle; Royal v. Netturub 4 F. Supp 2d. 510, 566 (E
- (a) any petition in a State Court under South Carolina Law? no
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 - (d) any other petitions, motions or applications in this or any other Court? no

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

- (a) the specific nature thereof:
 - i. NA
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. NA
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. NA
 - ii. _____
 - iii. _____

- iv. NA
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

- i. NA
- 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?

NA

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

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- 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) Ineffective Assistance Counsel
- (b) _____
- (c) _____

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

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

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. Attorney/LAW: Mr. Wilson Burr / Public Defender
 - ii. _____
 - iii. Public Defender office - Address 415 S. Pine Street
100 Brown Squire Drive Walthalla SC 29691
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

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

A reducing of my sentence, A reexamine of my case and my plea dec.

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.

Chris White

SWORN to and subscribed before me this 9th
day of July, 2015

S. [Signature] (L.S.)
Notary Public

My Commission Expires: 2/24

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2015 AUG 10 A 10:05

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.

Chris White

Applicant

SWORN or affirmed to and subscribed before me this
9th day of July, 2015

[Signature]

Notary Public

My Commission Expires: [Signature]

2015 AUG 10 A 10:05

FILED
BEVERLY H. WHITEFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Christopher Wilder)
 S.C.D.C. No. 303905)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-37-0595

RETURN¹

In response to the post-conviction relief (PCR) application filed on August 10, 2015, the Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the October 2014 term of the Oconee County Grand Jury for criminal sexual conduct (CSC) – first degree (2014-GS-37-1135). On October 20, 2014, Applicant appeared before the Honorable Allison Lee and pled guilty as indicted. Applicant was represented by Wilson Burr, Esq. Judge Lee sentenced Applicant to a term of imprisonment for ten (10) years. Applicant did not appeal his plea or sentence.

Attached herewith and incorporated herein are the records of the Oconee County Clerk of Court regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

¹ By Order dated August 11, 2015, Hugh Welborn has been appointed as counsel.

II.

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

1. "I was withheld from my motion of discovery to show me concrete evidence on my case"
 - a. "When defendant lacks knowledge of material evidence in the prosecutions possessions, the waiver of constitutional rights cannot be held, deemed, knowing and voluntary [citations omitted]"
2. "I would not have pled guilty when believe [sic] the solicitor would neither oppose nor recommend for the seven years I sign for as a plea"

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

III.

Respondent interprets Applicant's first claim as an allegation of due process violations. To the extent Applicant alleges independent claims of due process violations, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must 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, 260, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843

(1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); 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 this allegation should be dismissed pursuant to Rule 12(b)(6), SCRCP, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRCP, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

IV.

Respondent 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.

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

(SIGNATURE BLOCK ON NEXT PAGE)

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Feb 2, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 CHRISTOPHER WILDER, #303905)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS


2015-CP-37-0595

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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Hugh W. Welborn, Esquire
Post Office Box 173
Anderson, SC 29622

DATED this 2nd day of February, 2016.


 Lakesicha Gibbs, Legal Assistant
 For Respondent

1 State of South Carolina

In the Court of Common Pleas

2 County of Oconee

3

4 Christopher T. Wilder,

5 Applicant,

2015-CP-37-0595

6 -vs-

June 6, 2016

7 The State of South Carolina,

8 Respondent.

Transcript of Record

9

10

11

B E F O R E:

12

The Honorable R. Scott Sprouse, Judge

13

14

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

15

Hugh W. Welborn, Esquire
Attorney for Applicant

16

17

Johanna C. Valenzuela, Esquire
State Attorney General's Office
Attorney for Respondent

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Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

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I N D E X

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E x h i b i t s

For the State:

Marked	Description	I.D.	Admitted
	None offered.		

