

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Orangeburg County

Honorable Maite Murphy, Circuit Court Judge

S.C. SUPREME COURT

CHRISTOPHER ROBERTS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001422

APPENDIX

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG

2014-GS-38-0160
2014-GS-38-0161

STATE OF SOUTH CAROLINA

) TRANSCRIPT OF RECORD

VS.

)
) MAY 19, 2014

CHRISTOPHER ADAM ROBERTS

) ORANGEBURG, SC

B E F O R E:

HONORABLE DIANE S. GOODSTEIN

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

ASHLEY B. CORNWELL, ESQUIRE
Attorney for the State

ROBERT DOUGLAS MELLARD, ESQUIRE
Attorney for the Defendant

Ruth L. Mott, RPR, CRR
Official Court Reporter

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1 CHRISTOPHER ROBERTS,
2 being first duly sworn, was examined and testified as
3 follows:

4 MS. CORNWELL: May it please the Court, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. CORNWELL: Before you is Christopher Roberts. He's
7 here to plead guilty under Indictment 2014-GS-38-0160,
8 criminal sexual conduct in the second degree; and indictment
9 2014-GS-38-0161, unlawful conduct towards a child. The State
10 has a recommendation of 20 years, suspended to ten years and
11 five years' probation.

12 THE COURT: All right. He has been placed under oath.
13 Would you like that to be done again so the family can
14 witness that?

15 MS. CORNWELL: No, Your Honor.

16 THE COURT: Very well. All right. Mr. Roberts, you are
17 represented by Doug Mellard; is that right?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: I have some questions for Mr. Mellard, and
20 then I have many questions for you.

21 Mr. Mellard, have you advised your client regarding the
22 nature of this offense, the maximum possible penalty and his
23 constitutional rights, including his right to a jury trial?

24 MR. MELLARD: Yes, ma'am, I have.

25 THE COURT: And in your opinion does he understand the

1 nature of this offense, the maximum possible penalty and his
2 rights?

3 MR. MELLARD: Yes, ma'am.

4 THE COURT: And tell me how he wishes to plead.

5 MR. MELLARD: Guilty.

6 THE COURT: Do you concur with his decision?

7 MR. MELLARD: Yes, ma'am.

8 THE COURT: All right. From your investigation of the
9 facts and circumstances of your client's case, do you believe
10 the State could produce sufficient evidence to convict and
11 establish your client's guilt beyond a reasonable doubt?

12 MR. MELLARD: Yes, ma'am.

13 THE COURT: And if he was to stand trial, do you believe
14 that his conviction would be probable?

15 MR. MELLARD: Yes, ma'am.

16 THE COURT: All right. Do you have any concerns
17 regarding his competency?

18 MR. MELLARD: No, ma'am.

19 THE COURT: All right. Now, Mr. Roberts, I have many
20 questions to ask of you. If you do not understand my
21 question, do not answer it, okay?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: But do let me know that you don't understand
24 my question because there are many ways to explain any one
25 thing. And if you need to stop and talk to Mr. Mellard, he

1 still represents you, he isn't going anywhere, just let me
2 know that you need to stop and speak with him, okay?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Very well. Now, tell me how old you are.

5 THE DEFENDANT: 37.

6 THE COURT: Tell me how far you went in school.

7 THE DEFENDANT: Some college.

8 THE COURT: You're a high school grad?

9 THE DEFENDANT: High school grad, yes, ma'am.

10 THE COURT: And you say you have some college. Tell me
11 how much college.

12 THE DEFENDANT: Approximately 36 hours.

13 THE COURT: Okay. And where are you employed, or where
14 were you last employed?

15 THE DEFENDANT: Boeing, South Carolina.

16 THE COURT: And what was your job there?

17 THE DEFENDANT: Mechanical technician.

18 THE COURT: And have you ever been treated for alcohol,
19 drug abuse or mental health issues?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: In the last 72 hours have you had any
22 alcohol, any drugs or any medicine of any kind, to include a
23 baby aspirin?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: All right. Are you aware of any problem

1 that you have, a physical problem, a mental problem, a
2 nervous problem, drug or alcohol problem, are you aware of
3 any problem that you have that might or that could interfere
4 with your ability to know what you're doing here today?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: All right. Now, Mr. Roberts, the gentleman
7 standing beside you to your right, what is his name?

8 THE DEFENDANT: Mr. Doug Mellard.

9 THE COURT: What does he do?

10 THE DEFENDANT: He is my attorney.

11 THE COURT: All right. And the young woman who is
12 standing to his right, do you know what her role is?

13 THE DEFENDANT: She's the prosecuting attorney.

14 THE COURT: All right. And do you know what my role is?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: What is that?

17 THE DEFENDANT: You are the Judge in this particular
18 case.

19 THE COURT: All right. And do you know why you are here
20 today?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Tell me why.

23 THE DEFENDANT: I am here pleading guilty to two
24 charges, one being the CSC second, the other being unlawful
25 conduct towards a minor.

1 THE COURT: All right. Very well. Now, at this time
2 are you on probation or parole?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: All right. I want to talk about the
5 charges, and I'm going to first talk about the unlawful
6 conduct with a child. Do you understand that unlawful
7 conduct with a child or neglect of a child or helpless person
8 by a legal custodian carries a maximum possible penalty of
9 ten years in prison; do you understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right. And do you understand that
12 criminal sexual conduct with a child, second degree, carries
13 a maximum possible penalty of 20 years in prison?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. Now, do you understand that
16 there are additional consequences to the criminal sexual
17 conduct with a child in the second degree -- first of all, do
18 you know that there are other consequences to a plea?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right. And I want to talk to you about
21 them. Do you understand that criminal sexual conduct with a
22 child or criminal sexual conduct second degree, do you
23 understand that this offense, as I say, carries a maximum
24 possible penalty of 20 years; do you also understand that
25 this offense has a classification as a violent offense?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. And because it has a
3 classification as a violent offense, I want to go over what
4 that means or some of the consequences of this being a
5 violent offense. First of all, a person convicted of a
6 violent offense can never be released to the community in any
7 sort of work release program; do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand that you will not be
10 entitled to either educational or work credits?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. Do you understand that you may
13 not possess in the future a firearm or ammunition?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you understand that upon your release
16 from the South Carolina Department of Corrections that you
17 will never be allowed to work at a nursing home?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Or a school district.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. And you may not receive a
22 license to operate a nursing home or a community residential
23 care facility; do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. Do you also understand that the

1 fact that this is considered to be or this is classified as a
2 violent offense will dictate the facility in which you are
3 held with the Department of Corrections?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. Now, do you also understand that
6 criminal sexual conduct in the second degree also has a
7 classification, pursuant to 17-25-45, as a most serious
8 offense?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Because of this classification, if you are
11 in your life ever charged with another most serious offense
12 and the State serves you notice that the State intends to
13 seek life without the possibility of parole and you are then
14 convicted of that offense, that most serious offense, then it
15 is mandatory that the Court impose a sentence upon you of
16 life without the possibility of parole; do you understand
17 that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Tell me what life without the possibility of
20 parole means to you.

