

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

RECEIVED

FEB 08 2017

Edward W. Miller, Circuit Court Judge S.C. SUPREME COURT

Appellate Case No. 2016-001819

WILLIAM DAVID WOOTEN,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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¹ Plaintiff's Exhibit #6, introduced at p. 72, was the partial transcript of the first PCR hearing held August 25, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

COURT OF GENERAL SESSIONS
2012-GS-39-0492

ORIGINAL

STATE OF SOUTH CAROLINA)

PLAINTIFF)

vs.)

TRANSCRIPT OF RECORD

WILLIAM D. WOOTEN)

DEFENDANT)

February 27, 2012
Pickens, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, Judge.

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

BRANDI BATSON, ESQ.
Attorney for the State

PAUL AARON, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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There were no Exhibits.

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1 THE COURT: Whenever you're ready, Solicitor.

2 MS. BATSON: I'm ready, Your Honor.

3 THE CLERK: This is docket number

4 2011-GS-39-1763, the State vs. William David Wooten,

5 Indictment for lewd act upon a child. Docket number

6 2011-GS-39-1765, Indictment for lewd act upon a child.

7 Docket No. 2012-GS-39-492, Indictment for criminal sexual

8 conduct with a minor, first degree. Docket number

9 2012-GS-39-493, Indictment for criminal sexual conduct
10 with a minor, second degree.

11 Sir, if you would raise your right hand.

12 WILLIAM WOOTEN, after being duly sworn,
13 testified as follows:

14 THE CLERK: Thank you, sir.

15 MS. BATSON: Thank you, Your Honor. Before you
16 is William David Wooten. He will be entering a guilty
17 plea today on case number 2011-1765 and 2012-0492. Your
18 Honor, he has not yet been arraigned on 2012-0492. I have
19 provided Mr. Aaron with a certified, true copy of that
20 Indictment earlier in the week. I don't know if he wants
21 to waive the arraignment or if he wants to go through a
22 formal proceeding.

23 MR. AARON: We'll waive the arraignment, Your
24 Honor.

25 THE COURT: Thank you, Your Honor.

1 MS. BATSON: If, Your Honor's, ready I'll
2 proceed with the facts.

3 THE COURT: Certainly.

4 MS. BATSON: Your Honor, Indictment number 1765,
5 William David Wooten -- The State vs. William David
6 Wooten, involving the victim VICTIM 1 [ph]. Your
7 Honor, essentially the facts of that case was, VICTIM 1 is
8 the victim's niece -- excuse me, the Defendant's niece.
9 She was spending the night at their house after a Carolina
10 Clemson football game. She was laying on the couch,
11 attempting to go to sleep. The Defendant then at that
12 time started with his hands on her stomach and began
13 working his way to her vaginal area. She did thwart his
14 efforts by grabbing his hand, telling him she was going to
15 break it if he didn't leave her alone. That next day she
16 was able to speak with the Defendant's daughter, VICTIM 2
17 ~~Wooten~~, who is the victim in case number 2012-0492. It
18 was through that conversation that VICTIM 2 disclosed that
19 the Defendant had been sexually assaulting her since she
20 was eight years old.

21 Your Honor, the assault against his daughter,
22 VICTIM 2, began by touching VICTIM 2's genitals under her
23 clothing, her genitalia. He digitally penetrated her. He
24 forced her to touch his genitalia. He forced her to
25 perform fellatio on him. And the actions of the Defendant

1 columnated by him rubbing his penis of the outside of the
2 victim's vagina, under her clothing, to the point of
3 ejaculation.

4 Your Honor, this would occur on a daily basis
5 for VICTIM 2. It was a one time event with VICTIM 1
6 ~~██████████~~. Your Honor, the victims are here and would like
7 to address the Court when appropriate.

8 THE COURT: And Solicitor, was there any
9 recommendation or negotiation in this case?

10 MS. BATSON: Yes, Your Honor. This is a
11 negotiated sentence of 25 years. I believe 20 years on --
12 I'm sorry, 25 years on the CSC, first, which carries up to
13 30. Then, if, Your Honor's, inclined to sentence on the
14 lewd act, just concurrent time.

15 THE COURT: That is under the old statute?

16 MS. BATSON: That's correct.

17 THE COURT: And Mr. Aaron, you represent
18 Mr. Wooten?

19 MR. AARON: I do, Your Honor.

20 THE COURT: Have you explained to your client
21 the charges contained in these Indictments, the possible
22 punishments and have you explained to him his
23 Constitutional rights?

24 MR. AARON: I have, Your Honor. And we've done
25 it more than once.

1 THE COURT: And do you believe that Mr. Wooten
2 has understood the discussions that you had with him?

3 MR. AARON: I do.

4 THE COURT: Do you agree with his decision to
5 plead guilty to these two charges?

6 MR. AARON: Yes, sir.

7 THE COURT: Based on your investigation of the
8 facts and circumstances of the these two cases, do you
9 believe it likely that the State could convince a jury of
10 your client's guilt on each of the charges beyond a
11 reasonable doubt?

12 MR. AARON: Yes, sir.

13 EXAMINATION

14 BY THE COURT:

15 Q Now, mr. Wooten, how old are you, sir?

16 A Forty-two.

17 Q I couldn't hear you.

18 A Forty-two.

19 Q Forty-two. Are you married?

20 A No.

21 Q What kind of work have you normally done?

22 A I've done land surveying for 22 years.

23 Q Have you ever been in General Sessions or criminal
24 court before?

25 A No, sir.

1 Q Have you ever been treated for the abuse of alcohol
2 or abuse of drugs or ever treated for any mental
3 illness?

4 A No, sir.

5 Q In the past 24 hours have you taken any medication,
6 any drugs or have you consumed any alcohol?

7 A Yeah, I take medication, regularly.

8 Q Tell me about that. What kind of medication?

9 A It's diabetic medicine, blood pressure medicine.

10 Q All right. How long have you been taking those kinds
11 of medications?

12 A Since 2007.

13 Q Do either of those -- do those medications interfere
14 with your ability to understand what's going on here?

15 A No.

16 Q Are you aware today of any physical, nervous or
17 emotional problem that you might have that would
18 interfere with your ability to understand what's
19 happening here today?

20 A No.

21 Q Mr. Wooten, your attorney and the Solicitor both tell
22 me they believe you wish to plead guilty to these
23 charges.. One being lewd act upon a child, the other
24 being criminal sexual conduct, first degree; is that
25 correct?

1 A Yes.

2 THE COURT: Solicitor is going to give me a few
3 more facts about the case.

4 MS. BATSON: Yes, Your Honor. The specific
5 incident which occurred involving the CSC, first, the
6 victim was 10 years old at the time. She received a cell
7 phone and was caught texting with a boy. The Defendant
8 told her she was in big trouble for that. And that
9 evening he requested that she perform oral sex on him.
10 She did briefly. And that would be the basis for the CSC,
11 first, Your Honor.

12 BY THE COURT:

13 Q Mr. Wooten, you've heard the Solicitor's statement,
14 of the facts concerning both of these charges, the
15 lewd act on a child and the criminal sexual conduct,
16 first degree. Do you agree with what the Solicitor
17 has said about each of these charges?

18 A Yes.

19 Q Are you guilty of both of these charges?

20 A Yes, sir.

21 Q Has your attorney explained to you your right to have
22 a trial by jury on these charges?

23 A Yes, sir..

24 Q Have you ever had a jury trial?

25 A No.

1 Q As you know, I feel sure you know, the jury came in
2 this morning, the purpose of which was, I believe, to
3 select a jury for you. And I need to tell you a few
4 things. You are still entitled to a trial by jury if
5 you wanted one. If you did have such a trial, among
6 other things, the Court would instruct the jury that
7 you're presumed innocent. And that the burden would
8 be upon the State to prove your guilt to the jury
9 beyond a reasonable doubt. You would have the right
10 to cross-examine witnesses that the State might call
11 to testify against you and, of course, you could have
12 your own witnesses to testify for you. You could
13 testify or not. If you decided not to testify the
14 Court would instruct the jury that they could not
15 hold that against you because you have a
16 Constitutional right not to testify. If you had made
17 any incriminating statements, confessions, things
18 such as that, you would have the right to challenge
19 the State's right to use that evidence, just as you
20 would have the right to challenge the State's right
21 to any evidence against you. Do you understand that
22 you do have all of these viable rights?

23 A Yes, sir.

24 Q Do you understand that by pleading guilty you would
25 be giving up those rights as to these charges?

1 A Yes, sir.

2 Q Have you understood the discussions that we've had
3 here today?

4 A Yes, sir.

5 Q Have you had enough time to discuss all of these
6 matters with your attorney?

7 A Yes, sir.

8 Q Has he answered all of your questions?

9 A Yes, sir.

10 Q Are you satisfied with his services?

11 A Yes, sir.

12 Q Any complaints of any kind against Mr. Aaron or
13 anyone else connected with this case?

14 A No, sir.

15 Q Has anyone threatened you or coerced you in any way
16 to make you or cause you to plead guilty to these two
17 charges?

18 A No, sir.

19 Q Has anyone promised you anything or held out any hope
20 of reward, I guess, other than the negotiated
21 sentence, other than that, has anyone promised you
22 anything to cause you or to make you plea guilty?

23 A No, sir.

24 Q Are you pleading guilty to these two charges freely
25 and voluntarily?

1 A Yes, sir.

2 Q Are you pleading guilty to these two charges because
3 you are guilty of these charges?

4 A Yes, sir.

5 THE COURT: The Court finds there is a
6 substantial, factual basis for both pleas. And the
7 decision to enter these pleas were made freely and
8 voluntarily, with the advice of an attorney with whom the
9 Defendant states he is satisfied. And the Court accepts
10 both of the pleas.

11 Mr. Aaron.

12 MR. AARON: May it please the Court, Your Honor.
13 There are a couple of things that I do want to put on the
14 record just so those are clear for any future perspective.
15 I have in the past represented the parents, father and
16 step-parent, of VICTIM I . It was not in this
17 matter. My client has been advised of that. He has
18 waived any potential or apparent conflict that was there.
19 But I wanted to make sure that that was on the record.
20 The other is that David does have a low IQ. It's not to
21 embarrass David at all but in the mid 80's. It does not,
22 in my opinion, meet any of the qualifications that the
23 State would require to show that he was not capable --
24 competent here but it is a low IQ. And it has been
25 considered in my conversations with him.

1 If, Your Honor's, inclined to take the
2 negotiated plea, I will just tell you, as you've heard, he
3 does have a 12th grade education. He has worked his
4 entire life. And but for this set of circumstances, as
5 egregious as they may be, he does not have a prior
6 criminal record of any kind. I would just offer that to,
7 Your Honor. I do have one family member who would like to
8 speak at the appropriate time.

9 THE COURT: May do it now if they desire, sir.

10 MS. BROWN: My name is Paula Brown, I'm the Aunt
11 of David. I just want to stay that there's a lot of
12 things been said but I want to say, as far as his family,
13 family's really important to us. David's a good kid. I
14 baby-sitted David when he was a little boy. And we, as
15 our family, we take pride in our family. And I just want
16 you to know that we're -- we're sorry for everything
17 that's happened. And we just want to say that we love
18 David.

19 And my sister here is 66 years old. And her
20 health is not well. I just would like to ask if there's
21 anyway possible that, you know, I would like for my sister
22 to be around when her son sees the day of light again.
23 And we're respectful people. We're a good family. David
24 came from an excellent family. We're all well known. And
25 we just -- we just want to let, you know, Your Honor, how

1 much we love David and how much David means to us. And I
2 just want to say that, you know, I would like to see if
3 there's a problem that David gets some help here, you
4 know. That he would need instead of spending his time
5 behind bars, I'd like to see David get some mental
6 counseling. That's all I have to say.

7 THE COURT: Thank you, ma'am.

8 Anything else, Mr. Aaron?

9 MR. AARON: That's all we have, Your Honor.

10 THE COURT: This would -- would this also not
11 require that Mr. Wooten's name be placed in the Central
12 Registry?

13 MS. BATSON: That's correct, Your Honor.

14 THE COURT: Is there a mandatory GPS?

15 MS. BATSON: Yes, sir, Your Honor.

16 MR. AARON: I've already explained those to him
17 as well.

18 THE COURT: Solicitor.

19 MS. BATSON: Thank you, Your Honor. Present is
20 VICTIM 1, one of the victim's. VICTIM 2, the
21 other victim. VICTIM 2's step-brother, Cody E., who
22 is also the step-son of the Defendant. VICTIM 2's mother,
23 Natasha Lee. Who was never married to the Defendant but
24 is the victim's mother. And also Joe Wooten who was
25 married to the Defendant during this time and is the

1 step-mother VICTIM 2 And however, Your Honor,
2 would like to hear from them.

3 THE COURT: If any of them wish to speak at all,
4 they're certainly entitled to and be glad to hear from
5 them.

6 MS. VICTIM 1: I'm VICTIM 1, one of the
7 victim's. I personally believe that he deserves a little
8 over 25 years. I disagree with what he put my cousin
9 through and he should have to suffer alone and be ashamed
10 for what he did. He ruined VICTIM 2's life and 25 years is
11 clearly not enough. I just wanted to let you know if I
12 would not have said anything, he would still be harassing
13 her to this day. I hope he realizes the effect he has
14 made on his daughter's life. He always as made me feel
15 awkward when I come over. And the night the incident took
16 place, I knew something wasn't right. I always seen him
17 doing things that were very odd. And the looks he would
18 give me or any other girls just in general. I'm glad he's
19 getting at least 50 percent of what he deserves. Because
20 I now know he can no longer torture any other girls to
21 please himself.

22 THE COURT: Thank you.

23 MS. VICTIM 2: I'm VICTIM 2. I lost my
24 daddy in our relationship. I lost my brother, my
25 step-mother, I've lost my childhood. I've had to go

1 therapy. I don't like this plea because he does not
2 realize what he has done. To him he is getting a shorter
3 time. He will never realize because he is so twisted and
4 needs help. I want him to hear from my mouth what he did
5 to me and my family. To him, he is just winning the case.
6 Because he knows he will get time so he feels that he in
7 control. I hate that he did not admit the truth when he
8 could until he was forced to. Which proves he did not
9 care about me.

10 I want him to know -- I want him to know what I
11 know what I know is that he is not ashamed of what he did
12 to me or VICTIM! He is mad because he has to face jail
13 time. And he used me to please himself and he never once
14 cared about me. I hope one day that he realizes that he
15 did hurt me.

16 THE COURT: Thank you.

17 MR. E : I'm Cody E . I wanted David
18 to know that he was my father. He -- he was a father to
19 my little brother. I trusted him with my life. Over
20 these past two and a half years I looked up to him, I
21 trusted in him. The fact that he done this to my
22 step-sister and my cousin, it kills me to know that he
23 would do this in this sick twisted way. That he done this
24 to every other girl that I ever knew. Everything that he
25 ever done, I just want him to know that he should be

1 ashamed for what he has done. He does not deserve 25
2 years. I just personally think he deserves life for what
3 he had to my cousin and my step-sister. To know that he
4 did this to my step-sister changed my life. And it
5 changed it in the worse way I can possibly think. I got
6 taken away from my family because of him.

7 MS. LEE: I'm Natasha Lee, I'm Victim 2 mother.
8 Twenty-five years is definitely not enough for what he's
9 done. He's taken Victim 2 innocence, he's taken her
10 purity. She suffers much trauma. She's been in extensive
11 therapy. Weekly, daily at the first beginning here. She
12 holds things. What has been said is not even in
13 comparison to the things that he actually did to her. And
14 I just want him to know how much pain and trauma he's
15 caused her. And the life that he's dealt her is very Your
16 unfair. We're working with her daily, I'm very proud of
17 her. We just hope that the Court sees fit to the proper
18 sentence.

19 THE COURT: Thank you, Ma'am.

20 MS. WOOTEN: My name is Joe Wooten. And I'm
21 soon to be divorced from David Wooten. And I just want
22 him to know that he has torn our family apart. I trusted
23 in him. I supported our family of five. And little did I
24 know, he was at home playing with my step-daughter at
25 night. And my baby boy will grow up with no father

1 because of him. And no extensive family because of him.
2 And I think he deserves to rot in jail.

3 THE COURT: Thank you, Ma'am.

4 Anything else, Solicitor?

5 MS. BATSON: No, Your Honor.

6 THE COURT: Anything else, Mr. Aaron?

7 MR. AARON: Just the Solicitor had agreed that
8 she would dismiss the other charges that are pending in
9 Pickens County.

10 MS. BATSON: That's correct. There is another
11 pending charge, Your Honor, in Oconee that we will not be
12 dismissing. We do not have jurisdiction over it.

13 THE COURT: All right. Credit for time served?

14 MR. AARON: He's been in jail a total of five --
15 seven months.

16 SENTENCING

17 THE COURT: All right, Mr. Wooten, on
18 2011-GS-1765, committing a lewd act, it's a negotiated
19 sentence, sentence you to 15 years. That be concurrent,
20 you get credit for time served. On the criminal sexual
21 conduct with a minor in the first degree, one that
22 requires mandatory GPS, I sentence you to 25 years. Once
23 again, that will be concurrent, you will get credit for
24 time served. Of course, your name will be placed on the
25 Central Registry of Child Abuse and Neglect. As well as

1 being required to register as a sex offender.

2 MS. BATSON: Your Honor, could we also have no
3 contact directly or indirectly with the victims?

4 THE COURT: No contact directly or indirectly.
5 Anything else?

6 MS. BATSON: Not from the State, Your Honor.

7 MR. AARON: Would, Your Honor, advise him of his
8 right to appeal?

9 THE COURT: Yes.

10 Has your attorney explained to you your right to
11 appeal?

12 MR. AARON: I have, Your Honor, I'm not sure if
13 he remembers that.

14 MR. WOOTEN: We did, yes.

15 THE COURT: He has?

16 MR. WOOTEN: Yes.

17 THE COURT: Do you have any questions about it?

18 MR. WOOTEN: No, sir.

19 THE COURT: All right, do you understand if you
20 don't appeal --

21 It is within 10 days?

22 MR. AARON: Yes, sir.

23 THE COURT: You lose your right to a direct
24 appeal.

25 MR. WOOTEN: Okay.

1 THE COURT: You know how to do that? If you
2 wanted to.

3 MR. AARON: I've explained to him that he has to
4 file a notice of intent, Your Honor, then it would be
5 normally transferred to Appellate Defense.

6 THE COURT: All right. All right, thank you, so
7 much.

8 MS. BATSON: Thank you, Your Honor.

9 MR. AARON: Thank you, Your Honor.

10 (WHEREUPON, the proceedings were concluded.)
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WILLIAM WOOTEN .

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There were no Exhibits.

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

WILLIAM DAVID WOOTEN, #349872)
 Applicant,)
)
 v.)
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: Perry Correctional Institution 430 Oaklawn Road, Pelzer, SC 29669
2. Name and location of Court which imposed sentence: Pickens County General Sessions Court, 214 E. Main Street, Pickens, SC 29671
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2012-GS-39-0492 Criminal Sexual Conduct with a Minor First Degree
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 27, 2012 Twenty Five (25) years

6. Check whether a finding of guilty was made
- (a) after a plea of guilty YES
 - (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. 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
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) A direct appeal from a guilty plea would have been pointless.

(b) N/A

(c) N/A

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

(a) The Applicant received Ineffective Assistance of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) The Applicant's plea of guilty were not voluntary and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

(c) _____

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

(a) Trial Counsel failed to provide the Applicant effective assistance of counsel in that he failed to convey a plea offer from the State to the Applicant in a timely manner thereby causing the Applicant to lose the benefit of that plea negotiation with the prosecution.

(b) Counsel failed to provide client effective assistance of counsel prior to and during his guilty pleas proceeding. The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation.

(c) _____

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

(a) any petitions in a State Court under South Carolina law? N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

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 know, 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

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) Post-Conviction Relief action presents first appropriate opportunity for review of these collateral issues.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? n/a

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? n/a

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. S. Paul Aaron, Esquire P. O. Box 1862, Clemson, SC 29633

ii. N/A

iii. N/A

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

i. Guilty Plea and Sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application. Vacation of judgment and sentence. Applicant seeks a new trial.

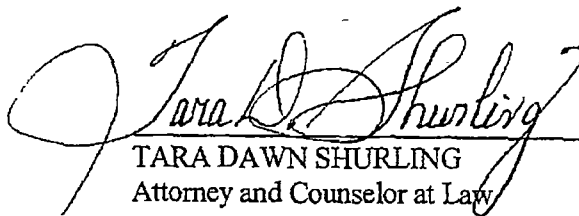
20. Are you now under sentence from any other court that you have not challenged? No. The Applicant has a pending charge for a lewd act on a minor in Oconee County. See, Indictment No. 2011-GS-37-00142.

STATE OF SOUTH CAROLINA

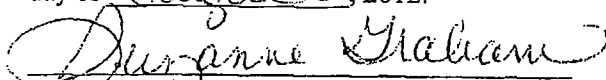
VERIFICATION

COUNTY OF PICKENS

I, Tara Dawn Shurling, *retained* counsel for the Applicant, 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. The Applicant *does not* desire the assistance of a court-appointed PCR attorney


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 14th
day of August, 2012.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

173-1117-2-20

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINAIN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2012 AUG 28 P 2:20

2012-CP-39-1196

WILLIAM DAVID WOOTEN, #349872)

Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)

**AMENDED 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: Perry Correctional Institution 430 Oaklawn Road, Pelzer, SC 29669
2. Name and location of Court which imposed sentence: Pickens County General Sessions Court, 214 E. Main Street, Pickens, SC 29671
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2012-GS-39-0492 Criminal Sexual Conduct with a Minor First Degree
 - (b) 2011-GS-39-01765 Lewd Act on a Minor under 16 years of age.
5. The date upon which sentence was imposed and the terms of the sentence:

(a) February 27, 2012 Twenty Five (25) years

(b) February 27, 2012 Fifteen (15) years Concurrent to sentence on 2012-GS-39- 0492

6. Check whether a finding of guilty was made

(a) after a plea of guilty YES

(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. 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

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

(a) A direct appeal from a guilty plea would have been pointless.

(b) N/A

(c) N/A

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

(a) The Applicant received Ineffective Assistance of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) The Applicant's plea of guilty were not voluntary and intelligently entered. The judgment and sentence against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

(c) _____

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

(a) Trial Counsel failed to provide the Applicant effective assistance of counsel in that he failed to convey a plea offer from the State to the Applicant in a timely manner thereby causing the Applicant to lose the benefit of that plea negotiation with the prosecution.

(b) Counsel failed to provide client effective assistance of counsel prior to and during his guilty pleas proceeding. The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation.

(c) _____

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

(a) any petitions in a State Court under South Carolina law? N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

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 know, 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 of Federal, in any petition, motion or application which you have filed? 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) Post-Conviction Relief action presents first appropriate opportunity for review of these collateral issues.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes

(b) your trial, if any? n/a

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? n/a

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? n/a

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. S. Paul Aaron, Esquire P. O. Box 1862, Clemson, SC 29633

ii. N/A

iii. N/A

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

i. Guilty Plea and Sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application. Vacation of judgment and sentence. Applicant seeks a new trial.

20. Are you now under sentence from any other court that you have not challenged? No. The Applicant has a pending charge for a lewd act on a minor in Oconee County. See, Indictment No. 2011-GS-37-00142.

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

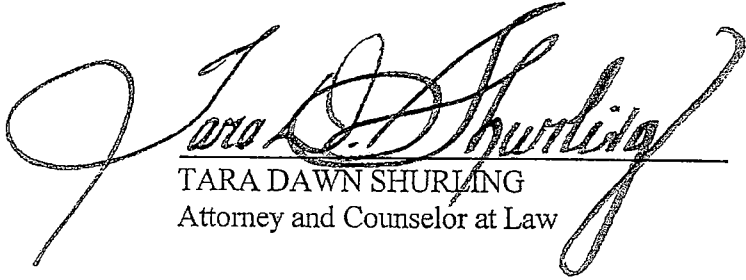
2012 AUG 28 P 2:20

STATE OF SOUTH CAROLINA

VERIFICATION

COUNTY OF PICKENS

I, Tara Dawn Shurling, *retained* counsel for the Applicant, 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. The Applicant *does not* desire the assistance of a court-appointed PCR attorney


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 27th
day of August, 2012.

Sharon H. McCallister
Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

2012 AUG 28 P 2:20

IN THE COURT OF COMMON PLEAS

WILLIAM DAVID WOOTEN, 349872)

Applicant,)

v.)

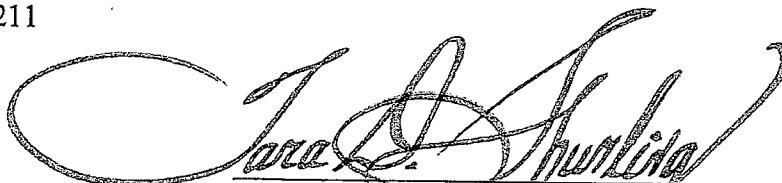
STATE OF SOUTH CAROLINA,)

Respondent.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Amended Application for Post-Conviction Relief in the above matter has been served on opposing counsel this 27th day of August, 2012, by mailing one (1) copy in a stamped envelope properly addressed to

Karen C. Ratigan
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211



TARA DAWN SHURLING
Attorney and Counselor at Law
3614 Landmark Drive, Suite D
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax
ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 27th day of

August, 2012.

Sharon W. McCollister (L.S.)
Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-39-1196
COUNTY OF PICKENS	)	
	)	
William David Wooten,	)	
S.C.D.C. No. 349872,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief (PCR) application filed August 17, 2012 and an amendment PCR application dated August 27, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant for two counts of lewd act upon a child (2011-GS-39-1763, -1765), first-degree criminal sexual conduct (CSC) with a minor (2012-GS-39-0492), and second-degree CSC with a minor (2012-GS-39-0493). S. Paul Aaron, Esquire represented the Applicant.

On February 27, 2012, the Applicant pled guilty – pursuant to a negotiated sentence – to one count of lewd act upon a child¹ and first-degree CSC with a minor. The Honorable Brooks P. Goldsmith sentenced the Applicant to concurrent terms of fifteen years for lewd act upon a child and twenty-five years for first-degree CSC with a minor. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Pickens

¹ 2011-GS-39-1765.

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to convey a plea offer in a timely fashion.
2. Involuntary guilty plea:
 - a. "The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation."

III.

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

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

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

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

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

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for

counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief

hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

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

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the PCR application and subsequent amendment.

Respectfully submitted,

ALAN WILSON
Attorney General

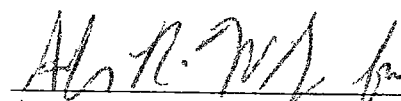
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

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

By:


Attorneys for Respondent

February
January 12, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2012-CP-39-1196

WILLIAM DAVID WOOTEN, 349872)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

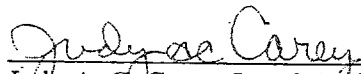
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Tara Dawn Shurling, Esquire
 3614 Landmark Drive; Suite A
 Columbia SC 29204

DATED this 12th day of February, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

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

2012-CP-39-1196

WILLIAM DAVID WOOTEN, #349872)
 Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

**SECOND AMENDED APPLICATION
 FOR POST-CONVICTION RELIEF**

The Post-Conviction Relief Application previously filed on August 17, 2012 under docket number 2012-CP-39-1196 and the Amended Application for Post-Conviction Relief filed on August 28, 2012 are hereby amended to include the following additional allegations:

1. Plea Counsel was ineffective for allowing the State to force the Applicant to make a decision about the plea offer extended to him on February 27, 2012, the date of his pleas, where the Applicant was not indicted for two separate charges of First Degree Criminal Sexual Conduct and Second Degree Criminal Sexual Conduct with a minor relating to his daughter until February 21, 2012, and was not made aware of these charges until immediately prior to his plea proceeding.
2. Plea Counsel was ineffective for failing to adequately advise the Applicant of measures which could be taken to ask the Court to sever the prosecution of his charges which involved two separate victim's neither of whom were witnesses to acts alleged to have been committed with the other.
3. Plea Counsel was ineffective for neglecting to fully advise the Applicant concerning what use the defense could make of a recantation made by the Applicant's daughter if his case had proceeded to trial by jury.
4. Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State.
5. Plea Counsel was ineffective for failing to fully discuss with the Applicant what use the defense could make of the domestic history between the Applicant and his daughter's mother, if the Applicant exercised his right to trial by jury, where allegations of sexual

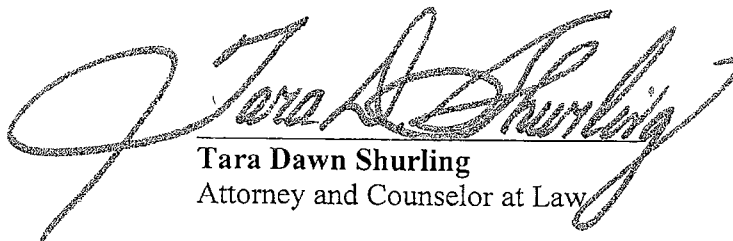
battery were not made against the Applicant until after he sought child support from his ex-wife sometime after he was awarded custody of their daughter.

6. Plea Counsel was ineffective for failing to consult with Attorney Nick Lavery concerning the fact that the Applicant's daughter had made a statement in the presence of Attorney Lavery, recanting her allegations of sexual battery.
7. Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner.
8. Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order.
9. Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection.
10. Plea Counsel failed to provide the Applicant reasonable professional assistance of counsel in that he failed to adequately inform the Applicant of the elements of the charges against him.
11. Plea Counsel was ineffective for failing to give the Applicant accurate advise concerning his sentencing exposure if he proceeded to trial by jury.
12. Plea Counsel was ineffective for failing to object to the Applicant's re-indictment for First Degree Criminal Sexual Conduct with a Minor and Second Degree Criminal Sexual Conduct with a Minor on charges of sexual battery upon his daughter where the second indictments broke the time period covered in a earlier single indictment into two separate offenses.
13. Plea Counsel was ineffective for neglecting to review all the discovery materials produced by the State with the Applicant before he was required to make a decision regarding exercising his right to a jury trial.
14. Plea Counsel was ineffective for failing to consult with his daughter's guardian *ad litem*, Liz Young, where Ms. Young's testimony would have helped develop a defense to the Applicant's charges pertaining to his daughter.

15. Plea Counsel was ineffective for failing to advise the Applicant concerning how the defense could use the testimony of a child interviewer who was the first to interview his daughter after the allegations concerning the daughter came to light.
16. Plea Counsel was ineffective for failing to object to a conflict of interest where the Plea Judge's daughter was close friends with the Prosecutor in the Applicant's case.
17. Plea Counsel was ineffective for failing to review favorable evidence from a Pickens County investigation concerning a recantation by Applicant's daughter with the Applicant and in failing to discuss the potential admissibility of that evidence in a jury trial with the Applicant before he was required to make a decision concerning a waiver of his right to a jury trial in Pickens County.

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his guilty plea proceeding in the Court of General Sessions. Copies of these amendments have been served on opposing counsel, Karen C. Ratigan, Senior Assistant Deputy Attorney General, and Plea Counsel, S. Paul Aaron, Esquire.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT

This 14th day of April, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

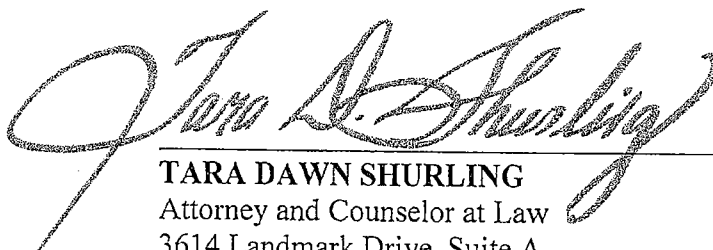
WILLIAM DAVID WOOTEN, 349872)
)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

CERTIFICATE OF SERVICE

2011 APR 17 PM 4 10
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

The undersigned hereby certifies that a true copy of the Second Amended Application for Post-Conviction Relief in the above matter has been served on opposing counsel this 14th day of April, 2014, by emailing one (1) copy to:

Karen C. Ratigan
 Senior Assistant Deputy Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211
kratigan@scag.gov



TARA DAWN SHURLING

Attorney and Counselor at Law
 3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 14th day of

April, 2014.

Supreme Hahn (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/2024

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

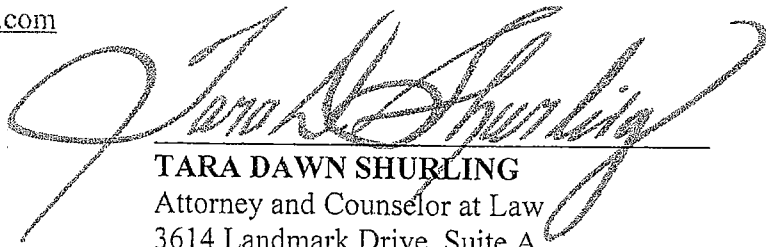
WILLIAM DAVID WOOTEN, 349872)
)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

CERTIFICATE OF SERVICE

2014 APR 17 PM 4:15
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

The undersigned hereby certifies that a true copy of the Second Amended Application for Post-Conviction Relief in the above matter has been served on opposing counsel this 14th day of April, 2014, by emailing one (1) copy to:

S. Paul Aaron, Esquire
 P. O. Box 1862
 Clemson, SC 29633
clemsonattorney@gmail.com



TARA DAWN SHURLING
 Attorney and Counselor at Law
 3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax
 ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 14th day of

April, 2014.
Debraanne Graham (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/2024

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.