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:27 a.m.)
4 MS. VALENZUELA: May it please the Court. Your Honor,
5 this is the case of Christopher Wilder verses the State
6 of South Carolina. The case number is 2015-CP-37-595.
7 Mr. Wilder filed a post-conviction relief application
8 in August 10th of 2015. He is presently confined, and
9 this was after he was indicted by the October 2014 term
10 of the Oconee County Grand Jury on criminal sexual
11 conduct.
12 On October 20th of 2014, the applicant appeared before
13 Judge Lee and pled guilty as indicted. He was
14 represented at the time by Mr. Wilson Burr. Judge Lee
15 ended up sentencing the applicant to a term of
16 imprisonment for a term of ten years, and the applicant
17 elected not to appeal his plea or his sentence.
18 The applicant has pled in his current application the
19 following two things: One, that he was withheld -- I'm
20 quoting him -- he was, "Withheld from my motion of
21 discovery to show me concrete evidence on my case," and
22 second quote, "I would not have pled guilty when
23 believed the solicitor would neither oppose nor
24 recommend for the seven years I signed for as a plea."
25 He is currently represented today in the courtroom by

1 Mr. Hugh Welborn, Your Honor. And at this time the
2 State is ready to proceed whenever the PCR counsel is.

3 THE COURT: Mr. Welborn.

4 MR. WELBORN: If it please the court, I call Chris
5 Wilder to the stand.

6 CHRISTOPHER WILDER,

7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 MR. WELBORN: May it please the Court.

9 DIRECT EXAMINATION

10 BY MR. WELBORN:

11 Q You're Chris Wilder?

12 A Yes, sir.

13 Q Mr. Wilder, you heard the State a minute ago state
14 what your sentence is and how long you're doing time.
15 Was that stated correctly?

16 A Yes, sir.

17 Q You have alleged in your application for
18 post-conviction relief that you were, quote, withheld
19 your motion of discovery to show you concrete evidence
20 in your case. And at some point, a few months ago, I
21 looked at Mr. Burr's file and sent you a copy of
22 everything he had; is that correct?

23 A Yes, sir.

24 Q Now, tell the court, how did you not understand
25 what the evidence was in your case and your specific

1 complaint about Mr. Burr and how he was ineffective in
2 that regard.

3 A Due respect to the court, this is for the records.
4 Once me and my attorney was speaking about the case, I
5 was never consulted and understood about my direct
6 appeal. And once I had signed the seven-year guilty
7 plea, I would not ever have signed it if I didn't think
8 that the guilty plea was a bonding agreement, and it
9 was never objected when I went to court and withdrawn
10 because I felt that I was basically coerced on taking
11 the ten once it was added.

12 Q I'll get to that in a moment. Let's talk about
13 what evidence you never received that, had you received
14 that, you would have insisted on going to trial.

15 A Motion for discovery.

16 Q Your motion for discovery?

17 A Yeah.

18 Q I sent you everything he had. What's in there
19 that would have changed your mind and you would have
20 insisted on going to trial?

21 A I would have done my homework on it. He's
22 never -- every time I recommended and asked for it, he
23 was putting me off and said that, "I will get it to
24 you, I will get it to you, I will get it to you." And
25 it has never been received from him to me.

1 Q You've got it now; is that correct?

2 A I got it now through you. I had to write through
3 the disciplinary council to get it.

4 Q I understand that. What would be different, since
5 you have those materials now, what in there would have
6 caused you to insist upon not pleading guilty but going
7 to trial?

8 A Basically, it wasn't no evidence in there.

9 Q There was no evidence in there?

10 A There wasn't no evidence. And from me asking of
11 the hospital records showing that where was there any
12 evidence, DNA found, whatever, it wasn't none in the
13 motion so I would have really took my chances on going
14 to trial based upon the evidence that was not in there.
15 So, basically, I took his advisory involuntary on
16 pleading guilty because I would have never took the
17 plea of ten years. I would have took my chances at
18 trial.

19 Q All right. You have also alleged in your
20 application something you stated a little bit -- a few
21 minutes ago about something, seven years as a plea.
22 Can you tell the court again what you mean by that?

23 A Once me and Mr. Burr had spoke about it, he never
24 advised me that 15 years was on the table, but 15 years
25 was on the table with the plea from the solicitor,

1 Lindsey Simmons. And then after he had come to the
2 jail and we had conversated, he was like, "The court
3 and the solicitor has ten on the table." I told him I
4 wasn't going to take ten years. And then we negotiated
5 some more things, and then he said, "Well, what would
6 you take if I can get you in court between Monday and
7 Tuesday?" I said, "Sir," because basically he was
8 like -- they really basically got you between a rock
9 and a hard spot. So that was part of the coercion.

10 And then I was like, "Well, if you can get me in
11 court between Monday and Tuesday, I will plead between
12 five to seven." And that's when he faxed, I guess,
13 Lindsey Simmons or the solicitor and they negotiated.
14 He said, "Well, let me go to the courts and see if I
15 can get it."