21 THE DEFENDANT: It means the sentence will be the rest
22 of the natural life with no possibility of early release.

23 THE COURT: That's correct. You would die in prison.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. Now, because this is a most

1 serious offense, there's another categorization of offenses
2 as serious offenses, and if you were to be convicted of a
3 serious offense and then charged with another serious
4 offense, if the State at that point chose to serve you with
5 notice of an intention to seek life without the possibility
6 of parole and then you were convicted of that second serious
7 offense, that then would be two serious offenses and this
8 most serious offense; that in that event, if you were
9 convicted, you would spend the rest of your life in prison
10 without the possibility of parole. Do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: So that this record is clear, I'm first
13 going to ask the solicitor, based upon her review of your
14 record, what strike is this -- this is known as the
15 two-strike/three-strike rule -- what strike is this for you.
16 I'm then going to ask Mr. Mellard and then you because I want
17 our record to be very clear about what number strike this is.

18 Yes, ma'am.

19 MS. CORNWELL: Thank you, Your Honor. This is a most
20 serious offense, it's a two-strike offense, meaning that if
21 he gets convicted of a serious crime or a most serious crime
22 again, he can face life without parole.

23 MR. MELLARD: And it's my understanding this is his
24 first strike, Your Honor.

25 THE COURT: His first strike.

1 MR. MELLARD: Yes, ma'am.

2 MS. CORNWELL: But it will count as two strikes, so it
3 will be his first and second strike.

4 THE COURT: Under the serious.

5 MS. CORNWELL: Under most serious.

6 THE COURT: Okay.

7 MS. CORNWELL: It counts as two strikes against him.

8 THE COURT: On the serious side.

9 MS. CORNWELL: On the most serious side.

10 THE COURT: I'm with you on that. You all come here a
11 second. Let me ask you a question.

12 (Judge and attorneys confer.)

13 THE COURT: We're going to take a look at that. There's
14 some question about the effect that the most serious has on
15 the serious, so we're going to take a look at that because I
16 want to be clear about that; but I'm going to go forward, and
17 then I'll clarify that for you. But needless to say, the
18 Solicitor believes that this would be your first most serious
19 strike and you have no serious strikes at this time; is that
20 your understanding?

21 MR. MELLARD: This is his first most serious, yes,
22 ma'am.

23 THE COURT: And he has no serious strikes.

24 MR. MELLARD: No serious strikes.

25 THE COURT: Is that your understanding?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. Very well.

3 MS. CORNWELL: Your Honor, for purposes of the record,
4 I've spoken with my office, and it's my understanding that
5 the Court is correct, it is two serious, one most serious, or
6 two most serious.

7 THE COURT: Okay. Very well, which is always fun to
8 explain.

9 MS. CORNWELL: It is.

10 THE COURT: What I was telling you was correct.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You have no serious strikes. It is your
13 first most serious strike; do you understand?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: If you were to go to the Department of
16 Corrections and you were to learn otherwise, you would be
17 surprised, wouldn't you?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: You would certainly want to call Mr.
20 Mellard, wouldn't you?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And have a conversation about what that
23 means, wouldn't you?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Are you relying today, in deciding to plead

1 here today, that you will have one strike and it will be a
2 most serious strike?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Very well. All right. Now, and this is
5 punishable by 20 years in prison; you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. Now, with regards to the amount,
8 people want to know what is the amount of time that they will
9 spend. Whatever I sentence you to I want you, in your mind,
10 I want you to understand and count on serving that period of
11 time; do you understand what I'm saying?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right. Now, I want to talk about the
14 sex offender registry. When you come out, do you understand
15 that you will be listed on the sex offender registry?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And there are many, many, many -- and our
18 legislature changes from time to time when you are supposed
19 to register, how often you are supposed to register, what
20 events in your life trigger the need to register yet again.
21 I am reluctant to tell you specifically what those are
22 because our legislature tends to change those on a regular
23 and recurring basis, but I will tell you because you are on
24 the registry you are going to have many details and many
25 obligations to register; do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Because you will be on the sex offender
3 registry, there are places where you will not be allowed to
4 live; do you understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Whatever those details are, you
7 are responsible for learning those details and living
8 pursuant to those dictates under the sex offender registry;
9 do you understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you know if you fail to live under the
12 dictates of the sex offender registry and those statutes
13 there attached, that you stand to commit criminal offenses
14 for the failure to follow the sex offender registry dictates?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. There is another consequence
17 that I want to talk about and it is this: Under South
18 Carolina law there is something called the Sexually Violent
19 Predator Act, and pursuant to that act before your release
20 from the Department of Corrections you may appear before a
21 commission, and that commission will be charged with the
22 responsibility to make a probable cause determination whether
23 you are a sex offender, a violent sex offender, and there is
24 a definition that is applicable. If they determine that
25 there is probable cause to believe that you are a sexually

1 violent predator, then you will be referred to a Circuit
2 Court Judge, and the Circuit Court Judge will determine
3 whether probable cause exists, based upon the information
4 provided, that you are in fact a sexually violent predator.

5 In the event that the Court determines there's probable
6 cause to believe that you are a sexually violent predator,
7 then you will be appointed counsel; and you'll come before
8 the Court for a hearing to determine whether you are a
9 sexually violent predator by probable cause, and if the Court
10 makes that determination, you then, present with counsel,
11 then you would be evaluated by a psychiatrist or
12 psychologist. And then if you are deemed by that
13 professional to meet the definition of a sexually violent
14 predator, then you certainly can have your own evaluation and
15 the State would pay for that. And you would then go forward
16 to a trial, and the burden of proof is beyond a reasonable
17 doubt; and if you're deemed to be a sexually violent
18 predator, then you would be housed in a locked facility with
19 the Department of Mental Health until such time as your
20 treatment would be completed and a determination made that
21 you can be released to the community and would no longer be a
22 threat to the community, meaning that you are deemed to no
23 longer have a mental abnormality that will cause you to be a
24 risk to re-offend. Do you understand.

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: That was a lot of information.

2 THE DEFENDANT: Yes, it was.

3 THE COURT: And have you had an opportunity to discuss
4 that consequence with Mr. Mellard fully?

5 THE DEFENDANT: No, ma'am, I have not.

6 THE COURT: Okay. Do you need any additional time to
7 talk to him about that because that's a lot?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: It's completely up to you. Because until
10 such -- you would be housed until such time as you're deemed
11 not to be a sexually violent predator. You'd come up for
12 annual review, but again, until there is a determination made
13 that you would no longer be at risk to re-offend, you would
14 be held in a secure facility with the Department of Mental
15 Health. Do you understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. If you change your mind and you
18 need to talk about any of these matters fully with Mr.
19 Mellard, you let me know, okay?

20 THE DEFENDANT: Thank you.

21 THE COURT: Because these consequences are -- these are
22 the most substantial consequences, other than a life
23 sentence, at this point under our law.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: These are substantial circumstances, they

1 really are, and so lots of explanation. All right. Now,
2 just to do the math, do you understand that your exposure
3 here today is 30 years in prison?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. Now, here's what you have told
6 me: That you understand the nature of these offenses, the
7 maximum possible penalty, and the consequences. Keeping
8 these matters in the absolute forefront of your mind, how do
9 you plead to unlawful neglect of a child or helpless person?