William D Wooten

AKA:

Race: WHITE Sex: M Age: 42

DOB: 1969 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: EASLEY, SC 29642

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

IN THE COURT OF GENERAL SESSIONS

45

INDICTMENT/CASE#: 2012-GS-39-0492
2011GS3901766

A/W#: 2011GS3901766 Direct Presentment

Date of Offense: 12/16/2010

S.C. Code § 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

0-30 yr

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brandi Batson 17844 Defendant Attorney for Defendant SC Bar# 272

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

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

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 7.80

TOTAL \$ 133.40

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

No Contact, Directly with Victim
or Indirectly☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2 1 3 9

Sentence Date: 2/27/2012

Clerk of Court/ Deputy Clerk Harold P. Wooten

Court Reporter: April Hannon

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.William David Wooten

AKA:

Race: WHITE Sex: M Age: 42DOB: 1969 SS#: Address: City, State, Zip: EASLEY, SC 29642DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140

of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC

w/minor 1st or Lewd Act)

☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brandi Batson
Batson, Brandi77844
SC Bar#William David Wooten
Defendant
Attorney for Defendant212
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

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§ 56-1-286 (DUI Breath Test) \$25 \$ _____

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§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3901765A/W#: 1677544Date of Offense: 11/28/2010S.C. Code § : 16-15-140CDR Code #: 2468

SENTENCE SHEET

0-154Y☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-15-140

of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC

w/minor 1st or Lewd Act)

☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brandi Batson
Batson, Brandi77844
SC Bar#William David Wooten
Defendant
Attorney for Defendant212
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

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§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

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

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

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§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

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Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

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_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: NO CONTACT, Directly or IndirectlyWith Victim☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge Judge Code: 2 / 3 9Sentence Date: 2 / 27 / 2012Clerk of Court/ Deputy Clerk Harold P. WootenCourt Reporter: April Herron

SCCA 17 (02/2011)

ARREST WARRANT

1-677544

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

THE STATE
against

PCSO#2010-26989

William David Wooten

Address:

Easley, SC 29640-

Phone: SSN:

Sex: M Race: W Height: 5 8 Weight: 120

DL State: SC DL#:

DOB: Agency ORI #: SC0390000

Prosecuting Agency: Pickens County Sheriff's Office

Prosecuting Officer: Jan Kelley - 0025

Offense: Sex / Lewd Act, committing or attempting lewd act
upon child under 16 (June 4, 1996)

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

William David Wooten
1-26-2011
Robert A. Porter
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Easley - Pickens County Summary Court
135 Folger Avenue
Easley, SC 29640

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant Jan Kelley

who

being duly sworn deposes and says that defendant William David Wooten

did within this county and state on or about 11/28/2010

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Pickens)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

The defendant, William David Wooten, did on 11/28/2010 commit a Lewd Act upon the body of VICTIM 1 thirteen (13)
years of age. The victim was spending the night, at the defendant's residence, with his daughter. After preparing for bed he
demanded that she tell him what type of panties she was wearing and that she show them to him. He sat beside her and began to rub
her stomach and ultimately attempted to rub her vagina. He sat beside her and began to watch pornographic movies while fondling
his penis. He asked her if she was going to tell on him; to which she emphatically replied: "YES!!" His actions were for the
undisputable intent of arousing; appealing to; or gratifying his lust, passions and/or perverted, depraved and vile sexual desires.

1-Victim's statement 2-Witnesses' statements 3-Incident Report PCSO#2010-26989

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Pickens

Affiant's Address 216 Lec Road

Pickens, SC 29671-

Affiant's Telephone (864)898-5500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

appearing from the above affidavit that there are reasonable grounds to believe

on or about 11/28/2010 defendant William David Wooten

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Pickens) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 12/01/2010

(L.S.)

Signature of Issuing Judge

E. David Forrest

Judge Code: 5878

Judge's Address 135 Folger Avenue

Easley, SC 29640-2901

Judge's Telephone (864)850-7076

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

FEB - 7 2011

47

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

1/26/2011

ARREST WARRANT NUMBER

1677544

TRUE BILL ACTION OF GRAND JURY
Date OCT 18 2011

Wayne V. King
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-39-
BMB

1765

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

OCT 18 2011 TERM 2011

THE STATE

vs.

WILLIAM DAVID WOOTEN

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on OCT 18 2011 the Grand Jurors of Pickens

County present upon their oath:

That WILLIAM DAVID WOOTEN did in Pickens County, on or about the 28th day of November, 2010, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of *Victim* a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 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.

Brian Batson
SOLICITOR

WITNESSES

Brandon Liner

Easley Police Department

2/28/2011

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 10-10-1969

SS# 250-45-9401

ACTION OF GRAND JURY

TRUE BILL

FILED

FEB 21 2012

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-39-

BMB

0493

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 21 2012

TERM 2012

THE STATE

vs.

WILLIAM D WOOTEN

Indictment for

0396

CRIMINAL SEXUAL CONDUCT W/ A MINOR
SECOND DEGREE

VIOLATION § 16-03-0655(B)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 09/06/12

C0511

WOOTEN, WILLIAM DAVID FBI # 719545KD8 SID# SC01981553 SCDC # 349872

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... PERRY CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 25 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: [REDACTED]

DORM.....: Q2B0120B

RACE....:W SEX...:M

PROJ MAXOUT DATE: 11/11/2036

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 42 DATE OF BIRTH...: [REDACTED]/69

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE		
	YRS	MOS	DYS		START	V/NV	CATEGORY
LEWD ACT/CHILD UNDER 16	15	0	0	PICKENS	11/18/2011	V	4
CRIM SEX COND.W/MINOR(1S	25	0	0	PICKENS	11/18/2011	V	5

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

HARASSMENT 2ND	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 4
HARASSMENT 2ND	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 4
HARASSMENT 2ND	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 4
LEWD ACT/CHILD UNDER 16	NOTIFY	OPEN ARREST NOTIFICATION	CATEG: 4
CODE NOT IN TABLE	HOLD	IRO	CATEG: 4

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

3/27/12 POSSESSION OF A WEAPON	DROPPED	CHARG	WEAPON

NON-ASSAULTIVE DISCIPLINARIES:

4/12/12 POSSESSION OF CONTRABAND	DROPPED	MAJOR

HISTORY OF MOVEMENTS:

8/29/12	PERRY	INCARCERATED	RETURN FROM COURT
8/29/12	OCONEE CO	AUTH ABSENCE (AWL)	TO COURT
6/15/12	PERRY	INCARCERATED	ADMINISTRATIVE
6/15/12	PICKENS CO	AUTH ABSENCE (AWL)	MEDICAL
4/ 2/12	PERRY	INCARCERATED	ADMINISTRATIVE
3/21/12	KIRKLAND	INCARCERATED	RETURN FROM COURT
3/21/12	OCONEE CO	AUTH ABSENCE (AWL)	TO COURT
2/28/12	KIRKLAND	INCARCERATED	R&E PROCESSING
2/28/12	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL

*NO WORK ASSIGNMENTS *

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

FEB 14 2013

2-18-13
SK

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 09/06/12
 OMCOMITA RELEASE DATE SCREEN C051123
 SCDC# > 349872 LOC: PERRY
 WOOTEN, WILLIAM DAVID SCDC CLASSIFICATION...: VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: Y
 SEXUAL PREDATOR...: PENDING
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: Y
 PREA DECISION...:
 CURRENT SENTENCE: 025-00-000 CONSECUTIVE SENTENCE ...: N
 025-00-000 CURRENT SENT START DATE: 11/18/2011
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 11/11/2036 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 000288 ISS.....:

PFKEYS: 5: HISTORY OF DATE CHANGES

4-° 1 Sess-1 167.7.50.33 SCDC1573 3/11

END

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
 STATE VS.
William David Wooten

AKA:

Race: WHITE Sex: M Age: 42DOB: 1969 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: EASLEY, SC 29642DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3901765A/W#: 1677544Date of Offense: 11/28/2010S.C. Code §: 16-15-140CDR Code #: 2468

SENTENCE SHEET

0-1544

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brandi Batson
Batson, Brandi77844
SC Bar#William D. Wooten
Defendant[Signature]
Attorney for Defendant212
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
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SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$	
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3% to County (if paid in installments)		\$	3.90
TOTAL		\$	133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

NO Contact, Directly or Indirectly
With Victim☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: April Herron

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2139Sentence Date: 2/27/2012

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.William D Wooten

AKA:

Race: WHITE Sex: M Age: 42DOB: 1969 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: EASLEY, SC 29642DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brandi Batson
Batson, Brandi17844
SC Bar#William D Wooten
Defendant[Signature]
Attorney for Defendant272
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>7.50</u>
TOTAL	\$	\$ <u>133.40</u>

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-39-0492
2011GS3901766A/W#: 2011GS3901766 Direct PreventmentDate of Offense: 12/16/2010S.C. Code § : 16-03-0655(A)(1)CDR Code #: 0385

SENTENCE SHEET

0-3044☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brandi Batson
Batson, Brandi17844
SC Bar#William D Wooten
Defendant[Signature]
Attorney for Defendant272
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$
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Proviso 47.9 (Public Def/Prob)	\$500	\$
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§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>7.50</u>
TOTAL	\$	\$ <u>133.40</u>

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

No Contact, Directly with Victim
or Indirectly☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: April Herron

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2 1 3 9Sentence Date: 2/27/2012

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT W/ A MINOR SECOND DEGREE

COUNTY OF PICKENS)

At a Court of General Sessions, convened on

FEB 21 2012

the Grand Jurors of Pickens

County present upon their oath:

That WILLIAM D WOOTEN did in Pickens County, between May 25, 2010 through November 28, 2010, commit a sexual battery on ~~VICTIM 2~~ who was fourteen years of age or less but who was at least eleven years of age. This is in violation of §16-3-655(2) 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.

Sharon Batson
SOLICITOR

CLERK OF COURT
 GENERAL SESSIONS DOCKET TRACKING SHEET
 PICKENS COUNTY
 SOUTH CAROLINA

Name: WILLIAM DAVID WOOTENIndictment #: 2012GS3900493Address: [REDACTED]

2012 MAR -6 P 3: 45

Warrant/Ticket # 2012GS3900493City: Easley State: SC ZIP: 29641

No Warrant: _____

SS#: [REDACTED] Sex: M Race: WOffense Code: 0396Date of Birth: [REDACTED] 1969Offense Name: Sex, Crim Sex Cond, 2nd DState: SC Driver's License #: [REDACTED]Date of Arrest: May 25, 2010DATE OF DISPOSITION: 2-27-12

DISPOSITION:

____ 1. Guilty Plea

* ____ 7. Remanded

____ 2. Trial (Guilty)

____ 8. Dismissed at Prelim

____ 3. Trial (Not Guilty)

____ 8. No Bill

* X 4. Dism/Nol Pros/Pros Ended

* ____ 9. Failure to Appear

* ____ 5. Judicial Commitment

* ____ 10. Other

____ 6. Judicial Dismissal

* Explain: Pled to other charges

Judge: _____

Ct. Reporter: _____

Defense Attorney: AARON, S. PAULSolicitor: Brandi Batson / Brandi BatsonOffense Code: 0396Offense Name: Sex, Crim Sex Cond, 2nd D

Sentence: _____

2012 FEB 28 PM 3:14
 13th Circuit
 Solicitors Office

WITNESSES

B Liner

Easley Police Department

2/28/2011

ARREST WARRANT NUMBER

Direct Presentment

DOB: 10-10-1969

SS#: 250-45-9401

TRUE BILL
OCT 18 2011

ACTION OF GRAND JURY

Jayne V. King
person of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-39-^{BMB}

1766

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

OCT 18 2011 TERM 2011

THE STATE

vs.

WILLIAM D WOOTEN

Indictment for

0385

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

VIOLATION § 16-03-0655 (A)(1)

JUL 16 2012

7/16/12
SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT FIRST DEGREE

At a Court of General Sessions, convened on OCT 18 2011 the Grand Jurors of Pickens

County present upon their oath:

That WILLIAM D WOOTEN did in Pickens County, between the year of 2003 and up until December 16, 2010,
engage in sexual battery, with VICTIM, and used aggravated force to accomplish this sexual battery. This is in
violation of South Carolina Code of Laws Section 16-3-655 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.

Blaude Katoen
SOLICITOR

GENERAL SESSIONS DOCKET TRACKING SHEET

PICKENS COUNTY
SOUTH CAROLINA

Name: WILLIAM D WOOTEN

Indictment #: 2011GS3901766

Address: [REDACTED]

2012 MAR -6 P 3:14 Warrant/Ticket # 2011GS3901766

City: EASLEY State: SC ZIP: 29642

No Warrant: _____

SS#: [REDACTED] Sex: M Race: W

Offense Code: 0385

Date of Birth: [REDACTED] 1969

Offense Name: Sex, Crim Sex Cond, 1st D

State: SC Driver's License #: [REDACTED]

Date of Arrest: December 16, 2010

DATE OF DISPOSITION: 2-27-12

DISPOSITION:

____ 1. Guilty Plea

* ____ 7. Remanded

____ 2. Trial (Guilty)

____ 8. Dismissed at Prelim

____ 3. Trial (Not Guilty)

____ 8. No Bill

* ☒ 4. Dism/Nol Pros/Pros Ended

* ____ 9. Failure to Appear

* ____ 5. Judicial Commitment

* ____ 10. Other

____ 6. Judicial Dismissal

* Explain: Pled to other charges

Judge: _____

Ct. Reporter: _____

Defense Attorney: _____

Solicitor: Brandi Batson

Brandi Batson

Offense Code: 0385

Offense Name: Sex, Crim Sex Cond, 1st D

Sentence: _____

2012 FEB 28 PM 3:14
13th Circuit
Solicitor's Office

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

WILLIAM DAVID WOOTEN,)

PLAINTIFF,)

-VS-)

STATE OF SOUTH CAROLINA,)

DEFENDANT.)

2012-CP-39-01196

AUGUST 25, 2014

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE JAMES R. BARBER, III, JUDGE

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

TARA DAWN SHURLING, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

William D. Wooten -vs- State of South Carolina (2012CP3901196)
Index

2

1

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PLAINTIFF'S EXHIBITS

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DEFENDANT'S EXHIBITS

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COURT'S EXHIBITS

	(NONE)		

**PLEASE NOTE THAT PLAINTIFF 2 WAS MARKED DURING
TESTIMONY OF THE PLAINTIFF, WHICH WAS NOT REQUESTED**

William D. Wooten -vs- State of South Carolina (2012CP3901196)
PCR Hearing

4

1 August 25, 2014

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE COURT: All right. Madam Attorney
5 General, are you ready?

6 MS. RATIGAN: Yes, Your Honor, may it please
7 the court.

8 THE COURT: Yes, ma'am.

9 MS. RATIGAN: This is the case of William
10 David Wooten versus the State of South Carolina.
11 Docket Number is 2012-CP-39-1196. Mr. Wooten was
12 indicted for two counts of lewd act with a minor, one
13 count of first degree criminal sexual conduct with a
14 minor, one count of second degree criminal sexual
15 conduct with a minor. Actually these charges, Your
16 Honor, were two different victims. One victim was the
17 CSC first, the CSC second on lewd act, and the other
18 victim was merely one lewd act.

19 He was represented on these charges by Mr. Aaron.
20 On February 27th of 2012, he entered a negotiated plea
21 before Judge Goldsmith to the lewd act against one
22 victim and the CSC with a minor first degree against
23 the other victim. Negotiation was for twenty-five
24 years for CSC first with the lewd act to be concurrent.
25 The judge accepted the negotiations and he did, in

1 fact, receive a twenty-five year sentence for these
2 charges. He did not file an appeal. The application
3 was timely filed. And the state is ready to proceed.

4 THE COURT: All right. Mr. Shurling.

5 MS. SHURLING: Good morning, Your Honor.

6 For the record, I'm Tara Shurling and I'm here, of
7 course, representing Mr. Wooten.

8 Your Honor, we filed an extensive amended
9 application for post conviction relief prior to this
10 proceeding. However, I have this morning informed
11 counsel for respondent that we will be proceeding only
12 on those allegations as they relate to a Davie claim
13 concerning a plea offer that was not timely conveyed to
14 my client.

15 And at this time I would call as the applicant's
16 first witness Mr. Paul Aaron.

17 THE CLERK: Place your left hand on the bible
18 and raise your right hand, please.

19 Do you solemnly swear or affirm the testimony
20 you're about to give in this case be the truth and the
21 whole truth and nothing but the truth, so help you God?

22 THE WITNESS: Yes.

23 THE CLERK: State your full name for the
24 record.

25 THE WITNESS: Stephen Paul Aaron.

William D. Wooten -vs- State of South Carolina (2012CP3901196)
S. Paul Aaron - Direct Examination by Ms. Shurling

6

1 THE CLERK: Please be seated.

2 S. PAUL AARON,

3 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MS. SHURLING:

6 Q. Mr. Aaron.

7 A. Yes, ma'am.

8 Q. Do you recall representing Mr. Wooten?

9 A. I do.

10 Q. And do you have an independent recollection here
11 today of a plea offer that was extended by the state
12 for Mr. Wooten to enter pleas of guilty to two counts
13 of lewd act for a fifteen year sentence?

14 A. Independent, no. After reviewing the file, yes.

15 Q. Okay. And it is my understanding that you
16 received that offer in writing from the state at some
17 point; is that correct?

18 A. The final offer to which we pled, I'm not sure
19 was actually -- I don't believe was in writing. That
20 was done the day we were set for trial.

21 Q. My apologies. I wasn't clear enough. The
22 fifteen year offer for two counts of lewd act, how was
23 that initially conveyed to you, Mr. Aaron?

24 A. If I recall -- the fifteen year offer, if I
25 recall, was tendered through a letter or email that was

1 received sometime after December 15th. The previous
2 one that was tendered in writing for eighteen years, it
3 was tendered somewhere around November the 18th.

4 Q. Okay. And somewhere around that time period, did
5 you have occasion to be out of the state or even maybe
6 out of the country for an extended vacation?

7 A. I think that -- in that year from December 15th
8 through January the 8th or 9th, somewhere in that area,
9 I was protected, and I was not in the state.

10 Q. Okay. And this is one area where the rules vary
11 from county to county. Can you tell me how orders of
12 protection are handled in Pickens County?

13 A. Yes, ma'am. We file a request with the Chief
14 Administrative Judge. In this county it is typically
15 the same administrative judge as in Greenville County,
16 Thirteenth Circuit. That judge then receives the
17 request, sends it to the solicitor's office for their
18 approval, sends it back and then sends it to us with an
19 okay. Sometimes that's by email, sometimes that's just
20 a return of the previous letter with an okay and the
21 judge's initials. But it has to be approved by the
22 solicitor's office first.

23 Q. You anticipated my next question. Is there
24 actually a formal order of protection entered or is it
25 generally just some indication of the judge's ruling on

1 a letter or an email? Is it that informal? How are
2 they handled here?

3 A. My experience in Pickens and Greenville County is
4 it's relatively informal. I send a request -- a
5 letter, typically, and it comes back with an okay,
6 Judge Verdin, Judge Miller. Other counties, like
7 Anderson, there's a specific form that you have to
8 file, the judge signs it and sends it back.

9 Q. And you were kind enough to allow me access to
10 your file in this case; isn't that true?

11 A. Yes, ma'am.

12 Q. And is a copy of any documentation verifying that
13 you were under order of protection during this time
14 period in your file in this case?

15 A. Not that I recall when I went back through it.
16 But typically I don't put the protection orders in my
17 court file. I put them in a file that's labeled
18 protection orders, which I have a stack of, over the
19 years, probably a hundred and fifty copies, at least.

20 Q. Sure. And can you tell me again what the time
21 period was? It was roughly December ---

22 A. I believe it was from December 15th through the
23 first week in January. But I can't tell you the exact
24 dates. I don't recall those. But typically I am gone,
25 and have been since all my kids graduated, they're

1 spread out all over the country, so typically we're
2 gone during those four weeks to visit the kids. So
3 that's -- I have the same thing for this coming year.
4 I usually ---

5 Q. Are you -- I'm sorry. I apologize.

6 A. I usually do that six months in advance.

7 Q. Thank you. And when you get written approval of
8 your request for protection, are you then required to
9 send copies of that to opposing counsel in any of your
10 pending cases? Or how does that work here?

11 A. Well, not in Pickens County and Greenville
12 County. Like I said, the solicitor's office actually
13 gets it before the judge approves it. As I understand
14 it, and my wife was a deputy solicitor for a while in
15 Greenville County, and they actually keep a database of
16 that information. They have it on their computer.
17 They can look today and see who's protected coming up.

18 Q. Okay.

19 A. So, no, I don't send it to opposing counsel. The
20 judge gets their approval first.

21 Q. So it would not have been your practice at that
22 time, once you got written approval of your request for
23 protection, to have sent it out to counsel, opposing
24 counsel, in any of your pending cases?

25 A. In Pickens County, that's correct.

William D. Wooten -vs- State of South Carolina (2012CP3901196)
S. Paul Aaron - Direct Examination by Ms. Shurling

10

1 Q. Okay. When did you first become aware that the
2 fifteen year plea offer for two counts of lewd act had
3 been extended by the assistant solicitor assigned to
4 this case?

5 A. To the best of my recollection, when I returned
6 back in January; as to the fifteen years.

7 Q. And who was the assistant solicitor in this case?

8 A. Ms. Hinton, Brandi Hinton.

9 Q. And at the time -- was her name Hinton at the
10 time?

11 A. No. I believe it was Batson.

12 Q. Okay. And when you say when you returned the
13 first week in January, when you first saw the plea
14 offer from Ms. Hinton, had it already expired?

15 A. Yes. Let me say this. I believe the expiration
16 date was January the 3rd.

17 Q. Okay. And ---

18 A. That's my recollection.

19 Q. Do you know specifically when that week you
20 returned from vacation?

21 A. Not specifically, no. 8th -- 7th, 8th, somewhere
22 in there. Maybe 9th. I mean, I don't know.

23 Q. Okay. So although you don't know the specific
24 date, you're confident that it was after the expiration
25 date of the plea ---

1 A. Yes.

2 Q. --- offer?

3 A. Yes.

4 Q. At that point did you contact opposing counsel
5 and ask her if she would extend the shelf life of that
6 offer? Or what did you do next?

7 A. I believe, again, to the best of my recollection,
8 and from what notes I have on the file jacket, I
9 believe I went down and talked to Mr. Wooten and
10 tendered the offer to him and had him sign the -- what
11 we call the plea sheets. Took those to the solicitor's
12 office -- I don't remember what time of day, but either
13 that day or perhaps the next day, I think Ms. Hinton --
14 Ms. Batson at that time -- called me. Again, that's my
15 recollection. She might have emailed me. But a
16 communication from her office that that plea offer had
17 expired and would not be extended. Court was coming
18 up, I think the last week in January, so we had not had
19 a court session during that period of time. That's how
20 I remember it.

21 Q. Okay. Did Ms. Hinton actually advise you that
22 the offer had expired before you took the sentencing
23 sheets down for your client to sign?

24 A. I don't have any independent recollection of
25 that. It's possible, but I don't ...

William D. Wooten -vs- State of South Carolina (2012CP3901196)
S. Paul Aaron - Direct Examination by Ms. Shurling

12

1 Q. Okay.

2 A. Now, we're talking about the sheets that were
3 from the fifteen, not the eighteen, if I recall.

4 Q. Certainly.

5 A. I think there were three sets of -- again, my
6 recollection, three sets of plea sheets tendered at
7 some point in time, including the one the day of court.

8 Q. Okay.

9 MS. SHURLING: May I approach, Your Honor?

10 THE COURT: You may.

11 Q. Do you recognize this email exchange with Ms.
12 Hinton?

13 A. It's addressed to me, so I'm sure it is.

14 Q. And the date of that is when?

15 A. January 12th.

16 Q. At what time?

17 A. Ten sixteen.

18 Q. And if we look at the other emails in the chain,
19 can you take a look at this one, please, and tell me

20 ---

21 A. What are you asking me?

22 Q. Well, let's see. I'm trying -- it's a little
23 confusing here. This email is from then Ms. Batson;
24 correct?

25 A. Yes.

- 1 Q. And it is timed when?
- 2 A. One thirty-three.
- 3 Q. On the same date?
- 4 A. Correct.
- 5 Q. And in that email she is indicating, is she not,
6 that the plea offer had already expired, but if you
7 would get sentencing sheets filled out, she would see
8 what, if anything, she could do about maybe still
9 getting you the deal?
- 10 A. That's what it says, yes.
- 11 Q. Okay. Okay. So the point in time when you were
12 being told to get the sentencing sheets just in case
13 she could resurrect that offer was after you already
14 knew that the -- at least the initial offer had
15 expired?
- 16 A. Well, yes, but I think I had already run the
17 sentencing sheets up here. I think that's what
18 prompted that return email from her. That's how I
19 remember it. But the email speaks for itself and what
20 was offered and what was tendered.
- 21 Q. Okay. Well, when you went to see Mr. Wooten, did
22 you tell him that the offer for fifteen years had
23 actually already expired?
- 24 A. I don't have any independent recollection of
25 that. I wouldn't have any reason not to tell him that,

William D. Wooten -vs- State of South Carolina (2012CP3901196)
S. Paul Aaron - Direct Examination by Ms. Shurling

14

1 but I don't know whether I did or I didn't. The
2 original offer for eighteen years was one that Mr.
3 Wooten -- that was in November. He wanted me to tender
4 back an offer of five years before he would sign any of
5 the sheets. I think that's when Ms. Batson came back
6 with the fifteen years. But again, I don't have any
7 independent recollection of what he and I actually
8 talked about. But normally I advised him everything I
9 knew. I had no reason not to.

10 Q. And ---

11 A. Let me interrupt you and say this. I was pretty
12 indignant that Ms. Batson had sent the letter that
13 expired while I was protected. So I'm probably sure
14 that I expressed my frustration to Mr. Wooten, but I
15 don't -- again, I didn't take any notes to that effect.

16 Q. Well, you anticipate my next several questions.
17 When you discovered that this plea offer had been made
18 while you were gone, under an order of protection, as
19 you say, did you express concern with the prosecutor
20 that the offer had been conveyed at a time when her
21 office was on notice that you were under order of
22 protection?

23 A. I conveyed it to Ms. Batson and she would tell
24 you that I was not a happy person at the time. She
25 referred me to Doug -- I can't think of his last name

1 right now, but he's the -- Richardson, who is the
2 deputy here. I discussed that with him. And he
3 referred me to Betty Strom, who is his boss over in
4 Greenville. So I had that conversation with all three
5 of those people at some point of the process.

6 Q. Did you consider making a motion for specific
7 enforcement of the original plea offer of fifteen years
8 to two counts of lewd act?

9 A. No. It wasn't in writing. I mean, it wasn't --
10 as far as -- it was in writing in terms of it was
11 offered. But unlike what we do in federal court where
12 we all sign a plea agreement and that's what we're
13 stuck to, practice here has never been that we have
14 those. We've never done that in this circuit.

15 Q. Okay.

16 A. My understanding of the law there is that it's
17 not enforceable unless it's written, negotiated, signed
18 and approved by everybody that's on board. And in this
19 case it was not. And I further believe that the
20 victims in this case were not on board with that
21 either.

22 Q. Well, at the point in time when the original
23 offer was made, it was a firm offer to plead to two
24 counts of lewd act for a fifteen year sentence;
25 correct?

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- 1 A. That's what that email said. Yes, that's
2 correct.
- 3 Q. Okay. And that offer expired while you were on
4 vacation?
- 5 A. That's correct.
- 6 Q. Okay. Now, subsequently Ms. Hinton agreed,
7 making it perfectly clear, that she didn't know whether
8 she could ultimately help you or not; that she would
9 see what she could do about possibly talking to her
10 victims and seeing if she could still get that deal;
11 correct?
- 12 A. That's my understanding of what that email says,
13 yes. I have no reason to believe it wasn't that way
14 either.
- 15 Q. But prior to the expiration of the offer on
16 January 3rd, there was no communication in your file
17 indicating that the state had withdrawn the offer prior
18 to its expiration date; was there?
- 19 A. Other than the original offer expiring on that
20 date, that's correct.
- 21 Q. Right. What I'm saying is, prior to January 3rd
22 when it expired, you hadn't gotten any communication
23 from the solicitor's office withdrawing that offer
24 prior to the expiration date?
- 25 A. No.

1 Q. Okay. When you -- are you a sole practitioner,

2 Mr. Aaron?

3 A. Yes.

4 Q. When you go on vacation or you're under order of
5 protection for any reason, what policies and procedures
6 do you have in place for someone to cover your office
7 communications; mail, email and so forth?

8 A. Well, I mean, I have a secretary or paralegal,
9 depending on who that person is. I have one that's a
10 paralegal and have -- at that time I had one who was a
11 secretary, I believe. They would normally retrieve the
12 mail and open the mail and put it on my desk.

13 Q. And is there any provision in your office
14 policies for another lawyer in the legal community to
15 be -- someone that your staff can reach out to if
16 there's an emergency or a time sensitive issue that
17 comes up with one of your clients?

18 A. Well, first of all, that's the idea or the
19 purpose of protection, is so that those things don't
20 happen. Yes. I mean, I have colleagues who have, in
21 the past, under emergency circumstances, covered
22 situations like that. I don't know that my secretary
23 would have identified that as an emergency, because,
24 quite frankly, procedurally she would open the letters
25 and place them in my desk to read. If she had a call

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1 from a clerk or a judge or something like that,
2 certainly there would have been a heightened concern.
3 But I don't know that she would have picked up on any
4 deadline considering her understanding, as I've
5 explained it to my staff, is protected means protected.
6 So that's -- I don't know if that answers your
7 question.

8 Q. Sure. And I certainly understanding we're going
9 back four, almost five years, when none of us were
10 quite as hooked-up as we are these days. But were you
11 set up so that you had an opportunity to monitor your
12 email at all while you were away from the office?

13 A. No.

14 Q. And ---

15 A. Well, let me back up and say, well, I don't
16 really remember five -- when this happened, I don't
17 remember whether I had that capacity or not. I do know
18 that part of the time when we were gone we were at a
19 place where there was no access to anything other than
20 rotary type dial phones, being out of the country
21 during that period of time. But ...

22 Q. At some point after you discovered that this
23 favorable deal had been made and expired, the state
24 eventually offered the deal that your client took and
25 pleaded to; correct?

- 1 A. Yes. That came about with a conversation with
2 Ms. Batson at the time and Judge Goldsmith ---
3 Q. I'm turning my back on you. I'm sorry.
4 A. That's all right. --- and Judge Goldsmith in the
5 jury room the morning that -- the first day I think of
6 the term of court where this was on the trial docket.
7 Q. And at that point had you shared with Mr. Wooten
8 and his family the fact that there had been a fifteen
9 year offer that had been made while you had gone that
10 had expired?
11 A. To the best of my knowledge, my conversations
12 with them included discussions about the eighteen years
13 and about the fifteen years and my displeasure with Ms.
14 Hinton -- or, yeah, Ms. Batson at the time, who in
15 particular I talked to -- I don't remember if I talked
16 to all of them or if I talked to part of them somewhere
17 on the phone. If I remember, some lived in North
18 Carolina. I was in constant contact with Jean, which
19 is his mom, during that whole period of time. From the
20 time David was -- his bond was revoked in November of
21 that year. From that point forward, most of my
22 communications, other than to David, were through his
23 mother. So the short answer is, I believe so.
24 Q. What was your understanding of what your client's
25 maximum sentencing exposure was if he went to trial?

1 A. Well, there are two statutes to deal with; the
2 old one and the new one. I believe the new one covers
3 twenty-five to thirty, and the old one covered up to
4 life, if I remember the difference between the two
5 statutes when it changed in that 19 -- I don't remember
6 the dates. I don't try to rely on the statute, but I
7 would look it up and see. Part of the question in this
8 case arose as to when the events actually occurred. In
9 fact, the indictment that was amended the Thursday
10 before this was scheduled for trial included, if I
11 remember, some expanded dates and times. So ...

12 Q. We're not going to waste a lot of the court's
13 time on that since we've focused our attention to this
14 plea issue. But in fact, your client had been charged
15 with second degree and lewd act until fairly close to
16 trial time, when there was direct presentment on an
17 indictment for first degree; correct?

18 A. Well, if I remember, there were actually more
19 than these two charges. There were several charges. I
20 think those are the two that got direct presented.
21 Again, I don't have any independent recollection,
22 though. There were also some pending charges in Oconee
23 County at the time.

24 Q. Okay?

25 A. Yeah, if I remember that correctly.

1 Q. Now, I believe you've indicated that in addition
2 to the second degree charge that was dismissed, there
3 was an additional lewd act charge that was dismissed as
4 part of this plea agreement?

5 A. I don't remember the specific what was dismissed.
6 I do know we discussed and Ms. Batson dismissed at
7 least one other charge. I don't remember if there were
8 more or not, to be honest with you. I do know the
9 transcript reflects that there were other charges
10 dismissed.

11 Q. Okay. Did you -- I'm circling back for just a
12 quick second. But in your discussions with Ms. Hinton,
13 did you make it clear to her, did you show her
14 documentation, that you had, in fact, been under order
15 of protection at the time the more favorable offer was
16 made and then -- and indeed until after it expired?

17 A. Did I tell her that?

18 Q. Did you discuss with her the fact that this was
19 not a situation where you had just let a deal sit
20 without going to see the client; that you had been out
21 of town under order of protection, was the reason the
22 offer had expired before you had a chance to give Mr.
23 Wooten a chance to decide whether he wanted to take it?

24 A. To the best of my recollection, absolutely.

25 Q. Okay.

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1 A. And like I said, I know for a fact I discussed it
2 with Mr. Richardson and Ms. Strom, as well, post the
3 events, but before the plea.

4 Q. Okay.

5 A. But exactly what conversation we had, I wouldn't
6 recall that. I know I wasn't happy with it, but I
7 can't remember -- I wasn't rude. But I know I had that
8 conversation at some point; yes, ma'am.

9 Q. Okay. And again, you did have the offer in
10 writing, albeit an offer that came while you were out
11 of town, you had the actual offer in writing in some
12 format; correct?

13 A. I'm sure I did. Otherwise, I wouldn't have known
14 it had expired.

15 Q. Okay.

16 A. I mean, I think my email to her the same day that
17 she wrote back to me, I think, referenced that it
18 expired on January the 3rd. You've got the email. I
19 don't remember what day.