16 So once he pulled me Tuesday, he came in the
17 holding cell and said, "Well, I got the seven years
18 that you wanted, that you said that you would plead
19 to." I signed the paper. And once we got in court,
20 that's when my probation officer went with the
21 seven-year recommendation, the solicitor went with the
22 seven-year recommendation, he had spoke about the
23 seven-year recommendation. And once the court had
24 proceeded on with everything and she said that she was
25 going to revoke the recommendation, he never objected

1 and said, "Your Honor, due to the respect of the courts
2 and me advising my client and the understanding that me
3 and my client have, up under him pleading him guilty
4 today was up under the seven-year plea. So I would ask
5 the court if they're not going to go along with the
6 recommendation today, that we withdraw the plea and set
7 it for trial to be resentenced."

8 Q So you would have insisted on going to trial
9 except for those reasons; is that correct?

10 A Yes, sir.

11 Q Thank you.

12 Answer anything the State may have.

13 THE COURT: All right. Ms. Valenzuela.

14 CROSS-EXAMINATION

15 BY MS. VALENZUELA:

16 Q Okay. Mr. Wilder, how many times did you meet
17 with your attorney prior to pleading?

18 A A roundabout estimate, maybe three times.

19 Q Okay. And you never recalled reviewing discovery
20 with your attorney?

21 A No, ma'am.

22 Q Do you recall discussing possible defenses with
23 your attorney?

24 A Yes, ma'am.

25 Q Other than asking for the discovery file, you

1 didn't ask your attorney to do anything else for you
2 that he didn't do, correct?

3 A He never filed for a direct appeal. We never
4 consulted on direct appeal.

5 Q Okay. Mr. Wilder, you were sworn before the court
6 before you took your plea agreement, before you pled
7 guilty before the court, correct?

8 A Yes, ma'am.

9 Q And then do you remember the court asking you if
10 there had been any promises or threats made in order to
11 make you plead?

12 A Yes, ma'am.

13 Q Okay. And, in fact, do you remember the court
14 saying, "Do you have any hope or promise of any type of
15 reward or benefit to you in pleading guilty"?

16 A Yes, ma'am.

17 Q And you said "no" to the court?

18 A Yes, ma'am.

19 Q And that was after you had been sworn to tell the
20 truth, correct?

21 A Yes, ma'am.

22 Q And you indicated to the court that you were
23 pleading freely and voluntarily, correct?

24 A Yes, ma'am.

25 Q And you were asked by the court if you had had

1 enough time to talk to your attorney, and you indicated
2 that you had?

3 A Yes, ma'am.

4 Q And you were asked if you had cooperated with your
5 attorney in your own defense, and you indicated to the
6 court that you had?

7 A Yes, ma'am.

8 Q And you asked -- you were asked if your attorney
9 had done everything that you had asked him to do in
10 connection with this charge, and you told the court
11 under oath "yes"?

12 A Based upon the binding agreement of me pleading
13 guilty to the seven years. So he should have the
14 seven-year plea recommendation that I had signed
15 present today.

16 Q When the court asked you if he had done everything
17 in connection with the charge, you did not inform the
18 court that your attorney had not given you your -- the
19 copy of your discovery file, correct?

20 A No, because he had it present with him, but he
21 said he would get it to me.

22 Q And do you remember listening to the prosecution
23 go through the facts on the record of the incident from
24 when you assaulted the victim in this case?

25 A There was no deep-down details because, basically,

1 with me was pleading guilty, they really went around
2 the evidence that was supposed to be presented and the
3 medical records. So, basically, the guilty plea really
4 avoided the evidence being brought about, but the
5 solicitor did speak on the victim's behalf and said a
6 brief little -- a brief detail.

7 Q So you remember the prosecutor explaining to the
8 court that you were pleading guilty to going into the
9 victim's house, drinking, hanging out, and then
10 digitally penetrating her against her will?

11 A No, ma'am.

12 Q And then after agreeing to that, you actually
13 corrected the court on one issue, didn't you?

14 A Yes, ma'am.

15 Q You actually said that you didn't feel like you
16 had threatened her?

17 A Yes, ma'am.

18 Q But then when the court asked you if you admitted
19 that you knew she did not want the sexual advance and
20 that you continued despite that and you did force
21 yourself on her, you agreed that you had done that?