10 THE DEFENDANT: Guilty.

11 THE COURT: How do you plead to criminal sexual conduct
12 in the second degree?

13 THE DEFENDANT: Guilty.

14 THE COURT: Do you understand that when you plead guilty
15 that you give up certain very important constitutional
16 rights?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Mr. Roberts, I'm going to talk to you about
19 many of them, but I won't talk to you about them all. If you
20 have any questions of me or if you have any questions of Mr.
21 Mellard, please ask them, all right?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: First of all, you give up the right to
24 remain silent. That is your Fifth Amendment right. You have
25 the right to remain silent, but when you plead guilty, you're

1 no longer silent. You just told me you're guilty, so you're
2 no longer silent. You just gave up that constitutional
3 right; do you understand?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Now, you didn't give it up for all time. If
6 this plea doesn't go through, there's a rule that protects
7 you; but your Fifth Amendment right is preserved for you at
8 trial, and you waive it when you plead guilty. You just told
9 me you were guilty, so it makes sense, doesn't it?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You give up the right to remain silent and
12 give up the right of self-incrimination. In other words,
13 what is more incriminating than telling me that you're
14 guilty. Again, that's a constitutional right preserved for
15 you at trial that you give up when you plead guilty. Do you
16 understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: You give up your right to require the State
19 have to prove you guilty beyond a reasonable doubt if they
20 can; do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: You give up your right to have Mr. Mellard
23 cross-examine witnesses who would testify against you; do you
24 understand?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: You give up your right to have Mr. Mellard
2 subpoena witnesses to come testify in your defense; do you
3 understand?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: You give up your right to present defenses.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You give up your right to challenge any
8 incriminating statements that you may have made to the
9 government, meaning typically the government, law
10 enforcement; do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And obviously incriminating statements are
13 statements made typically to law enforcement but to the
14 government which were not made in your best interests; do you
15 understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: You give up your right to have him challenge
18 any stops or searches or seizures that you think were not
19 appropriate; do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You give up your right to a jury trial; do
22 you understand?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And if you wanted a jury trial, there would
25 be a jury trial, Mr. Roberts, and at that trial it would be

1 completely left up to you whether you wish to testify or not
2 testify; and if you wished to go to trial and not testify,
3 the Judge would tell the jury that the jury could not
4 consider your decision not to testify on the issue of whether
5 you were guilty or not guilty, and the Judge would tell the
6 jury that the jury could not even discuss, couldn't even talk
7 about your decision not to testify in the jury room, that
8 that wouldn't matter for them, that the burden would be and
9 would remain on the State to prove guilt beyond a reasonable
10 doubt, you couldn't even talk about it in the jury room; do
11 you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Now, do you understand that there are other
14 rights that we've not specifically discussed which are
15 important, and they are preserved for you at trial, and you
16 waive them when you plead guilty?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And is that what you want to do?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Do you clearly understand, when you plead
21 guilty, you give up your right to have a jury determine if
22 you're guilty or not guilty; do you understand?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Do you understand that if I accept your
25 plea, I will sentence you?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right. Very well. Now, here's what
3 happens next: Every plea must be supported by a factual
4 basis. I'm going to call on the solicitor, Ms. Cornwell, to
5 go over the facts with me; and when she is finished, I'm
6 going to ask you is that what happened. You need to correct
7 anything that needs correcting so that I have an accurate
8 picture of what occurred. What she's going to tell me are
9 the facts that she stands ready to present at trial based on
10 her investigation and that of law enforcement, so if she
11 tells me something that needs to be corrected, I'm going to
12 ask you to do that when I ask you is that what happened. I
13 want you to correct anything that needs correcting. The goal
14 is that I have an accurate picture of what occurred; do you
15 understand?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Listen very carefully, please.

18 Yes, ma'am.

19 MS. CORNWELL: Thank you, Your Honor, may it please the
20 Court.

21 THE COURT: Yes.

22 MS. CORNWELL: On September 25th of 2013 officers met
23 with the complainant, Patrick Roberts, who is the victim
24 victim and minor 1 grandfather. Mr. Roberts stated that
25 victim had told him the defendant had been touching her with

1 his hands on her body in an improper way. The officer spoke
2 with victim who stated the defendant would have her lay on
3 her back in the bed while he would lay on top of her and have
4 the victim rub his back. The victim stated the defendant
5 would have her take her clothes off and that he would take
6 his clothes off while laying top of her, rubbing against her
7 legs and her inner thighs. The victim also stated that the
8 defendant would take his hands and rub her breasts.

9 Officers met with the defendant on October 2nd of 2013,
10 and after waiving his Miranda rights, the defendant stated
11 that he had had back problems, so he would get his daughter
12 to give him massages while he laid on top of her. He said
13 that he would -- she would give him these massages until he
14 fell asleep. When asked if he ever thought his daughter was
15 uncomfortable, the defendant responded that he was still a
16 functioning male and his daughter would notice things. The
17 defendant further stated that he had gotten erections while
18 his daughter massaged him and that he would sometimes touch
19 his daughter between her upper thighs to adjust her while he
20 was getting the massage.

21 On October 4th of 2013 officers got a voluntary
22 statement from the victim, victim who stated that
23 her father would make her get out of bed and go into his room
24 to get a massage. He would make her take her pants off where
25 she was just wearing her panties and he would lie on top of

1 her with his pants and underwear off. She stated he would
2 move his private parts against her and sometimes adjust her
3 because he stated that he would get rug burns on his private
4 parts. The victim stated that there were several times he
5 would make her take her underwear off as well because of the
6 supposed rug burns. The victim stated that she told him
7 numerous times that it made her uncomfortable but the father
8 refused to listen and would tell her that she was being weird
9 or being a freak and to keep on doing it.

10 On October 8th of 2013 the officers met with **minor 1**
11 who is also the defendant's son. Mr. Roberts stated
12 that he had seen his father touch **victim** in the vaginal
13 area. He called it goosing. He also admitted that when he
14 would clean his father's room, there would be condoms and the
15 victim told him that the defendant would wear them so he
16 wouldn't get rug burn. Originally the victim, **victim**
17 stated that there was not penetration. She put that
18 in her written statement. The State was concerned, given the
19 nature of the offense and the grooming that we saw present,
20 we asked for a forensic interview to be done with a
21 counselor. A forensic interview was done with a counselor
22 for both **victim** and **minor 1** At that time **victim**
23 disclosed that there was one occasion where her father
24 inserted his penis halfway inside her vagina. She stated
25 that she freaked out. I think she said she kicked him, and

1 that was kind of the end of that.

2 We met with **victim** and **minor 1** numerous times. We have
3 spoken to them about the incidents. **victim** stated to us
4 that her and **minor 1** went and moved in with their father when
5 she was about eight years old and **minor 1** was about five years
6 old. They moved to Illinois with the defendant and a
7 stepmother named Megan. According to both **minor 1** and
8 **victim** Mr. Roberts was abusive from the beginning. He
9 would hit them in the head. He would spank them. He would
10 yell at them, call them names, and was just very verbally and
11 physically abusive. After he and Megan divorced, they moved
12 to another place in Illinois before moving to Mississippi.

13 They lived in Mississippi about four years ago. In
14 Mississippi Mr. Roberts had a girlfriend Beth Jarks. They
15 broke up, and after they broke up is when the sexual abuse
16 started with **victim** It began as being extra cuddly, always
17 wanting to be near her, stated that whenever she would sit
18 down, he would always have his hands on her, always have to
19 be touching her. She stated that it made her uncomfortable.
20 She told him that it made her uncomfortable, but again he
21 told her that she was being weird or stupid and not to worry
22 about it. It also upset **minor 1** asked his dad about
23 it at one point, and he -- Mr. Roberts got angry with **minor 1**
24 yelled at him, told him to mind his own business, and hit him
25 when he asked about it.