20 Q. Now, you've indicated that on the 27th, February

21 ---

22 MS. SHURLING: I'll get you some.

23 Moment's indulgence, Your Honor.

24 THE WITNESS: Thank you very much.

25 Q. If I understood you correctly, you had indicated

1 that the plea offer that was ultimately accepted by Mr.
2 Wooten, that Judge Goldsmith was at least somewhat
3 instrumental in getting plea negotiations jump-started
4 again, getting you folks talking about another deal?
5 A. Well, I think what happened, in the anticipation
6 of being on the trial docket, I think Ms. Batson
7 emailed Judge Goldsmith and sent me a copy that
8 previous Friday indicating what this case was about and
9 that we wanted -- I believe it said that we wanted to
10 discuss, come Monday morning, some options. We met in
11 there. I don't think he had his robe on. I think it
12 was pretty informal at that point as to where we --
13 because it was going to be a plea, if we were doing to
14 do a plea off the trial docket, there's some issues
15 that come up, particularly in this circuit, so we had
16 to have some discussions with His Honor. And as a
17 result of those discussions, I think his response was,
18 I won't do any less than twenty-five. We go to trial
19 and he's convicted, it will be more. I mean, but I --
20 I don't want to quote the judge, but I'm pretty sure
21 that was the conversation. And after that I went and
22 talked to David.
23 Q. Okay. And I wasn't suggesting Judge Goldsmith
24 had taken part in the negotiations. I'm saying that
25 ---

1 A. I understand.

2 Q. --- that conversation with the Judge led to you
3 and Ms. Hinton once again discussing the possibility of
4 a plea?

5 A. Yes.

6 Q. Okay. And did you make Judge Goldsmith aware of
7 what had happened in terms of the earlier plea offer
8 that had expired while you were under order of
9 protection?

10 A. I would say I did because I was -- again, I was
11 not -- I was an irritated individual in that regards,
12 but I can't tell you -- I don't have any independent
13 recollection of it.

14 Q. All right. And again, very briefly, what was
15 your reason for not making a motion for specific
16 enforcement of that plea agreement based on the fact
17 that it was extended to your client while you were
18 under order of protection and the state was, at least
19 to your belief, on notice that you were under order of
20 protection?

21 A. Well, my interpretation of -- I've done this for
22 quite a while. My interpretation is that was an offer
23 that had not been accepted, (a), by my client for
24 obvious reasons, and (b), had not been tendered back to
25 the solicitor's office for obviously reasons. And that

1 at that point it was an offer. It had not been -- it
2 was not a negotiated and signed plea agreement. Nor
3 had it been approved by the judge. So if that's an
4 incorrect evaluation of the law, then I was wrong. But
5 I don't believe at the time that was incorrect. In
6 addition, the victims had not signed off on that
7 agreement.

8 Q. Pardon?

9 A. I said, in addition, the victims had not signed
10 off on that agreement.

11 Q. Well, actually when a -- in terms of the original
12 offer to plead to two counts of lewd act for fifteen
13 years, that offer came and went, expired, without any
14 mention by the state of any problem with the victims;
15 isn't that true?

16 A. Possibly. I don't know what the discussion was
17 with the solicitor and the victims. I do know the
18 victims have told me that that was never tendered -- or
19 never approved. It was tendered but never approved.

20 Q. Do you still have that stack of emails?

21 A. No.

22 Q. I must have brought them back up here. Excuse
23 me. Well, you knew, did you not, that you had at least
24 -- may not have had a signed plea agreement, per se,
25 but you had in writing the state's offer?

1 A. Yes.

2 Q. And you had in writing that between the time that
3 it was made and the time it expired, January 3rd, that
4 there had been no communication whatsoever from the
5 solicitor's office indicating that they were
6 withdrawing that plea offer?

7 A. True.

8 Q. And that there had been no communication with the
9 solicitor's office indicating that the plea offer
10 itself was contingent upon approval by the victims?

11 A. All correct.

12 Q. Okay. And it was only after you were attempting
13 to resurrect the offer that it expired while you were
14 gone and Ms. Hinton indicated that she would have to
15 see if she could get her victims to still go for that;
16 correct?

17 A. According to that email that you showed me
18 earlier, that is correct.

19 Q. Okay.

20 A. And I had no -- I had nothing to dispute that at
21 that time. I had no reason to believe otherwise.

22 Q. Was there any discussion with your client about
23 his potential exposure to a sentence of life on these
24 charges?

25 A. Yes.

1 Q. And can you explain under what theory he was
2 exposed to life?

3 A. I remember early on when -- my representation of
4 David began when it was a DSS case. He had John DeJong
5 for several months after that. When I took the case
6 over, I believe in September -- it could have been
7 August or September -- I had conversations with him and
8 at least one member of the family -- maybe all, I don't
9 remember -- and met several times about the potential
10 exposure on the different statutes. And I'm sure that
11 -- as I said earlier under the old statute I believe he
12 had -- the exposure was life. And under the new
13 statute, it was twenty-five to thirty or the other way
14 around. I mean, without looking at the statute, I
15 can't -- I don't try to remember those things
16 independently. But yes, yes.

17 Q. And on the sentencing sheets in this case ---

18 MS. SHURLING: Your Honor, they should be in
19 your package.

20 Q. --- on the first degree CSC count, it clearly
21 indicates that the exposure in this particular case was
22 zero to thirty years on first degree CSC; correct?

23 A. That's correct. And before we did the plea,
24 actually Ms. Batson and I and the Judge had the
25 conversation prior to the plea about what the maximum

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1 exposure was on each charge, being lewd act, I believe,
2 was up to fifteen, and then the CSC, if it were pled
3 that way and under the dates alleged in the indictment
4 and that it would be a maximum of thirty years on that
5 and fifteen on the other. And the agreement was to run
6 concurrent, if I recall. And at that point -- let me
7 finish by saying, at that point when I went to David to
8 discuss the options of going to trial and/or the plea,
9 I know for a fact that I told him then exactly what the
10 offer was, because we had just finished talking about
11 it two minutes earlier in the jury room. So ...

12 Q. Okay.

13 THE COURT: Explain to me. I thought he pled
14 to twenty-five on the CSC and fifteen on the ---

15 MS. SHURLING: Lewd act?

16 THE COURT: --- lewd act?

17 MS. SHURLING: Correct, Your Honor.

18 THE COURT: Well, these two -- well, this is
19 the same indictment, you know, the same sentence.

20 MS. SHURLING: Do you have multiple copies of
21 the same one?

22 THE COURT: And they have a charge of CSC and
23 lewd act was dismissed; is that correct?

24 MS. SHURLING: Correct, Your Honor.

25 THE COURT: Were they Pickens County cases?

1 MS. SHURLING: They were, Your Honor.

2 THE COURT: And were they addressed in the
3 plea offer?

4 MS. SHURLING: Yes. It was specifically
5 stated on the record during the plea that other charges
6 were being dismissed.

7 THE COURT: No, on the initial plea letter
8 that was sent by Ms. Hinton?

9 MS. SHURLING: It is my understanding that
10 the initial offer was to plead to those two counts and
11 everything else would be dismissed.

12 THE COURT: Okay.

13 MS. SHURLING: A moment's indulgence.

14 Nothing further, Your Honor.

15 CROSS EXAMINATION

16 BY MS. RATIGAN:

17 Q. Mr. Aaron, I believe you testified that Mr.

18 DeJong had initially represented Mr. Wooten?

19 A. That is correct.

20 Q. Do you recall at what stage of the proceedings
21 you were retained? Was it after bond, after prelim; do
22 you remember?

23 A. It was after all of that. I believe it was after
24 we had disposed of the DSS case. At that point, I
25 think both David and his mom asked me if I would take

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1 over the criminal case, which again, if I remember
2 correctly, was in August sometime.

3 Q. And I believe you briefly mentioned it. Did Mr.
4 Wooten have similar charges in Oconee at the time?

5 A. Yes.

6 Q. And did you represent him on those?

7 A. I did not. A public defender, Mr. Burr -- I
8 can't remember his first name -- did. Although I had
9 conversations with both Mr. Burr and Lindsey Simmons,
10 who was the prosecutor handling those cases.

11 Q. And when you got on the case, did you engage in
12 plea negotiations right away; would you say?

13 A. To be honest with you, I don't know when we
14 initially began conversations. Obviously, I was quite
15 familiar with the facts and circumstances that were
16 initially alleged. And then when I got all the
17 discovery from Mr. DeJong, I'm sure at some point that
18 Ms. Batson and I had more than one conversation about
19 the nature of the case.

20 MS. RATIGAN: May I approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 Q. Mr. Aaron, can you identify this document for me?

23 A. It appears to be a plea offer tendered on the
24 18th day of November, 2011, by Ms. Batson.

25 Q. Is that the offer you received in this case?

1 A. I believe that's the offer that I took down
2 initially to Mr. Wooten; that is correct.

3 Q. Okay.

4 A. And the reason I can remember, they always spell
5 my name wrong on plea offers. So, yes.

6 MS. RATIGAN: Your Honor, we would ask this
7 be admitted as State's 1.

8 MS. SHURLING: No objection, Your Honor.

9 THE COURT: So admitted.

10 (WHEREUPON, Defendant Exhibit Number 1 was marked
11 and admitted into evidence.)

12 Q. So you received that offer that was tendered in
13 November 2011 and you took that down to Mr. Wooten
14 right away?

15 A. Yes.

16 Q. And what was that eighteen year offer for?

17 A. It was a plea to plead to criminal sexual conduct
18 first degree, a lewd act, another lewd act, a criminal
19 sexual conduct second degree, an harassment charge and
20 another second degree criminal sexual conduct; straight
21 up or eighteen years, all charges to be included. And
22 Oconee County will agree to concurrent time.

23 Q. Okay. So that lists all the charges we're
24 talking about here today and an additional harassment
25 charge?

1 A. That is correct.

2 Q. Okay. And you took all that to Mr. Wooten, and
3 what did he say when you gave him that offer for
4 eighteen?

5 A. Again, I don't have any independent recollection
6 of that, but on my case file it says that he wanted to
7 think about the eighteen years, but wanted me to
8 counteroffer with five years, to which I did.

9 Q. Did you email Ms. Hinton? Did you call her? Do
10 you recall how you conveyed that counteroffer?

11 A. I do not recall specifically how I did that;
12 although I have some recollection that she and I were
13 here at the term of court right after that and in the
14 back hallway, but I mean, that's -- that could be
15 inaccurate, but that's what I recall. This plea
16 expires, also, on the 3rd of January.

17 Q. When you made that five year counteroffer, what
18 was Ms. Hinton's response to that? Do you recall?

19 A. I do not recall.

20 Q. But it's safe to say within a couple of weeks is
21 when you had your protection and this fifteen year
22 offer came in?

23 A. Yes.

24 Q. Was there an oral offer for the fifteen before
25 you got the written offer? Had y'all ever talked about

1 fifteen just in conversation; you and Ms. Hinton?

2 A. I don't think so. I believe it was --
3 understanding how plea negotiations often work, we have
4 this case coming up on the trial docket -- and again, I
5 don't have any independent recollection, but oftentimes
6 in the courtroom when we're talking about cases and
7 then sometime after that we'll get a written offer for
8 the same. But I don't have any specific recollection
9 that's how it happened.

10 Q. Okay. So you got back from vacation and that's
11 the first time you saw this fifteen year written offer?

12 A. Yes. To the best of my recollection, yes.

13 Q. And I believe you testified you took it straight
14 to Mr. Wooten at the detention center?

15 A. Yes.

16 Q. And at that point is when you tried to contact
17 Ms. Hinton and discuss this fifteen year offer?

18 A. The best I remember is I went down there and
19 David signed them and I took them to the solicitor's
20 office immediately. I don't remember -- there's two
21 emails on that same date. I don't know -- I'm assuming
22 or presuming it was the same date, but I don't know
23 that for -- I don't have any independent recollection.

24 Q. And when Ms. Hinton stated the offer had expired,
25 at that point you went to talk to Doug Richardson?

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1 A. Yeah. I mean, I don't know that it was the same
2 day, but it was certainly before the next term of
3 court.

4 Q. Okay. And Mr. Richardson is the kind of deputy
5 in charge of the Pickens Solicitor's Office, would that
6 be fair to say?

7 A. Correct.

8 Q. And when you talked to him was he also unwilling
9 to resurrect the plea offer?

10 A. Yes.

11 Q. And at that point is he the one who told you to
12 contact Ms. Strom over in Greenville?

13 A. I'm sure what he said was, you know, if you want
14 to take it to Greenville you can. And I know that's
15 who I talked to in Greenville. Well, actually, I
16 believe I talked to her on the telephone, but I also --
17 I know I talked to her here that same -- when that next
18 term of court came up. And also, I believe she was
19 here the day we did this negotiated plea.

20 Q. Ms. Strom?

21 A. Yes.

22 Q. And clearly by the fact that this went forward,
23 you did not get anywhere with Ms. Strom either?

24 A. Correct.

25 Q. And you testified you subsequently became aware

1 the victims were not on board with the fifteen years;

2 is that fair to say?

3 A. Yes.

4 Q. Okay. Does the solicitor's office here

5 generally, in the course of conduct, take the victims'

6 wishes into consideration in terms of tendering and

7 accepting pleas?

8 A. My experience has been if they don't approve it,

9 it doesn't get done.

10 Q. And the morning of the plea, I believe that's

11 February 27th, did you approach Ms. Hinton again that

12 morning about trying to work something out, or had she

13 already kind of laid the groundwork by that email to

14 Judge Goldsmith?

15 A. Oh, I never give up trying to get what I can in

16 terms of a better opportunity for my client, so I'm

17 sure we had that conversation. But I'm sure her

18 response was, it's on the trial docket, we're here and

19 Judge Goldsmith is ready to go. And that's why we had

20 that meeting.

21 Q. And you brought up, during the course of that

22 conversation with Judge Goldsmith, the fact that you

23 had this prior eighteen and prior fifteen?

24 A. I would say yes, but again, I don't have any

25 independent recollection of that. It wasn't -- I

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1 didn't write it down. I'm sure -- well, I'll stand by
2 what I just said.

3 Q. And it would be fair to say that Judge Goldsmith
4 kind of telegraphed to you that he would get more if he
5 was found guilty at trial?

6 A. Well, again, I didn't write down exactly what he
7 said. In all fairness to the Judge, I'm sure what he
8 said was, based on what I know about the cases y'all
9 are telling me, this is what my inclination is. It
10 could be more. And if he goes to trial, he'll be
11 exposed to whatever the maximum is. So I'm sure that's
12 what he -- I don't think he said he would give him the
13 max, but ...

14 Q. And after you discussed this with Judge Goldsmith
15 and the assistant solicitor, that's when you went back
16 to talk to Mr. Wooten again?

17 A. Yes. In fact, it may have been in this room. I
18 don't remember where -- I don't like to go down into
19 the dungeon, so to speak, but it was somewhere where we
20 had a fairly lengthy conversation about the plea. And
21 then we pled upstairs in one of the smaller courtrooms.

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

23 THE COURT: All right. Ms. Shurling,
24 anything?

25

REDIRECT EXAMINATION

1 BY MS. SHURLING:

2 Q. When you went downstairs or wherever in the
3 building to see your client and got him to fill in plea
4 sheets for the fifteen year deal, even though it had
5 expired?

6 A. That would have been at the LEC, I would think;
7 but yes.

8 Q. Okay. Again, Ms. Hinton had said it's expired,
9 but fill in the plea sheets and then sent you another
10 email saying those sheets are downstairs and you got
11 your client to sign them; correct?

12 A. To be honest with you, I don't remember it that
13 way. I mean, the emails reflect that time frame. What
14 I remember, the plea sheets I had, maybe they were in
15 the mail along with the agreement; I don't know, but I
16 had the plea sheets when I took them down -- when I
17 went down to talk to David, I remember that. I just
18 don't remember -- I remember bringing them up here
19 immediately from the jail. But again, I don't remember
20 if that was before or after her one thirty-three email.
21 So I can't answer that.

22 Q. Well, if I may approach, at the top of the page
23 there's an email about ten minutes later telling you
24 they're downstairs; correct?

25 A. That is correct.

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1 Q. Okay. And ---

2 A. Which would mean I would have come here, assuming
3 I didn't already have a copy of them, then I would have
4 come here, picked them up and then taken them down to
5 David.

6 Q. And would you please take a look at that email
7 and give us the date on that one?

8 A. The 17th of January.

9 Q. Okay. At what time?

10 A. One twenty-four.

11 Q. So almost exactly five days later Ms. Hinton
12 informed you that unfortunately -- thanking you for
13 getting her the sentencing sheets, but saying it wasn't
14 going to work; that the family was not going to allow
15 him to plead to the deal that had expired?

16 A. She says, as we discussed, I took the offer back
17 to the victims and let them have the final say-so.
18 They want to take this case to trial. Don't want him
19 to plead to the expired offer. That's what she wrote
20 back; that's correct.

21 Q. Okay. And that was January 17th?

22 A. Right. I can't ---

23 Q. Okay. When you got your client to fill in that
24 sentencing sheet on the fifteen year deal for the two
25 counts of lewd act, did you keep a copy of those

1 sentencing sheets before you turned them in ---

2 A. I did not.

3 Q. --- to the solicitor's office?

4 A. I did not.

5 Q. Did there come a time in the future when you
6 tried to obtain a copy of those from the solicitor's
7 office?

8 A. Yes.

9 Q. And what were you told?

10 A. There's an email that was sent back that said
11 those would have been destroyed when we did the plea;
12 or something to that effect. It was from Ms. Batson.

13 Q. This line of email communication between January
14 12th and January 17th between you and Brandi, then
15 Batson, are there copies of these emails in your file,
16 Mr. Aaron?

17 A. I would say that they are, but I mean, I don't --
18 at least part of them are. I don't know if all of them
19 are or not, to be honest with you. I don't know where
20 you got those copies. To be ---

21 MS. SHURLING: For the record, Your Honor,
22 I'll have them identified by Ms. Hinton. They came
23 from her file.

24 THE WITNESS: Okay.

25 Q. Are you aware of where in your file this

1 communication would be contained?

2 A. You went through my file last Wednesday. If you
3 didn't find them in there, then they're not in there.
4 I mean, I'm not telling you they are. I just -- I
5 don't know.

6 Q. Okay. Well, how about specifically the plea
7 offer that you came home to find; the two lewd acts for
8 fifteen years, is that email communication in your
9 file?

10 A. I'm not sure that was tendered by email. I think
11 that was tendered by letter. But I ---

12 Q. But is that letter in your file?

13 A. I don't recall. I can look. But if you didn't
14 find it, then it's not in there. I mean, I ---

15 THE COURT: Did you find it?

16 MS. SHURLING: No, sir.

17 THE COURT: All right. Well, he said if you
18 didn't find it ---

19 MS. SHURLING: Nothing further, Your Honor.

20 THE COURT: All right. Thank you, sir. You
21 may step down.

22 THE WITNESS: Thank you, Your Honor.

23 MS. SHURLING: Your Honor, I would call
24 Brandi Batson Hinson?

25 THE WITNESS: Hinton.

1 MS. SHURLING: Hinton, excuse me.

2 THE CLERK: Place your left hand on the
3 bible, raise your right hand, please.

4 Do you solemnly swear or affirm the testimony
5 you're about to give in this case to be the truth and
6 nothing but the truth, so help you god?

7 THE WITNESS: I do.

8 THE CLERK: State your full name for the
9 record.

10 THE WITNESS: It's Brandon Batson Hinton.

11 BRANDON BATSON HINTON,

12 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. SHURLING:

15 Q. Ms. Hinton, do you recall prosecuting the case
16 involving William David Wooten?

17 A. Yes, I do.

18 Q. And the plea offer that you've heard discussed
19 this morning for him to plead to two counts of lewd act
20 for a sentence of fifteen years, do you specifically
21 recall that?

22 A. I do. While that was not our first discussion
23 about pleas, that discussion did occur, yes.

24 Q. Okay. And I believe if I may see, Madam Court
25 Reporter, your earlier offer had been for an eighteen

1 year deal; is that correct?

2 A. This is not ---

3 Q. Oh, I'm sorry. Wrong one. I should have had my
4 glasses on.

5 A. Yes. Either straight up or eighteen years;
6 that's correct.

7 Q. Okay. And you subsequently made the offer for
8 the two lewd acts?

9 A. The fifteen year offer?

10 Q. The fifteen year?

11 A. Yes.

12 Q. Okay. And do you recall how that offer was
13 conveyed to Mr. Aaron?

14 A. The fifteen year offer?

15 Q. Yes?

16 A. I do not. I want to say it was conveyed also in
17 an offer letter, but I'm not one hundred percent sure
18 of that.

19 Q. Okay. Did you receive a subpoena from my office
20 ---

21 A. Yes.

22 Q. --- requesting copies of any and all
23 documentation relevant to that deal?

24 A. Yes.

25 Q. And in response to that subpoena, I'm going to

1 hand you a thread, as the iPhone would call it, of
2 email communications between you and Mr. Aaron between
3 January 12th and January 17th.

4 A. Yes. And I have also included -- our system
5 keeps case notes, and I also included the case notes as
6 they discuss our first initial conversations about a
7 plea in October of 2011.

8 Q. Okay. And in any of these documents -- well, let
9 me stop.

10 MS. SHURLING: Your Honor, I would move that
11 these be introduced as Applicant's 1.

12 MS. RATIGAN: No objection, Your Honor.

13 THE COURT: So admitted.

14 (WHEREUPON, Plaintiff Exhibit Number 1 was marked
15 and admitted into evidence.)

16 MS. SHURLING: I apologize, Karen, had you
17 seen them?

18 MS. RATIGAN: Yep.

19 Q. Were you able to locate a copy of your offer
20 letter on the plea to fifteen years for two lewd acts?

21 A. To be honest, I cannot recall. The file is about
22 this big (indicating). I cannot recall if that was in
23 there or not.

24 Q. Okay. Well, can you agree with me that the offer
25 was to plead to two counts of lewd act for a fifteen

1 year sentence and for other counts -- any other counts,
2 related counts, to be dismissed?

3 A. I believe that's what our emails discussed, yes.

4 Q. Okay. At the time you sent that offer to Mr.
5 Aaron's office, were you aware that he was out of town
6 on vacation?

7 A. The way it works is we get an email from our
8 Greenville office that is basically a spreadsheet
9 saying who is protected. So, yes. The reason that
10 went out during that time is that that was just a
11 further negotiation of the letter that had already been
12 extended. Our first initial conversation in October of
13 2011 was that Mr. Wooten was not interested in pleading
14 guilty at all. Despite that, I extended him an
15 eighteen year offer. At that time, Mr. Aaron and I
16 entered into fairly extensive plea negotiations. And I
17 went back to the victims, as I do with any sex case,
18 and asked their opinion on the deal, because I had
19 originally told them that the offer would be for
20 eighteen years or straight up. So out of respect for
21 them, I always go back to them and further discuss why
22 I'm going to offer what I'm going to offer. They were
23 in agreement with the fifteen years, so I sent some
24 sort of communication to Mr. Aaron that they were
25 willing to go as low as fifteen. That's my

1 recollection.

2 Q. Okay. And just to kind of circle back to my
3 original question, at the time you sent that -- some
4 form of communication to Mr. Aaron's office, you were
5 or weren't aware that he was gone and under order of
6 protection?

7 A. Yes. I was aware of that.

8 Q. And were you aware that the order of protection
9 was going to extend until the date you had given for
10 the offer to expire?

11 A. Well, in our office we are not allowed to extend
12 offers past the expiration date without approval from
13 our bosses. So I was not at liberty to extend the date
14 of that expiration. Now, whether or not -- I believe I
15 sent it to him before he went out of town. I believe I
16 was mindful of that. Now, how far in advance, I don't
17 know. That is why he had to speak to Doug Richardson,
18 and subsequently Betty Strom, after that offer had
19 expired. Because that is our internal process.

20 Q. Okay. I'm a little confused. It's your
21 recollection that you actually extended the offer
22 before his order of protection began?

23 A. That is my recollection. Maybe not many days
24 before, but that the offer came in before he went out
25 of town, yes.

1 Q. And once you extended that offer, did you get any
2 feedback from Mr. Aaron before his protection order
3 began and he left town?

4 A. Not to my recollection, no.

5 Q. Okay. And the part I didn't understand. You
6 said because of the way that had happened, then when he
7 reinitiated discussions with your office about that
8 offer, he had to talk to someone other than you; is
9 that what I understood you to say?

10 A. Correct. Once an offer expires and a case is
11 prepared to go to trial -- when the offer expires, the
12 case is set for trial. Once that offer expires, we, as
13 assistant solicitors, do not have further authority to
14 negotiate without permission from our bosses. Given
15 the fact that Mr. Wooten had, on several occasions,
16 discussed pleading, then not pleading, pleading, then
17 not pleading, I was not inclined to extend it any
18 further. So that is when I sent Mr. Aaron to my boss.

19 Q. Okay. And I'm not being a smart aleck, I swear
20 I'm not. But if you were aware that Mr. Aaron was out
21 of town and under order of protection and he's a sole
22 practitioner, how is it that Mr. Wooten was supposed to
23 have become aware of your offer before its expiration
24 date?

25 A. Well, I think I've answered that in that after

1 the expiration date, I don't have any further
2 authority. I had no problem with Mr. Aaron approaching
3 my boss about it, but I don't have the authority to do
4 that.

5 Q. Well, if we take a look at the exhibit that you
6 said was from you, this was your offer back on November
7 18th for eighteen years; correct?

8 A. Correct.

9 Q. And that had an expiration date of January 3rd?

10 A. That's correct.

11 Q. Okay. So was the January 3rd deadline a deadline
12 for any plea agreement to be reached or was it the
13 expiration date for this offer?

14 A. That was the expiration date originally for the
15 eighteen year offer. When I extended the fifteen year
16 offer to Mr. Wooten, we did not extend the expiration
17 date, which is often the case. Mr. Wooten had already
18 told -- I had already been informed that Mr. Wooten was
19 not accepting the eighteen years. So that offer had
20 ended. I extended a fifteen year offer, which is
21 sometimes the case when we're dealing with children,
22 and you want to avoid them going to trial. I extended
23 the fifteen year offer, but I did not extend the date.
24 Nor am I required to do that.

25 Q. I understand that. But did you talk to your

1 supervisors about the fact that you were going to make
2 an additional offer beyond the eighteen year offer, but
3 that the lawyer for that individual was under order of
4 protection and would not be available to discuss it
5 with you, much less with the client, until after that
6 expiration date? Did you ask anybody to let you extend
7 that date?

8 A. Well, at the time I did not know whether or not
9 Mr. Aaron would be able to communicate that to Mr.
10 Wooten. I didn't know where Mr. Aaron was going or
11 what he was going to be doing. So, no, I did not have
12 that conversation.

13 Q. Okay. And just so that I'm real clear, at the
14 time the fifteen year offer was made, the family was on
15 board; at that time?

16 A. They were willing. I wouldn't say they were on
17 board. They were willing.

18 Q. I'm sorry. I didn't mean to quibble with you
19 about semantics. But they had agreed for you to extend
20 that offer?

21 A. I had told them that I was going to extend that
22 offer. They did not object to that offer.

23 Q. Okay. And their objection only arose after that
24 offer expired and you were being asked to consider
25 resurrecting the offer?

1 A. That's correct.

2 MS. SHURLING: Moment's indulgence.

3 Nothing further, Your Honor.

4 Your Honor, is there water on the bench somewhere?

5 All the pitchers here are dry and my mouth is sticky.

6 THE COURT: You want my water?

7 MS. SHURLING: Yes. I want somebody's before
8 my mouth sticks closed. Thank you.

9 THE COURT: I don't have any water.

10 CROSS EXAMINATION

11 BY MS. RATIGAN:

12 Q. Ms. Hinton, when you conveyed this eighteen year
13 offer to Mr. Aaron, did he ever come back to you with
14 some kind of counter proposal?

15 A. Yes, I believe he did.

16 Q. And do you recall what that was?

17 A. I don't recall exactly what it was. I remember
18 it being something that I thought was -- no offense to
19 Mr. Aaron -- quite ridiculous.

20 Q. At that point did you kind of just decide
21 independently to drop it down to the fifteen or did
22 y'all have more discussions about the counter? Do you
23 remember?

24 A. Yeah. I think we went into -- generally when I'm
25 dealing with a sex case and I'm dealing with victims

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1 who are sensitive about the issue, I try to figure out
2 exactly what they're willing to do before I go back to
3 my victim. So I believe that Mr. Aaron and I had some
4 discussion and, you know, I said, you know, that I
5 wouldn't go lower than fifteen, but that I would have
6 to discuss that with the victim. That's generally how
7 our conversations go.

8 Q. And do you remember him telling you anything at
9 that time about his opinion about whether or not the
10 fifteen years would be something acceptable? Or did
11 you just kind of throw out that number and you just
12 didn't respond?

13 A. Yeah, I -- well, I don't think I really asked his
14 opinion at that point because it didn't matter until
15 the victims had jumped on board.

16 Q. And your recollection is that you would have
17 conveyed that fifteen year offer shortly before he left
18 town?

19 A. As I recall, it was definitely before he left
20 town. I could be mistaken about that, but that's my
21 recollection. But I don't know that it was any
22 extended time before he went out of town.

23 Q. And you testified on several occasions Mr. Wooten
24 had decided to plead and changed his mind. Can you go
25 into a little bit more detail about that; what you

1 recall?

2 A. If you have that first exhibit ...

3 MS. RATIGAN: Is this all together, Tara?

4 MS. SHURLING: They can be marked as a group
5 or ...

6 MS. RATIGAN: Mark them all together.

7 Q. In referencing the notes that are entered in by a
8 date and time, it looks like that on October 28th,
9 2011, at two twenty-three p.m., that we informed the
10 victims that I had talked to Paul and that Mr. Wooten
11 was not interested in a plea. That was our first, I
12 believe, conversation about any sort of plea deal.
13 Subsequent to that was when I extended the eighteen
14 year offer. At that point Mr. Wooten -- I'm sorry --
15 Mr. Aaron came back with some offer that I did not
16 think was acceptable, given the circumstances. At that
17 point I then went and talked to the victims about a
18 fifteen year offer. Even when Mr. Aaron came back from
19 vacation, it was not a, okay, yeah, we're going to
20 plead to the fifteen years. It was still an act of
21 negotiation, of he wants eight or nine; are you willing
22 to do that? I certainly was not willing to do that at
23 that time. And I think the emails reflect that. In
24 fact, on January the 12th, at ten fifty-two a.m., he
25 wrote to me, if you will also remember, you asked me to

1 make a counter proposal and I suggested an eight or
2 nine year sentence, and you said you wouldn't recommend
3 anything other than fifteen years. So even on the
4 12th, we had not come to any sort of agreement with Mr.
5 Wooten. At that point, given the fact that Mr. Wooten
6 had gone back and forth so many times, and I had gone
7 back and forth to my victims so many times, I told him
8 that it would have to be something that I had in
9 writing before I would even take it to them. That is
10 further why we did a negotiated plea of twenty-five
11 years, because of Mr. Wooten's prior, I'm going to
12 plead, I'm not going to plead.

13 Q. So Mr. Aaron never actually accepted that fifteen
14 year offer on behalf of his client?

15 A. He did -- later that day he did send me signed
16 sentencing sheets; yes, he did.

17 Q. Okay.

18 A. However, our initial conversation was not that
19 that offer had been accepted; no.

20 Q. And the signed sentencing sheets, that was after
21 y'all did the back and forth about eight or nine years?

22 A. That was my recollection, is that he proposed
23 eight or nine. I said no. And that the only way I
24 would take it to my victims or to my bosses was to have
25 signed sentencing sheets in hand.

1 Q. So your recollection is at some point he
2 contacted you and said Mr. Wooten wants to take the
3 fifteen. And you said, no. And that's when he
4 proposed the eight or nine? Or did he propose the
5 eight or nine first and y'all -- I'm just a little
6 confused about the timing.

7 A. So what he actually said is that -- I sent him an
8 email about a potential -- him knowing one of the
9 victims' fathers from before. At that point he said
10 that he did not believe it was a conflict, but they
11 were close to a plea of straight up, no recommendation,
12 to two counts of lewd act, run Oconee concurrent,
13 dismiss the other charges, plea on the 23rd. That's
14 when I informed him, I'm sorry, that offer has actually
15 expired. I sent him that response at ten sixteen a.m.
16 At ten fifty-two a.m. is when he told me that I had
17 asked him to make a counter proposal and that's when he
18 offered the eight or nine, which I was not willing to
19 accept.

20 Q. And when Mr. Aaron, for lack of a better term, I
21 believe the word he used was indignant, when he came to
22 you and was indignant about the timing of all this, you
23 referred him to Mr. Richardson?

24 A. Yes. And he was very indignant.

25 Q. Okay. And y'all were still negotiating the day

1 of the trial? Y'all pled off the trial docket?

2 A. I believe what happened is Mr. Aaron approached
3 me still slightly upset about what had happened, and
4 wanted us to further open negotiations. I then talked
5 to Betty Strom about that, who was present that day, as
6 she is my boss to the boss, and she told me, given
7 everything that had happened, that she was willing to
8 let me negotiate something. And that is ultimately how
9 we ended up talking to Judge Goldsmith about it.

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

11 **REDIRECT EXAMINATION**

12 **BY MS. SHURLING:**

13 Q. May I see the email chain for a moment, please?
14 Thank you. Did I understand you correctly a while ago
15 to say that it wasn't until the 23rd that Mr. Aaron
16 came back and told you definitely that his client would
17 take the fifteen?

18 A. No. He recommended a plea on the 23rd. January
19 the 23rd would have been our plea term. So he was
20 asking that we get the plea done that term. That's
21 where the 23rd day comes from. Our conversations took
22 place on the 12th.

23 Q. Okay. And in fact, the plea chain that's been
24 introduced as Plaintiff's 1 indicates that you made the
25 plea sheets available to him on the 12th and that on

1 the 17th, you were thanking him for getting them back
2 to you so promptly?

3 A. I believe he, I believe he actually got them back
4 that day. However, I needed to contact -- I had two
5 sets of victims who don't live together; they're not in
6 Pickens County. So I had to get in touch with them and
7 that's why there was a delay in me responding to him;
8 yes.

9 Q. I understand. But my point being, the email
10 thread, as you understand it, and as you independently
11 reflect, indicates that the signed plea sheets that
12 would have been used to plead to two counts of lewd act
13 for a fifteen year sentence, were actually returned to
14 you on January 12th?

15 A. That's my recollection; yes.

16 Q. And you have heard Mr. Aaron's testimony that he
17 returned from vacation somewhere in the neighborhood of
18 the 7th or 8th of January; correct?