22 A It wasn't no forceful manner like that because,
23 basically, she had entertained, too.

24 Q She had what?

25 A She had entertained, too.

1 Q Okay. So -- but you agreed with the court as to
2 the recitation of the prosecution's facts?

3 A Yes, ma'am.

4 Q And that was when you were under oath?

5 A Yes, ma'am.

6 Q And do you remember the court advising you that
7 you had ten days in which to file your appeal?

8 A Yes, ma'am.

9 Q And you heard that that day during your plea?

10 A Yes, ma'am.

11 Q Now, do you remember waiving your constitutional
12 rights during the plea?

13 A Based upon me pleading guilty, yes, ma'am.

14 Q Yes. You remember waiving the right to a grand
15 jury -- I'm sorry, you were true billed on that
16 indictment. Do you remember waiving your right to a
17 jury trial?

18 A Yes, ma'am.

19 Q And to the presumption of innocence?

20 A Yes, ma'am.

21 Q And to the State having to prove your guilt beyond
22 a reasonable doubt?

23 A Yes, ma'am.

24 Q And do you remember waiving the right to subpoena
25 witnesses and confront the State's witnesses?

1 A Yes, ma'am. But that was part of the binding
2 agreement, though, of the seven years. That's when I
3 waived all those rights.

4 Q And do you remember the court explaining to you
5 that you could present defenses and attempt to suppress
6 the State's evidence if you were to go to trial, and
7 you were waiving those rights as well?

8 A Yes, ma'am.

9 Q And that you were waiving your right to remain
10 silent?

11 A Yes, ma'am.

12 Q And do you remember informing the court that you
13 were, in fact, guilty of this charge?

14 A Yes, ma'am.

15 Q At the end of the plea, do you remember the judge
16 having a discussion about why she did not feel that
17 probation would work on a charge that carried -- that
18 required that you serve 85 percent of the sentence?

19 A Yes, ma'am.

20 Q And do you recall that she at that point sentenced
21 you to ten years?

22 A Yes, ma'am.

23 Q And what did you do to notify the court at that
24 point that you wished to withdraw your appeal?

25 A That's when I had looked at Mr. Burr and thought

Christopher Wilder vs. The State of South Carolina 2015-CP-37-0595 June 6, 2016
Christopher Wilder - Cross-Examination by Ms. Valenzuela

1 that he was going to object it and say, "Your Honor,
2 due to the understanding of me and my client, having
3 him plead guilty to this charge upon me recommending
4 and asking the court for seven years." And once my
5 probation officer agreed, the solicitor agreed, he
6 brought it to the court, that agreement, that was part
7 of -- supposed to have been the binding agreement.
8 That's the only reason upon his advisory that I pled
9 guilty.

10 Q Okay. Mr. Wilder, so other than looking at your
11 attorney at that point, you did nothing else to
12 indicate to the court that you wished to withdraw your
13 plea?

14 A Because he was supposed to object. That was his
15 duty.

16 Q Thank you, Mr. Wilder.

17 THE COURT: Mr. Welborn.

18 MR. WELBORN: Nothing further.

19 That's our case, Your Honor.

20 THE COURT: Thank you, Mr. Wilder. You can step
21 down.

22 MS. VALENZUELA: Your Honor, may I have a brief
23 moment?

24 THE COURT: Yes, ma'am.

25 MS. VALENZUELA: Your Honor, the State calls

1 Mr. Burr to the stand, Wilson Burr.

2 **W. WILSON BURR,**

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. VALENZUELA:

6 Q Good morning, Mr. Burr. Can you state your full
7 name for the record, please.

8 A W. Wilson Burr.

9 Q Thank you. And how long have you been practicing
10 law, Mr. Burr?

11 A 35 years.

12 Q Okay. And then approximately how much of your
13 career has been spent in criminal defense?

14 A Well over half of it.

15 Q And were you appointed or retained in Mr. Wilder's
16 case?

17 A I was working in the public defender's office.

18 Q And then how long have you been working in the
19 public defender's office at the time?

20 A Probably eight or nine years.

21 Q How many times did you meet with the applicant
22 before his guilty plea?

23 A His case moved along faster than a typical case.
24 I don't think he was in pretrial but about three months
25 before he actually wanted to go ahead, he said, and get

1 this taken care of. I probably saw him half a dozen
2 times, maybe more. They do keep a log over at the
3 jail. I can verify it.