1 After they moved back to South Carolina, they originally
2 moved in with the grandparents, who are the paternal parents
3 of the defendant. The kids state that the abuse kind of died
4 down while they were living with the grandparents, however
5 after speaking with Sharon and Patrick Roberts, who are the
6 grandparents, they stated that that wasn't necessarily the
7 case. Sharon Roberts stated that she was home a lot with the
8 kids and with the defendant, that she noticed some behavior
9 that concerned her. She stated that they would sit on the
10 couch, and when the defendant would sit next to **victim** on
11 the couch, he would sit so close to her that he would almost
12 have her hip up on his leg, and he would put his arm around
13 her where his hand was hanging right in her breast area.
14 They would also state that he would ride **minor 1** that no
15 matter what **minor 1** did, it wasn't right. If **minor 1** stood up,
16 he was supposed to sit down; if he sat down he was supposed
17 to stand up. And that he was very verbally abusive to **minor 1**
18 to the point where I think they had a discussion with him
19 about, you know, you need to lay off a little bit.

20 Ms. Roberts states that she told her husband about her
21 concerns with **victim** Unfortunately, nobody wants to
22 believe this could happen to their family. The grandfather
23 thought at the time that maybe it was a little bit of an
24 overreaction, that they had just moved in, they don't know
25 anybody, so they were a close family. After they moved out

1 is when the naked massages would occur. We talked to
2 victim and she stated that again it originally started he
3 would come into her bedroom and lay on her bed and make her
4 give him the massages. They started out as normal massages,
5 where he would lay down and she would kind of just get on the
6 back and massage as a normal massage would go. He stated
7 that those massages weren't working, they weren't helping,
8 and at that point is when he would have her lay on her back,
9 he would lay on top of her and have her reach around to
10 massage him. This made her uncomfortable. She told him it
11 made her uncomfortable, to the point she stopped sleeping in
12 her bedroom, thinking that maybe if she wasn't in the
13 bedroom, he wouldn't come and get in the bed with her. She
14 would go out and stay on the couch, but that didn't help. He
15 would get her off of the couch and at that point make her
16 come into his bedroom.

17 It progressed from having clothes on to having underwear
18 on to eventually being completely naked. She stated that he
19 would rub his private area on her private area and move about
20 while she was giving him these massages. There were times
21 that he would reach in between her legs, and at that point
22 she did finally divulge that there was digital penetration
23 during this time. We asked her about the penal penetration.
24 At one point she did state that at some time he did put his
25 penis halfway inside of her vaginal area. She stated she

1 kicked him but he wouldn't let her leave the room after that.
2 She still had to finish giving the massage, and that was
3 where that occurred.

4 minor 1 became a little bit more suspicious. He noticed
5 his sister was always crying, that she was upset all the
6 time. He would ask her about it. In the beginning she told
7 him not to worry about it. It finally came out where she
8 disclosed to the brother what happened. The brother didn't
9 do anything for the first couple weeks. She told him not to
10 worry about it, not to say anything. Finally, after one
11 instance, he decided to tell victim boyfriend. victim
12 boyfriend then talked to victim and they decided that she
13 needed to tell her grandparents.. All three of them went to
14 the grandparents' house. Mr. Roberts was at work, but Mrs.
15 Roberts was there. They spoke to the grandmother, waited
16 until the grandfather got home, and then once the grandfather
17 got home, they called law enforcement.

18 We also spoke to minor 1 extensively. minor 1 confirms a
19 lot of what victim said. Obviously he didn't have an
20 occasion to see the massages. They happened at 3 and 4
21 o'clock in the morning, so he was either asleep -- he did say
22 that there were times that he heard things. He heard her
23 saying, no, I don't want to, stop that, please don't do that,
24 but nothing -- he never walked in. He states that his father
25 was physically abusive towards him. That he would snatch him

1 up and throw him against walls at times. He would hit him
2 with a belt in the lower back, the buttocks area, the legs,
3 the arms. He would also hit him in the head with an open
4 hand and a closed fist. I asked him to tell me about one
5 time of the abuse. He stated one time he had asked -- he had
6 done something, and his father had gotten mad at him and hit
7 him. He hit him in his stomach to the point where minor 1 had
8 bent over, trying to catch his breath. minor 1 couldn't stand
9 back up, so at that point his father picked him up by the
10 neck and held him against the wall to where minor 1 states his
11 feet barely touched the ground, and he started to black out.
12 That's just one instance of the physical abuse we believe
13 that we would be able to present testimony at trial to meet
14 the element of that charge as well.

15 THE COURT: Location.

16 MS. CORNWELL: It was in Orangeburg County, in the
17 Eutawville area of Orangeburg County, for both the physical
18 abuse and the sexual abuse. And he does have a prior record,
19 and we can get into that.

20 THE COURT: In a little bit.

21 MS. CORNWELL: In a little bit.

22 THE COURT: Yes. Very well.

23 MS. CORNWELL: The family is here. I don't believe they
24 want to address Your Honor, but they did want you to know
25 that they were here.

1 THE COURT: Very well. Is that what happened?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Now, has anyone promised you anything or
4 held out any hope of a reward to get you to plead guilty?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Has anyone tried to force you or threaten
7 you to get you to plead guilty?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Has anyone intimidated you to cause you to
10 plead guilty?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Has anyone overcome your free will to cause
13 you to plead guilty?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Have you had enough time to make up your
16 mind that this is what you want to do?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Are you pleading guilty today freely and
19 voluntarily?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Are you pleading guilty because you are in
22 fact guilty?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Are you satisfied with the services of Mr.
25 Mellard?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Have you and he talked about your case for
3 as many times and for as long a period on each of those
4 occasions as you believe appropriate for him to properly
5 represent you?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: I don't know that you asked -- well, let me
8 ask you this question first: Have you been over with Mr.
9 Mellard the discovery, in other words, the information that
10 the State has available to present at trial to prove your
11 guilt?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: I don't know that you asked for copies of
14 it, but if you did ask for copies of it, has he given those
15 to you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. And has he spoken to any people
18 that you asked him to speak to?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Has he investigated your case in any ways
21 that you may have asked him to investigate your case?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And has he done everything for you in his
24 representation of you that you believe he should have done or
25 could have done to properly represent you?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Has he done anything in his representation
3 of you that you believe he should not have done?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Are you completely satisfied with Mr.
6 Mellard's services?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Have you understood your conversations with
9 him?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Now, has anyone associated with your case,
12 your lawyer, the solicitor, any of the police officers
13 involved in your arrest or any of the folks at the detention
14 facility, has anyone associated with your case mistreated you
15 in any way?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: Have you understood my questions here today?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Is there anything you want to ask me about
20 what we have just been over?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Do you understand that you have a right to
23 appeal your guilty plea; do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that you also have a right

1 to appeal any sentence that I impose; do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: However, do you understand, if you wish to
4 appeal, you or an attorney on your behalf must appeal within
5 ten days; do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: With respect to each and every answer that
8 you have given me here today, have you been absolutely candid
9 and truthful with me?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Have your answers been your answers?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Has anyone told you how to answer my
14 questions?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Tell me whose answers you've given me here
17 today.

18 THE DEFENDANT: Mine.

19 THE COURT: Anyone tell you how to answer my questions?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. I find that there is a
22 substantial factual basis for this plea and that the decision
23 of Mr. Roberts to plead guilty is freely, voluntarily,
24 knowingly and intelligently made, that he's had advice of
25 counsel with whom he tells me he's satisfied, and I'll accept

1 the plea.