19 A. Yes.

20 Q. So fairly quickly when he got back, you had
21 signed sentencing sheets in your hand; albeit the deal
22 had expired, but fairly quickly he got you signed plea
23 sheets?

24 A. Yes.

25 Q. Okay. There's been some mention of discussions

1 with Judge Goldsmith about a possible plea in this
2 case. During those discussions do you recall anyone
3 making Judge Goldsmith aware of the previous offer and
4 the circumstances under which it had expired?

5 A. Yes. My recollection is that Paul was -- excuse
6 me -- Mr. Aaron was very upset and he made most people
7 aware of that, including Judge Goldsmith; Yes.

8 Q. And is it fair to say there was not a word of
9 discussion about that on the record during the plea
10 proceeding?

11 A. I have not seen the transcript, but to my
12 recollection, I don't think we discussed that; no, not
13 on the record.

14 Q. Do you have a copy of the order of protection in
15 your file?

16 A. Again, we don't get an actual copy. The only
17 time that we're ever sent anything is generally a
18 letter if we've bond-carded someone in, a letter will
19 come from the office, Mr. Aaron's office, saying he has
20 protection; or an email. However, if he's just sending
21 it in for approval and then for the judge's signature,
22 we just get a spreadsheet of who has requested
23 protection and when.

24 Q. Okay. And at least as of January 12th, you have
25 written confirmation of the fact that Mr. Wooten was

1 willing to take the deal that had been offered in Mr.

2 Aaron's absence?

3 A. Well, I've learned in sex cases, nothing is for
4 sure until the plea actually happens, but I had at
5 least a valiant effort through written sentencing
6 sheets that he was willing to entertain that offer;
7 yes.

8 Q. Thank you. No further questions.

9 THE COURT: Anything?

10 MS. RATIGAN: No, Your Honor.

11 THE COURT: Let me ask you something. Those
12 first two offers, were they negotiated?

13 THE WITNESS: I don't ---

14 THE COURT: The one for eighteen and the one
15 for fifteen?

16 THE WITNESS: The first one I know was not
17 because I offered him -- to allow him to plead straight
18 up if he preferred. The fifteen, yes, I believe the
19 emails reflect that the fifteen years was a firm
20 fifteen years.

21 THE COURT: Well, that was a negotiated --
22 but that was negotiated, so it would take court
23 approval to ---

24 THE WITNESS: That is my understanding of our
25 conversations; yes.

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1 THE COURT: All right. Thank you, ma'am.

2

3 [END OF REQUESTED TRANSCRIPT OF RECORD]

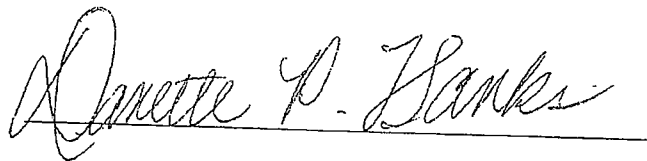
1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Tenth Judicial Circuit of the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 25th day of
10 August, 2014.

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

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

15 March 19, 2015
16
17

18 
19

20 Circuit Court Reporter

Hinton, Brandi

From: Batson, Brandi
Sent: Thursday, January 12, 2012 10:16 AM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

Mr. Aaron –

Unfortunately, that offer expired on 1/3/2012. I have no authority to further negotiate on this case.

Brandi M. Batson
 Assistant Solicitor
 13th Circuit Solicitor's Office
 214 E. Main St., B-120
 Pickens, SC 29671
 Phone: 864-898-5915
 Fax: 864-898-5586
bbatson@greenvillecounty.org

From: S Paul Aaron Attorney [<mailto:spalegal@bellsouth.net>]
Sent: Thursday, January 12, 2012 9:57 AM
To: Batson, Brandi
Subject: Re: Wooten

Not a conflict

But I think we are close to a plea straight up no recommend except concurrent not consecutive

Lewd act two counts Pickens

Run Oconee case concurrent

Dismiss the other charges pending

Plea on 23 rd

What do you think

Sent from my iPhone
 S Paul Aaron Attorney

On Jan 12, 2012, at 9:24 AM, "Batson, Brandi" <bbatson@greenvillecounty.org> wrote:

Mr. Aaron –

As I am sure you are aware, you once represented one of the victim's fathers (Scott Respass). I have spoken to him about it. I do not see it as a conflict. I just wanted to make sure you felt the same to avoid any issue as we prepare for trial. Please let me know. Thanks!

Brandi M. Batson
 Assistant Solicitor
 13th Circuit Solicitor's Office
 214 E. Main St., B-120
 Pickens, SC 29671



Phone: 864-898-5915

Fax: 864-898-5586

bbatson@greenvillecounty.org

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Hinton, Brandi

From: Batson, Brandi
Sent: Thursday, January 12, 2012 1:43 PM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

They are downstairs.

Brandi M. Batson
 Assistant Solicitor
 13th Circuit Solicitor's Office
 214 E. Main St., B-120
 Pickens, SC 29671
 Phone: 864-898-5915
 Fax: 864-898-5586
 bbatson@greenvillecounty.org

-----Original Message-----

From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]
Sent: Thursday, January 12, 2012 1:39 PM
To: Batson, Brandi
Subject: Re: Wooten

Put them downstairs and I will get them

Sent from my iPhone
 S Paul Aaron Attorney

On Jan 12, 2012, at 1:33 PM, "Batson, Brandi" <bbatson@greenvillecounty.org> wrote:

> If your client will enter a negotiated plea of 15 years to 2 counts of
 > Lewd Act AND you provide me with signed sentencing sheets then I will
 > take that information to the office and to my victims and let you know
 > what they decide. This in no way is promising that he will be allowed
 > to plea to the offer of 15 years, as it has already expired. However,
 > I will consider it but not until we come to terms that he will plea to
 > 15 years on 2 counts of lewd act and I have signed sentencing sheets
 > in my hands. Please understand with an upcoming court term with 3
 > cases on the docket as well as guilty pleas (and the fact that all of
 > my victims now live in Greenville) I will not be in a position to plea
 > this case for the January term. Please let me know your answer ASAP
 > and I will send you the sentencing sheets.

>

> Brandi M. Batson
 > Assistant Solicitor
 > 13th Circuit Solicitor's Office
 > 214 E. Main St., B-120
 > Pickens, SC 29671

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> Phone: 864-898-5915

> Fax: 864-898-5586

> bbatson@greenvillecounty.org

>

>

> -----Original Message-----

> From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]

> Sent: Thursday, January 12, 2012 1:31 PM

> To: Batson, Brandi

> Subject: Re: Wooten

>

> I believe you verbal offer during our discussion in court was 2 lewd

> acts 15 years and harassment (most recent warrant) That was December

> term The last day of which and through january second I was protected

> as I was out the state Obviously I had to have my clients agreement

> which I now have We have had no term of court since in which to do the

> plea I'm not sure why there needs to be a problem Your initial offer

> wasn't even tendered until November 18 That is less than 30 days

> before I left the state Certainly not an adequate time for any

> attorney to discuss the terms it's ramifications Review the evidence

> all necessary according to our supreme court to provide adequate

> representation Please reconsider your position regards the plea for

> all concerned including the victims who don't need to suffer any

> further trauma through a trial

>

> Thank you for your consideration

>

> Sent from my iPhone

> S Paul Aaron Attorney

>

> On Jan 12, 2012, at 12:59 PM, "Batson, Brandi"

> <bbatson@greenvillecounty.org> wrote:

>

>> You are correct. I would not recommend anything other than fifteen

>> years. I made that offer of fifteen years to you. You still have

>> not accepted that offer. You are requesting to plea straight up,

>> concurrent. I am not willing to do that. Allowing your client to

>> plea straight up to two counts of lewd act only was never an option.

> Further,

>> the offer has expired.

>>

>> Brandi M. Batson

>> Assistant Solicitor

>> 13th Circuit Solicitor's Office

>> 214 E. Main St., B-120

>> Pickens, SC 29671

>> Phone: 864-898-5915

>> Fax: 864-898-5586

>> bbatson@greenvillecounty.org

>>

>>

>> -----Original Message-----

>> From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]

>> Sent: Thursday, January 12, 2012 10:52 AM

>> To: Batson, Brandi

>> Subject: Wooten

>>

>> If you will also remember you asked me to make a counter proposal and

> I

>> suggested an 8 or nine year sentence and you said you wouldn't

> recommend

>> anything other than the 15 years

>>

>> That is also when you suggested we do Oconee as well if they (Oconee

>> solicitor and mr Wooten and his Oconee public defender) would agree

>> I now have all of that done Let's do this plea and make it go away

>>

>> Sent from my iPhone

>> S Paul Aaron Attorney

>>

>>

>>

>>

>> CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it

> are confidential and may contain information which is legally

> privileged or otherwise exempt from disclosure. They are intended

> solely for the use of the individual or entity to whom this e-mail is

> addressed. If you are not one of the named recipients or otherwise

> have reason to believe that you have received this message in error,

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>

Hinton, Brandi

From: Batson, Brandi
Sent: Tuesday, January 17, 2012 1:24 PM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

Paul -

Thank you for the quick return of the sentencing sheets. As we discussed, I took this offer back to my victims and let them have the final say so. They are confident in taking this case to trial and do not wish to allow him to plea to the expired offer. Thanks.

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671
Phone: 864-898-5915
Fax: 864-898-5586
bbatson@greenvillecounty.org

-----Original Message-----

From: S Paul Aaron Attorney [<mailto:spalegal@bellsouth.net>]
Sent: Tuesday, January 17, 2012 12:24 PM
To: Batson, Brandi
Subject: Wooten

Plea sheets signed and tendered

Sent from my iPhone
S Paul Aaron Attorney

13th Circuit Solicitor - Pickens

CASE NOTES

Warrant: I677543

Prosecutor: Brandi Batson

Indictment #: 2011GS3901764

LE Case Number:

Defendant: William David Wooten

Victim: *Victim 2*

Charge Code: 0396 - Sex / Criminal sexual conduct with minor, or Attempt - victim 11

Created By	Created Date	Created Time	NOTE	Changed By	Changed Date	Changed Time
DOWENS	3/17/2011	9:11:51AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
DOWENS	3/17/2011	9:11:35AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
DOWENS	3/17/2011	9:11:01AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
AANTHONY	9/21/2011	3:57:06PM	John DeJong called today and said the Paul Aaron had been retained by Mr. Wooten. John has turned his file over to Paul	AANTHONY	9/21/2011	3:57:07PM
BROPER	9/26/2011	9:39:35AM	Okay this victim was originally in the custody of her father (the def) and the step mother Jo Wooten. She has since been placed in the custody of her mother. The mother's family court attorney has passed on a copy of the order. I am sending VIS to the mother today. I will talk to BMB about what to do about notifying the step-mother, b/c technically she doesn't have the victim anymore but we don't want to alienate her b/c she will be a good witness for us. The mother tells me that she gets along fine with the step mother.	BROPER	9/26/2011	9:42:06AM
BROPER	10/24/2011	3:03:34PM	I am faxing victim information to Asap monitoring. They brought by ID showing they are his bondsman and monitoring company and they need victim information to put a zone around victim's home so he can't go in there.	BROPER	10/24/2011	3:03:45PM
BROPER	10/28/2011	2:23:58PM	Victim's mother called and was going to be present for court. She was going to bring victim to court and I advised her not to do that b/c she wouldn't be allowed in the courtroom b/c she is a minor and there would be no need for her to come that day since he would not be pleading. The mother ended up not showing up and I called her today and told her what happened in that BMB talked to Paul and figured out that they are not interested in a plea. I told Mom that we need to meet with victim. She is going to call me back and set that up.	BROPER	10/28/2011	2:24:04PM
BROPER	11/8/2011	11:07:57AM	Have not heard from mother about setting up meeting. Called her back today she is going to talk to husband and I am going to talk to BMB about setting something up.	BROPER	11/8/2011	11:12:10AM

Created By	Created Date	Created Time	NOTE	Changed By	Changed Date	Changed Time
BROPER	11/9/2011	1:02:26PM	Victim meeting set up for Friday in Greenville. BMB and I called victim today to discuss plea offer of 18 years or straight up and Victim is okay with that.	BROPER	11/9/2011	1:42:09PM
BROPER	12/21/2011	10:20:12AM	Set up meeting Jan 3 at 9	BROPER	12/21/2011	10:20:16AM
BROPER	1/4/2012	3:59:55PM	BMB AND MYSELF MET WITH VICTIMS AND WENT OVER THE OFFER. CALLED THEM BACK TODAY AND INFORMED THEM THAT WE DID NOT HEAR BACK FROM DEFENSE ATTY ON THE OFFER SO WE WILL PREPARE FOR TRIAL.	BROPER	1/4/2012	4:03:01PM
BBATSON	1/5/2012	11:00:34AM	Spoke to Gville Co. DSS They do not have an open or closed case on William D. Wooten			
BBATSON	1/12/2012	9:21:31AM	Victim's father, Scott Respass called to speak to me about Paul Aaron representing him in the past. I told him I would address it. See email to Paul in filings.			
BROPER	2/3/2012	3:42:31PM	Victim coming in Thursday at 8:30 on Feb 9	BROPER	2/3/2012	3:42:32PM
AANTHONY	2/9/2012	10:59:03AM	Paul Aaron came in today to pick up his discovery (which he only requested 2 days ago). We have DSS records that he said he would like to look through. We told him they are available and we will let him sit in the conference room to go through them. He said he didn't have time today, that he would reschedule another time to do that			
BROPER	2/14/2012	4:36:31PM	I sat in on meeting with victim. She is pretty consistent and detailed. I believe she will be a good witness considering this is her biological father. She is believable. BMB met with her a good while and went through questions. We showed her courtroom etc. I set up another meeting next week for BMB. The step Father Matt seems to be a real nice guy and willing to work with us however needed.	BROPER	2/14/2012	4:39:03PM
BROPER	2/24/2012	1:50:02PM	Victim 2 GAL 322-3545	BROPER	2/24/2012	1:50:03PM
BROPER	9/13/2012	2:48:54PM	SCDC INFO SENT	BROPER	9/13/2012	2:48:54PM

S. PAUL AARON, P.A.*Attorney at Law**Certified Family Court and Civil Court Mediator*

PO Box 1862 Clemson, S.C. 29633

Email: spalegal@bellsouth.net

864-722-9292 fax: 864-722-9293

Web: aaronlawyer.com

June 28, 2013

William David Wooten, SCDC #349872
PCI Q3B-222
430 Oaklawn Rd.
Pelzer, SC 29669

Re: your letter of June 6, 2013

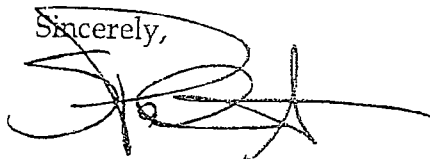
Dear Mr. Wooten:

I am in receipt of your letter of June 6, 2013 in which you requested copies of your "original plea that the Pickens County Solicitor offered and that I signed".

If you are referring to your sentence sheets that you signed in order to enter your guilty plea, those are retained by the Clerk of Court. After you sign the sentence sheets, the originals are handed up to the Clerk and we do not get copies. Please address your request for copies to the Clerk of Court.

Thank you.

Sincerely,



S. Paul Aaron



S. PAUL AARON, P.A.

Attorney at Law

Certified Family Court and Civil Court Mediator

PO Box 1862 Clemson, S.C. 29633
Email: Clemsonattorney@gmail.com

864-722-9292 fax: 864-722-9293

Web: aaronlawyer.com

August 22, 2013

William David Wooten SCDC #349872
P.C.I. Q3B-222
430 Oaklawn Rd.
Pelzer, SC 29669

Dear Mr. Wooten,

I have been informed by the solicitor's office that they no longer have a copy of the previous sentence sheet or the earlier offer proposed regarding your case. They have advised me that they routinely shred those after a plea has been accomplished.

Sincerely,

S. Paul Aaron

S. Paul Aaron
SPA/tss

S. PAUL AARON, P.A.*Attorney at Law**Certified Family Court and Civil Court Mediator*

PO Box 1862 Clemson, S.C. 29633

Email: Clemsonattorney@gmail.com

864-722-9292 fax: 864-722-9293

Web: aaronlawyer.com

August 8, 2013

William David Wooten SCDC #349872

P.C.I. Q3B-222

430 Oaklawn Rd.

Pelzer, SC 29669

Dear Mr. Wooten,

I have asked for a copy of the sentencing sheet you requested. I have not heard from them but if I get a copy I will send it to you.

The prior sentencing sheet that I sent to you was from the hearing itself.

Sincerely,

S. Paul Aaron
SPA/tss

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

11/18/2011

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. paul Aaron :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

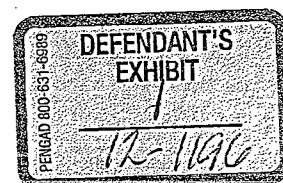
The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

The State will make the following sentence recommendations/negotiation:

Straight up or 18 years

Other conditions/comments:



All charges will be included. Oconee Co. would agree to concurrent time.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

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

2012-CP-39-1196

WILLIAM DAVID WOOTEN, #349872)
 Applicant,)
) MEMORANDUM IN SUPPORT
) OF POST-CONVICTION RELIEF
 v.) APPLICATION
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)

2011 SEP 19 PM 12 14
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Applicant was indicted by the Pickens County Grand Jury on two counts of lewd act upon a child (2011-GS-39-1763, - 1765), first-degree criminal sexual conduct (CSC) with a minor (2012-GS-39-0492), and second-degree CSC with a minor (2012-GS-39-0493).

On February 27, 2012, the Applicant pled guilty pursuant to a negotiated plea agreement under the terms of which he entered pleas of guilty to one count of lewd act upon a child¹ and first-degree CSC with a minor² for a negotiated aggregate sentence of twenty-five (25) years. The Honorable Brooks P. Goldsmith accepted the negotiated plea agreement and sentenced the Applicant to concurrent terms of fifteen years for lewd act upon a child and twenty-five years for first-degree CSC with a minor. The Applicant did not pursue a direct appeal from said pleas and sentences.

This matter is currently before the Court by way of a Post-Conviction Relief

¹ 2011-GS-39-1765

² 2012-GS-39-0492

action. The original application for Post-Conviction Relief filed on August 17, 2012, an Amended PCR application was filed on August 28, 2012 and a Second Amended Application was filed on April 17, 2014. In his original Application, and the Applicant's first Amended Application, he alleged that he is being held in custody unlawfully where his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his guilty plea proceeding. In support of this position he made the following specific allegations of errors and omissions:

- (a) Trial Counsel failed to provide the Applicant effective assistance of counsel in that he failed to convey a plea offer from the State to the Applicant in a timely manner thereby causing the Applicant to lose the benefit of that plea negotiation with the prosecution.
- (b) Counsel failed to provide client effective assistance of counsel prior to and during his guilty pleas proceeding. The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation.

In the Second Amended Application filed by Applicant on April 17, 2014, Applicant again alleged that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his guilty plea proceeding in the Court of General Sessions. In that Amended Application he raised the following specific errors and omissions of Plea Counsel:

- 1. Plea Counsel was ineffective for allowing the State to force the Applicant to make a decision about the plea offer extended to him on February 27, 2012, the date of his pleas, where the Applicant was not indicted for two separate charges of First Degree Criminal Sexual Conduct and Second Degree Criminal Sexual Conduct with

a minor relating to his daughter until February 21, 2012, and was not made aware of these charges until immediately prior to his plea proceeding.

2. Plea Counsel was ineffective for failing to adequately advise the Applicant of measures which could be taken to ask the Court to sever the prosecution of his charges which involved two separate victim's neither of whom were witnesses to acts alleged to have been committed with the other.
3. Plea Counsel was ineffective for neglecting to fully advise the Applicant concerning what use the defense could make of a recantation made by the Applicant's daughter if his case had proceeded to trial by jury.
4. Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State.
5. Plea Counsel was ineffective for failing to fully discuss with the Applicant what use the defense could make of the domestic history between the Applicant and his daughter's mother, if the Applicant exercised his right to trial by jury, where allegations of sexual battery were not made against the Applicant until after he sought child support from his ex-wife sometime after he was awarded custody of their daughter.
6. Plea Counsel was ineffective for failing to consult with Attorney Nick Lavery concerning the fact that the Applicant's daughter had made a statement in the presence of Attorney Lavery, recanting her allegations of sexual battery.
7. Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner.
8. Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order.
9. Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection.

10. Plea Counsel failed to provide the Applicant reasonable professional assistance of counsel in that he failed to adequately inform the Applicant of the elements of the charges against him.
11. Plea Counsel was ineffective for failing to give the Applicant accurate advice concerning his sentencing exposure if he proceeded to trial by jury.
12. Plea Counsel was ineffective for failing to object to the Applicant's re-indictment for First Degree Criminal Sexual Conduct with a Minor and Second Degree Criminal Sexual Conduct with a Minor on charges of sexual battery upon his daughter where the second indictments broke the time period covered in an earlier single indictment into two separate offenses.
13. Plea Counsel was ineffective for neglecting to review all the discovery materials produced by the State with the Applicant before he was required to make a decision regarding exercising his right to a jury trial.
14. Plea Counsel was ineffective for failing to consult with his daughter's guardian *ad litem*, Liz Young, where Ms. Young's testimony would have helped develop a defense to the Applicant's charges pertaining to his daughter.
15. Plea Counsel was ineffective for failing to advise the Applicant concerning how the defense could use the testimony of a child interviewer who was the first to interview his daughter after the allegations concerning the daughter came to light.
16. Plea Counsel was ineffective for failing to object to a conflict of interest where the Plea Judge's daughter was close friends with the Prosecutor in the Applicant's case.
17. Plea Counsel was ineffective for failing to review favorable evidence from a Pickens County investigation concerning a recantation by Applicant's daughter with the Applicant and in failing to discuss the potential admissibility of that evidence in a jury trial with the Applicant before he was required to make a decision concerning a waiver of his right to a jury trial in Pickens County.

An evidentiary hearing was convened in this matter on August 25, 2014. The Applicant was present at this hearing and was represented by undersigned counsel, Tara Dawn Shurling. The Respondent was represented by Karen Ratigan, Senior Assistant Deputy Attorney General. At his evidentiary hearing the Applicant, acting by and through his undersigned counsel, advised the Court of his intention to go forward only on the issues relating to plea counsel's failure to inform him of a plea offer by the State in a timely manner. That subject matter was addressed in Item 11(a) of Applicant's original PCR Application as well Item 11(a) in his Amended Application for Post-Conviction Relief filed on August 28, 2012. In addition, this subject matter was addressed in allegations number four, seven, eight and nine from Applicant's Second Amended Application for Post-Conviction Relief filed on April 17, 2014. Those allegations raised the following specific claims:

4. Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State.
7. Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner.
8. Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order.
9. Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection.

DISCUSSION

The testimony and evidence introduced during the evidentiary hearing in this case establishes that Applicant's plea attorney, Paul Aaron, requested and received an order of protection from the Circuit Court while he was on vacation out-of-state from the last day of a December term of General Sessions Court through January 2, 2012.³ Attorney Aaron testified that when he returned from vacation he discovered that the State had extended an offer for Applicant to plead guilty to 2 counts of lewd act on a minor for a negotiated sentence of 15 years and the dismissal of all the remaining related charges in Pickens County. When he approached the Solicitor's Office to accept this plea offer on the behalf of the Applicant, he was advised that the offer had expired. Attorney Aaron's Post Conviction Relief testimony indicates that this matter was very vigorously debated among the parties inasmuch as he felt it was grossly unfair for the State to have presented an offer to him to be extended to his client during a time when they were on notice that he was under Order of Protection, and knew that he was going to be out of state and away from his office. Notwithstanding this assertion by Attorney Aaron, the record below does not indicate that Plea Counsel made any effort to seek specific enforcement of that plea offer from the Court. Failing in his attempts to convince the Solicitor's Office to honor the plea offer extended while he was under an Order of Protection, Plea Counsel ultimately advised his client to plead to one count of criminal sexual conduct with a

³ Neither Attorney Aaron, nor the Office of the Solicitor, were able to produce a copy of the Order of Protection at issue in this case. The dates that order covered, as referenced herein, are taken from the testimony of Attorney Aaron and emails introduced during the PCR hearing as Petitioner's Exhibit No. 1. Attorney Aaron states in his email to Ass't Solicitor Hinton (Batson), dated January 12, 2012 at 1:31 PM, that he was under Order of Protection, and out of State, from the last day of the December term of Court until January 2nd.

minor first degree and one count of lewd act on a minor for an aggregate sentence of twenty-five (25) years.

Brandi Batson Hinton, Assistant Solicitor, at the time when the plea offer in question was made, was called as a witness for Applicant during his PCR hearing. During that proceeding Assistant Solicitor Hinton expressly acknowledged that at that time of the plea offer for a negotiated fifteen year sentence for pleas to two counts of Lewd Act on a Minor, the victims were on board with the plea offer. She admitted being on notice that Mr. Aaron was leaving the state on vacation, and that he was going to be under an Order of Protection up through the first part of January, 2012. It was her testimony that the offer to plead to two counts of lewd act on a minor for a negotiated sentence of 15 years expired before Attorney Aaron took any action on it. At the PCR hearing she produced copies of a series of emails between herself and Attorney Aaron which documented the fact that on January 12, 2012 she advised Mr. Aaron that the offer in question had expired on January 3, 2012. She went on to clarify that she had, at the request of Mr. Aaron, approached her victims about allowing the plea to go forward under the terms of that offer after it expired, however by then they were no longer willing to agree to the terms of that offer. The series of emails produced by this witness were introduced at this hearing as Plaintiff's Exhibit No. 1. *See Attachment A*. Her testimony was extremely clear about the fact that, at the time the offer was made, the victims were in agreement with it, albeit reluctantly.

Assistant Solicitor Hinton's testimony made it very clear that at the time the offer was extended she knew about Attorney Aaron's Order of Protection. When questioned as to why she would send a plea offer to an attorney that she knew was under protection and

out-of-state, she backtracked and testified that she "believed" that she had extended the offer to Mr. Aaron before he left on vacation. On today's date, PCR Counsel was provided with a copy of correspondence from Assistant Solicitor Batson (now Hinton), dated December 20, 2011, in which she offered a negotiated plea of 15 years for pleas to two counts of Lewd Act on a Minor and agreed to dismiss one count of First Degree Criminal Sexual Conduct with a Minor, two counts of Second Degree Criminal Sexual Conduct with a Minor and one count of Harassment. This correspondence stated that these pleas had to be entered by January 3, 2012 or the offer, as well as any previous offers, was automatically withdrawn. Applicant was not provided this document until today's date, September 16, 2014. It is Counsel's intent to file a Motion to Expand the Record to include this document as *Plaintiff's Exhibit No. 2*. A copy of that email with attachments is provided as *Attachment B*.⁴

In addition to the string of email communications between herself and Plea Counsel Aaron, Ms. Hinton also produced a copy of a two page document captioned "13th Solicitor Case Notes". That document, as well as copies of the emails in question, was introduced by Applicant as Plaintiff's Exhibit No. 1 during the PCR hearing held on August 25, 2014. An examination of those file notes, indicates that they are not complete. Page 2 of that document indicates that on November 9, 2011 there was a meeting with the victims concerning a plea offer "of 18 years or straight up" and further that "victim is okay with that." The next entry in the case notes revealed that on

⁴ Oddly, the email received by Plea Counsel on today's date also contained what is clearly a second copy of the exact same letter that was dated December 20, 2011 however, the second copy is dated January 3, 2012. PCR Counsel is not in the position to determine how, or why, this second copy of the December 20, 2011 letter was generated. She would note that the copy of the letter dated January 3, 2012 plainly states that the plea offer contained in the letter *expires on January 3, 2012*. PCR Counsel would also note that that deadline was obviously not extended since the email thread between Plea Counsel and the prosecutor clearly states that the plea offer *expired on January 3, 2012*.

December 21, 2011 a meeting was set up for January 3rd at nine. The next entry on this document states "*BMB and myself met with victims and went over the offer. Called them back today and informed them that we did not hear back from defense attorney on the offer so we will prepare for trial.*" Assistant Solicitor Hinton was questioned concerning her receipt of a subpoena from PCR Counsel asking for any and all documentation concerning the plea offer which expired while Attorney Aaron was on vacation and under Order of Protection. She acknowledged receiving the subpoena but indicated that the email chain and file notes were all she had produced in response to it. It could not be determined from those materials, introduced as Plaintiff's Exhibit No. 1, when the offer of 15 years concurrent on two counts of lewd act on a minor was extended or if or when the victim's family agreed to it. One could only assume from this document that the plea offer changed between November 9, 2011 when the 18 year deal was offered and whenever the 15 year sentence in exchange for pleas to two counts of Lewd Act was extended to Applicant through plea counsel, Paul Aaron. The file notes presented by Assistant Solicitor Hinton do not reveal how or when the 15 year offer was conveyed to Attorney Aaron. They do not contain a reference to the correspondence sent to Attorney Aaron on December 20, 2011.

Applicant submits that his case is directly controlled by the Supreme Court's decision in *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009), in which our Court announced the rule that counsel's failure to convey a plea offer constitutes deficient performance. In *Davie, supra*, trial counsel asserted that he did not receive the plea offer in dispute because he was in the midst of moving his law office. The Court found that although counsel's failure to convey, the offer on the facts of that case, may have been

construed as excusable neglect, the Court did not believe such neglect would negate the deficient performance. The Court in *Davie* went on to note that even if counsel was not aware of the offer until after the expiration date, he was still deficient for failing to object at the plea hearing. In *Davie*, unlike in the current case, the trial court was at least aware of a previous plea offer. In that case, the Solicitor informed the Circuit Court judge that the original plea offer had not been accepted by the due date, and therefore that the prosecution had advised the defense that they were ready to proceed to trial. In *Davie*, the Supreme Court noted that had defense counsel objected, or in some way indicated to the Court that he had no knowledge of the original plea offer, he might have been able to convince the Solicitor to reinstate the plea offer or to persuade the circuit court judge to impose a 15 year sentence. In Applicant's case, unlike *Davie*, not one word was uttered about the plea offer which expired while plea counsel was out-of-state under an Order of Protection. Unlike *Davie*, in this case there is evidence that Plea Counsel attempted to get the State to honor the plea offer in dispute after he learned that it had expired in his absence. There is no indication that the Court was ever made aware of the dispute between Plea Counsel and the Solicitor over the fact that an offer was extended while counsel was under an Order of Protection and was not honored when Plea Counsel returned from vacation.

In the case by case approach adopted in *Davie*, our Supreme Court emphasized that the *"ultimate goal was to assess whether, but for counsel's deficient performance, a defendant would have accepted the state's proposed plea bargain and that he would've benefited from the offer."* 381 S.C. at 613, 675 S.E. 2d at 423.

The testimony in Applicant's case, as in *Davie*, establishes that a 15 year negotiated sentence for two counts of lewd act was offered by the State. Plea Counsel and Assistant Solicitor Hinton's testimony agree on that point. The testimony of the prosecutor reveals that at the time the offer was extended the victims were in agreement with the terms of that plea offer. Applicant's testimony at his PCR proceeding verified that he wanted to accept the plea offer in question and was willing to accept its terms. In Applicant's case, he went one step further by presenting testimony from a guard at the jail who testified that she recalled Mr. Aaron coming to the jail, and having her get the Applicant brought out to sign a document. She specifically recalled that she had overheard discussion about a 15 year sentence.

Plea Counsel testified that there were no documents, that he was aware of, that documented this offer in his file. The Assistant Solicitor acknowledged that she had been served with a subpoena requesting copies of any documents relating to the plea offer in question. Notwithstanding the subpoena, the only documentation she provided PCR Counsel was the thread of email communications between her and Plea Counsel on January 12, 2012 and the file notes disclosed along with the email chain. After the PCR hearing, Plea Counsel wrote Assistant Solicitor Hinton and asked if she any further documentation in her file concerning this plea offer. As noted above, Counsel was provided with a copy of the December 20, 2011 correspondence in which the offer was extended on today's date. This letter was dated December 20, 2011. Plea Counsel's email dated January 12, 2012, at 1:31 PM, indicates that a verbal offer was extended to him during the December term of Court for "*2 lewd acts 15 years and harassment (most recent warrant)*." In Plea Counsel's email he reminded Assistant Solicitor Batson (now

Hinton) that he was under protection and out of state *the last day of the December term* through January 2nd. The South Carolina Judicial website contains a history of the terms of court held during December, 2011. That database indicates that two terms of General Sessions Court were held in Pickens County in December, 2011. They were the week of December 12 -16, 2011 and December 19, 2011. Thus, where the plea in question was not extended to Plea Counsel until he received the letter dated December 20, 2012, it could not have been extended to him before his Order of Protection began. In the January 12th email, Plea Counsel goes on to note that the State's *"initial offer wasn't even tendered until November 18."* The email PCR Counsel received from Assistant Solicitor Hinton on today's date included a copy of a letter dated November 18, 2011 addressing *an earlier plea offer*. That letter was introduced by Respondent during the PCR hearing as *Defendant's Exhibit No. 1*.

In light of the above, Applicant would assert that Plea Counsel was ineffective for failing to make a Motion for Specific enforcement of the plea bargain in question after he discovered that the prosecution had extended this very favorable offer during a time period when they knew he was out of state and protected. Plea Counsel's failure to make the appropriate motion in this matter deprived Applicant of the opportunity to have the Court decide whether he should receive the benefits of specific performance on the facts of this case. If that motion had been denied by the trial court, Applicant would have had the right to appeal that ruling on appeal. Applicant additionally asserts that Plea Counsel was ineffective for failing to convey the plea offer in question to him on January 3, 2012 where Plea Counsel's Order of Protection was only valid through on January 2, 2012 and the State's written plea offer expired on January 3, 2012. Applicant was in jail and

readily available to consult with his attorney on January 3, 2012. Had Plea Counsel not been able to get Applicant before a judge on January 3, 2012 to enter the pleas under the plea bargain, he could have documented that there was no available judge taking pleas on that date and, at minimum, afforded Applicant the opportunity to accept the plea offer in writing on that date. Plea Counsel would then have been in the position to object on the record and move for specific performance if the State tried to say the offer had expired because the pleas were not *entered* before Plea Counsel, much less his client, was even aware the offer had been made. Applicant has asserted that Plea Counsel brought paperwork to him in jail for him to sign accepting the plea bargain discussed herein. He has presented a witness, a retired detention center employee, to testify to Plea Counsel coming to the jail and enlisting her aid in getting Applicant to quickly sign papers. She recalled hearing discussion of a fifteen year sentence. Plea Counsel acknowledges having had Applicant sign sentencing sheets for a plea under the terms of this plea bargain. He turned those documents over to the Solicitor's Office without retaining a copy and thereby deprived Applicant of evidence that he could have used in this PCR action to conclusively prove that he accepted the State's offer when it was presented to him by his attorney.