4 Q So at least six times you remember meeting with
5 your client?

6 A Yes, but I will add to that, his pictures involved
7 in this case were on a disk. It had not been -- were
8 not hard copy, so the first couple of times that I saw
9 Chris, I didn't have the pictures to share with him.
10 But I did go back with the laptop and with my paralegal
11 and go over the pictures. And the reason I remember
12 that, you could hear some of the testimony in the
13 court, there was some discussion about the hammer.
14 When he was mentioning not using force, he had shown me
15 on that picture where a hammer was up under the edge of
16 a couch, and he said he did not threaten her with that
17 hammer. I think her foot was near the hammer or
18 whatever, but it was clear. He showed me where the
19 hammer was and convinced me he did not try to hit her
20 with it.

21 Q Thank you, Mr. Burr. And, in fact, you just
22 focused on the photographs in the case, but did you go
23 over all the discovery with the applicant before his
24 plea?

25 A I went over everything that I had received with

1 him.

2 Q Did you discuss his version of the facts of the
3 event with him?

4 A I did. I've known Chris -- I've represented him
5 in the past. I didn't realize at the time when he
6 first came back in he had additional problems in
7 Pickens County. But when I represented him years
8 before, we had a real good rapport, and I actually felt
9 this was completely out of line for the conduct he had
10 been involved in in the past.

11 Q Did you discuss possible defenses with him prior
12 to the plea?

13 A We did. And that's why I said it stood out in my
14 mind he said he wanted to go ahead and get it done.
15 I'm not sure -- it is not unusual for people to sit
16 over in county jail a year or longer on a charge like
17 this, and I don't think he was in but about 90 days
18 before he came over and did his plea.

19 Q When you -- you've said this a couple of times,
20 that he indicated to you that he either wanted to take
21 care of this or wanted to get it done. What does that
22 mean in terms of a plea or a trial?

23 A Well, now, I had negotiated or worked with the
24 solicitor's office to get the best possible plea offer.
25 And as Mr. Wilder told you, we had discussions of a

Christopher Wilder vs. The State of South Carolina 2015-CP-37-0595 June 6, 2016
W. Wilson Burr - Direct Examination by Ms. Valenzuela

1 seven-year -- well, that's not exactly right. The
2 offer was 15 years suspended on seven years. And that
3 was a recommendation, not negotiated. It was -- I
4 explained that to him. I also explained to him that
5 the way that time is computed, he would have to do
6 85 percent of the 15 years or the full seven years,
7 whichever comes first, so he would be doing the full
8 seven years. And if I remember correctly, that's what
9 the judge alluded to when she didn't -- after the
10 probation cases came up she didn't go along with that,
11 with the straight seven years. She said but the way
12 she structured it, it would be about the same thing.

13 Q I'm going to go back and just break that down a
14 little bit.

15 So you did go over the plea offer with him, and he
16 indicated he wanted to move forward with that
17 recommendation and that guilty plea?

18 A Correct.

19 Q Okay. And then you also talked about how you told
20 him it was a recommendation versus a negotiation. What
21 do you cover in terms of a negotiated plea, a
22 recommendation, or no recommendation with your clients
23 prior to pleading?

24 A It's my experience it's sort of unusual to do
25 actual negotiated pleas. A lot of judges don't like to

1 do that because they have given up their authority, and
2 they typically tell the client when they're taking a
3 plea, if there's been a recommendation made, that I'm
4 not bound by those.

5 And then in this case I can't remember all the
6 facts, but I know Judge Lee was really good. I think
7 she had the bailiffs lock the doors while she did all
8 of the instructions, the general instructions to
9 numerous clients that are planning to plead that day,
10 and she went into great detail. And I remember on this
11 one, actually, when it got to the part about when you
12 can do your appeal, she initially said 15 days. And I
13 think probably my reaction to her, she stopped and
14 backed up and said, no, ten days. But she was -- I
15 think she went to great length to tell all the
16 defendants what their rights were.

17 Q Would you have explained or did you explain to
18 Mr. Wilder that this was a recommendation which meant
19 that the judge did not have to go along with the
20 recommendation?

21 A Yes, because there was some problems on this one.
22 After the solicitor's office did agree to it, they
23 would go along with the recommendation, I think
24 Ms. Simmons probably even put that on the record that
25 she was recommending 15 years suspended on seven.