2 Record.

3 MS. CORNWELL: Your Honor, he has a 2007 domestic
4 battery out of Illinois. It's our understanding that that
5 case also involved the victim, minor 1 where this
6 defendant was charged with abusing minor 1

7 THE COURT: All right. And anyone from the family wish
8 to be heard?

9 MS. CORNWELL: No, Your Honor.

10 THE COURT: All right. Very well. Mr. Mellard.

11 MR. MELLARD: Just briefly, Your Honor, he's 37 years
12 old. As you've heard, he's working at Boeing. I'll tell the
13 Court he was in the United States Army. He was there for
14 three years. He worked on tanks at Fort Knox. He has some
15 college. He went to college for art; he went to college for
16 electronics. He's here taking responsibility. You've heard
17 his words, Your Honor. He spent three days in jail, and we'd
18 ask the Court to accept the recommendation. We believe it's
19 a good resolution to this case. He understands the
20 consequences of it, and we'd just ask the Court to accept the
21 recommendation.

22 THE COURT: Anything else from anyone before I pass
23 sentence on Mr. Roberts?

24 State?

25 MS. CORNWELL: Nothing from the State, Your Honor.

1 THE COURT: Defendant?

2 MR. MELLARD: No, ma'am.

3 THE COURT: Very well. With regards to 2014-GS-38-160,
4 Mr. Roberts, I'm going to commit you to the South Carolina
5 Department of Corrections for a period of 20 years, which I'm
6 going to suspend on the service of 10 years and probation for
7 5 years. As special conditions of your probation, which
8 would also be imposed upon your release from the South
9 Carolina Department of Corrections, you must register as a
10 sex offender. You must have GPS monitoring attached for 24/7
11 monitoring prior to being released from the South Carolina
12 Department of Corrections. GPS may be removed if a
13 determination is made by a psychiatrist with expertise
14 working with sex offenders that you represent little or no
15 risk to the community to re-offend. You must successfully
16 complete sex offender treatment and be enrolled in that
17 treatment within ten days of your release from the Department
18 of Corrections. You may have no contact with your victims,
19 and you may not be in the presence of minors unsupervised,
20 and by that the supervisor must be a person who knows of your
21 history and the need of children to be protected specifically
22 who might be in your presence; in other words, it's hard to
23 do that without some sort of training by someone like Dr.
24 Burke and his program. You're to be given credit for the
25 time that you have served of the three days, and these

1 sentences will run concurrent. That would be the sentence of
2 the Court.

3 You know, I normally and typically speak to kids if they
4 want me to do that. Any objection to me doing that in
5 chambers if they wish?

6 MR. MELLARD: Your Honor, can we approach real quick
7 just one second?

8 THE COURT: Yes.

9 (Judge and attorneys confer.)

10 THE COURT: Just to be absolutely certain,
11 2014-GS-38-161, I'm going to commit you to the state
12 Department of Corrections for a period of 10 years, and the
13 sentences will run concurrent. You're to be given credit for
14 the three days.

15 MR. MELLARD: Thank you, Your Honor.

16 THE COURT: And I'm putting a note because of the extent
17 of the conditions, I started on one and ended on the other,
18 so I've made a note to that effect on the sentencing sheets.

19 MR. MELLARD: Thank you, Your Honor.

20 THE COURT: And, again, any objection if the kids wish
21 to speak?

22 MR. MELLARD: No, Your Honor.

23 THE COURT: Very well.

24 --- END OF TRANSCRIPT OF RECORD ---

25

1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF ORANGEBURG

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Orangeburg County,
11 South Carolina, on the 19th of May, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 June 25, 2015

16

17 *Ruth L. Mott*

18 Official Court Reporter

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)

County of Orangeburg)

Christopher Adam Roberts ^{SDCH} 360090)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS
Case # 2014GS38-0160
2014GS38-0161

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Allendale Correctional Institution
2. Name and location of Court which imposed sentence General Sessions - Orangeburg
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2014GS38-0160

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

(b) 2014GS-38-0161
(c) 0

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 5-19-2014 20yrs suspended to
(b) 10yrs. with 5yrs. probation with
(c) a con ^{current} ~~current~~ 10yrs

6. Check whether a finding of guilty was made:

(a) after a plea of guilty yes
(b) after a plea of not guilty N/A
(c) after a plea of nolo contendere N/A

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. N/A
ii. N/A
iii. N/A
(b) the result in each such Court to which you appealed:
i. N/A
ii. N/A
iii. N/A
(c) the date of each such result:
i. N/A
ii. N/A
iii. N/A
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. N/A
ii. N/A
iii. N/A

2015 MAY 21 11:03

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Unaware of ability to appeal /

- (b) attempt made late
- (c) 0

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) insufficient Counsel, No appeal filed
- (b) insufficient Counsel, no defense presented
- (c) insufficient Counsel, failed to realize emotional state/durress

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) No appeal Filed
- (b) never made aware / produced a defense
- (c) never had a professional evaluation and failed to garner informat. on from other state agencies

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (d) the date of each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A

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

NO
NO

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

- (a) which grounds have been presented:
 - i. N/A
 - ii. N/A
 - iii. N/A
- (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. N/A
 - iii. N/A

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) Unaware that "I" could
 (b) Unaware that "I" could
 (c) Unaware that "I" could

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

- (a) your arraignment and plea? Yes
 (b) your trial, if any? NO
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? None filed
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. SC Bar # 13521 Public Defender's office
Orangeburg, S.C. 190 Gibson St.
 ii. Orangeburg SC. 29116
~~_____~~
 iii. ~~_____~~
~~_____~~

(b) the proceedings at which each such attorney represented you:

- i. preliminary hearing
~~_____~~
 ii. guilty plea
~~_____~~
 iii. ~~_____~~
~~_____~~

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

Overturn Case
Reduction of sentence
0

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

NO
0

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Allendale)

VERIFICATION

I, Christopher A. Roberts, 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.

Christopher A. Roberts

SWORN to and subscribed before me this 19 day of May, 2015.

Virginia Greub (L.S.)
Notary Public

My Commission Expires: 12-12-22

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

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

I, Christopher A. Roberts, 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.

Christopher A. Roberts
Applicant

SWORN or affirmed to and subscribed before me this

19 day of May, 2015.

Virginia Drubb
Notary Public

My Commission Expires: 12-12-22

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

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Christopher Roberts, #360090,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2015-CP-38-0646

**RETURN AND PARTIAL
MOTION TO DISMISS**

Respondent, making its Return to the Application for Post-Conviction Relief filed May 21, 2015:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In January 2014, the Orangeburg County Grand Jury indicted Applicant for criminal sexual conduct, second degree (2014-GS-38-0160) and unlawful neglect of child or helpless person (2014-GS-38-0161). R. Douglas Mellard, Esquire, represented Applicant. On May 19, 2014, Applicant pled guilty as indicted to both counts. The Honorable Diane W. Goodstein sentenced Applicant to twenty (20) years' imprisonment for criminal sexual conduct, second degree, and ten (10) years' imprisonment for unlawful neglect of child. Applicant did not appeal his plea or sentence.

II.

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

1. Ineffective Assistance of Counsel
 - a. "No appeal filed"
 - b. "No defense presented"
 - c. "Counsel failed to realize emotional state/duress"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Applicant has alleged ineffective assistance of counsel because no appeal was filed, thus he is entitled to a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (U.S. 2000). Respondent submits that Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue.

IV.