In addition, Plea Counsel was ineffective for failing to make arrangements for another lawyer to cover for him in the event some emergent matter, like a plea offer that would expire before he returned from vacation, came up while he was out of state. Likewise, Plea Counsel was ineffective for failing to insure that someone in his office was closely monitoring phone messages, email and regular mail for developments which demanded immediate attention and for failing to have a plan in place to deal with such

issues as they emerged. While the Order of Protection received by Plea Counsel protected him from making court appearances during the term covered by the order, it did not relieve counsel of the duty to protect his clients' best interests by insuring that another lawyer was available to cover for him in the event of any development which could not be put off until he returned to the practice of law after his vacation.

In *Davie*, our Court engaged in extensive discussion concerning the appropriate remedy when counsel failed to convey a plea offer. The Court took guidance from *Turner v. Tennessee*, 858 F. 2d 1201, 1207 (6th Cir. 1988), *Cert. denied*, 502 US 150, 112 S.Ct. 915 (1992), wherein the Court noted that while the United States Supreme Court has held that specific performance of a plea agreement is an allowable remedy where one has been denied effective assistance of counsel, specific performance is not warranted where it might infringe upon the State's competing interests. In so ruling, however, the Court in *Turner* found that the State must show that the withdrawal of the plea agreement was "*free of a reasonable apprehension of vindictiveness.*" *Id.*, quoting *United States v. Morrison*, 449 US 361, 364 S. Ct 665. (1980). In Applicant's case he submits that the State does not come before the Court with clean hands. In her Post-Conviction Relief testimony, the prosecutor admits that she extended the plea offer in dispute during a time when she knew defense counsel was under an Order of Protection. Only when pressed as to why she would extend an offer to Applicant when she knew his attorney was not around to convey it to him, she clarified her position to assert that she thought she had initially presented the offer to Plea Counsel before his departure. Despite a subpoena, she brought no records to Court which would document exactly when the offer in question was first submitted to Plea Counsel. Plea Counsel's own testimony very

clearly indicates that he first became aware of the plea offer in question after he returned from vacation, and that the offer had expired while he was gone. Once finally disclosed, the plea offer letter itself indicates that it could not have been received by Plea Counsel before his Order of Protection became effective and before he left the State on vacation.

For this reason, Applicant now respectfully submits that specific performance of the plea agreement involved in this case is the only way to "*neutralize the constitutional deprivation suffered*" by Applicant. Applicant would further note that the remedy ordered in *Davie* is not practical on the facts of his case. In *Davie* the Court ultimately found that remand for a re-sentencing proceeding at which *Davie* would receive the benefit of effective assistance of counsel. The judge on re-sentencing was directed to take the 15 year sentence offered in *Davie's* original plea offer into account. It was expressly found that the judge could not re-sentence *Davie* to a term which exceeded his original sentence.

Applicant respectfully submits that he has met his burden of proof with regard to his allegation that Plea Counsel failed to provide him effective assistance of counsel prior to and during his guilty plea proceeding.

REMEDY SOUGHT

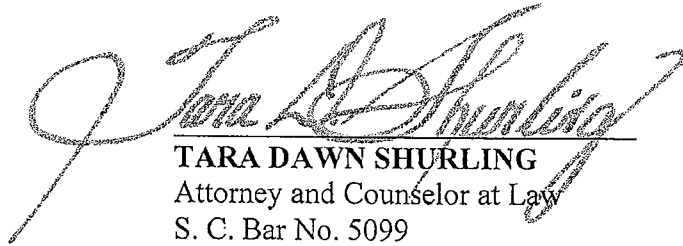
Applicant received 25 years for first-degree criminal sexual conduct with a minor, the mandatory statutory minimum, and 15 years concurrent for lewd act on a minor. Any sentence of less than 25 years for first-degree criminal sexual conduct with a minor would be an illegal sentence pursuant to the terms of S.C. Code Ann. §16-3-655 (C) (1)

which was in effect on the offense date for that indictment; 2012-GS-39-0493. In addition, any sentence imposed for First Degree Criminal Sexual Conduct with a Minor would be subject to service of 85% of the term imposed before Applicant would be eligible for any type of release. Lewd Act on a Minor pursuant to §16-15-140 is a class D Felony and is not subject to the mandatory 85% service requirements imposed for Class A, B or C Felonies, or unclassified offenses, under §24-13-100 and §24-13-150(A). Therefore, even if a sentence of fifteen (15) years could be imposed on the judgments entered at the time of Applicant's pleas, that remedy would not make him whole because he would have to serve a larger percentage of that fifteen (15) year sentence than he would have been required to serve on the fifteen (15) year aggregate sentence for two counts of Lewd Act on a Minor agreed to under the terms of the negotiated plea.

For all these reasons, Applicant respectfully submits that the only remedy which could potentially make him whole would be the vacating of his judgment for first-degree Criminal Sexual Conduct and the remand of his case for specific enforcement of the plea bargain extended while Plea Counsel was under an Order of Protection. Applicant would be remanded to the Court of General Sessions for a plea to an additional count of Lewd Act with a minor and then be re-sentenced for two counts of lewd act on a minor for a negotiated sentence of 15 years. Counsel is mindful of the fact that the presiding judge at re-sentencing would not be bound by the terms of the negotiated plea bargain if he did not elect to accept it. However, where the express terms of the plea bargain to be specifically enforced called for a plea to two counts of Lewd Act on a Minor, the Solicitor's Office could be directed to present Applicant for a plea on that charge only. The maximum penalty for Lewd Act is fifteen (15) years and, therefore, if the judge at re-

sentencing declined to accept the negotiated sentence of fifteen (15) years he could ordinarily impose a sentence of up to thirty (30) years (two consecutive fifteen year terms) however, under the *Davie* decision, the Applicant submits, the Order of this Court should direct that Applicant could not be sentenced to a term longer than his original sentence.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 Fax
E-mail: tdslaw@shurlinglaw.com

ATTORNEY FOR APPLICANT

This 17th day of September, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2012-CP-39-1196

WILLIAM DAVID WOOTEN, 349872)
)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

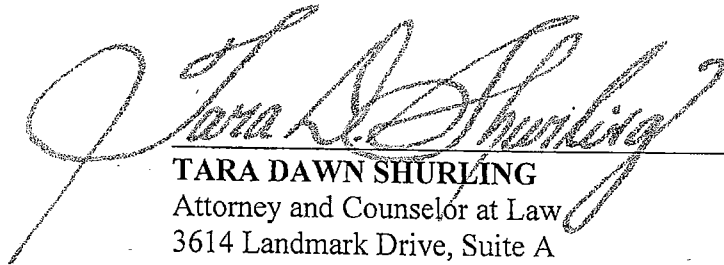
CERTIFICATE OF SERVICE

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2014 SEP 19 PM 12 14

The undersigned hereby certifies that a true copy of the Memorandum in Support of the Post-Conviction Relief Application in the above matter has been served on the Honorable James R. Barber, III, Circuit Court Judge on this 17th day of September, 2014, by mailing one (1) copy to:

Honorable James R. Barber, III
 Circuit Court Judge
 P. O. Box 2766
 Columbia, South Carolina 29202



TARA DAWN SHURLING
 Attorney and Counselor at Law
 3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax
 ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 17th day of

September, 2014.

Suzanne Graham (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2012-CP-39-1196

WILLIAM DAVID WOOTEN, 349872)
Applicant,)

CERTIFICATE OF SERVICE

v.)

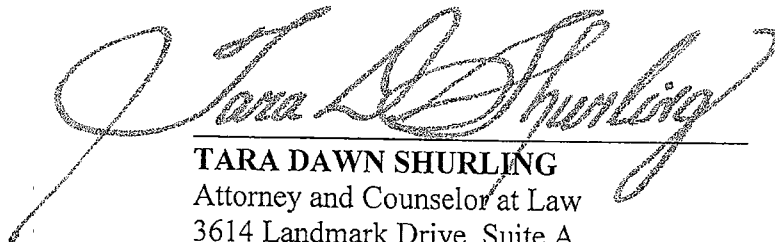
STATE OF SOUTH CAROLINA,)
Respondent.)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2014 SEP 19 PM 12 14

The undersigned hereby certifies that a true copy of the Memorandum in Support of the Post-Conviction Relief Application in the above matter has been served on opposing counsel this 17th day of September, 2014, by mailing one (1) copy to:

Karen C. Ratigan
Senior Assistant Deputy Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211



TARA DAWN SHURLING
Attorney and Counselor at Law
3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax
ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 17th day of

September, 2014.

Marganne Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/24

ATTACHMENT A

Hinton, Brandi

From: Batson, Brandi
Sent: Thursday, January 12, 2012 10:16 AM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

Mr. Aaron –

Unfortunately, that offer expired on 1/3/2012. I have no authority to further negotiate on this case.

Brandi M. Batson
 Assistant Solicitor
 13th Circuit Solicitor's Office
 214 E. Main St., B-120
 Pickens, SC 29671
 Phone: 864-898-5915
 Fax: 864-898-5586
bbatson@greenvillecounty.org

From: S Paul Aaron Attorney [<mailto:spalegal@bellsouth.net>]
Sent: Thursday, January 12, 2012 9:57 AM
To: Batson, Brandi
Subject: Re: Wooten

Not a conflict.

But I think we are close to a plea straight up no recommend except concurrent not consecutive
 Lewd act two counts Pickens
 Run Oconee case concurrent
 Dismiss the other charges pending
 Plea on 23 rd
 What do you think

Sent from my iPhone
 S Paul Aaron Attorney

On Jan 12, 2012, at 9:24 AM, "Batson, Brandi" <bbatson@greenvillecounty.org> wrote:

Mr. Aaron –

As I am sure you are aware, you once represented one of the victim's fathers (Scott Respass). I have spoken to him about it. I do not see it as a conflict. I just wanted to make sure you felt the same to avoid any issue as we prepare for trial. Please let me know. Thanks!

Brandi M. Batson
 Assistant Solicitor
 13th Circuit Solicitor's Office
 214 E. Main St., B-120
 Pickens, SC 29671



Phone: 864-898-5915

Fax: 864-898-5586

bbatson@greenvillecounty.org

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Hinton, Brandi

From: Batson, Brandi
 Sent: Thursday, January 12, 2012 1:43 PM
 To: 'S Paul Aaron Attorney'
 Subject: RE: Wooten

They are downstairs.

Brandi M. Batson
 Assistant Solicitor
 13th Circuit Solicitor's Office
 214 E. Main St., B-120
 Pickens, SC 29671
 Phone: 864-898-5915
 Fax: 864-898-5586
 bbatson@greenvillecounty.org

-----Original Message-----

From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]
 Sent: Thursday, January 12, 2012 1:39 PM
 To: Batson, Brandi
 Subject: Re: Wooten

Put them downstairs and I will get them

Sent from my iPhone
 S Paul Aaron Attorney

On Jan 12, 2012, at 1:33 PM, "Batson, Brandi" <bbatson@greenvillecounty.org> wrote:

> If your client will enter a negotiated plea of 15 years to 2 counts of
 > Lewd Act AND you provide me with signed sentencing sheets then I will
 > take that information to the office and to my victims and let you know
 > what they decide. This in no way is promising that he will be allowed
 > to plea to the offer of 15 years, as it has already expired. However,
 > I will consider it but not until we come to terms that he will plea to
 > 15 years on 2 counts of lewd act and I have signed sentencing sheets
 > in my hands. Please understand with an upcoming court term with 3
 > cases on the docket as well as guilty pleas (and the fact that all of
 > my victims now live in Greenville) I will not be in a position to plea
 > this case for the January term. Please let me know your answer ASAP
 > and I will send you the sentencing sheets.

>
 > Brandi M. Batson
 > Assistant Solicitor
 > 13th Circuit Solicitor's Office
 > 214 E. Main St., B-120
 > Pickens, SC 29671

154

> Phone: 864-898-5915
> Fax: 864-898-5586
> bbatson@greenvillecounty.org
>
>
> -----Original Message-----
> From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]
> Sent: Thursday, January 12, 2012 1:31 PM
> To: Batson, Brandi
> Subject: Re: Wooten
>
> I believe you verbal offer during our discussion in court was 2 lewd
> acts 15 years and harassment (most recent warrant) That was December
> term The last day of which and through january second I was protected
> as I was out the state Obviously I had to have my clients agreement
> which I now have We have had no term of court since in which to do the
> plea I'm not sure why there needs to be a problem Your initial offer
> wasn't even tendered until November 18 That is less than 30 days
> before I left the state Certainly not an adequate time for any
> attorney to discuss the terms it's ramifications Review the evidence
> all necessary according to our supreme court to provide adequate
> representation Please reconsider your position regards the plea for
> all concerned including the victims who don't need to suffer any
> further trauma through a trial
>
> Thank you for your consideration
>
> Sent from my iPhone
> S Paul Aaron Attorney
>
> On Jan 12, 2012, at 12:59 PM, "Batson, Brandi"
> <bbatson@greenvillecounty.org> wrote:
>
>> You are correct. I would not recommend anything other than fifteen
>> years. I made that offer of fifteen years to you. You still have
>> not accepted that offer. You are requesting to plea straight up,
>> concurrent. I am not willing to do that. Allowing your client to
>> plea straight up to two counts of lewd act only was never an option.
> Further,
>> the offer has expired.
>>
>> Brandi M. Batson
>> Assistant Solicitor
>> 13th Circuit Solicitor's Office
>> 214 E. Main St., B-120
>> Pickens, SC 29671
>> Phone: 864-898-5915
>> Fax: 864-898-5586
>> bbatson@greenvillecounty.org
>>
>>
>> -----Original Message-----

>> From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]

>> Sent: Thursday, January 12, 2012 10:52 AM

>> To: Batson, Brandi

>> Subject: Wooten

>>

>> If you will also remember you asked me to make a counter proposal and

> |

>> suggested an 8 or nine year sentence and you said you wouldn't

> recommend

>> anything other than the 15 years

>>

>> That is also when you suggested we do Oconee as well if they (Oconee

>> solicitor and mr Wooten and his Oconee public defender) would agree

>> I now have all of that done Let's do this plea and make it go away

>>

>> Sent from my iPhone

>> S Paul Aaron Attorney

>>

>>

>>

>>

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 > immediately from your computer. Any other use, retention,
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 entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe
 that you have received this message in error, please immediately notify the sender and delete this message immediately
 from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly
 prohibited.

>

Hinton, Brandi

From: Batson, Brandi
Sent: Tuesday, January 17, 2012 1:24 PM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

Paul -

Thank you for the quick return of the sentencing sheets. As we discussed, I took this offer back to my victims and let them have the final say so. They are confident in taking this case to trial and do not wish to allow him to plea to the expired offer. Thanks.

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671
Phone: 864-898-5915
Fax: 864-898-5586
bbatson@greenvillecounty.org

-----Original Message-----

From: S Paul Aaron Attorney [<mailto:spalegal@bellsouth.net>]
Sent: Tuesday, January 17, 2012 12:24 PM
To: Batson, Brandi
Subject: Wooten

Plea sheets signed and tendered

Sent from my iPhone
S Paul Aaron Attorney

13th Circuit Solicitor - Pickens

CASE NOTES

Warrant: I677543

Prosecutor: Brandi Batson

Indictment #: 2011GS3901764

LE Case Number:

Defendant: William David Wooten

Victim: BRIANNA WOOTEN

Charge Code: 0396 - Sex / Criminal sexual conduct with minor, or Attempt - victim 11

Created By	Created Date	Created Time	NOTE	Changed By	Changed Date	Changed Time
DOWENS	3/17/2011	9:11:51AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
DOWENS	3/17/2011	9:11:35AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
DOWENS	3/17/2011	9:11:01AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
AANTHONY	9/21/2011	3:57:06PM	JOhn DeJong called today and said the Paul Aaron had been retained by Mr. Wooten. John has turned his file over to Paul	AANTHONY	9/21/2011	3:57:07PM
BROPER	9/26/2011	9:39:35AM	Okay this victim was originally in the custody of her father (the def) and the step mother Jo Wooten. She has since been placed in the custody of her mother. The mother's family court attorney has passed on a copy of the order. I am sending VIS to the mother today. I will talk to BMB about what to do about notifying the step-mother, b/c technically she doesn't have the victim anymore but we don't want to alienate her b/c she will be a good witness for us. The mother tells me that she gets along fine with the step mother.	BROPER	9/26/2011	9:42:06AM
BROPER	10/24/2011	3:03:34PM	I am faxing victim information to Asap monitoring. They brought by ID showing they are his bondsman and monitoring company and they need victim information to put a zone around victim's home so he can't go in there.	BROPER	10/24/2011	3:03:45PM
BROPER	10/28/2011	2:23:58PM	Victim's mother called and was going to be present for court. She was going to bring victim to court and I advised her not to do that b/c she wouldn't be allowed in the courtroom b/c she is a minor and there would be no need for her to come that day since he would not be pleading. The mother ended up not showing up and I called her today and told her what happened in that BMB talked to Paul and figured out that they are not interested in a plea. I told Mom that we need to meet with victim. She is going to call me back and set that up.	BROPER	10/28/2011	2:24:04PM
BROPER	11/8/2011	11:07:57AM	Have not heard from mother about setting up meeting. Called her back today she is going to talk to husband and I am going to talk to BMB about setting something up.	BROPER	11/8/2011	11:12:10AM

Created By	Created Date	Created Time	NOTE	Changed By	Changed Date	Changed Time
BROPER	11/9/2011	1:02:26PM	Victim meeting set up for Friday in Greenville. BMB and I called victim today to discuss plea offer of 18 years or straight up and Victim is okay with that.	BROPER	11/9/2011	1:42:09PM
BROPER	12/21/2011	10:20:12AM	Set up meeting Jan 3 at 9	BROPER	12/21/2011	10:20:16AM
BROPER	1/4/2012	3:59:55PM	BMB AND MYSELF MET WITH VICTIMS AND WENT OVER THE OFFER. CALLED THEM BACK TODAY AND INFORMED THEM THAT WE DID NOT HEAR BACK FROM DEFENSE ATTY ON THE OFFER SO WE WILL PREPARE FOR TRIAL.	BROPER	1/4/2012	4:03:01PM
BBATSON	1/5/2012	11:00:34AM	Spoke to Gville Co. DSS They do not have an open or closed case on William D. Wooten			
BBATSON	1/12/2012	9:21:31AM	Victim's father, Scott Respass called to speak to me about Paul Aaron representing him in the past. I told him I would address it. See email to Paul in filings.			
BROPER	2/3/2012	3:42:31PM	Victim coming in Thursday at 8:30 on Feb 9	BROPER	2/3/2012	3:42:32PM
AANTHONY	2/9/2012	10:59:03AM	Paul Aaron came in today to pick up his discovery (which he only requested 2 days ago). We have DSS records that he said he would like to look through. We told him they are available and we will let him sit in the conference room to go through them. He said he didn't have time today, that he would reschedule another time to do that			
BROPER	2/14/2012	4:36:31PM	I sat in on meeting with victim. She is pretty consistent and detailed. I believe she will be a good witness considering this is her biological father. She is believable. BMB met with her a good while and went through questions. We showed her courtroom etc. I set up another meeting next week for BMB. The step Father Matt seems to be a real nice guy and willing to work with us however needed.	BROPER	2/14/2012	4:39:03PM
BROPER	2/24/2012	1:50:02PM	Victim 1 GAL 322-3545	BROPER	2/24/2012	1:50:03PM
BROPER	9/13/2012	2:48:54PM	SCDC INFO SENT	BROPER	9/13/2012	2:48:54PM

ATTACHMENT B

TDSLAW

From: Hinton, Brandi [bbatson@greenvillecounty.org]
Sent: Tuesday, September 16, 2014 11:18 AM
To: TDSLAW; jbarberj@sccourts.org; jbarberlc@sccourts.org; kratigan@scag.gov
Subject: RE: David Wooten v. State of South Carolina
Attachments: E-mail Message (190 KB)

Ms. Shurling –

Please find attached the only information I have other than emails and notes. I had prepared a package for both you and Ms. Ratigan. It is quite possible between jury selection, pleas and a PCR hearing that day that I picked up the wrong packet for you. If these were not included, they certainly should have been per your subpoena. My recollection is that these were entered into evidence and that I testified to them so I believe someone had a copy. Again, if they were not provided to you, then I apologize. Please let me know if you have any questions.

From: TDSLAW [mailto:tdslaw@shurlinglaw.com]
Sent: Monday, September 15, 2014 1:31 PM
To: Hinton, Brandi; jbarberj@sccourts.org; jbarberlc@sccourts.org; kratigan@scag.gov
Subject: David Wooten v. State of South Carolina
Importance: High

Mrs. Hinton:

Prior to the August 25, 2014 evidentiary hearing in this matter, you were sent a subpoena for appearance at that proceeding as well as for production of any and all documentation concerning the original plea offer that was extended to Mr. Wooten in this case. I attach a copy of that subpoena for your convenient reference. At the hearing you produced copies of some emails that went back and forth between you and Mr. Aaron concerning this plea offer after he returned from vacation and attempted to have his client plead under that offer. I did not receive any documentation from you concerning when that offer was extended to Mr. Wooten through Mr. Aaron *other than* the emails discussing the fact that the offer had expired by the time Mr. Aaron returned from vacation and attempted to act on the offer.

During your testimony, you asserted that you believed the offer was sent to Mr. Aaron before his Order of Protection went into effect. When I asked you how the offer was extended you indicated that you thought it would have been in writing through either a letter or an email. Again, if such communication existed, I was not provided with a copy of it in response to my subpoena. During your testimony you acknowledged receipt of my subpoena, but indicated that the only documentation you had brought to court and given to me was the email chain in question.

Please check your file *at once* and see if there is such a correspondence either in the hard file or on your computer database. If so, I need to be provided with a copy *immediately*. If there is no such document in your file, please advise me of that fact in writing please. I appreciate your prompt response and cooperation. I am currently preparing a memorandum for Judge Barber in this matter and in reviewing my notes concerning this hearing it became obvious that there may be something more in your file that was inadvertently not provided to me before the hearing. Thanks a lot.

9/17/2014

Tara Dawn Shurling

Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

(803)738-8622 Phone
(803)738-1600 Fax
(803)446-3614 Business Cell
tdslaw@shurlinglaw.com

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State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

11/18/2011

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. paul Aaron :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

The State will make the following sentence recommendations/negotiation:

Straight up or 18 years

Other conditions/comments:

All charges will be included. Oconee Co. would agree to concurrent time.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

12/20/2011

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. Paul Aaron :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
1677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

The State will dismiss the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju

The State will make the following sentence recommendations/negotiation:

15 years

Other conditions/comments:

Please note that the offer expires on 1/3/2012.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

1/3/2012

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. paul Aaron :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
1677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

The State will dismiss the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju

The State will make the following sentence recommendations/negotiation:

15 years

Other conditions/comments:

Please note that the offer expires on 1/3/2012.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

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

2012-CP-39-1196

WILLIAM DAVID WOOTEN, #349872)
 Applicant,)
)
)
 v.)
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)
)

MOTION TO ENLARGE RECORD

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2014 SEP 23 AM 9 31

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Applicant was indicted by the Pickens County Grand Jury on two counts of lewd act upon a child (2011-GS-39-1763, - 1765), first-degree criminal sexual conduct (CSC) with a minor (2012-GS-39-0492), and second-degree CSC with a minor (2012-GS-39-0493).

On February 27, 2012, the Applicant pled guilty pursuant to a negotiated plea agreement under the terms of which he entered pleas of guilty to one count of lewd act upon a child¹ and first-degree CSC with a minor² for a negotiated aggregate sentence of twenty-five (25) years. The Honorable Brooks P. Goldsmith accepted the negotiated plea agreement and sentenced the Applicant to concurrent terms of fifteen years for lewd act upon a child and twenty-five years for first-degree CSC with a minor. The Applicant did not pursue a direct appeal from said pleas and sentences.

This matter is currently before the Court by way of a Post-Conviction Relief action. The original application for Post-Conviction Relief filed on August 17, 2012, an Amended PCR application was filed on August 28, 2012 and a Second Amended

¹ 2011-GS-39-1765

² 2012-GS-39-0492

Application was filed on April 17, 2014.

An evidentiary hearing was convened in this matter on August 25, 2014. The Applicant was present at this hearing and was represented by undersigned counsel, Tara Dawn Shurling. The Respondent was represented by Karen Ratigan, Senior Assistant Deputy Attorney General. At his evidentiary hearing the Applicant, acting by and through his undersigned counsel, advised the Court of his intention to go forward only on the issues relating to plea counsel's failure to inform him of a plea offer by the State in a timely manner. That subject matter was addressed in Item 11(a) of Applicant's original PCR Application as well Item 11(a) in his Amended Application for Post-Conviction Relief filed on August 28, 2012.

On August 14, 2014, the undersigned PCR Counsel served Brandi Batson Hinton with a subpoena by certified mail requiring her appearance at Applicant's PCR hearing and her production at that hearing of,

Any and all documentation from the Solicitor's file on William David Wooten as it pertains to any plea offers that were extended to Attorney Paul Aaron on behalf of the Defendant, and any documentation in your file concerning Orders of Protection for Paul Aaron, Esquire for December 1, 2011 thru February 27, 2012.

See, Attachment A.

Discussion

Brandi Batson Hinton, Assistant Solicitor, at the time when the plea offer in question was made, was called as a witness for Applicant during his PCR hearing. During that proceeding Assistant Solicitor Hinton expressly acknowledged that at that time of the plea offer for a negotiated fifteen year sentence for pleas to two counts of Lewd Act on a Minor, the victims were on board with the plea offer. She admitted being on notice that Mr. Aaron was leaving the state on vacation, and that he was going to be

under an Order of Protection up through the first part of January, 2012. It was her testimony that the offer to plead to two counts of lewd act on a minor for a negotiated sentence of 15 years expired before Attorney Aaron took any action on it. At the PCR hearing she produced copies of a series of emails between herself and Attorney Aaron which documented the fact that on January 12, 2012 she advised Mr. Aaron that the offer in question had expired on January 3, 2012. She went on to clarify that she had, at the request of Mr. Aaron, approached her victims about allowing the plea to go forward under the terms of that offer after it expired, however by then they were no longer willing to agree to the terms of that offer. Her email dated January 17, 2012 advised Plea Counsel that the victims were no longer willing to agree to that plea offer. In addition to the emails, Assistant Solicitor Hinton also referenced in her testimony a copy of her file notes which was found at the back of the email chain previously discussed. The series of emails discussed above, and the two page document captioned as file notes, were introduced at this hearing as Plaintiff's Exhibit No. 1. *See Attachment B.*

Assistant Solicitor Hinton's testimony made it very clear that at the time the offer was extended she knew about Attorney Aaron's Order of Protection. When questioned as to why she would send a plea offer to an attorney that she knew was under protection and out-of-state, she stated that she "*believed*" that she had extended the offer in writing to Plea Counsel before he left on vacation. When questioned as to whether she had with her a copy of any document extending the offer in question to Applicant through Plea Counsel, she indicated that all she had were the emails and file notes previously mentioned.

In preparing a memorandum in support of this PCR action for the Court, PCR Counsel recalled Assistant Solicitor Hinton's testimony from the PCR hearing, and

became concerned that there might be additional documentation that had not been turned over in response to the subpoena issued in this matter. That concern prompted PCR Counsel to send Assistant Solicitor an email asking that she double check her file for any additional documents relating to any plea offers extend by her in this case. A similar email was sent to Plea Counsel who subsequently advised that he had located nothing additional in his file relating to this plea offer. *See, Attachment E*. Plea Counsel had previously testified that his file did not contain a written record of the plea bargain in question. On September, 16, 2014, PCR Counsel received a responsive email from Assistant Solicitor Hinton with which PCR Counsel was provided with a copy of correspondence from Assistant Solicitor Batson (now Hinton), dated December 20, 2011, in which she offered a negotiated plea calling for a sentence 15 years for pleas to two counts of Lewd Act on a Minor. The offer also called for the State to dismiss one count of First Degree Criminal Sexual Conduct with a Minor, two counts of Second Degree Criminal Sexual Conduct with a Minor and one count of Harassment. This correspondence stated that these pleas had to be entered by January 3, 2012 or the offer, as well as any previous offers, was automatically withdrawn. This email from Assistant Solicitor Hinton contained as attachments three letters from her to Plea Counsel addressing plea offers in Applicant's case. The first letter addresses an offer that was sent to Plea Counsel on November 18, 2011. The second letter was dated December 20, 2011 and is referenced above. Oddly, the email received by Plea Counsel contained what is clearly a second copy of the exact same letter that was dated December 20, 2011, however, the second copy is dated January 3, 2012. PCR Counsel is not in the position to determine how, *or why*, this second copy of the December 20, 2011 letter was generated. She would note however that the copy of the letter dated January 3, 2012 plainly states

that the plea offer contained in the letter *expires on January 3, 2012*. A copy of the September 16, 2014 email with to PCR Counsel, with attachments, is provided as **Attachment C**. Attachment C also reflects PCR Counsel's email wherein she asked that this prosecutor search her file for additional documents relating to plea offers which had not previously been provided to Applicant.

Assistant Solicitor Hinton's email indicates that she thought she had provided these letters in response to PCR Counsel's subpoena and acknowledges that if they were not turned over to PCR Counsel they should have been. She further indicates that she had prepared copies of these materials for both PCR Counsel and Counsel for Respondent, Karen Ratigan. While PCR Counsel has no knowledge concerning what was provided to Counsel for Respondent prior to this hearing, her recollection, which has been confirmed by Respondent, is that the Respondent introduced a copy of the November 18, 2011 letter as Defendant's Exhibit No. 1 during the PCR hearing. **See, Attachment D.**

PCR Counsel was in actuality not provided with copies of any materials by Assistant Solicitor Hinton prior to the evidentiary hearing held in this matter. Prior to this hearing, PCR counsel approached this witness and asked her if she had located any of the documentation referenced by Applicant's subpoena. She was seated in the courtroom reading something when PCR Counsel questioned her concerning the documents that had been requested. At that time, she handed PCR Counsel the documents in her hand, the papers she had apparently been reading, which were readily recognized as emails between the prosecutor and Applicant's Plea Counsel. PCR Counsel quickly reviewed those documents and handed them back to Assistant Solicitor Hinton. PCR Counsel reviewed every page of the documents handed to her.

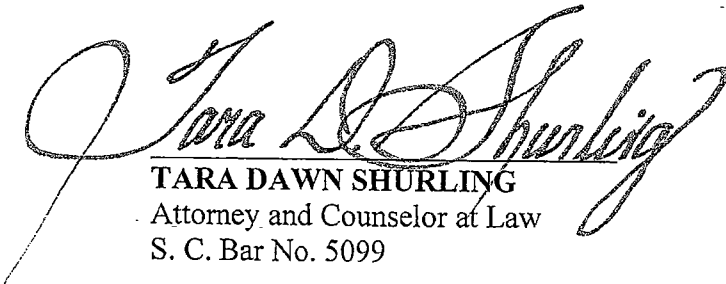
Plea Counsel never saw the three letters sent to her on September 16th prior to the commencement of Applicant's PCR hearing. Neither were these documents disclosed to her during the PCR hearing. She obviously saw the November 18, 2011 letter at the evidentiary hearing when it was introduced by the State, however, she had never seen either of the other two letters before they were sent to her on September 16, 2014. PCR Counsel has not yet obtained a transcript of the PCR proceeding. When it is prepared, the record will demonstrate that PCR Counsel questioned Assistant Solicitor Hinton about how and when she extended the offer in question to Plea Counsel. After this witness asserted that she believed the offer had been conveyed in writing before Plea Counsel's Order of Protection went into effect, PCR Counsel directly questioned her about any available documentation concerning that offer. PCR Counsel's questions in this vein would make no sense whatsoever if she had been provided the documents in question prior to this hearing. Likewise, this witness's responses did not indicate that she had already provided Plea Counsel the documentation in question. Neither did this witness reveal the existence of this letter.

Conclusion

Applicant, acting through PCR Counsel, exercised due diligence in attempting to ascertain what, if any written plea offers had been extended to Applicant and when they were conveyed to Plea Counsel. Neither Applicant, nor Plea Counsel, had knowledge of the documentation in question prior to the evidentiary hearing held in this matter. Regardless of whether the failure to produce these documents was intentional or not, Applicant is entitled to have these documents considered as part of his offer of proof in this Post-Conviction Relief action where he has the burden of proof concerning his allegations. Applicant now asks that the record in this PCR case be enlarged to include

PCR Counsel's subpoena demanding production of the material in question dated August 14, 2014, PCR Counsel's email to Assistant Solicitor Hinton dated September 15, 2015, the September 16, 2014 email from Assistant Solicitor Hinton to PCR Counsel, and all three letters attached thereto, email to PCR Counsel from Plea Counsel dated August 28, 2014, as Plaintiff's Exhibits. Alternatively, should this Honorable Court feel it necessary and appropriate, Applicant would ask that this PCR action be reopened for additional proceedings at which Applicant would be permitted to introduce these documents in support of Applicant's PCR case.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 Fax
E-mail: tdslaw@shurlinglaw.com

ATTORNEY FOR APPLICANT

This 18th day of September, 2014.