Christopher Wilder vs. The State of South Carolina, 2015-CP-37-0595 June 6, 2016
W. Wilson Burr - Direct Examination by Ms. Valenzuela

1 Probation, we didn't get their concurrence until
2 actually the day we were doing the plea. I was still
3 negotiating with them. But by the time we did the
4 plea, everybody, you know, the solicitor's office and
5 probation, had agreed to the 15 suspended to seven.

6 Q Now, can you tell us briefly what the evidence
7 against -- that the State had against the applicant
8 prior to the plea was?

9 A I haven't had a chance to review the file and it's
10 been two years. I know the victim herself reported
11 this immediately. She went to the hospital. She has
12 some physical -- she had, actually, a lot of tearing in
13 her vaginal area. They had pictures. They had
14 pictures of the beer cans. I think Mr. Wilder brought
15 a 12-pack of beer over. They had pictures of the stuff
16 in the trash. They had a picture of the couch. They
17 had her statement, a picture of the hammer. I would
18 have to go back and pull that file to get all of it.

19 Q But you had at least a victim's statement which
20 was not a delayed reporting, which was almost an
21 immediate reporting, and then photos of the actual
22 crime scene, and then additional medical evidence that
23 corresponded with the victim's account of what had
24 happened?

25 A Correct. And the victim knew Mr. Wilder. They

1 were acquaintances.

2 Q So it wasn't a question of identification?

3 A No, it was not.

4 Q At any time did the applicant tell you that he
5 didn't understand something or needed further time with
6 you before pleading guilty?

7 A No.

8 Q And whose decision was it for him to plead guilty,
9 was it yours or his?

10 A It was his decision.

11 Q Did he ever indicate to you that he wanted to go
12 to trial on this?

13 A He did not.

14 Q Please answer any questions that Mr. Welborn has.

15 MR. WELBORN: I have no questions. However, Your
16 Honor, I would like, after their case, to put very
17 brief reply back up by my client. Thank you.

18 THE COURT: Thank you, Mr. Burr.

19 MR. WELBORN: We call Mr. Wilder back to the stand
20 for brief reply.

21 THE COURT: Just come around to the witness chair
22 again, Mr. Wilder.

23 CHRISTOPHER WILDER,

24 BEING PREVIOUSLY DULY SWORN, WAS RECALLED

25 AND TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MR. WELBORN:

3 Q Mr. Wilder, you remain under oath.

4 What were you wanting to tell the court that you
5 believe is not accurate about this situation regarding
6 Mr. Burr's testimony?

7 A Due to honor of the court, *Strickland vs.*
8 *Washington*, 466 U.S. 668 104 Supreme Court, counsel
9 failed to properly advise the applicant of his rights
10 to withdraw the plea after the judge enhanced the plea
11 above that which was previously agreed upon by the
12 applicant and the counsel. The agreement was for seven
13 years, and the judge enhanced it to ten years. If
14 counsel would have properly and professionally advised
15 applicant of the variance of which the plea agreement
16 could have been subject to change.

17 Q Anything else you want to tell the court, sir?

18 A A lack of professional advice did greatly
19 prejudice me.

20 Q Thank you. That's all we have.

21 THE COURT: Any cross-examination?

22 MS. VALENZUELA: No, Your Honor.

23 THE COURT: Thank you, Mr. Wilder.

24 MR. WELBORN: That's the case, Your Honor. Our
25 reply, excuse me.

1 THE COURT: All right. Anything further from the
2 applicant?

3 MR. WELBORN: No, Your Honor.

4 THE COURT: Anything further from the State?

5 MS. VALENZUELA: Your Honor, just brief argument.

6 He's made two claims here. He said that he did
7 not receive discovery. Presented to you has been a
8 witness who stated that he not only went over
9 discovery, but there is reference to that discovery in
10 the plea agreement transcript.

11 And then the second is that he would not have pled
12 guilty if the solicitor had not -- if he had known
13 about that the plea being able to be withdrawn, but it
14 was a recommendation. Counsel testified today that he
15 went over it being a recommendation and not a
16 negotiated sentence. And, additionally, there was
17 nothing indicated in the plea agreement -- I mean in
18 the plea transcript that applicant had either trouble
19 getting his discovery or had trouble with the amended
20 sentence.