Respondent submits this all other claims in this Application for Post-Conviction Relief should be dismissed for failing to comply with the filing procedures of the Uniform Post-

Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160 (Supp. 2003). S.C. Code Ann. §17-27-45(a) reads as follows:

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.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offenses he challenges on May 19, 2014, so he was therefore required to file his application on or before May 19, 2015. This Application was filed on May 21, 2015, which was after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, with the exception of Applicant's allegation that he is entitled to a review pursuant to White v. State, Respondent moves to summarily dismiss the application because the

PCR action was filed after the statute of limitations had expired. Respondent requests an evidentiary hearing be held solely on the matter of the Applicant's entitlement to a White Review.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

11 / 19, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 CHRISTOPHER ROBERTS, #360090)
)
 Applicant,)
))
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

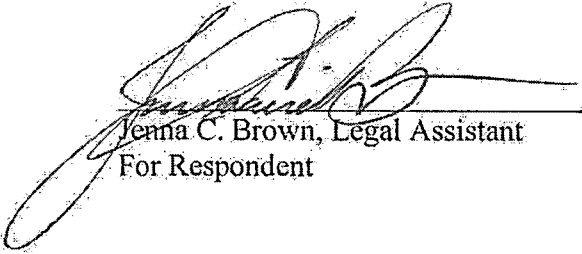
2015-CP-38-00646

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

Mr. Jonathan Waller, Esquire
1315 Blanding Street
Columbia, SC 29201

DATED this 19th day of November, 2015.



Jenna C. Brown, Legal Assistant
 For Respondent

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NO EXHIBITS INTRODUCED

1 (The following proceedings were held
2 February 23, 2016, Dorchester County, South
3 Carolina, @ 9:51 a.m.)

4 MR. MITCHELL: May it please the Court,
5 this is Christopher Roberts versus the State of
6 South Carolina, 2015-CP-38-646. Mr. Roberts was
7 indicted January of 2014 for criminal sexual
8 conduct second degree and unlawful neglect of a
9 child or helpless person. He was represented on
10 the charges by Mr. Doug Mellard. He pled guilty
11 May 19th of 2014. Filed this application May 21st
12 of 2015. So we filed a return and partial motion
13 to dismiss asking to dismiss all issues except any
14 relating to a belated appeal. He is about a week
15 late or three days late on the filing. The statute
16 is pretty clear, I think, that it must be filed by
17 this date. It is not that it is postmarked.
18 There's no mailbox rule or anything like that. I
19 know -- I understand it is pretty close, but the
20 application must be filed within a year of the
21 conviction.

22 So we would move to dismiss all
23 allegations except anything related to the belated
24 appeal. I note Mr. Roberts is present and
25 represented by Mr. Jonathan Waller.

1 THE COURT: Mr. Waller.

2 MR. WALLER: Thank you, Your Honor.

3 Your Honor, in speaking with Mr. Roberts he
4 acknowledges that he did file it late. He signed
5 it I believe on the day of the deadline and stuck
6 it in the mail. So I don't have an argument
7 against that. I would ask the Court to allow us to
8 proceed with the issue of the appeal of his
9 original guilty plea though.

10 THE COURT: All right, sir. You may
11 proceed.

12 MR. WALLER: Thank you. We will call
13 Christopher Roberts.

14 THE CLERK: State your full name for
15 the record.

16 THE WITNESS: Christopher Adam Roberts.

17 CHRISTOPHER ROBERTS

18 Having been duly sworn, testifies as follows:

19 THE COURT: Your witness.

20 MR. WALLER: Thank you, Your Honor.

21 May it please the Court.

22 DIRECT EXAMINATION

23 BY MR. WALLER:

24 Q. Good morning, Mr. Roberts. How are you
25 today?

1 A. Fine.

2 Q. Mr. Roberts, I want to if I can take
3 you back to the day you pled guilty. Do you recall
4 that day?

5 A. Yes, I do.

6 Q. Okay. Now, what were the charges that
7 you pled guilty to?

8 A. Criminal sexual conduct second degree
9 and unlawful neglect of a child/helpless person.

10 Q. Okay. And you pled guilty in front of
11 Judge Goodstein?

12 A. Yes, I did.

13 Q. Okay. And who was your attorney on
14 those charges?

15 A. Douglas Mellard.

16 Q. And when did you -- how did he come to
17 be your attorney?

18 A. Court ordered or state.

19 Q. Appointed?

20 A. Appointed.

21 Q. And about how long after you were first
22 charged was he appointed to represent you?

23 A. The first set of charges he was
24 appointed I believe it was two to three days after
25 I was indicted. And like I said, he was already

1 representing me.

2 Q. Okay. And about how long after you
3 were charged did you first meet with him?

4 A. I met with him the first day he was
5 appointed to me for about five minutes, maybe ten,
6 and then I met with him again roughly a month
7 later.

8 Q. Okay. Do you recall how many times you
9 met with him?

10 A. Three.

11 Q. Okay. About how long were your
12 conversations with him each time?

13 A. Very brief. The first one, like I
14 said, was five to ten minutes. The second time I
15 spoke with him was 30 and then the last time I
16 spoke with him was alone probably five minutes,
17 with others in the office altogether probably
18 20 minutes to go over the agreement for the guilty
19 plea.

20 Q. Okay. And did y'all discuss the
21 evidence the State intended to introduce against
22 you?

23 A. I witnessed the two video statements
24 from the victims.

25 Q. Okay. Did y'all have a chance to

1 discuss that?

2 A. No.

3 Q. Okay. Did y'all have a chance to
4 discuss what the charges carried as far as
5 penalties?

6 A. I was given numbers as far as what the
7 penalties could be.

8 Q. Okay. You were ordered to be on the
9 sex offender registry as a result of your guilty
10 plea; is that right?

11 A. Correct.

12 Q. Did you and Mr. Mellard discuss what
13 that would entail?

14 A. No.

15 Q. Okay. You were ordered not to have
16 contact with the victim in that charge. Did you
17 discuss that with Mr. Mellard?

18 A. No.

19 Q. What did you and Mr. Mellard talk about
20 that led you to pleading guilty?

21 A. The second time I spoke with him I had
22 asked him to look into a similar issue I had had
23 with my children. I gave him the information and
24 expected him to go forward with it. I tried to
25 contact his office a couple times after that and

1 couldn't reach him by phone. I was told the one
2 time I did reach him by phone that not to worry
3 about it. The next appointment he had it taken
4 care of, it was just a bond hearing appointment or
5 roll call or something.

6 Then on the day that I was picked up by
7 the U.S. marshals I am assuming that they had
8 violated my bond. I don't know exactly what had
9 happened at that point. I was brought in front of
10 the judge. I knew that I was going to be brought
11 in front of the judge to have a plea hearing.
12 Spoke to everyone in the office and was told that
13 if all these charges were put together that I would
14 end up, I can't remember the exact number, it was
15 80 or it was some large number of years and
16 possibility of me being found guilty was 50/50.
17 And whenever I asked him what the defense he had
18 planned for me I had no response. At that point I
19 knew that I'm not the man to gamble. I pled
20 guilty.

21 Q. Okay. You pled guilty to one charge
22 that was considered under the South Carolina law as
23 a most serious charge. Did you understand that?

24 A. After the sentencing the judge
25 explained a little bit to me that one was a

1 serious, one was a most serious and that after a
2 number of strikes that I could possibly spend a
3 very long time in prison if I was to reoffend.

4 Q. There was some confusion as to how
5 those strikes would add up during the plea; is that
6 right? Is that your recollection?

7 A. Yes.

8 Q. What -- during the plea what was your
9 understanding of the strikes you would have?

10 A. I had a most serious strike and a
11 violent or serious strike and if I had a
12 combination of one more most serious or two more
13 serious that they would strike out as a third
14 strike or some type of lifetime sentencing for any
15 type of recurrence.