STATE OF SOUTH CAROLINA)
 2014 SEP 23 AM 9 18 THE COURT OF COMMON PLEAS
 COUNTY OF PICKENS)

CLERK OF COURT 2012-CP-39-1196
 PICKENS COUNTY

WILLIAM DAVID WOOTEN, 349872TH O. CAROLINA

CERTIFICATE OF SERVICE

Applicant,)

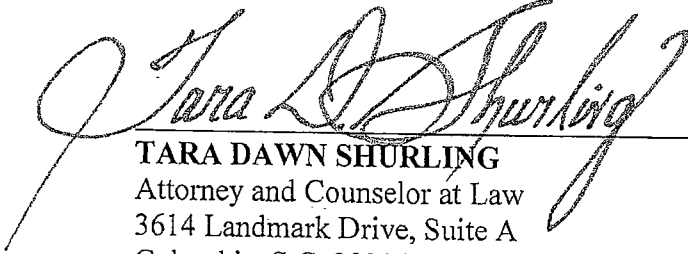
v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

The undersigned hereby certifies that a true copy of the Motion to Enlarge Record in the above matter has been served on opposing counsel this 18th day of September, 2014, by mailing one (1) copy to:

Karen C. Ratigan
 Senior Assistant Deputy Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211


 TARA DAWN SHURLING

Attorney and Counselor at Law
 3614 Landmark Drive, Suite A
 Columbia, S.C. 29204

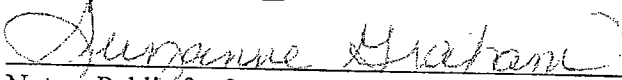
(803) 738-8622

(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 18th day of

September, 2014.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2012-CP-39-1196

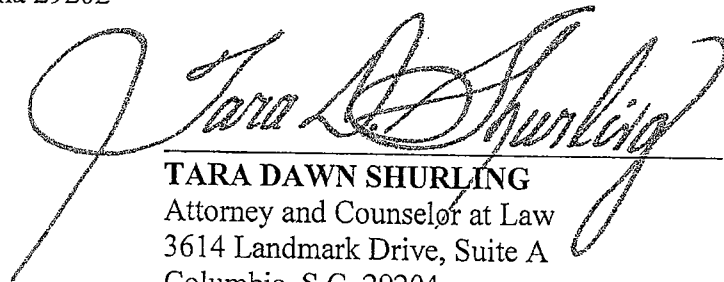
WILLIAM DAVID WOOTEN, 349872)
Applicant,)
v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

CERTIFICATE OF SERVICE

2014 SEP 23 AM 9 32
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

The undersigned hereby certifies that a true copy of the Motion to Enlarge Record in the above matter has been served on the Honorable James R. Barber, III, Circuit Court Judge on this 18th day of September, 2014, by mailing one (1) copy to:

Honorable James R. Barber, III
Circuit Court Judge
P. O. Box 2766
Columbia, South Carolina 29202



TARA DAWN SHURLING
Attorney and Counselor at Law
3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax
ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 18th day of

September, 2014.

Stephann Graham (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/28/24

ATTACHMENT A

STATE OF SOUTH CAROLINA

2014 SEP 23 AM 9 32
ISSUED BY THE CIVIL COURT IN THE COUNTY OF PICKENS

William David Wooten
v.

CLERK OF COURT
PICKENS COUNTY
SUBPOENA IN A CIVIL CASE

State Of South Carolina, Defendant

Case Number: 2012-CP-39-1196

Pending in Pickens County

TO: Brandi Batson Hinton, Assistant Solicitor

☒ YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY Pickens County Courthouse	COURTROOM The Honorable James R. Barber, III
DATE AND TIME: Monday, August 25, 2014 at 11:00 a.m.	

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects): Any and all documentation from the Solicitor's file on William David Wooten as it pertains to any plea offers that were extended to Attorney Paul Aaron on behalf of the Defendant, and any documentation in your file concerning Orders of Protection for Paul Aaron, Esquire for December 1, 2011 thru February 27, 2012.

PLACE Pickens County Courthouse	DATE AND TIME Monday, August 25, 2014 at 11:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

ANY SUPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

ISSUING OFFICERS NAME, ADDRESS AND PHONE NUMBER
TARA DAWN SHURLING, ATTORNEY AT LAW 3614 LANDMARK DRIVE, SUITE D, COLUMBIA, SC 29204 (803)738-8622

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULES 45(C) (1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Tara A. Shurling August 14, 2014
ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE
REPLICA OF SCCA FORM 254 (7/93) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse)

PROOF OF SERVICE		
SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$ _____
	PLACE	
SERVED ON (PRINT NAME) Brandi Batson Hinton, Assistant Solicitor 305 East North St. Ste 325, Greenville, SC 29601		MANNER OF SERVICE Certified And Regular U. S. Mail
SERVED BY (PRINT NAME) Suzanne Graham		TITLE Paralegal

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on

8/14/14
DATE

SIGNATURE OF SERVER

Law Office of Yara Dawn Shurling, PA

3614 Landmark Dr., Suite D Columbia, SC 29204

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings, and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel production. Such an order to compel production shall protect any person who is not a party or an officer from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which the subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed at a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed, or regularly transacts business in person, except that, subject to the provision of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development or commercial information, or

(ii) requires disclosure of an un-retained expert's opinion or information not describing in specific words events or occurrences in dispute and resulting from the experts study made not at the request of any party, or

(iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed, or regularly transacts business in person, the court may, to protect a person subject to or affected by a subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature or the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

LAW OFFICE OF



TARA DAWN SHURLING, PA

Attorney and Counselor at Law

3614 Landmark Drive

Suite A

Columbia, South Carolina 29204

E-Mail: tdslaw@shurlinglaw.com

(803) 738-8622

(Fax) (803) 738-1600

August 14, 2014

Brandi Batson Hinton, Assistant Solicitor
Pickens County Solicitor's Office
305 East North Street, Ste. 325
Greenville, South Carolina 29601

RE: William David Wooten, 349872 v. State of South Carolina; 2012-CP-39-1196.

Dear Ms. Hinton:

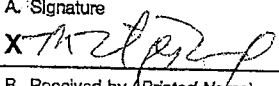
Please see the enclosed subpoena regarding the above-mentioned case scheduled for Monday, August 25, 2014 at 11:00 a.m before the Honorable James R. Barber, III. I will be calling you the first of the week to discuss this subpoena with you. There is a chance that your attending this hearing may not be necessary. Thank you for your cooperation. I remain,

Yours sincerely,

A handwritten signature in cursive script that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counsel at Law

TDS/sg
Enclosure

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☐ Agent ☐ Addressee	
1. Article Addressed to: Brandi Batson Hinton, Esq. 305 EAST North St. Suite 305 Greenville, SC 29601		B. Received by (Printed Name) Lili Strand	C. Date of Delivery
2. Article Number (Transfer from service label)		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, February 2004		Domestic Return Receipt	

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SC 295

18 AUG 2014

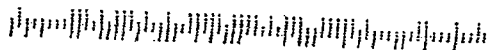


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Tara Dawn Shurling
3614 Landmark Dr.
Suite A
Columbia, SC 29204

(David Wooten)



ATTACHMENT B

Hinton, Brandi

From: Batson, Brandi
Sent: Thursday, January 12, 2012 10:16 AM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

Mr. Aaron –

Unfortunately, that offer expired on 1/3/2012. I have no authority to further negotiate on this case.

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671
Phone: 864-898-5915
Fax: 864-898-5586
bbatson@greenvillecounty.org

From: S Paul Aaron Attorney [<mailto:spalegal@bellsouth.net>]
Sent: Thursday, January 12, 2012 9:57 AM
To: Batson, Brandi
Subject: Re: Wooten

Not a conflict

But I think we are close to a plea straight up no recommend except concurrent not consecutive
Lewd act two counts Pickens
Run Oconee case concurrent
Dismiss the other charges pending
Plea on 23 rd
What do you think

Sent from my iPhone
S Paul Aaron Attorney

On Jan 12, 2012, at 9:24 AM, "Batson, Brandi" <bbatson@greenvillecounty.org> wrote:

Mr. Aaron –

As I am sure you are aware, you once represented one of the victim's fathers (Scott Respass). I have spoken to him about it. I do not see it as a conflict. I just wanted to make sure you felt the same to avoid any issue as we prepare for trial. Please let me know. Thanks!

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671



Phone: 864-898-5915

Fax: 864-898-5586

bbatson@greenvillecounty.org

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Hinton, Brandi

From: Batson, Brandi
 Sent: Thursday, January 12, 2012 1:43 PM
 To: 'S Paul Aaron Attorney'
 Subject: RE: Wooten

They are downstairs.

Brandi M. Batson
 Assistant Solicitor
 13th Circuit Solicitor's Office
 214 E. Main St., B-120
 Pickens, SC 29671
 Phone: 864-898-5915
 Fax: 864-898-5586
 bbatson@greenvillecounty.org

-----Original Message-----

From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]
 Sent: Thursday, January 12, 2012 1:39 PM
 To: Batson, Brandi
 Subject: Re: Wooten

Put them downstairs and I will get them

Sent from my iPhone
 S Paul Aaron Attorney

On Jan 12, 2012, at 1:33 PM, "Batson, Brandi" <bbatson@greenvillecounty.org> wrote:

> If your client will enter a negotiated plea of 15 years to 2 counts of
 > Lewd Act AND you provide me with signed sentencing sheets then I will
 > take that information to the office and to my victims and let you know
 > what they decide. This in no way is promising that he will be allowed
 > to plea to the offer of 15 years, as it has already expired. However,
 > I will consider it but not until we come to terms that he will plea to
 > 15 years on 2 counts of lewd act and I have signed sentencing sheets
 > in my hands. Please understand with an upcoming court term with 3
 > cases on the docket as well as guilty pleas (and the fact that all of
 > my victims now live in Greenville) I will not be in a position to plea
 > this case for the January term. Please let me know your answer ASAP
 > and I will send you the sentencing sheets.

>
 > Brandi M. Batson
 > Assistant Solicitor
 > 13th Circuit Solicitor's Office
 > 214 E. Main St., B-120
 > Pickens, SC 29671

> Phone: 864-898-5915
> Fax: 864-898-5586
> bbatson@greenvillecounty.org

> -----Original Message-----

> From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]
> Sent: Thursday, January 12, 2012 1:31 PM
> To: Batson, Brandi
> Subject: Re: Wooten

>
> I believe your verbal offer during our discussion in court was 2 lewd
> acts 15 years and harassment (most recent warrant) That was December
> term The last day of which and through January second I was protected
> as I was out the state Obviously I had to have my clients agreement
> which I now have We have had no term of court since in which to do the
> plea I'm not sure why there needs to be a problem Your initial offer
> wasn't even tendered until November 18 That is less than 30 days
> before I left the state Certainly not an adequate time for any
> attorney to discuss the terms its ramifications Review the evidence
> all necessary according to our supreme court to provide adequate
> representation Please reconsider your position regards the plea for
> all concerned including the victims who don't need to suffer any
> further trauma through a trial

> Thank you for your consideration

> Sent from my iPhone
> S Paul Aaron Attorney

> On Jan 12, 2012, at 12:59 PM, "Batson, Brandi"
> <bbatson@greenvillecounty.org> wrote:

>> You are correct. I would not recommend anything other than fifteen
>> years. I made that offer of fifteen years to you. You still have
>> not accepted that offer. You are requesting to plea straight up,
>> concurrent. I am not willing to do that. Allowing your client to
>> plea straight up to two counts of lewd act only was never an option.
> Further,
>> the offer has expired.

>>
>> Brandi M. Batson
>> Assistant Solicitor
>> 13th Circuit Solicitor's Office
>> 214 E. Main St., B-120
>> Pickens, SC 29671
>> Phone: 864-898-5915
>> Fax: 864-898-5586
>> bbatson@greenvillecounty.org

>> -----Original Message-----

>> From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]

>> Sent: Thursday, January 12, 2012 10:52 AM

>> To: Batson, Brandi

>> Subject: Wooten

>>

>> If you will also remember you asked me to make a counter proposal and

> I

>> suggested an 8 or nine year sentence and you said you wouldn't

> recommend

>> anything other than the 15 years

>>

>> That is also when you suggested we do Oconee as well if they (Oconee

>> solicitor and mr Wooten and his Oconee public defender) would agree

>> I now have all of that done Let's do this plea and make it go away

>>

>> Sent from my iPhone

>> S Paul Aaron Attorney

>>

>>

>>

>>

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>

Hinton, Brandi

From: Batson, Brandi
Sent: Tuesday, January 17, 2012 1:24 PM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

Paul -

Thank you for the quick return of the sentencing sheets. As we discussed, I took this offer back to my victims and let them have the final say so. They are confident in taking this case to trial and do not wish to allow him to plea to the expired offer. Thanks.

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671
Phone: 864-898-5915
Fax: 864-898-5586
bbatson@greenvillecounty.org

-----Original Message-----

From: S Paul Aaron Attorney [<mailto:spalegal@bellsouth.net>]
Sent: Tuesday, January 17, 2012 12:24 PM
To: Batson, Brandi
Subject: Wooten

Plea sheets signed and tendered

Sent from my iPhone
S Paul Aaron Attorney

13th Circuit Solicitor - Pickens

CASE NOTES

Warrant: I677543

Prosecutor: Brandi Batson

Indictment #: 2011GS3901764

LE Case Number:

Defendant: William David Wooten

Victim:

Victim 2

Charge Code: 0396 - Sex / Criminal sexual conduct with minor, or Attempt - victim 11

Created By	Created Date	Created Time	NOTE	Changed By	Changed Date	Changed Time
DOWENS	3/17/2011	9:11:51AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
DOWENS	3/17/2011	9:11:35AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
DOWENS	3/17/2011	9:11:01AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
AANTHONY	9/21/2011	3:57:06PM	John DeJong called today and said the Paul Aaron had been retained by Mr. Wooten. John has turned his file over to Paul	AANTHONY	9/21/2011	3:57:07PM
BROPER	9/26/2011	9:39:35AM	Okay this victim was originally in the custody of her father (the def) and the step mother Jo Wooten. She has since been placed in the custody of her mother. The mother's family court attorney has passed on a copy of the order. I am sending VIS to the mother today. I will talk to BMB about what to do about notifying the step-mother, b/c technically she doesn't have the victim anymore but we don't want to alienate her b/c she will be a good witness for us. The mother tells me that she gets along fine with the step mother.	BROPER	9/26/2011	9:42:06AM
BROPER	10/24/2011	3:03:34PM	I am faxing victim information to Asap monitoring. They brought by ID showing they are his bondsman and monitoring company and they need victim information to put a zone around victim's home so he can't go in there.	BROPER	10/24/2011	3:03:45PM
BROPER	10/28/2011	2:23:58PM	Victim's mother called and was going to be present for court. She was going to bring victim to court and I advised her not to do that b/c she wouldn't be allowed in the courtroom b/c she is a minor and there would be no need for her to come that day since he would not be pleading. The mother ended up not showing up and I called her today and told her what happened in that BMB talked to Paul and figured out that they are not interested in a plea. I told Mom that we need to meet with victim. She is going to call me back and set that up.	BROPER	10/28/2011	2:24:04PM
BROPER	11/8/2011	11:07:57AM	Have not heard from mother about setting up meeting. Called her back today she is going to talk to husband and I am going to talk to BMB about setting something up.	BROPER	11/8/2011	11:12:10AM

Created By	Created Date	Created Time	NOTE	Changed By	Changed Date	Changed Time
BROPER	11/9/2011	1:02:26PM	Victim meeting set up for Friday in Greenville. BMB and I called victim today to discuss plea offer of 18 years or straight up and Victim is okay with that.	BROPER	11/9/2011	1:42:09PM
BROPER	12/21/2011	10:20:12AM	Set up meeting Jan 3 at 9	BROPER	12/21/2011	10:20:16AM
BROPER	1/4/2012	3:59:55PM	BMB AND MYSELF MET WITH VICTIMS AND WENT OVER THE OFFER. CALLED THEM BACK TODAY AND INFORMED THEM THAT WE DID NOT HEAR BACK FROM DEFENSE ATTY ON THE OFFER SO WE WILL PREPARE FOR TRIAL.	BROPER	1/4/2012	4:03:01PM
BBATSON	1/5/2012	11:00:34AM	Spoke to Gville Co. DSS They do not have an open or closed case on William D. Wooten			
BBATSON	1/12/2012	9:21:31AM	Victim's father, Scott Respass called to speak to me about Paul Aaron representing him in the past. I told him I would address it. See email to Paul in filings.			
BROPER	2/3/2012	3:42:31PM	Victim coming in Thursday at 8:30 on Feb 9	BROPER	2/3/2012	3:42:32PM
AANTHONY	2/9/2012	10:59:03AM	Paul Aaron came in today to pick up his discovery (which he only requested 2 days ago). We have DSS records that he said he would like to look through. We told him they are available and we will let him sit in the conference room to go through them. He said he didn't have time today, that he would reschedule another time to do that			
BROPER	2/14/2012	4:36:31PM	I sat in on meeting with victim. She is pretty consistent and detailed. I believe she will be a good witness considering this is her biological father. She is believable. BMB met with her a good while and went through questions. We showed her courtroom etc. I set up another meeting next week for BMB. The step Father Matt seems to be a real nice guy and willing to work with us however needed.	BROPER	2/14/2012	4:39:03PM
BROPER	2/24/2012	1:50:02PM	Victim 2 GAL 322-3545	BROPER	2/24/2012	1:50:03PM
BROPER	9/13/2012	2:48:54PM	SCDC INFO SENT	BROPER	9/13/2012	2:48:54PM

ATTACHMENT C**TDSLAW**

From: Hinton, Brandi [bbatson@greenvillecounty.org]
Sent: Tuesday, September 16, 2014 11:18 AM
To: TDSLAW; jbarberj@sccourts.org; jbarberlc@sccourts.org; kratigan@scag.gov
Subject: RE: David Wooten v. State of South Carolina
Attachments: E-mail Message

Ms. Shurling –

Please find attached the only information I have other than emails and notes. I had prepared a package for both you and Ms. Ratigan. It is quite possible between jury selection, pleas and a PCR hearing that day that I picked up the wrong packet for you. If these were not included, they certainly should have been per your subpoena. My recollection is that these were entered into evidence and that I testified to them so I believe someone had a copy. Again, if they were not provided to you, then I apologize. Please let me know if you have any questions.

From: TDSLAW [mailto:tdslaw@shurlinglaw.com]
Sent: Monday, September 15, 2014 1:31 PM
To: Hinton, Brandi; jbarberj@sccourts.org; jbarberlc@sccourts.org; kratigan@scag.gov
Subject: David Wooten v. State of South Carolina
Importance: High

Mrs. Hinton:

Prior to the August 25, 2014 evidentiary hearing in this matter, you were sent a subpoena for appearance at that proceeding as well as for production of any and all documentation concerning the original plea offer that was extended to Mr. Wooten in this case. I attach a copy of that subpoena for your convenient reference. At the hearing you produced copies of some emails that went back and forth between you and Mr. Aaron concerning this plea offer after he returned from vacation and attempted to have his client plead under that offer. I did not receive any documentation from you concerning when that offer was extended to Mr. Wooten through Mr. Aaron *other than* the emails discussing the fact that the offer had expired by the time Mr. Aaron returned from vacation and attempted to act on the offer.

During your testimony, you asserted that you believed the offer was sent to Mr. Aaron before his Order of Protection went into effect. When I asked you how the offer was extended you indicated that you thought it would have been in writing through either a letter or an email. Again, if such communication existed, I was not provided with a copy of it in response to my subpoena. During your testimony you acknowledged receipt of my subpoena, but indicated that the only documentation you had brought to court and given to me was the email chain in question.

Please check your file *at once* and see if there is such a correspondence either in the hard file or on your computer database. If so, I need to be provided with a copy *immediately*. If there is no such document in your file, please advise me of that fact in writing please. I appreciate your prompt response and cooperation. I am currently preparing a memorandum for Judge Barber in this matter and in reviewing my notes concerning this hearing it became obvious that there may be something more in your file that was inadvertently not provided to me before the hearing. Thanks a lot.

9/18/2014

Tara Dawn Shurling

Law Office of Tara Dawn Shurling, PA
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

(803)738-8622 Phone
(803)738-1600 Fax
(803)446-3614 Business Cell
tdslaw@shurlinglaw.com

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State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

11/18/2011

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. paul Aaron :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

The State will make the following sentence recommendations/negotiation:

Straight up or 18 years

Other conditions/comments:

All charges will be included. Oconee Co. would agree to concurrent time.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

12/20/2011

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. paul Aaron :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
I677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

The State will dismiss the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju

The State will make the following sentence recommendations/negotiation:

15 years

Other conditions/comments:

Please note that the offer expires on 1/3/2012.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

State of South Carolina
Solicitor, Thirteenth Judicial Circuit



Telephone: 864-898-5905
Telefax: 864-898-5798

Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

1/3/2012

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. paul Aaron :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
I677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

The State will dismiss the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju

The State will make the following sentence recommendations/negotiation:

15 years

Other conditions/comments:

Please note that the offer expires on 1/3/2012.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

ATTACHMENT D

From: Karen Ratigan [kratigan@scag.gov]
Sent: Tuesday, September 16, 2014 5:04 PM
To: Law Offices of Tara D. Shurling
Subject: Wooten

Tara,

I'm not avoiding you, but I'm working on an order that is due today so I'm working on it and haven't been taking anyone's phone calls. State's Exhibit 1 at the hearing was the plea offer letter from November 18, 2011.

Karen C. Ratigan
Senior Assistant Deputy Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
(803) 734-4042

Letter referenced as Attachment D in
Motion to Enlarge at p.5, para. 2.

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

11/18/2011

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. paul Aaron :

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

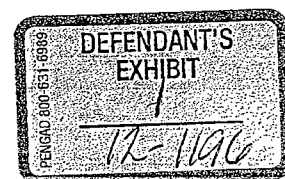
The Defendant will plead guilty to the following:

<i>Warrant Number:</i>	<i>Charge:</i>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

The State will make the following sentence recommendations/negotiation:

Straight up or 18 years

Other conditions/comments:



All charges will be included. Oconee Co. would agree to concurrent time.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

ATTACHMENT E

From: Paul Aaron, Attorney [mailto:clemsonattorney@gmail.com]
Sent: Thursday, August 28, 2014 10:13 AM
To: Tara Shurling
Cc: Karen Carnes
Subject: Re: Wooten file

Nothing additional in file)

Sincerely

S Paul Aaron, Attorney

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NUMBER: 2012-CP-39-1196

William David Wooten, #349872

State of South Carolina
PICKENS COUNTY
SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

2014 DEC 16 A 10 01

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

AFTER HEARING FROM SEVERAL WITNESSES, THE MATTER WAS RECESSED TO ALLOW FOR ADDITIONAL DISCOVERY. ONE OF THE KEY WITNESSES WHO IS TO BE DEPOSED IS ON MATERNITY LEAVE AND UNAVAILABLE FOR THE IMMEDIATE FUTURE. IT IS THEREFORE ORDERED THAT THE CASE BE RETURNED TO THE ROSTER FOR A TRIAL DE NOVO WHEN ALL PARTIES AND WITNESSES ARE AVAILABLE FOR TRIAL.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

Circuit Court Judge

James L. Bault

Judge Code 2110

Date 12/15/14

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

David P. Welborn

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2012-CP-39-1196
COUNTY OF PICKENS	)	
	)	
	)	
	)	
	)	
WILLIAM D. WOOTEN,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	

Monday, April 20, 2015
Pickens, South Carolina

B E F O R E:

THE HONORABLE JUDGE EDWARD W. MILLER

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

TARA DAWN SHURLING, ESQ.
Attorney for the Plaintiff

KAREN C. RATIGAN, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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(PW) - Denotes Plaintiff's Witness
(SW) - Denotes State's Witness

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1	<u>EXHIBITS</u>			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
3	P-1	11/18/11 Plea Offer	10	
4	P-2	12/20/11 Plea Offer	13	
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P R O C E E D I N G S

MS. RATIGAN: This is the case of William Wooten vs.
The State of South Carolina. The docket number is
2012-CP-39-1196.

Mr. Wooten was indicted for two counts of lewd act
with a minor, one count of CSC with a minor in the first
degree, and one count of CSC with a minor in the second
degree. He was represented on these charges by Mr. Aaron.
He entered a plea -- a negotiated plea on February 27,
2012, before Judge Goldsmith. He pled guilty to one count
of lewd act and the CSC with a minor in the first degree.
Judge Goldsmith accepted the negotiation and sentenced him
to concurrent terms of 25 years for CSC first and 15 years
for a lewd act.

We actually, Your Honor, had a hearing on this case
before Judge Barber August 25, 2014. We had a full
hearing. The applicant testified, Mr. Aaron testified,
Ms. Hinton testified, several other witnesses, and at the
conclusion of which I won't torture you with all the
how-we-got-theres, but Judge Barber ordered depositions to
be taken. Depositions ultimately could not be taken
because Ms. Hinton went into labor, so we were kind of
forestalled from doing that. Rather than holding the
record even further and getting depositions after she got
back from leave, Judge Barber issued an order ordering a de

1 novo hearing in the case.

2 So I put all that on the record just to say that we've
3 kind of already plowed this ground before, so some of the
4 issues should be fairly limited. And I know that
5 Ms. Shurling has a partial transcript of that hearing that
6 she will introduce at some point that I have no objection
7 to.

8 I would also note that Ms. Hinton is in General
9 Sessions today, but says that she'll be able to pop over
10 whenever we need her.

11 So the State is ready proceed at this time.

12 THE COURT: Okay. All right.

13 MS. SHURLING: Thank you, Your Honor.

14 Your Honor, for the record, we had filed an extensive
15 amended application for post-conviction relief in this
16 case. Prior to the last proceeding, I put on the record
17 the fact that we were proceeding only on claims of
18 ineffective assistance of counsel as they regarded the
19 manner in which the plea negotiations were handled in this
20 matter, the manner in which certain plea offers advanced by
21 the State were not given to my client in a timely manner.

22 There is a component in this case of prosecutorial
23 misconduct to the degree that the offer at issue was
24 extended to my client during a time period when the
25 Solicitor's Office was aware that Attorney Aaron was under

SPANGLER DIRECT BY SHURLING

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1 order of protection, and it was designated to expire before
2 he returned from that order of protection.

3 Your Honor, I have one witness, Ms. Lisa Spangler, who
4 was an officer at the detention center who has been working
5 all night, and I -- with permission of the Court, I'm going
6 to take her testimony out of order and get her out of here
7 first so that she can go home and go to bed.

8 THE COURT: Okay.

9 MS. SHURLING: Ms. Spangler.

10 WHEREUPON,

11 LISA SPANGLER,

12 After first having been duly sworn, testified as follows:

13 THE CLERK: State your full name for the record.

14 THE WITNESS: Lisa Spangler.

15 DIRECT EXAMINATION ...

16 BY MS. SHURLING:

17 Q Ms. Spangler, who are you employed by?

18 A I'm employed now by the Pickens County Stockade.

19 Q And back in January of 2012, where were you working?

20 A I was working for Pickens County Sheriff's Office as a
21 detention officer.

22 Q Okay. So you were working with the detention
23 facility?

24 A Yes, ma'am.

25 Q Do you recall an occasion back in January of 2012 when

1 attorney Paul Aaron came to see a client by the name of
2 William David Wooten?

3 A Yes, I do.

4 Q Is there anything in particular about that visit that
5 sticks out in your mind?

6 A He had a paper he wanted Mr. Wooten to sign. I was
7 told it was a plea paper.

8 Q Okay. And did Mr. Aaron, at that time, visit with his
9 client in an attorney conference room? Or how did that
10 conversation take place?

11 A No, ma'am. They asked me -- Mr. Aaron asked me to --
12 if I would get Mr. Wooten out of his cell block and just
13 bring him to the hallway so he could speak to him briefly.

14 Q And could you hear any of their conversation?

15 A The only thing that I can testify to is I do recall
16 that Mr. Aaron said this would be a plea bargain, and all
17 he needed was a signature to plea to 15 years.

18 MS. SHURLING: And may I approach, Your Honor?

19 THE COURT: Yeah.

20 BY MS. SHURLING:

21 Q Do you recall seeing the papers that Mr. Aaron had in
22 his hand?

23 A No, ma'am. I did not read the papers.

24 Q And did you see them?

25 A I saw them. Yes, ma'am.

1 Q Were they full-size sheets like this?

2 A Full-size sheets. Yes, ma'am.

3 Q And did they appear to be a form like this?

4 A Similar.

5 MS. SHURLING: Thank you. No further questions.

6 CROSS EXAMINATION

7 BY MS. RATIGAN:

8 Q One quick question. What date was that; do you
9 remember?

10 A It seems like it was back in January of 2012, if I'm
11 not mistaken. I can't remember the exact date.

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

13 THE COURT: Okay.

14 MS. SHURLING: Nothing further from this witness. I'd
15 ask that she be excused.

16 THE COURT: Any objection?

17 MS. RATIGAN: No, Your Honor.

18 THE COURT: Okay. See you.

19 THE WITNESS: Thank you.

20 THE COURT: Thanks.

21 MS. SHURLING: The applicant calls attorney Paul
22 Aaron, please.

23 THE WITNESS: Your Honor, may I bring my file with me?

24 THE COURT: Yeah. Sure.

25 ///

1 WHEREUPON,

2 PAUL AARON,

3 After first having been duly sworn, testified as follows:

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

5 THE WITNESS: Stephen Paul Aaron.

6 DIRECT EXAMINATION

7 BY MS. SHURLING:

8 Q Can I help you with something, Mr. Aaron?

9 A No. I just feel rather short back here.

10 Q I pretty much always feel short, Mr. Aaron, so I
11 sympathize.

12 Do you recall representing David Wooten?

13 A Yes.

14 Q And back toward the end of 2011, had you been engaged
15 in plea negotiations in this case?

16 A Yes.

17 Q Do you recall at some point receiving an offer from
18 the Solicitor's Office for an 18-year deal --

19 A Yes.

20 Q -- that your client rejected?

21 A Correct.

22 MS. SHURLING: May I approach, Your Honor?

23 THE COURT: Uh-huh.

24 BY MS. SHURLING:

25 Q Does that look familiar?

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1 A Yes.

2 Q Could you tell me on the second page of that
3 correspondence when that deal was set to expire?

4 A On or before January 3, 2012.

5 Q Okay. And that was for 18 years, and that was clearly
6 rejected by your client?

7 A I think what David said originally is he wanted to
8 think about it, could we do anything better, which lead to
9 me having another conversation with Ms. Hinton.

10 MS. SHURLING: We'll move on from here.

11 Your Honor, Petitioner's 1.

12 MS. RATIGAN: No objection, Your Honor.

13 THE COURT: Okay.

14 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
15 identification.)

16 BY MS. SHURLING:

17 Q I realize that was a while ago, but did you go on a
18 trip sometime toward the end of 2011 ---

19 A Yes.

20 Q --- over to the beginning of 2012?

21 A I did.

22 Q Do you know where you went?

23 A It would be a guess. I usually go somewhere with my
24 kids, so maybe Disney. But it would be a guess.

25 Q And prior to leaving on this family vacation, did you

1 obtain an order of protection?

2 A Yes.

3 Q And at my request, have you searched your files for
4 any documentation concerning that order of protection?

5 A Yes.

6 Q And have you been able to locate anything that sets
7 forth the exact dates of your order of protection?

8 A I don't have a document. I know the solicitor's --
9 the process is we send the request to the administrative
10 judge, the administrative judge then sends that to the
11 Solicitor's Office. They approve it, get -- or go around,
12 put it on their whatever, and send it back. I don't even
13 know if we get a copy back, to be honest with you, but I do
14 not have a copy.

15 Q And can you share with us the time frame under which
16 you were protected?

17 A I believe it was December 20th through January 5th.
18 But, again, I don't have any independent recollection, but
19 it seems like that's what it was.

20 Q Okay. December 20th through January 5th.

21 And it's your testimony that those requests for orders
22 of protection go through the Solicitor's Office before they
23 even go to the admin judge?

24 A No. I think what happens, if we send it to the admin
25 judge, fax it to the admin judge, and then my understanding

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1 is that it then goes to the Solicitor's Office to make sure
2 there's nothing pending. And then I don't know if they
3 have to actually give their okay, but that's been my
4 experience with that.

5 Q Okay. Excuse me. I had it backwards. I apologize.

6 And, Mr. Aaron, would you have waited for confirmation
7 of your prayer for protection before leaving on vacation?

8 A Oh, absolutely. I don't think there's ever -- I don't
9 know that anybody's ever questioned that I had an order of
10 protection. I think the solicitor testified to that.

11 Q I just want to make sure the record is very clear.

12 When you returned from vacation, what did you discover
13 with regard to the status of plea negotiations in this
14 case?

15 A I had received a letter from Ms. Hinton. If I
16 remember, there may have been two letters that were
17 introduced last time: one dated December 20th and one
18 dated January 3rd. But they both expired on January 3rd,
19 before my protection was over.

20 MS. SHURLING: Again, Your Honor, may I approach?

21 THE COURT: Yes.

22 BY MS. SHURLING:

23 Q Can you identify that?

24 A (Reviews document) That's the letter from
25 December 20th offering a plea to lewd act on -- or two lewd

1 acts and dismissal for the criminal sexual conduct, two
2 counts of that. Actually, three counts of that and one
3 harassment.

4 Q And under the last portion of page 1 where it
5 indicates the term of years involved, what does it say?

6 A The State will recommend 15 years.

7 Q And actually, it says "recommendation/negotiation,"
8 does it not?

9 A That's correct.

10 Q Okay. But it doesn't expressly say which ---

11 A That's correct.

12 Q --- at that point?

13 A I think that's a standard form, to be honest with you.

14 MS. SHURLING: Petitioner's 2, please.

15 MS. RATIGAN: No objection.

16 (WHEREUPON, Plaintiff's Exhibit No. 2 was marked for
17 identification.)

18 BY MS. SHURLING:

19 Q Okay. And when you came back from your vacation, you
20 had, you believe, two different letters setting forth the
21 same plea?

22 A I think you introduced two letters last time. I don't
23 think I had a copy but of one of those. But one of them
24 was dated -- if I -- let me back up and see. I had a
25 conversation with Ms. Hinton in the hallway prior to me

1 going on vacation. I believe that was on the 15th of
2 December. I was gone by the time that letter was penned
3 December 20th, and it expired before I returned from
4 holiday.