21 To the extent that applicant has raised a question
22 on appeal, that was not part of the allegations, and we
23 would move to strike that portion from being
24 considered.

25 THE COURT: Mr. Welborn, I'll give you last word.

1 MR. WELBORN: May it please the Court. Your
2 Honor, I think my client has presented a meritorious
3 case, and we ask the court to grant him a new hearing
4 and grant relief. Thank you.

5 THE COURT: Okay. All right. I have reviewed the
6 transcript -- well, I have reviewed the application and
7 then the transcript, and the transcript appears to have
8 a very lengthy explanation of rights by the presiding
9 judge at the time. I've heard the testimony today, and
10 in light of the application, the transcript, and the
11 testimony, I find the applicant has failed to meet his
12 burden of proof, and therefore the application would be
13 denied.

14 Ms. Valenzuela, please draft me an order and send
15 Mr. Welborn a draft.

16 MS. VALENZUELA: Yes, Your Honor. Do you want a
17 draft sent to Mr. Welborn ahead of you or just courtesy
18 copied when I send it to you?

19 THE COURT: Send him a copy before you send it to
20 me to give him an opportunity to review the wording.

21 MS. VALENZUELA: Absolutely.

22 MR. WELBORN: Thank you, Your Honor.

23 MS. VALENZUELA: Thank you, Your Honor.

24 (WHEREUPON, the hearing ended at 9:54 a.m.)

25 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 6th day of June 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

October 11, 2016



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Christopher Wilder,)
 S.C.D.C. No. 303905,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE TENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-37-0595

ORDER OF DISMISSAL

2016 JUL 21 P 3:04

FILED OCONEE COUNTY, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 10, 2015. Respondent made its return and motion to dismiss on or about February 2, 2016. An evidentiary hearing was held on June 6, 2016, at the Lexington County Courthouse. Applicant was present and represented by Hugh Welborn, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant and his plea counsel, Wilson Burr, Esquire, testified at the hearing. The Court had before it Applicant's guilty plea transcript, the Oconee County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the October 2014 term of the Oconee County Grand Jury for criminal sexual conduct (CSC) – first degree (2014-GS-37-1135). On October 20, 2014, Applicant appeared before the Honorable Allison Lee and pleaded guilty as indicted. Applicant was represented by Wilson Burr, Esq.

Judge Lee sentenced Applicant to a term of imprisonment for ten (10) years. Applicant did not appeal his plea or sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRPC 71.1(e)).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) (“[T]he defendant must show that counsel’s representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (“PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms;

and (2) that the deficient performance prejudiced the applicant's case."'). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (internal citations omitted).

In determining guilty plea issues, the PCR court should consider the guilty plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Applicant alleged his attorney failed to review discovery with him and claims he did not understand the plea offer was a recommendation to the plea court and not a binding contract. Applicant testified that if he received his discovery, he would have done his homework and stated there was no evidence in the file such as DNA or medical records. Applicant also alleged he was never told by counsel that he was facing a possibility of fifteen years. Applicant asserts counsel should have moved to withdraw the plea. Applicant confirmed that during the plea and while under oath he informed the plea court that he was guilty (Plea Tr., p. 14), that there was no hope or promise of any type of reward or benefit to him if he pleaded guilty (Plea Tr., p. 11-12), and that he was pleading guilty freely and voluntarily (Plea Tr., p. 14). Applicant also confirmed that while under oath he told the plea judge that he felt he had sufficient time with his attorney, had cooperated with his attorney in his defense, and that his counsel had done everything he had asked him to do in connection with the charge (Plea Tr., p. 14).

Plea counsel testified he met with Applicant at least six times during his representation of

Applicant. Plea counsel explained he reviewed all discovery with Applicant prior to the plea, to include a disc of photos. Plea counsel noted Applicant had even used those photos to identify an issue with the location of the hammer in the photos. Plea counsel explained Applicant never indicated he was interested in a trial and instead indicated he just wanted to "get it done." Plea counsel testified he did explain the differences between a recommendation and a negotiation and that he explained to Applicant the offer made by the State and that it was a recommendation and not a negotiation.

Plea counsel summarized the State's evidence against the Applicant as follows: the victim of the sexual assault knew Applicant and immediately reported the assault, identifying Applicant as the perpetrator; the physical done at the hospital on the victim showed vaginal tearing; there were photos of the crime scene; and the victim provided a written statement.