16 Q. Okay. Did you ever get clarification
17 on that? Do you understand that now?

18 A. No.

19 Q. Okay. Judge Goodstein went also into
20 detail about the sexually violent predator act. Do
21 you recall that?

22 A. No.

23 Q. Did you discuss that with Mr. Mellard
24 before you pled guilty?

25 A. No.

1 Q. What sentence did you receive?

2 A. I received two sentences. One was
3 20 years suspended to ten with a five-year
4 probation, and the other one was a sentence of ten
5 years. As a condition of sentencing I had to
6 complete of a sex offender treatment for my license
7 or state licensed psychiatrist, I think it was a
8 psychiatrist on it. And then further, after being
9 sentenced I was ordered to have no contact with the
10 victims or their families.

11 Q. Okay. Did you and your attorney ever
12 discuss appealing the judge's sentence?

13 A. He asked me if I wanted to appeal as I
14 was being taken back to the holding for transport
15 and I asked him well, what will that do? He said
16 probably nothing. I said -- well, I can't remember
17 what I said to him at that point. I was lost to
18 it.

19 Q. Did you -- where did you go after you
20 were taken out of the courtroom?

21 A. First I was taken back to county for
22 holding and then I spent one night I believe, then
23 I was taken to R&E in Columbia.

24 Q. When you are in R&E are you allowed to
25 contact outside?

1 A. No, there was no contact.

2 Q. For about how long were you there?

3 A. I was at R&E for roughly a month, four
4 weeks.

5 Q. Was the same conditions of not being
6 able to contact the outside world present the whole
7 time you were there?

8 A. Yes, sir.

9 Q. Did you attempt to file an appeal on
10 your own?

11 A. No. I was told after I got to where I
12 was being incarcerated, the prison, that I had been
13 outside of the appeal process and then just
14 Inmate.com, talked with other people about things,
15 came to realize PCR was available. So I spent some
16 time trying to go about trying to do that. As we
17 have already heard here I was a little late in
18 filing it.

19 MR. WALLER: Okay. No further
20 questions. Please answer any questions Mr.
21 Mitchell might have.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. MITCHELL:

25 Q. Good morning, Mr. Roberts.

1 A. Good morning.

2 Q. So Mr. Mellard was appointed to
3 represent you on the case, right?

4 A. Correct.

5 Q. And then there was a recommendation
6 made by the State with regards to the sentence;
7 isn't that correct?

8 A. Yes.

9 Q. Okay. Judge Goodstein reviewed a lot
10 of the stuff with you at the plea hearing pretty
11 intently, you agree with that?

12 A. As far as what the State was offering
13 and what the charges were, yes.

14 Q. And to the appeal issue, you didn't ask
15 Mr. Mellard to file an appeal on your behalf, did
16 you?

17 A. No.

18 Q. Okay. You did not attempt to file an
19 appeal yourself?

20 A. No.

21 MR. MITCHELL: No further questions.

22 THE COURT: You may step down, sir.

23 Thank you. You may call your next witness.

24 MR. WALLER: No further witnesses, Your
25 Honor.

1 THE COURT: Mr. Mitchell.

2 MR. MITCHELL: Judge, the State calls
3 Mr. Douglas Mellard.

4 THE CLERK: State your full name for
5 the record.

6 THE WITNESS: Robert Douglas Simmons
7 Mellard.

8 ROBERT MELLARD

9 who, after being first duly sworn, testified as
10 follows:

11 THE COURT: Your witness.

12 DIRECT EXAMINATION

13 BY MR. MITCHELL:

14 Q. Good morning, Mr. Mellard.

15 A. Good morning.

16 Q. How were you involved in this case?

17 A. I was appointed to represent him as a
18 public defender.

19 Q. Did you represent him the entire time?

20 A. I believe so.

21 Q. Can you give a bit of the background of
22 the allegations that the State made?

23 A. He was charged with criminal sexual
24 conduct, basically a committing sexual battery on
25 his daughter. He was charged with incest I believe

1 and he was also charged with unlawful conduct
2 towards his two children.

3 Q. What evidence did the State have to
4 support these charges?

5 A. His two children. He had a daughter
6 that was saying he did things and then the son was
7 also saying that things occurred.

8 Q. Okay. How did plea negotiation come
9 about?

10 A. Well, we were supposed to have a trial.
11 We -- around I think it was April he stopped
12 showing up for his appointments. He was supposed
13 to show up April 1st. He didn't show up for an
14 appointment. We tried to locate him. We couldn't
15 locate him. He gave a phone number. We called the
16 phone number. It was a phone number to the
17 victims's house. We called it a couple of times
18 and then the solicitor told us to quit calling it,
19 it is not the right number.

20 So we tried to keep locating him. We
21 called the bondsman to try to find him. I believe
22 we had our investigator trying to look for him. We
23 ended up coming up for a trial. I went -- I
24 actually came here May the 16th and asked Judge
25 Goodstein for a continuance because we couldn't

1 locate him. I believe at the hearing the solicitor
2 said the federal marshals are out trying to find
3 him. Judge Goodstein denied my motion. And then I
4 think the next day which is probably like a
5 Saturday I spoke to the solicitor and she said the
6 marshals are still looking for him.

7 And by the time Monday rolled around
8 they had found him. I think they found him in a
9 motel room somewhere. So that's kind of we were
10 getting ready for a trial. He got caught by the
11 marshals. We talked about the trial. We talked
12 about the plea and he decided to plea.

13 Q. What was the recommendation by the
14 State?

15 A. I believe it was 20 suspended to ten
16 and probation.

17 Q. Did the plea hearing -- were there any
18 issues that arose that you thought were
19 objectionable?

20 A. Not to my knowledge. I mean if you
21 have got a transcript.

22 Q. Right. I am just wondering if anything
23 stuck out to you at the hearing that you thought --

24 A. No. I haven't reviewed that part of
25 the transcript. I lost it. You all sent it to me.

1 I can't remember where I put it. So I can't tell
2 you off the top of my head.

3 Q. So nothing sticks out now though?

4 A. No.

5 Q. Just thinking back. If something had
6 gone wrong or something was objectionable would you
7 have objected to it at the plea hearing?

8 A. I would have.

9 Q. Did Mr. Roberts ask you to file an
10 appeal?

11 A. Not to my knowledge.

12 Q. What's your normal practice on advising
13 clients whether to -- about appealing guilty pleas?

14 A. We have a plea checklist I go over with
15 everybody, pretty much tells them that you have the
16 right to appeal, you got to do it within ten days
17 of entering the plea. If they decide they want to
18 appeal we just draft up the paperwork and send it
19 up. We don't do the appeals. The indigent defense
20 does it. So all they got to do is say they want an
21 appeal and we will generate it for them.

22 Q. So if Mr. Roberts would have asked to
23 file an appeal you would have?

24 A. Oh, yes, we would have definitely done
25 it.

1 MR. MITCHELL: No further questions.
2 Please answer any Mr. Waller has for you.

3 CROSS-EXAMINATION

4 BY MR. WALLER:

5 Q. Just briefly. Mr. Mellard, there
6 seemed to be some confusion as to how the strikes
7 would be added up if he were to ever reoffend. Do
8 you recall that during the transcript or the
9 hearing?

10 A. If I'm not mistaken the solicitor I
11 think was Ms. Cornwell. She had a different view
12 of strikes back then. I can't remember what her
13 view was, but it was totally off. It was not
14 correct. And I think if this is the right case I
15 think that Harrison Bell who was another solicitor
16 ended up letting her know that her view of the
17 strikes was wrong.