5 Q Okay.

6 A So I didn't have -- I didn't have that letter at all
7 until I got back.

8 Q Okay. And the letter that you recall having in your
9 mail when you returned from vacation was the one dated
10 December 20th?

11 A That's what I recall.

12 Q Okay.

13 A But I believe you introduced another one that had
14 January 3rd as well. Same information, just different
15 date. (Reviews document) That's the letter.

16 Q And is it identical in every aspect except for the
17 date?

18 A I'd have to look at both of them to be sure, but . . .

19 Q Smart lawyer.

20 A It's an oxymoron, I think, smart lawyer.

21 (Reviews document) Yeah. I believe the only additions
22 to either exhibit was something written in pen at the
23 bottom. I don't know who wrote that, but I did not.

24 Q And the January 3, 2012, letter being identical to the
25 12/20/2011 letter also says that it expires on

1 January 3, 2012?

2 A That's correct.

3 Q So it expires the day it's issued?

4 A That is correct. I don't know if I ever actually
5 received that letter -- the second letter or not.

6 MS. SHURLING: Thank you.

7 Petitioner's 3, please.

8 MS. RATIGAN: No objection, Your Honor.

9 (WHEREUPON, Plaintiff's Exhibit No. 3 was marked for
10 identification.)

11 BY MS. SHURLING:

12 Q Once you discovered that this offer had been extended,
13 did you engage in further discussions with Ms. Hinton
14 concerning this case -- Brandi Hinton concerning this case?

15 A I'm sure I did. I mean, I don't have any independent
16 recollection, but . . .

17 Q Okay. And do you recall a series of e-mails between
18 the two of you concerning this matter?

19 A I didn't recall those until, I think, the last
20 hearing, but yes.

21 Q Okay. At some point, was it your understanding that
22 she was going to allow your client to go forward on the
23 offer even though it had expired, according to the letter
24 on January 3rd?

25 A I believe she gave me or left sentencing sheets in the

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16

1 office downstairs for me to pick up to take to Mr. Wooten.

2 Q And was that after your having refreshed your
3 recollection concerning the fact that you were under order
4 of protection?

5 A I don't recall specifically what lead to that, but I
6 would presume that would be the case.

7 MS. SHURLING: May I approach?

8 THE COURT: Yes.

9 BY MS. SHURLING:

10 Q Can you identify those, please.

11 A (Reviews document) Those appear to be the sentencing
12 sheets for a guilty plea to include two lewd acts signed by
13 Ms. Batson, Mr. Wooten, myself, dated January 17, 2012.
14 They're both the same, just two different indictment
15 numbers.

16 Q Two different indictment numbers. And --

17 THE COURT: You mean February 27th?

18 MS. SHURLING: No, sir, Your Honor. I mean
19 January 17th.

20 THE COURT: Okay. Actually, Mr. Aaron, I should
21 address you with that.

22 THE WITNESS: Yes. These are, I think, the ones that
23 were introduced last time.

24 BY MS. SHURLING:

25 Q No. These were not provided to me until last week.

1 A Well, I had recalled taking these sheets to
2 Mr. Wooten. As of the last hearing, no one could produce
3 those sheets. But Ms. Shurling showed me those this
4 morning and asked me if that was my signature and did I
5 obtain Mr. Wooten's signature, and I actually dated the
6 sheets. So yes.

7 THE COURT: Okay.

8 BY MS. SHURLING:

9 Q And if you can for me, please, under the portion of
10 this document that indicates terms and conditions, what
11 does it say with regard to sentence?

12 A "Negotiated sentence" is checked.

13 Q Okay. Not "recommendation," but "negotiated"?

14 A That is correct.

15 Q And, again, that was signed by then Ms. Batson?

16 A Yes. Now, I don't know in what order those were
17 signed, but I know that all the signatures are there. And
18 Mr. Wooten also initialed where the waiving presentment to
19 the grand jury because those were not the initial
20 indictments.

21 MS. SHURLING: Okay. Thank you.

22 And, Your Honor, I would introduce these together as
23 Petitioner's 4.

24 MS. RATIGAN: I have no objection.

25 THE COURT: Okay.

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18

1 (WHEREUPON, Plaintiff's Exhibit No. 4 was marked for
2 identification.)

3 BY MS. SHURLING:

4 Q And, again, these are the sheets that you would have
5 taken to the detention center and gotten your client to
6 sign?

7 A Yes, ma'am.

8 Q And they were signed by Ms. Batson then, Ms. Hinton
9 now, before you picked them up?

10 A I can't -- I don't have any independent recollection
11 of whether she had actually signed them before I picked
12 them up or not, but I would assume so.

13 Q Okay. But at least the portion regarding what the
14 plea was to be to, the two counts of lewd act and the fact
15 that it was for a negotiated sentence, those are both
16 computer-generated. They're typed, correct?

17 A I assume that's correct, yes.

18 Q And would have been on the documents at the time you
19 had your client sign them?

20 A All the typed material was on the document when I had
21 Mr. Wooten sign it, absolutely.

22 Q Thank you. How did you find out that you weren't
23 going to be allowed to go forward that day on the plea?

24 A I believe -- again, I believe I brought them back to
25 the Solicitor's Office after having David sign them, and I

1 don't know if I received an e-mail or a phone call or both
2 that said that the offer had expired on the 3rd. Again, I
3 don't have any independent recollection, but I believe
4 that's correct.

5 MS. SHURLING: And a moment's indulgence.

6 May I approach?

7 BY MS. SHURLING:

8 Q Does that appear to be the e-mail you received that
9 day?

10 A Yes.

11 Q At the time you picked up the sentencing sheets from
12 the Solicitor's Office, was it your understanding that you
13 were going forward on the original offer?

14 A Yes.

15 Q Did you understand the offer to be in any way
16 conditional at that point in time?

17 A No.

18 Q Were you taken aback by this turn of events?

19 A Yes.

20 Q Okay. In February you ended up going forward on
21 another plea offer with the same client, correct?

22 A That is correct.

23 Q In the interim, between this turn of events and the
24 February plea, did you file any sort of motion with the
25 Circuit Court for specific enforcement of the plea bargain

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20

1 under Santobello?

2 A No.

3 Q Can you explain to us why not?

4 A My understanding is -- or was -- still is that it is
5 not a negotiated or recommended plea until it's accepted by
6 the Court in contrast perhaps to what we do in the Federal
7 court. But that was my understanding.

8 Q Okay. And ---

9 A I did express to the solicitor, to the deputy
10 solicitor and to the local deputy solicitor my displeasure
11 with what had happened on more than one occasion, and I
12 told the judge -- I don't remember what judge it was at
13 sentencing, but prior to going forward that morning we met
14 in the jury room, and I told him what I had. But that was
15 the extent of my protest.

16 Q Well, is there any question in your mind that the
17 assistant solicitor on this case knew you were under order
18 of protection from the 20th through the first week in
19 January?

20 A I would say no. One, I know I told her; two, the
21 Solicitor's Office has a list of lawyers that are protected
22 -- at least they used to. I assume they still do -- that
23 have been granted protection so that they don't -- their
24 clients or the cases don't get called that week.

25 Q Okay. And in the interim between when that offer

1 expired on January 3rd and the 17th, it is apparent that
2 the family of the victim changed their position with regard
3 to the plea?

4 A I don't know that.

5 MS. SHURLING: Well -- a moment's indulgence, Your
6 Honor.

7 BY MS. SHURLING:

8 Q If I can get you to take another look at the e-mail we
9 were just discussing. It's very short. Could you just
10 publish that for us, please.

11 A Sure. "Paul, thank you for the quick return of the
12 sentencing sheets. As we discussed, I took this offer back
13 to my victims and let them have the final say-so. They are
14 confident in taking this case to trial and do not wish to
15 allow him to plea to the expired offer. Thanks."

16 Q So the reason advanced to you by the Solicitor's
17 Office for not honoring the deal that had been documented
18 on those plea sheets was the position of the victim's
19 family?

20 A That's what was tendered to me. I did not talk to the
21 family directly, so I don't know that.

22 Q I understand. But the position that was given to you
23 by the prosecutor was that the victim's family had changed
24 their position?

25 A Yes.

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22

1 MS. SHURLING: Your Honor, at this time, there's a
2 series of e-mail traffic going back and forth between
3 Ms. Batson and Mr. Aaron that was introduced as Plaintiff's
4 No. 1 at the previous PCR proceeding. At this point, I
5 would ask that it be remarked as Petitioner's 5.

6 MS. RATIGAN: I have no objection.

7 THE WITNESS: Your Honor, may I look at -- since
8 that's my e-mail, can I look at them?

9 THE COURT: Yeah.

10 THE WITNESS: (Reviews documents) Thank you.

11 BY MS. SHURLING:

12 Q So it's your testimony that you expressed your
13 displeasure concerning this turn of events to Ms. Batson's
14 superiors?

15 A I would say that would be putting it mildly, yes.

16 MS. SHURLING: One moment, Your Honor. I forgot to
17 let the court reporter mark the exhibit. My apologies.

18 (WHEREUPON, Plaintiff's Exhibit No. 5 was marked for
19 identification.)

20 BY MS. SHURLING:

21 Q But, again, you didn't consider filing any sort of
22 formal motion asking for specific enforcement of the plea
23 bargain?

24 A No.

25 Q Did you introduce -- and to a large extent, the record

1 will speak for itself, but just in the interest of a clear
2 record, did you introduce any documentation concerning your
3 order of protection at the subsequent plea proceeding?

4 A No.

5 Q Was the offer for two counts of what was then lewd act
6 under 655 a substantially more favorable deal than the one
7 that your client ultimately was allowed to plea under?

8 A I believe so.

9 Q Eventually, in February your client plead to what?

10 A Without looking at the specific sentencing sheets, I
11 believe it was 25 years.

12 Q Here's a copy of the plea, Mr. Aaron.

13 A Specifically what was your question?

14 Q Your client eventually plead to one count of first
15 degree CSC with a minor and one count of lewd act; is that
16 correct?

17 A I believe that is correct.

18 Q And those sentences were concurrent for an aggregate
19 25-year term, correct?

20 A Yes.

21 Q And a 25-year sentence for CSC would be under the
22 statute that prohibits early release of any sort for a
23 Class A, B or C or unclassified offense -- A, B or C felony
24 or unclassified offenses. So it's an 85 percent sentence,
25 correct?

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24

1 A I believe that's correct.

2 Q Whereas lewd act on a minor would not have been?

3 A I believe that is also correct.

4 Q Okay. And, of course, the consequences with regard to
5 sex offender registry and mandatory electronic monitoring,
6 ironically, are the same for both?

7 A Correct.

8 Q How did you explain this turn of events to your
9 client?

10 A I believe I told both David and his family that the
11 solicitor had withdrawn the offer, and that I had discussed
12 that with the solicitor, Ms. Batson at the time, that I had
13 discussed that with Mr. -- I can't remember his last name
14 -- Doug, who is the deputy over here, and then I had
15 discussed it with the deputy over in Greenville. And then
16 finally, the day it was actually set on the trial docket,
17 if I recall, and that morning we met, Ms. Hinton and I --
18 or Ms. Batson and I met with the judge. I told him the
19 position I was in, and his -- and I don't have any
20 independent recollection other than I believe the comments
21 were, well, we're going to go forward on the original
22 charges or we can do a plea. And I'm sure that's the way I
23 explained it to David and the family. But I -- that's what
24 I would normally do anyway.

25 Q Did you explain to your client that there had -- the

1 previous offer for 15 years had actually been made while
2 you were on vacation?

3 A I'm sure I did. I talked to somebody in the family on
4 the telephone. It might have been his mom. And I was
5 pretty hot under the collar when that first happened. But
6 I don't remember who. I talked to many members of the
7 family over a period of time, some at the office, some by
8 telephone. I don't remember the sequence, but yes.

9 Q Sure. Let's shift gears for just a minute. When you
10 go on an order -- go somewhere and you get an order of
11 protection, what is your understanding of the scope of
12 protection afforded an attorney who's operating under an
13 order of protection?

14 A I think the scope would be probably the same whether
15 it be Family Court, Civil Court or Criminal Court. I think
16 how you might act under it would be different, but the
17 scope being that whatever -- that I am protected from any
18 court-related activities, which would include, in criminal
19 cases, pleas or roll-call appearances, trials, that sort of
20 thing.

21 Q And during this time period, Mr. Aaron, were you a
22 sole practitioner?

23 A Yes.

24 Q So there were no other attorneys in your firm able to
25 operate in a standby capacity for you while you were away?

1 A That's true. But in a criminal case, I wouldn't have
2 anybody standing by anyway. I don't think that's ---

3 Q I was going to get there. As a practical matter, what
4 is your understanding of the law with regard to whether or
5 not another attorney could have stepped in and handled the
6 case for you even if you had had someone serving as backup
7 counsel in your absence?

8 A I'm not sure it's a matter of law as much as it is
9 ethics. I think -- I think under -- in a criminal case in
10 particular, there's a clear attorney-client relationship
11 that goes between the attorney and the client, not between
12 the attorney and somebody else either in the office or next
13 door. In order for me to effectively provide advice to a
14 client in a criminal case, I have to be the one to do it.
15 That would be my interpretation, what we're responsible
16 for.

17 Q Did you notify your clients in advance when you were
18 leaving on vacation?

19 A No.

20 Q Did you ask anyone in the legal community to be on
21 standby for any problems concerning any of your cases?

22 A No.

23 Q Did your support staff, your secretarial staff,
24 paralegals, what have you, do they work in your absence?

25 A Yes.

1 Q Were they reviewing your mail?

2 A I assume they were.

3 Q Were they expected to be reviewing your mail?

4 A Yes.

5 Q And did you have any regular communication with your
6 office while you were away under order of protection?

7 A Regular, no. More than once a week, yes.

8 Q Back at this point in time in 2012, did you have a
9 cell phone?

10 A I'm sure I did.

11 Q Could anyone in your staff have reached you by
12 telephone to make you aware that there was a plea offer
13 that was scheduled to expire before your return?

14 A I can't answer that because I can't remember where we
15 went. So if we went somewhere in the Caribbean, then the
16 answer would be no. If we went to Florida, then the answer
17 would be yes. But I do keep my phone when I'm on vacation
18 in airplane mode, at least when I'm with the kids.

19 Q And if you had become aware during your trip that
20 there was an offer pending that was going to expire before
21 you came back and before your order of protection
22 terminated, would you have been contacted then Ms. Batson
23 and reminded her that you were under protection?

24 A I would have probably deferred that to a staff member
25 and said, "How about call Brandi and remind her that I'm

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1 under a protection order."

2 Q And had you been made aware of that plea offer and the
3 fact that it was going to expire before the termination of
4 your order of protection, would you have asked Ms. Batson
5 or had someone on your behalf ask Ms. Batson to extend the
6 expiration date on the plea offer?

7 A Hypothetically, perhaps. I mean, I would have assumed
8 that the order of protection would have been honored by the
9 Solicitor's Office or anybody else that was involved. But
10 the short answer is I didn't do that, so . . .

11 MS. SHURLING: A moment's indulgence.

12 BY MS. SHURLING:

13 Q You mentioned that you discussed the problem you had
14 had with regard to this offer with -- and you may have made
15 this clear and I misunderstood. You discussed it with the
16 presiding judge at the plea prior to the plea proceedings?

17 A In the jury room we met, Ms. Hinton -- Ms. Batson and
18 I met with the judge that morning in the jury room, and I
19 told him the same thing that I just told you, that I had --
20 Mr. Wooten had an offer; we signed the plea sheets, we
21 turned them in; however, the offer -- the solicitor said
22 the offer had expired during the period of time which I was
23 protected. I know I had that conversation.

24 Q Okay. And did I understand you to say you had
25 subsequent discussions with the chief admin judge as well?

1 Did you say that?

2 A No.

3 Q No. Just the presiding judge?

4 A The trial judge for that week.

5 Q And therein nothing on the record?

6 A No.

7 MS. SHURLING: Okay. No further questions.

8 THE COURT: Cross?

9 MS. RATIGAN: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MS. RATIGAN:

12 Q So would it be fair to say that as soon as you became
13 involved in the case, you started engaging in plea
14 negotiations with the State?

15 A Once we got the discovery material, yes.

16 Q Okay. Was Mr. Wooten ever brought over to plead
17 guilty prior to this, do you recall?

18 A There was a long period of time when David was not
19 incarcerated. That resulted from an issue -- or an
20 incident, I believe, that his wife alleged -- his wife at
21 the time alleged and they revoked his bond. But I don't
22 recall specifically that they brought him over on another
23 occasion, but that doesn't mean they might not have.

24 Q Specifically end of October, I believe October 27th,
25 28th, do you recall receiving a bond card to have him come

1 in to plead?

2 A Oh, it's possible. I don't remember when he was -- I
3 don't remember when he was -- when his bond was revoked,
4 off the top of my head. It looks like he was bond carded
5 on 10/27/2011.

6 Q Okay. And would that have been for a plea, do you
7 remember?

8 A I don't think so. I think that probably would have
9 been -- typically, that would be in the middle of the
10 process, so it would be an opportunity for Ms. Hinton and I
11 or whoever the solicitor was to talk about some options.

12 Q Okay. Now, that 18-year offer that's Exhibit 1, did
13 you receive that in the physical mail or was it an e-mail;
14 do you remember?

15 A The one dated December 20th?

16 Q Yes. Well, no. Let me see.

17 Here we go. I'm handing you Exhibit 1. Did you
18 receive that in the mail mail or was it e-mailed to you?

19 A Possibly both.

20 Q Okay.

21 A Some solicitors e-mail everything, some snail mail the
22 rest.

23 Q And when you received that 18-year offer, at that
24 point, was Mr. Wooten at the jail?

25 A I believe he was at the jail at that time, yes.

1 Q Did you take that offer down to him at the jail?

2 A Yes.

3 Q And did you explain the risks and the advantages of
4 taking this plea offer?

5 A Of the initial plea offer?

6 Q Yes, sir.

7 A Yes.

8 Q The one -- the 18 years.

9 And at that point, did Mr. Wooten ask you to make a
10 counteroffer?

11 A Yeah. I don't know that David used the word
12 "counteroffer," but he was not -- he was not willing to
13 accept that at that point in time. I think he probably --
14 I would be guessing. I assume he asked me to continue
15 negotiations, because I did.

16 Q Do you recall him asking you to make a five-year
17 counteroffer?

18 A Possibly. I mean, I don't have any independent
19 recollection of that, but that's entirely possible.

20 Q But at the end of the day, he did reject that 18
21 years?

22 A Yes.

23 Q Now, this 15-year offer -- handing you Exhibits 2 and
24 3, which we've already discussed are basically the same,
25 those were received while you were on vacation?

1 A Yes.

2 Q And, again, were those received physical mail or
3 e-mail; do you recall?

4 A I don't have any independent recollection. It could
5 have been both.

6 Q And the first you had heard of these offers was when
7 you got back to your office?

8 A I had discussed the case. If I recall, I may have
9 said the 20th earlier, but my protection may have started
10 on the 15th. I remember there was a term of General
11 Sessions that week. I remember being in the hallway right
12 in front of the Family Court secretary's office looking out
13 those windows when Ms. Hinton said she was going to make an
14 offer of 15 years and that she was going to send that to
15 me. And I know -- I know I reminded her that I was -- that
16 was my last day of availability until into January. And
17 the letter was dated five days later.

18 Q Now, once you got back from your trip and discovered
19 these plea letters, did you go and speak to your client
20 first or did you contact the assistant solicitor?

21 A When I got the letters?

22 Q Right. When you discovered those letters had been
23 sent in your absence, did you go right to the jail and talk
24 to Mr. Wooten or did you contact the assistant solicitor to
25 figure out what was going on?

1 A I think I contacted Ms. Hinton and said, "I don't have
2 any sentencing sheets," and I believe she said they're --
3 she would put them downstairs in the -- whatever that is,
4 the office downstairs. I don't have any, again,
5 independent recollection, but I'm assuming based on the
6 fact that I went and got signed sentencing sheets from her
7 that that's where I got them.

8 Q Okay. And when you went to talk to Mr. Wooten, did he
9 tell you during that meeting he would accept that 15 years?

10 A Yes.

11 Q Okay.

12 A It was a real short meeting as the deputy testified
13 because there was some urgency, if I recall, on
14 Ms. Hinton's part of getting those back to her that day.
15 In fact, I think the e-mail confirms that.

16 Q I'm going to hand you Exhibit 5. This is the series
17 of e-mails you and the assistant solicitor exchanged that
18 morning. I'm going to direct you to the e-mail that you
19 sent her at 10:52. It says something in there about eight
20 or nine years. Do you recall the context of that? Were
21 you making a counteroffer before you went to talk to your
22 client? Or -- I mean, how do you recall that eight or nine
23 years coming about?

24 A I think that was something -- after reading this, I
25 believe that's what David had asked me to counteroffer

1 with, eight or nine years.

2 Q And did he ask you for that counter prior to knowing
3 about this 15 years? I'm just trying to get the timeline
4 kind of sorted out.

5 A I believe that's correct. I visited him or talked to
6 him on November the 2nd, and then on -- and I don't
7 remember the date or the other offer for the 18 years.
8 That was November the 18th. That was a written proposal.
9 I discussed that with him. But I believe that's when he --
10 I'm guessing as to exactly what he said, but I believe
11 that's when he asked me if he could -- if I could get
12 something like eight or nine years, and that's what I
13 reminded Ms. Batson of my conversation in the hallway. And
14 you said -- quoting, it says you said, "you" being Brandi,
15 you wouldn't recommend anything other than the 15 years.
16 And then we go on to talk about the Oconee County cases as
17 well.

18 Q So at that stage, even though the 15-year offer has
19 been made, albeit in your absence, you were still
20 negotiating with the State?

21 A Well, my position on that is I always try to enhance
22 the position of my client even up till the time we do a
23 plea. But yes.

24 Q And after you got Mr. Wooten to sign the sentencing
25 sheets and brought it back to the assistant solicitor, I'm

1 paraphrasing, but basically, she said at that point the
2 victims wouldn't go along with it?

3 A That's what her e-mail says.

4 Q Okay. And in your experience, if the victims are not
5 comfortable with the plea offer, does the State pursue that
6 plea offer or do they take the victim's wishes into
7 consideration?

8 A Well, that depends on what county, what solicitor and
9 how adamant the victim is or are. I don't think there's
10 any general rule of the thumb.

11 Q Have you ever -- you've practiced law for a while.
12 I'm not going to ask you how long. But have you ever asked
13 in an order of protection for that to encompass things such
14 as plea offers or anything of that nature, or were your
15 orders just limited to court appearances?

16 A Typical request for an order of protection is a letter
17 from me to the administrative judge requesting that I be
18 protected from date X to date Y. Doesn't have any details
19 or anything else. There are some Family Court judges and a
20 couple of Circuit Court judges in Anderson who require --
21 Judge Macaulay, retired -- require a specific form. But
22 even that form doesn't -- it's just a form, so it doesn't
23 have details in it at all.

24 Q So your belief at the time was this order of
25 protection would also protect you from things like receipt

1 and conveyance of plea offers; would that be fair to say?

2 A Again, I would qualify that by saying in a criminal
3 case, I don't think there's anybody qualified, and I think
4 it would be a disservice and possibly misconduct to have
5 anybody try to convince my client to accept a plea. I
6 mean, that would be my position. So yes.

7 Q And the date that y'all ultimately pled guilty, that
8 morning I believe you stated you brought up this 15-year
9 offer to Judge Goldsmith?

10 A In chambers, that is correct.

11 Q And did you make him aware that you had registered
12 your displeasure with the deputy solicitors?

13 A Yes. I believe -- I can't think of her name. The
14 deputy solicitor was actually there that ---

15 Q Betty Strom?

16 A Betty was actually there that morning.

17 Q And at that point, did you ask the judge to try and
18 enforce that 15-year ---

19 A Again, I don't know specifically what I asked the
20 judge to do. I believe I said, Judge, something to the
21 effect that, you know, had this plea arrangement --- we had
22 signed plea sheets. We had an agreement for 15 years.
23 We'd like to go forward on that. And his position --
24 again, paraphrasing, I don't remember specifically -- was
25 we're on the trial docket. We're ready for trial. There's

1 a -- here's what I -- I think that's how it came out.
2 Here's what I would do was I would accept what the
3 solicitor as opposed in -- 25 years, or we can go to trial.
4 He was very businesslike.

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

6 REDIRECT EXAMINATION

7 BY MS. SHURLING:

8 Q Mr. Aaron, in what was marked as Plaintiff's 1 in the
9 last proceeding and is now Plaintiff's 5, if I could get
10 you to look at the last document in the stack that was
11 provided to us by Ms. Batson, what is that?

12 A I have no idea. It looks -- it says it's her case
13 notes. I've never seen that other than maybe the last time
14 we were here.

15 Q And can you read for me the entry on 1/4/2012?

16 A "BMB and myself met with victims and went over the
17 offer. Called them back today, informed that we did not
18 hear back from defense attorney on the offer so we will
19 prepare for trial."

20 Q And the next entry is on the 5th, correct?

21 A Yes.

22 Q Okay. And then there is an entry concerning a
23 discussion with the victim's father on the 12th; is that
24 also correct?

25 A Yes.

1 Q What is the date of the next entry?

2 A February 3, 2012.

3 Q There's no entry at all with regard to having had a
4 discussion with you about going forward on the original
5 offer or producing these plea sheets or anything?

6 A I don't see one.

7 MS. SHURLING: I had to -- Your Honor, I was not using
8 my phone. I needed a 2012 calendar.

9 BY MS. SHURLING:

10 Q On the 2012 calendar, January 2nd is on a Monday.
11 Would you ordinarily have returned from a vacation over the
12 holidays on the Monday following the New Year's holiday?
13 Or . . .

14 A I would typically -- what I normally do, and I've done
15 this for probably the last five or six years from
16 February 5th -- not February -- December 15th or
17 thereabouts through the end of the first week in January,
18 usually I put January 10th, but that's what I normally ask
19 for. I get fussed at, but I ask for it.

20 Q So that would have been on or about January 6th would
21 have been the time period you would have had your order of
22 protection terminate?

23 A That's correct.

24 Q And Friday was the 6th.

25 A And I don't believe that January there was a term of

1 General Sessions. I know there wasn't one the first week.
2 But yes, short answer.

3 Q And did you say you do or don't notify clients when
4 you're going to be away on protection?

5 A No. Nope.

6 Q You don't?

7 A They can still call my office.

8 Q Okay. Is it your understanding that the victim's
9 wishes with regard to a plea offer is controlling or
10 controlling as regard to plea negotiations?

11 A I don't make that call. Every county is different.
12 Every Solicitor's Office is different. Some are inclined
13 more than others to -- I think they all have to consult the
14 victims, but I think each office uses their own discretion.
15 I've had cases before where the victims have been told very
16 politely that we understand that, however, we're going
17 forward. This is as good as we can get. I've had others
18 that have left it to the victims completely.

19 Q When you went to see the applicant at the jail on
20 January 17th to sign the plea sheets, had you already had
21 discussions with him prior to that day about the offer and
22 gotten his agreement to accept it?

23 A I can only assume I had. I mean, I don't have any
24 independent recollection of that.

25 Q Okay.

1 A But considering the previous offer was 18 and this was
2 for 15, I would assume, yes. But I can't --

3 Q Okay. And in any event, there's no question that your
4 client and you signed the plea sheets clearly indicating a
5 negotiated sentenced to two counts of lewd act on that day?

6 A That's my signature, and I know that David signed it
7 in front of me because his initials are on there as well.

8 MS. SHURLING: No further questions.

9 MS. RATIGAN: I have nothing further.

10 THE COURT: Who was the judge you had been in front
11 of?

12 MS. SHURLING: Judge Goldsmith, Your Honor.

13 THE COURT: Do you know in January the 17 or whenever
14 you signed those sheets?

15 THE WITNESS: There wasn't a term that week. I don't
16 know if there was a judge coming up the following week or
17 not, to be honest with you.

18 THE COURT: And you don't know if that judge would
19 have accepted the negotiated plea; is that right?

20 THE WITNESS: That's correct.

21 THE COURT: Okay. Thanks. Okay... Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Okay.

24 MS. RATIGAN: I ask that Mr. Aaron be excused, Your
25 Honor.

1 THE COURT: Any objection?

2 MS. SHURLING: None.

3 THE COURT: Okay. Thank you.

4 MS. SHURLING: Your Honor, my next witness would be
5 Ms. Brandi Hinton, and I understand she's in the courtroom.

6 THE CLERK: She's, I think, available.

7 WHEREUPON,

8 BRANDI BATSON HINTON,

9 After first having been duly sworn, testified as follows:-

10 THE CLERK: State your full name for the record.

11 THE WITNESS: Brandi Batson Hinton, H-I-N-T-O-N.

12 DIRECT EXAMINATION

13 BY MS. SHURLING:

14 Q Good morning.

15 A Good morning.

16 Q Sorry to be starting over, but do you recall being the
17 assigned prosecutor on the case of Mr. William David
18 Wooten?

19 A Yes, I do.

20 Q And have you had the opportunity prior to this
21 proceeding to thoroughly review all your records in this
22 case?

23 A I have.

24 Q Okay. Prior to the original post-conviction relief
25 hearing, had you received a subpoena from my office

1 requesting any and all documentation relevant to plea
2 negotiations and discussions concerning this defendant?

3 A Yes, I have.

4 Q And prior to that proceeding, did you turn over a copy
5 to me of the letter dated December 20, 2011, extending the
6 15-year deal that expired on January 3rd?

7 A I believe I did. I know that there were some
8 documents in your package that were not the same as
9 Ms. Ratigan's. I'm not sure if that was or not.

10 Q Okay. And following your testimony at that
11 proceeding, did I contact you and ask you for any
12 supporting documentation you had concerning your PCR
13 testimony that you had extended the offer to Mr. Wooten
14 through his attorney in writing back in December 2011?

15 A Yes.

16 Q And in response to that inquiry, did you provide me a
17 copy of that December 20th letter?

18 A Yes.

19 Q Okay. Prior to that hearing, had I contacted you on
20 previous occasion concerning any and all records that would
21 be available concerning previous plea offers that were on
22 the table?

23 A Prior to the first PCR hearing?

24 Q Right.

25 A Yes.

1 Q And, in fact, had asked for any available
2 documentation concerning previous plea offers, correct?

3 A Yes.

4 Q You have seen and, in fact, provided me what has now
5 been marked as Petitioner's 1. Defendant's 4. Pardon me.
6 It will be Plaintiff's 4. I'm sorry. There was a wrong
7 sticker put on there. When did you provide me those
8 sentencing sheets?

9 A Again, I think I sent an e-mail last Tuesday saying I
10 wasn't sure if these originally had been included, but I
11 know I at least sent them last Tuesday. Before that, I
12 don't know if they had been provided or not.

13 Q Well, during your testimony at the last
14 post-conviction relief hearing, I asked you if the
15 documents you had handed me immediately before the hearing
16 were all you had available concerning plea negotiations,
17 didn't I?

18 A Yes, you did. And as I informed you in the e-mail on
19 Tuesday, there was another file of Mr. Wooten's that had
20 been misfiled in our storage unit, and that's where those
21 sentencing sheets were.

22 Q Okay. Well, one thing we did have at the last
23 proceeding, thanks to you, was a compilation of all the
24 e-mail exchanges between you and Mr. Paul Aaron, correct?

25 A Correct.

1 Q And you were gracious enough to include with that a
2 copy of what has the header 13th Solicitor Circuit
3 Solicitor Case Notes?

4 A Correct.

5 Q Okay. Would you look with me, please, at Page 2 of
6 that document for a moment.

7 A (Reviews document.)

8 Q What, if anything, does it indicate took place with
9 regard to these charges on January 17, 2012?

10 A There is no note from January the 17th.

11 Q Okay. Looking earlier in that document, there is an
12 e-mail from you to -- excuse me, Your Honor -- 1:24 p.m.
13 Is that dated January 17, 2012?

14 A It is.

15 Q And what does that indicate?

16 A It indicates that I had received signed sentencing
17 sheets from Mr. Aaron and that I would -- that I contacted
18 the victims and that they did not wish to extend the plea
19 offer any further and that they would like the case to go
20 to trial.

21 Q Okay. Well, looking at these signed sentencing sheets
22 that were dated, at least by Mr. Aaron, on January 17th, is
23 that your signature?

24 A It is.

25 Q And is that your signature?

1 A It is.

2 Q And at least at the time you filled out these sheets
3 and supplied them to Mr. Aaron, you were in agreement with
4 a plea to two counts of lewd act?

5 A No. I was not. What I -- I always sign the
6 sentencing sheets before I give them to a defense attorney.
7 But my conversations with Mr. Aaron was that I would allow
8 him to sign Mr. Wooten up because we had been back and
9 forth so many times on whether or not he was going to
10 plead, and that once he, in good faith, returned signed
11 sentencing sheets, then I would discuss it with the victims
12 again.

13 Q And, again, these sentencing sheets were generated by
14 you in your office?

15 A Correct.

16 Q And they indicate that this was for a negotiated
17 sentenced?

18 A Correct. Of 15 years.

19 Q Okay. And after you got these sheets back, you had
20 discussions with the victim -- or victim's family?

21 A Correct.

22 Q Were those in person or on the phone?

23 A I believe they were on the phone.

24 Q Is there any particular reason why they would not be
25 documented along with your other communications with the

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1 victim and the family in the case file notes?

2 A I do not -- I mean, I don't note every conversation I
3 have. I -- I do my best to do that. But no, not every
4 conversation is -- is noted.

5 Q When the family indicated that they did not wish to go
6 forward on that offer, did you have discussions with them
7 about the fact that you had extended the offer during the
8 time period when your client's attorney was under
9 protection?

10 A No. I was not aware of that so I would not have had
11 that discussion with them.

12 Q Pardon?

13 A I was not aware of that at the time, so I would not
14 have had that discussion with them.

15 Q So you were not present in the courtroom during
16 Mr. Aaron's testimony?

17 A This morning?

18 Q Correct.

19 A No, I was not.

20 Q Were you present in the courtroom during his testimony
21 at the previous proceeding?

22 A I believe at least for part of it, yes, I was.

23 Q So you're aware of his position that he had made you
24 fully aware of the fact that he was under order of
25 protection from approximately January [sic] 15th through at

1 least January 5th, possibly the 6th?