Initially, this Court notes Applicant confirmed to the plea judge he wanted to plead guilty to his charges after the plea judge informed Applicant of his charges and the associated maximum sentences (Plea Tr., pp. 8-9, 21). Applicant also told the plea judge he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and was not coerced in any way. (Plea Tr., pp. 1-7, 11-2, 14). Applicant had no trouble speaking up when he felt he needed to correct something on the record and in fact did object and offer a correction to a portion of the State and Probation's recitation of the facts in his case. (Plea Tr., pp. 13-14, 16).

This Court finds Applicant failed to meet his burden of proving plea counsel was ineffective or that he suffered any prejudice.

As to the claim that plea counsel failed to review discovery with him, plea counsel testified he met with Applicant several times, did review discovery, and that Applicant actively

responded to the discovery items reviewed with him. At the plea, Applicant, under oath, informed the plea court that his attorney had done everything that had been asked of him. As such, this Court finds plea counsel's testimony credible and finds Applicant has failed to meet his burden of proving counsel was ineffective for failing to review discovery with him prior to the plea.

As to the claim that plea counsel was ineffective due to the Court's decision to sentence Applicant to ten years instead of the recommendation of fifteen years suspended on seven active years and five years of probation, this Court finds plea counsel's testimony that he reviewed the differences between a negotiated offer and a recommendation with Applicant to be credible. The Court also finds the plea court's lengthy explanation of rights was thorough, and, based on Applicant's answers during his guilty plea, Applicant's plea was knowing and voluntary. This Court finds Applicant has failed to meet his burden of establishing plea counsel was ineffective.

This Court also finds Applicant failed to meet his burden of proving he suffered any prejudice related to his allegations because the State had overwhelming evidence of Applicant's guilt. See, e.g., Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009) (holding no prejudice occurred, even if trial counsel was deficient, where there was otherwise overwhelming evidence of the defendant's guilt).

All Other Allegations

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

CONCLUSION

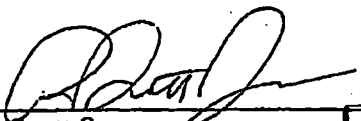
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, and Applicant was not prejudiced by counsel's representation. Therefore,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

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

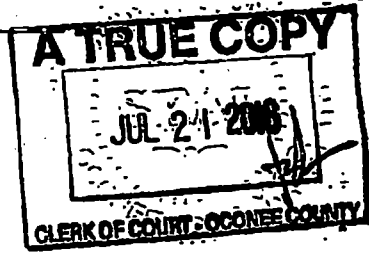
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 19 day of July, 2016.


 R. Scott Sprouse
 Presiding Judge
 Tenth Judicial Circuit

FILED OCONEE COUNTY, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2016 JUL 21 P 3:04



Wahalla, South Carolina.

DOCKET NO. 2014GS37 01135

WITNESSES

K Cain, Oconee Co Sheriff's Dept.

Will Greestone
[Signature]

ARREST WARRANT NUMBER

2014A3710400607

ACTION OF GRAND JURY

~~Melissa A. Burdette~~
Melissa A. Burdette

TRUE BILL

Foreperson of Grand Jury

Date: **OCT 06 2014**

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

OCT 06 2014

Term

THE STATE

vs.

CHRISTOPHER TRENT WILDER

LSS

Indictment for

SEX / CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

SC Code: 16-03-0852

CDR Code: 0160

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 OCT 9 PM 2 38

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Oconee)

INDICTMENT

OCT 06 2014

At a Court of General Sessions, convened on _____, the Grand Jurors of
 Oconee County present upon their oath:

SEX / CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That **Christopher Trent Wilder** did in Oconee County, South Carolina, on or about **June 21, 2014**, engage in sexual battery with SMW, accompanied by the following circumstance(s): the defendant used aggravated force to accomplish the sexual battery and/or the victim submitted to sexual battery under circumstances where she was also the victim of forcible confinement or kidnapping, or any other similar offense or act, to wit: defendant did digitally penetrate the victim and attempt to force the victim to perform oral sex. The defendant was armed with a knife and hammer like object during the assault and threatened the victim with these items. This is in violation of 16-3-652 of the South Carolina Code of Laws (1976) as amended

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


 ASSISTANT SOLICITOR