18 Q. So you think that got cleared up during
19 the hearing?

20 A. I'm almost certain it got cleared up
21 during the hearing.

22 Q. Did you and Mr. Roberts discuss
23 appealing prior to him actually pleading? Did you
24 discuss the appeal process?

25 A. Yes, what I did was I have a checklist,

1 guilty plea checklist and I go over it with him and
2 look at -- part of it is, you know, he can appeal
3 if it's filed within ten days of entering the plea.
4 We talked about that. And we talk about how much
5 the charges carry and that kind of stuff.

6 Q. Did you have any contact with him after
7 his -- he pled guilty?

8 A. Not to my knowledge.

9 Q. Okay.

10 MR. WALLER: No further questions.

11 THE COURT: Thank you, Mr. Mellard.

12 You may step down. You may call your next witness.

13 MR. MITCHELL: I have no further
14 witnesses.

15 THE COURT: Parties care to give any
16 summation?

17 MR. WALLER: Nothing from the
18 applicant, Your Honor.

19 MR. MITCHELL: Your Honor, I only point
20 out that Judge Goodstein did advise him he had ten
21 days to appeal in the guilty plea transcript and
22 that his testimony is that he did not ask for an
23 appeal and that a rational Defendant would not wish
24 to appeal the case either. So I would ask you to
25 deny granting him a belated appeal.

1 THE COURT: I will take the time to
2 review the transcript and the documentation and
3 notify you of an opinion.

4 (These proceedings were concluded at
5 10:15 a.m., February 23, 2016, Dorchester County,
6 South Carolina.)

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3 CERTIFICATE OF REPORTER

4 I, Ruth C. Weese, Registered Diplomate
5 Reporter for the State of South Carolina at Large,
6 do hereby certify that the foregoing transcript is
7 a true, accurate, and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 18th day of July, 2016 at
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

15 _____
16 Ruth C. Weese

17 Registered Diplomate

18 Reporter
19
20
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22
23
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25

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Christopher Roberts, #360090,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2015-CP-38-0646

ATTEST: TRUE COPY
ORDER OF DISMISSAL

Winnaja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed May 21, 2015. Respondent filed a Return and Partial Motion to Dismiss on November 23, 2015, arguing that the action be dismissed as filed outside the statute of limitations. Jonathan D. Waller, Esquire, was appointed by the Orangeburg County Clerk's Office to represent Applicant. An evidentiary hearing was held on February 23, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

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

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. In January 2014, the Orangeburg County Grand Jury indicted Applicant for criminal sexual conduct, second degree

(2014-GS-38-0160) and unlawful neglect of child or helpless person (2014-GS-38-0161). Counsel Mellard represented Applicant. On May 19, 2014, Applicant pled guilty as indicted to both counts. The Honorable Diane S. Goodstein sentenced Applicant on the criminal sexual conduct, second degree to twenty (20) years' imprisonment provided upon the service of ten (10) years, the balance is suspended with probation for five (5) years. He was also sentenced to ten (10) years' imprisonment for unlawful neglect of child. Applicant did not appeal his plea or sentence.

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

1. Ineffective assistance of counsel in failing to file a notice of appeal.

II. APPLICABLE LAW

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

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

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Belated Appeal Pursuant to White v. State

The State asked this Court to dismiss all issues except whether Applicant is entitled to a review of his direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because the application was filed outside of the statute of limitations. Applicant pleaded guilty on May 19, 2014, and filed the application on May 21, 2015. This Court granted the State's motion at the hearing and found that this application must be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, *et. seq.* S.C. Code Ann. §17-27-45(a) reads as follows:

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.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The application was not filed within one year of Applicant's plea, therefore it is untimely.

The Court then allowed Applicant to present evidence on the belated direct appeal issue.

Discussion

Applicant testified he was represented by Counsel Mellard on the charges before the Court. He testified Counsel Mellard asked if he would like to appeal and that they discussed the likelihood of success. He testified that he attempted to file an untimely *pro se* notice of appeal. Applicant acknowledged that Judge Goodstein reviewed his appellate rights and the time frame in which a notice of appeal must be filed. Counsel testified that he did not recall being asked to file a notice of appeal. Counsel explained that he went over a guilty plea checklist with Applicant prior to him pleading that included advice on appealing.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029 (2000). There was no evidence or testimony presented that Applicant requested Counsel Mellard file an appeal on Applicant's behalf or that there was a reason for Counsel to believe that Applicant wanted to appeal the conviction or sentence. Furthermore, upon a full review of the record, the Court finds that no grounds existed for an appeal, so any appeal would have been futile. Therefore, this claim is denied and dismissed with prejudice.

All Other Allegations

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

IV. CONCLUSION

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

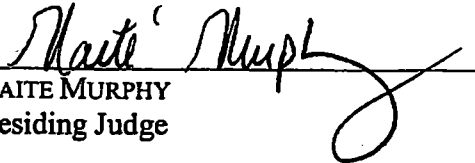
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 23 day of May, 2016.


MAITE MURPHY
Presiding Judge

St. George, South Carolina

WITNESSES

Lori Garrison

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2014ORB2

Arrested: October 11, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: January 13, 2014

VERDICT

TRUE BILL

Michelle Shaw

Date **JAN 13 2014**

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0160

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

January 13, 2014 TERM

THE STATE
vs.

Christopher Adam Roberts

Indictment for

**CRIMINAL SEXUAL CONDUCT -
SECOND DEGREE**

SC Code: 16-3-653

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

Defendant

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

Defendant

Witness:

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

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT

FILED FOR RECORD
W. CLERK OF COURT
ORANGEBURG, SC

2014 JAN 14 AM 9:26

WITNESSES

Lori Garrison

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2014ORB3

Arrested: October 11, 2013

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: January 13, 2014

VERDICT

TRUE BILL

Michelle Shaw

Date JAN 13 2014

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS38-0161

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS
January 13, 2014 TERM

THE STATE
vs.

Christopher Adam Roberts

Indictment for

LEGAL CUSTODIAN, UNLAWFUL
NEGLECT OF CHILD OR HELPLESS
PERSON

SC Code: 20-7-50

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

Defendant

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

Defendant

Witness:

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

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

FILED FOR RECORD
W. CLERK
CLERK OF COURT
ORANGEBURG, SC

2014 JAN 14 AM 9:26

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2014GS38-0161

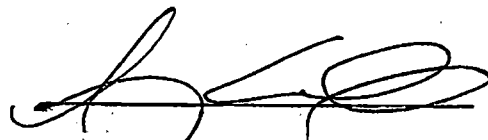
At a Court of General Sessions, convened on January 13, 2014 the Grand Jurors of Orangeburg County present upon their oath:

LEGAL CUSTODIAN, UNLAWFUL NEGLECT OF CHILD OR HELPLESS PERSON

That in Orangeburg County, South Carolina, between May 1, 2012 and October 1, 2013, the Defendant, Christopher Adam Roberts, while having charge or custody, or being the parent or guardian, or being responsible for the welfare of the minor child, _____, who less than 18 years of age at the time of the incident did place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or did unlawfully or maliciously cause, or cause to be done, bodily harm to the child so that the life or health of the child was endangered or was likely to be endangered; or did willfully abandon the child. This offense being a violation of Section 63-5-70 of the South Carolina Code of Laws, as amended.

Y40000011031
4.19.14

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


Ashley B. Cornwell, Solicitor