2 A Yes. - And as we discussed, in the prior PCR hearing,
3 the way that protection works in our office is it's sent to
4 Greenville, and then we receive an e-mail with a list of
5 every attorney that's requested protection. I do not check
6 those lists every time I extend an offer to someone.

7 Q When did you become aware that Mr. Aaron had, in fact,
8 been out of the state and under order of protection?

9 A I can't testify as to when. I know that we had a
10 conversation about it. I don't know if it was when we
11 spoke to Judge Goldsmith and Mr. Aaron was explaining his
12 disdain with me for not keeping the offer extended. I know
13 he had spoken to my bosses about it. So at some point, we
14 had a conversation. I can't tell you when.

15 Q Okay. But you did not tell the victim's family that
16 the offer had been extended while he was under -- whether
17 you knew it or not, you didn't tell the victim's family at
18 any juncture that the offer had been extended while my
19 client's lawyer was under protection and out of state?

20 A I have no recollection of that, no.

21 Q And so as far as the victim's family had any reason to
22 know, this offer had been made and the client had had all
23 that time to decide whether or not he was going to take it
24 and had not attempted to do so until that late in January?

25 A No. The original offer for 15 years was, I believe,

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1 extended prior to that time. I made a timeline that's in
2 that envelope because I don't remember every date. But I
3 know we discussed an 18-year offer and then there was a
4 15-year offer made at some point.

5 MS. SHURLING: May I approach, Your Honor?

6 THE COURT: Yes.

7 BY MS. SHURLING:

8 Q Isn't it a fact that that November 18, 2011, letter
9 indicates that the 18-year offer was made in November
10 before Mr. Aaron left on protection?

11 A I'm not sure when his protection began, but that's the
12 date of the letter is November the 18th.

13 Q And the date of the letter which you provided me after
14 the first PCR hearing extending the 15-year deal was when?

15 A December 20, 2011.

16 Q And, again, you deny knowing that Mr. Aaron was on
17 order of protection at that time?

18 A I believe I made that clear, yes.

19 Q Okay. And, Ms. Hinton, I really am not trying to be
20 difficult, but once you found out -- whether you knew or
21 not, once you found out that Paul Aaron wasn't being
22 dilatory, that he just was gone the whole time the offer
23 was on the table, why didn't you discuss with the family
24 the fact that this was not a matter of the client just not
25 taking the offer, that his lawyer had not even been around

1 to offer it to him?

2 A Well, personally, I didn't think that 15 years was an
3 appropriate offer to begin with, so I was going to make the
4 family make that decision on whether or not they wanted the
5 girls to testify. I was not going to influence their
6 decision. That's what Mr. Aaron asked for, so I agreed to
7 go speak with him about it.

8 I'm not aware of any rule that prohibits me from
9 sending correspondence to an attorney while they're out of
10 town or on protection. I cannot rule them into court, but
11 I'm not aware of my inability to communicate with them.

12 Q Well, if you didn't think it was an appropriate offer,
13 why did you send the letter on December 20th? You extended
14 the offer, 15 years.

15 A Because I believe that we had discussed with the
16 family, and at the time, they were okay with that. That's
17 what they wanted to do. And so I extended that offer with
18 a very firm expiration date because we have a case
19 management system. I'm not allowed to extend the
20 expiration date without permission from people who are more
21 important than me in my office. And I believe that's why
22 Mr. Aaron went to them about potentially extending it, and
23 they were not inclined to do that.

24 Q Again, very quickly, you know who is BMB?

25 A Those were my initials before I was married.

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1 Q Okay. And excuse me. Is that another prosecutor in
2 your office?

3 A No. That is my victim advocate.

4 Q Okay. So the entry on January 4, 2012, would be made
5 by your victim advocate?

6 A That's correct.

7 Q All right. And she indicates that it was she that
8 called the victim's family on January 4th and told them
9 that since you had not heard back from the defense
10 attorney, you would be preparing for trial?

11 A Yes. We made that phone call together.

12 Q Okay. Is there a policy in your office that you will
13 not go forward with plea offers if victims don't agree with
14 it?

15 A No. That's not -- that was just a courtesy that I
16 extended to them in this case.

17 Q Okay. But their opinion is not always definitive?

18 A No. It's never definitive, no.

19 Q Okay. And you did make the 15-year offer on
20 December 20th?

21 A Yes.

22 Q Did you even consider telling the family that you
23 would not ordinarily extend the deadline, but that since
24 you knew now that the guy's lawyer had been out of the
25 state the whole time the plea offer was pending, that you

1 would like to extend it to give him a few more days?

2 A I do not have the authority to do that in our office.
3 That is a decision that has to be made by my boss to extend
4 an offer past the expiration date in our case management
5 system.

6 Q And did you request that permission?

7 A Mr. Aaron, I believe, had a conversation with them
8 about that.

9 Q Is there any reason why there are no notations
10 concerning that in the case file notes?

11 A Because it's not a conversation that I had. It's a
12 conversation that Mr. Aaron had with them. Why they didn't
13 note it, I can't tell you. But no. I did not make a note
14 of it. It was not a conversation that involved me.

15 Q Okay. So you never went to your boss and said, "Look,
16 I acted in good faith. I extended the offer. I didn't
17 know he was going to be out of town. I now know he was
18 gone the whole time. He didn't just drag his feet. He was
19 gone. And I'd like to give him that, you know,
20 consideration of a day or two to get with his client"?

21 A No, I did not.

22 Q A moment's indulgence.

23 In the series of e-mails going back and forth between
24 you and Mr. Aaron, do you recall one from January 12th in
25 which Paul Aaron reminded you that he was protected?

1 A (Reviews document) I -- I do see where he said that
2 was the December term, the last day of which and through
3 January 2nd I was protected and out of the state. And I
4 don't think he references us having a conversation about
5 that.

6 Q Okay. So at least according to this e-mail, Mr. Aaron
7 was under order of protection through January 2nd, not
8 January 5th or 6th?

9 A That's what his e-mail says, yes.

10 MS. SHURLING: Thank you. No further questions.

11 THE COURT: Cross.

12 MS. SHURLING: A moment's indulgence. I'm sorry.
13 Thank you.

14 MS. RATIGAN: I'll be brief.

15 CROSS EXAMINATION

16 BY MS. RATIGAN:

17 Q Ms. Hinton, do you recall whether prior to you
18 conveying that initial 18-year offer, had you ever been
19 informed that Mr. Wooten wanted to plead guilty?

20 A I believe actually the opposite. I was informed that
21 he did not want to plead guilty and that he wanted a trial.
22 I believe I was informed that when I carded him in the end
23 of October. And then I don't know whether we had a
24 different conversation to go ahead and extend the offer or
25 what, but I did subsequently extend one.

1 Q So you bond carded him in at the end of October 2011?

2 A I believe that's correct, yes.

3 Q And was that to plead? Or do you recall why you bond
4 carded him in?

5 A That would have been for a plea, yes.

6 Q But you were subsequently informed that he did not
7 want to plead guilty, he wanted to go to trial?

8 A Yes.

9 Q Okay. But you ended up making that 18-year offer in
10 November?

11 A Correct.

12 Q And did Mr. Aaron respond with any kind of a
13 counteroffer?

14 A I don't know specifically to that one, but I know that
15 we -- I believe he did. Something like five years. But we
16 went back and forth many times on an offer, yes.

17 Q Okay. So the 18-year offer wasn't rejected. In fact,
18 some kind of counter was made -- I mean was rejected
19 because there was a counter made?

20 A Yes. Either to that or to the initial 15. I'm not
21 sure which one.

22 Q And when you made that 15-year offer, you eventually
23 heard back from Mr. Aaron in that series of e-mails?

24 A I heard back after the expiration date of that offer,
25 yes.

1 Q Okay. During those e-mails, at some point, Mr. Aaron
2 talks about an eight- or nine-year counter. Do you recall
3 discussing that with him? Do you have that up there?

4 A I do have --

5 Q I believe it's the e-mail that's from him at 10:52.

6 A Yes. That he suggested an eight- or nine-year
7 sentence, and I said I wouldn't recommend anything other
8 than the 15.

9 Q So even though the 15-year had been conveyed, he was
10 still negotiating in offering either eight or nine?

11 A That's correct.

12 Q Did Mr. Aaron ever tell you affirmatively that his
13 client had accepted the 15 years or just that he had signed
14 the blank sentencing sheets?

15 A Just the sentencing sheets.

16 Q And regarding the sentencing sheets, did you ever
17 affirmatively tell Mr. Aaron that if he and his client
18 signed those sentencing sheets, he would absolutely get
19 that 15-year offer, or were you just floating that out
20 there to see what you could do?

21 A I think I was floating it out there. In fact, I think
22 there's an e-mail that makes it clear, and I'm trying to
23 find it. But I think I made it very clear that I would
24 take that back to the victims, but that I was not promising
25 anything to him.

1 Q So at any point prior to the date Mr. Wooten pled
2 guilty, did you ever receive any confirmation he accepted
3 that 15 years?

4 A No.

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

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MS. SHURLING:

9 Q At the time that you prepared sentencing sheets, did
10 you do so because Mr. Aaron had told you his client was
11 going to take the deal?

12 A No. That was in response to me saying this is in no
13 way promising. And, in fact, I believe that's my
14 January 12th e-mail at 1:33 that I will consider it, but
15 not until he comes to terms, that he pleads like this, and
16 then I would take it back to the victims.

17 Q And had you had any discussions -- I know what it says
18 the victim's advocate entered in the case notes on the 4th.
19 But, again, you had no discussions with the victims between
20 -- when the offer expired on January 3rd and whatever
21 conversation you had apparently on January 17th, did you
22 have any discussions with them about extending the offer?

23 A No.

24 Q None at all?

25 A Past the expiration date, is that what you're asking?

1 Q Correct.

2 A No.

3 Q On the 17th, once you had these sheets in hand, you
4 did have that discussion with the victims?

5 A I told them that -- my recollection of our
6 conversation is that I told them I have these signed
7 sentencing sheets. He wanted 15 years. Asked their
8 opinion on it. And they were not inclined to have him
9 plead to that.

10 Q Did you tell them that you had agreed, depending on
11 their position, to accept it?

12 A I think I made it very clear to Mr. Aaron that I was
13 leaving it up to the victims. I wasn't entering into an
14 agreement to anything, that I would let him know what they
15 decided.

16 Q I'm focusing at this point on what was clear to the
17 victims. Did you make it clear to the victims that you, as
18 the prosecutor, were willing to allow the 15-year deal to
19 go forward if they were okay with it?

20 A We probably did have that conversation, yes. I
21 probably said, like I do with most of my victims, "This is
22 what he's willing to do. If y'all are okay with that,
23 then, you know, we can consider that." But, again, that's
24 another thing that I would have to have put in front of my
25 boss, too, and got permission to do, much like the day that

1 Mr. Wooten plead, he was supposed to plead straight up off
2 the trial docket. However, my boss is allowing me to
3 extend the 25-year offer to him.

4 Q Sure. But at least on December 20, 2011, everyone was
5 on board?

6 A At least willing to let me extend the offer without
7 raising too much of a ruckus, yes.

8 Q Okay. But, I mean, you wouldn't have sent that letter
9 out on December 20th for that offer and made it good until
10 January 3rd unless your victims, however -- I'm not
11 debating whether they were reluctant or happy about it, but
12 they had agreed to go along with it?

13 A Sure. Yes.

14 MS. SHURLING: No further questions.

15 MS. RATIGAN: I have nothing further and ask that
16 Ms. Hinton be excused.

17 THE COURT: Okay. Thanks.

18 THE WITNESS: Thank you, Your Honor.

19 MS. SHURLING: Your Honor, I believe we've got a few
20 exhibits we need to get tags straight on, and I will have
21 testimony from the applicant. Does Your Honor want to go
22 forward at this time or take a quick break?

23 THE COURT: Are you asking for a break?

24 MS. SHURLING: It's up to -- I was asking whether the
25 Court wanted to.

1 THE COURT: Do you need a break? Does anybody need a
2 break? Let's go.

3 MS. SHURLING: Thank you. Mr. Wooten, David Wooten to
4 the stand.
5 WHEREUPON,

6 WILLIAM DAVID WOOTEN,
7 After first having been duly sworn, testified as follows:

8 THE CLERK: State your full name for the record.

9 THE WITNESS: William David Wooten.

10 DIRECT EXAMINATION

11 BY MS. SHURLING:

12 Q Mr. Wooten, your name is William David Wooten?

13 A Yes.

14 Q And you go by David?

15 A I go by David.

16 Q Okay. Were you aware prior to his departure that your
17 lawyer was about to leave on vacation at the end of 2011?

18 A I had no idea.

19 Q Were you aware at the beginning of 2012 when
20 subsequent plea negotiations continued that he had been
21 gone for a period of time?

22 A I had no clue.

23 Q Do you recall having discussions with your lawyer
24 concerning the 18-year offer that was extended in November
25 of 2011?

1 A No.

2 Q You do not recall that?

3 A I do not recall an 18-year offer.

4 Q Okay. Do you recall the 15-year offer for two counts
5 of lewd act?

6 A Yeah. The time he brought it to the county jail when
7 Lisa pulled me out. That's when the 15-year offer came at
8 me.

9 Q In January 2012, when was the first time you saw Paul
10 Aaron?

11 A In what year?

12 Q January 2012, the same year you plead in February.

13 A Okay. The only time I saw him, he came down on a
14 Thursday with the plea sheets, and I signed them. And he
15 come back the next Friday and said, "Well, they're not
16 going to let you plea. You're being put on the trial
17 docket. We're going to trial." That's where I was at with
18 that.

19 Q When he came down to see you on January 17, 2012, did
20 he discuss with you the plea offer that was being made by
21 the State?

22 A The 15-year?

23 Q Yes.

24 A No. He just said, "They're offering you 15." He
25 said, "I think you'd be good doing this."

1 I said, "All right."

2 And i said -- so he said, "Sign it." And I signed it,
3 and that's how it went. .

4 Q Was it your understanding at that time that that was a
5 firm offer?

6 A Uh-huh.

7 Q Did you think you were going to court that day?

8 A No. He said that we were going to plead out on the
9 23rd of January.

10 Q Okay.

11 A That's what he said. I remember him saying that.

12 Q And then the next time he came to see you was when?

13 A Well, he come on that Thursday. He came back on that
14 Friday and then was telling me the plea was no good, we're
15 going to trial, that she's put you on the trial docket to
16 go to trial. He never told me why we were going to trial.
17 Okay.

18 Q All right. And I don't mean to sound stupid, but when
19 you say you signed these documents on January 17th, when
20 you say he came back on Friday, you don't mean the 18th.
21 You mean the Friday the following week?

22 A No. It was that Thursday. He come back the next day.

23 Q The next day.

24 A Yeah.

25 Q What did he tell you the next day?

1 A That the plea sheets were no longer no good and that
2 we were going to be -- she had put me on the trial docket
3 to go to trial.

4 Q And when was your understanding of when you would be
5 going to trial?

6 A Well, he said something around the 23rd, but it ended
7 up being in February the 27th. He said something, because
8 when we come down on that Thursday, he said we was going to
9 go to court on the 23rd and plea. Then he come back that
10 Friday. He said something -- I remember him saying
11 something, we're going to trial this -- this month. But we
12 didn't end up going till February.

13 Q So the next day is when he told you those plea sheets
14 weren't any good?

15 A Right.

16 Q Did he tell you at that time that the 15-year deal had
17 actually expired on January 3rd?

18 A No. I had no clue.

19 Q Did you ever know -- prior to the January 17th meeting
20 with Mr. Aaron at the detention center, did you even know
21 there was a 15-year deal on the table?

22 A No. I had no clue that there was an offer coming at
23 me at all.

24 Q And you didn't know that your lawyer was under order
25 of protection and out of state?

1 A No. I had no clue.

2 Q When you signed these plea sheets, were you committed
3 to entering pleas?

4 A Yeah. I was committed to enter that 15-year offer he
5 gave me.

6 Q To two counts of lewd act?

7 A Uh-huh.

8 Q And you were willing to plead guilty to those?

9 A Right.

10 Q There's been a lot of discussion about your asking for
11 deals involving less time in previous discussions. You
12 don't deny that, do you?

13 A Well, let's say that I didn't make no deals with Paul.
14 I remember him coming around -- it was -- I want to say it
15 was around December -- no. November something. I can't
16 remember the exact date. But he had come to me. He said
17 he thought that the offer should be eight to nine years or
18 something like that. I really -- and I said, "So you think
19 that's good?"

20 And he said, "Yes."

21 So it wasn't me making the offer. It was him making
22 the offer. I really didn't discuss a lot of offers with
23 him.

24 Q Well, A, Mr. Aaron, please.

25 And, B, you understand his role as a defense attorney,

1 he can't make you an offer, right?

2 A Right. I get that.

3 Q So when you say it was him making the offers, you mean
4 it was him throwing out suggestions?

5 A Right. Suggestions at me.

6 Q Okay. And -- but just so we're clear, January 17th
7 you said you would take the 15-year negotiated deal --

8 A Yes.

9 Q -- to two counts of lewd act?

10 A Yes.

11 Q And were that offer magically on the table today,
12 would you take it?

13 A Yes.

14 Q Now, originally, when I filed your application and
15 then I did an amended application, we did many, many issues
16 because we were attacking other aspects of your case,
17 right?

18 A Right.

19 Q And you and I have had some lengthy discussions where
20 I have advised you that in my judgment, your best issue was
21 to proceed on ineffective assistance of counsel concerning
22 the manner in which plea negotiations and plea offers were
23 handed you to seek relief in the form of specific
24 enforcement of the original plea bargain that was in place
25 until January 3, 2015 -- I mean, pardon me, '12, correct?

1 A Correct.

2 Q That's your decision, though, Mr. Wooten. You
3 understand that if you had wanted to go forward on all our
4 allegations and attack everything about this case, that I
5 was prepared to do so. You know that?

6 A Yes, ma'am.

7 Q Are you comfortable with your decision to waive all
8 your allegations with the exception of these that address
9 the manner in which plea negotiations, your lawyer's order
10 of protection, communication with you concerning offers,
11 those issues are all you want to go forward on here today?

12 A Yes, ma'am.

13 Q Had you understood more about the law, would you have
14 wanted your lawyer to at least try to get the Circuit Court
15 to enforce the offer that was extended while your lawyer
16 was protected from court-related matters?

17 A Say again now?

18 Q Would you have wanted your lawyer to file some sort of
19 legal paperwork, a motion --

20 A Yes, ma'am.

21 Q -- and ask the Circuit Court to enforce the plea
22 agreement that was extended and made to terminate while
23 your lawyer was under order of protection?

24 A Yes, ma'am.

25 Q Because you were ready, willing and able to take that

1 offer and enter that plea ---

2 A Yes, ma'am.

3 Q --- as those sentencing sheets evidence, right?

4 A Yes, ma'am.

5 Q Have I raised every aspect of those issues that you
6 wanted to bring to His Honor's attention?

7 A Yes, ma'am.

8 Q If not, speak up. This is your only chance.

9 A You've done a great job.

10 MS. SHURLING: Thank you. No further questions.
11 Please answer anything the State asks truthfully.

12 CROSS EXAMINATION

13 BY MS. RATIGAN:

14 Q Did you come to court at the end of October of 2011 on
15 a bond card?

16 A Yeah. They called me in for a bond card.

17 Q And what was the purpose of coming in; do you
18 remember?

19 A Well, we came in. But I -- the first time ever I've
20 had a bond card. And I met with Paul Aaron out front and
21 asked him what it was. He said -- he said, "It's just a
22 bond card hearing. You go inside and they're going to
23 check your name that you're here and you can leave."

24 We was in there about five minutes, and he said,
25 "Y'all can go." So we left.

1 Q So were you there to plead guilty that day?

2 A I had no recollections of any plea that day.

3 Q And your testimony today is that you never saw that
4 18-year plea offer?

5 A I never seen an 18-year.

6 Q And so therefore, you never made any kind of
7 counteroffer to that 18 years?

8 A Never.

9 Q And when Mr. Aaron came to the jail to talk to you
10 about the 15-year offer in January, why did you decide to
11 take that offer?

12 A Because he's my lawyer, and he told me when -- he
13 said, "This will be the best deal for you to take."

14 Q How long of a conversation did you have about that?

15 A About -- I mean, we just -- we were there about five
16 minutes in the hallway. And Lisa Spangler, she was
17 present.

18 Q So based on Mr. Aaron telling you you need to take
19 this deal, you decide to take it?

20 A Yes, ma'am.

21 Q Did he tell you if you signed that sentencing sheet,
22 you would absolutely get that 15 years or just that he was
23 still working with the State?

24 A That was never discussed.

25 Q When you went to court on February 27, 2012, why did

1 you think you were going to court that day?

2 A Go to trial.

3 Q When did you find out that the State had made a
4 25-year offer?

5 A When Mr. Aaron came back and told me.

6 Q Was it that day?

7 A That same day.

8 Q And so he came back and told you when you were at the
9 courthouse for your trial the State had made this offer?

10 A Yes, ma'am.

11 Q And why did you decide to go ahead and take that
12 offer?

13 A Well, we were going to trial, and then he comes back
14 and tells me that if I go into trial today and we lose, I
15 could get life. And for some odd reasons, I've got my
16 notions that I just -- he wasn't prepared, so I took the
17 25.

18 Q Okay. Because you were facing a life sentence and you
19 thought Mr. Aaron was unprepared, you decide to go ahead
20 and take that 25?

21 A I took that 25.

22 Q Okay. Were you pretty unhappy with him that day?

23 A I was -- I was real dissatisfied with him.

24 Q Why -- when the judge asked you if you were satisfied
25 with counsel, why didn't you take that opportunity to tell

1 the judge you were dissatisfied?

2 A Because at that time, I had no recollection of the
3 laws or anything. I was just, "Yes. Yes. Yes. Yes.
4 No."

5 Q So even though the judge asked you specifically if you
6 were satisfied with Mr. Aaron, you just decide to say
7 "yes"?

8 A Yes.

9 Q Even though you were facing all this time?

10 A Yes.

11 Q So did you lie to the judge when you said you were
12 satisfied?

13 A I don't want to call it lying, but I was going with
14 what my lawyer said with me. And sometimes I'd turn to him
15 and ask him a question while we was there. He'd just nod
16 his head and I'd just say "yes" along with him.

17 Q Did Mr. Aaron tell you to lie to the judge?

18 A No. He didn't tell me to lie. I mean, he nodded.

19 Q Okay. Did he tell you how to answer the question?

20 A I wouldn't say he told me how to answer the questions,
21 like every one of them.

22 Q So when you went to plead guilty that day, would it be
23 fair to say you wanted that 15-year offer back since you
24 were facing 25 now?

25 A Yes. I mean, I . . .

1 Q Well, why didn't you tell the judge that you wanted
2 this 15-year offer back and that your attorney had not
3 performed adequately?

4 A Well, like I say, I only discussed that 15 years for
5 five minutes. I didn't know exactly where the 15 had --
6 why it was dropped. I had no recollections. And if my
7 attorney would have been on point with me about it, sure, I
8 would have said something that day in court. But that's
9 not where we were at. We were at pleading right then and
10 there for 25. He told me if I don't decide, the judge is
11 going to decide for me.

12 Q So you just didn't feel it was proper for you to bring
13 up that --

14 A Right.

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

16 REDIRECT EXAMINATION

17 BY MS. SHURLING:

18 Q As regards to the 15-year offer, your attorney told
19 you the solicitor wasn't going to go along with it?

20 A Right.

21 Q And relayed to you that she wasn't going to go along
22 with it because the victims didn't want to do it anymore?

23 A Right. Well, he didn't say anymore. He said the
24 victims didn't want me to have that plea. I remember those
25 kind of words.

1 Q And he never told you that there had been a firm offer
2 for that for a negotiated 15 made back on December 20th --

3 A Yes.

4 Q -- of the previous year?

5 A Hu-uh.

6 Q And he didn't tell you anything about it expiring
7 while he was under order of protection?

8 A No.

9 Q So the first you knew about the 15-year deal was
10 January 17, 2012?

11 A Yes, ma'am.

12 Q And when he brought you those sentencing sheets, did
13 he say, "Here's the deal"?

14 A Yes, ma'am.

15 Q Did he indicate to you that it was in any way iffy or
16 contingent on anything that would happen after you signed
17 those sheets?

18 A No, ma'am. I just remember him kind of hurrying me up
19 because he said he needed to get back to the Solicitor's
20 Office, get it -- put it on her table.

21 Q If you had known that the victim's family thought that
22 from December 20th ---

23 MS. RATIGAN: I'm going to object, Your Honor. It's
24 outside the scope of redirect.

25 THE COURT: Sustained.

1 MS. SHURLING: Your Honor?

2 THE COURT: What.

3 MS. SHURLING: She has specifically asked why my
4 client did not speak up and say anything to the judge. I
5 want to establish that if my client had known that the
6 victims did not know that the reason he didn't respond to
7 the offer in time was his lawyer was out of town, that he
8 would have spoken up.

9 THE COURT: Go ahead. I'll let -- go ahead. Ask it.

10 BY MS. SHURLING:

11 Q At the time of your plea in February, were you aware
12 that there had been a firm offer that expired when your
13 lawyer was on protection?

14 A Say one more time?

15 Q At the time you plead in February even ---

16 A Right.

17 Q --- were you aware that there had been a firm offer
18 for 15 years that had expired January 3rd while your lawyer
19 was on vacation under order of protection?

20 A No, I didn't.

21 Q If you had known that, would you have spoken up during
22 your February plea and told the judge, "Look, I lost my
23 15-year deal because my judge was on -- my lawyer was on
24 vacation"?

25 A Yes, ma'am. I would have done that. Yes.

1 Q And if you had known that, would you have asked your
2 lawyer to speak to the victim's family about their position
3 concerning that offer based on the fact that it wasn't your
4 fault you didn't accept it sooner?

5 A Right. Yes.

6 MS. SHURLING: Thank you. No further questions.

7 THE COURT: Anything else?

8 MS. RATIGAN: No, Your Honor.

9 THE COURT: All right. Thanks. You can step down.

10 THE WITNESS: Thank you.

11 MS. SHURLING: Your Honor, before we go any further,
12 Ms. Ratigan and I had discussed prior to this proceeding
13 and we were in agreement that we would introduce -- and I'm
14 happy to make it a plaintiff's exhibit. I did not order a
15 complete transcript of the previous PCR, but I did order a
16 transcript of the testimony of Ms. Hinton and the testimony
17 of Paul Aaron. And by agreement with opposing counsel, I'd
18 move to introduce that as a petitioner's exhibit.

19 (WHEREUPON, Plaintiff's Exhibit No. 6 was marked for
20 identification.)

21 MS. SHURLING: A moment's indulgence.

22 Jean Keown to the stand, please.

23 WHEREUPON,

24 JEAN KEOWN,

25 After first having been duly sworn, testified as follows:

1 THE CLERK: State your full name for the record.

2 THE WITNESS: Jean Keown.

3 THE CLERK: Please be seated.

4 DIRECT EXAMINATION

5 BY MS. SHURLING:

6 Q Ms. Keown, what's your relationship to David Wooten?

7 A He's my son.

8 Q And back in January 2012, on the 17th, to be exact, or
9 in that time period, were you aware that a 15-year offer
10 had been made by the State?

11 A No, ma'am.

12 Q You knew nothing about it?

13 A No, ma'am.

14 Q Did you subsequently become aware that a 15-year offer
15 had been made and that it had expired before your son knew
16 anything about it?

17 A Hu-uh.

18 Q How did you first find out that there had been a
19 15-year offer on the table that had expired before your son
20 got a chance to take it?

21 A Honestly, I don't remember. I don't. The dates are
22 all just kind of run together because there was so many
23 different things going on.

24 Q Did you know that Paul Aaron was leaving the state on
25 vacation the end of December 2011/the beginning of --

1 A No, ma'am.

2 Q -- 2012?

3 A No, ma'am.

4 Q You were not aware that he was absent from the state
5 and under an order of protection?

6 A Hu-uh. None whatsoever.

7 Q Was the offer that your son eventually pleaded under
8 in February of 2012 the first offer that you had any
9 knowledge of?

10 A I don't remember.

11 Q You just don't remember?

12 A No, ma'am, I don't.

13 MS. SHURLING: Okay. No further questions.

14 MS. RATIGAN: No cross, Your Honor.

15 THE COURT: Thank you. You can step down.

16 MS. SHURLING: Doug Wooten.

17 WHEREUPON,

18 RICHARD DOUGLAS WOOTEN, III,

19 After first having been duly sworn, testified as follows:

20 THE CLERK: State your full name for the record.

21 THE WITNESS: Richard Douglas Wooten, III.

22 DIRECT EXAMINATION

23 BY MS. SHURLING:

24 Q Mr. Wooten, are you David Wooten's brother?

25 A Yes, ma'am.

1 Q It's your mama that just got off the stand?

2 A Yes, ma'am.

3 Q Were you involved in hiring Mr. Paul Aaron?

4 A No. That was my brother's decision.

5 Q Okay. Once Mr. Aaron was hired, did you participate
6 in any discussions with Mr. Aaron about your brother's
7 case?

8 A Never in his office. Over the phone.

9 Q Over the phone?

10 A Yes, ma'am.

11 Q Were you at some point made aware that the State had
12 extended a 15-year offer in this case?

13 A Yes, ma'am.

14 Q Can you tell us about when you became aware of that
15 offer?

16 A It was probably a couple of days after. We would go
17 see my brother at the LEC about every day or every other
18 day when we could go visit him, and we found out that way.

19 Q Okay. So you found out when your brother told you
20 about the plea sheets Mr. Aaron had brought down for him to
21 sign?

22 A That's correct.

23 Q Okay. How and when did you find out that that deal
24 was not going through?

25 A At some point, I told my brother that the victims did

1 not accept it. And that's the only way we knew. It was
2 not through Paul Aaron.

3 Q Were you at any point made aware that Mr. Aaron was
4 leaving the state and going to be under order of protection
5 for some time at the end of 2011/the beginning of 2012?

6 A No, ma'am.

7 Q In your discussions with your brother following
8 Mr. Aaron's visit in January of 2012, was it your
9 impression that he was committed to that plea offer that he
10 was discussing with you for 15 years to two counts of lewd
11 act?

12 A I think he was committed, but like he said, the
13 conversation with him and Mr. Aaron was so brief that he
14 did not know completely. I don't -- I mean, none of us
15 did. We didn't know it was solid until a couple days later
16 he told us the victims did not accept it.

17 Q Okay. But did he tell you it was contingent on
18 anything?

19 A No.

20 Q So from what he told you, there was a 15-year deal?

21 A Correct.

22 Q And that he agreed to take it?

23 A Correct.

24 Q And he'd signed papers?

25 A Correct.

1 Q That's all you knew?

2 A Correct.

3 Q So you didn't know anything about it being contingent
4 on anything?

5 A That's right.

6 MS. SHURLING: Okay. No further questions.

7 MS. RATIGAN: I have no questions Your Honor.

8 THE COURT: Thanks.

9 THE WITNESS: Thank you.

10 MS. SHURLING: No further witnesses, Your Honor.

11 THE COURT: Got anything?

12 MS. RATIGAN: Your Honor, the State has no witnesses
13 to call. And I'd ask since we've been going awhile, if
14 Your Honor has a desire for any argument, we would just ask
15 to submit like a memo or something like that instead of
16 making closings.

17 THE COURT: Okay. We'll do it that way.

18 All right. Thanks.

19 MS. SHURLING: And I'm sorry. I apologize. My
20 hearing's not good. You ask that we do what?

21 MS. RATIGAN: If the judge asked for -- wanted any
22 argument, that we do it in a memo instead of an actual
23 closing.

24 MS. SHURLING: I would be grateful for that as well,
25 Your Honor.

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THE COURT: All right. Good okay. Thanks.

*****END OF TRANSCRIPT OF RECORD*****

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)4 COUNTY OF PICKENS)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of Common Pleas for
13 Pickens County, South Carolina, on the 20th day of April,
14 2015.

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

17
18

19 July 29, 2015

20
21 

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

11/18/2011

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D. Wooten

Dear S. Paul Aaron:

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

<u>Warrant Number:</u>	<u>Charge:</u>
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
I677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment; prior conviction w/in 10 yrs while RO or inju
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

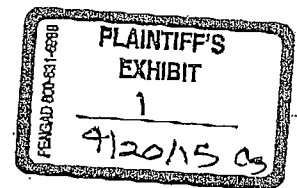
The State will make the following sentence recommendations/negotiation:

Straight up or 18 years

Other conditions/comments:

→ Exp 1/3/12

→ Oconee Agrees to CC time



All charges will be included. Ozonee Co. would agree to concurrent time.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

12/20/2011

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. Paul Aaron:

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

Warrant Number:	Charge:
1677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

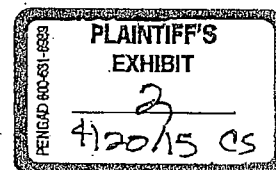
The State will dismiss the following:

Warrant Number:	Charge:
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
1677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386539	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju

The State will make the following sentence recommendations/negotiation:

15 years

Exp 1/3/12



Other conditions/commitments:

Please note that the offer expires on 1/3/2012.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-898-5905
Telefax: 864-898-5798



Pickens County Courthouse
214 E. Main Street, B120
Pickens, South Carolina 29671

Solicitor
W. Walter Wilkins

1/3/2012

S. PAUL AARON
POST OFFICE BOX 1862
CLEMSON, SC 29633

RE: Plea Offer for State v. William D Wooten

Dear S. Paul Aaron:

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The Defendant will plead guilty to the following:

Warrant Number:	Charge:
1677544	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)
K394786	Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

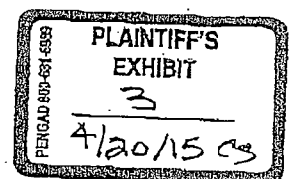
The State will dismiss the following:

Warrant Number:	Charge:
2011GS3901766	Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree
M078229	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
1677543	Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.
M386559	Harassment / 2nd Degree Harassment: prior conviction w/in 10 yrs while RO or inju

The State will make the following sentence recommendations/negotiation:

15 years

Exp 1/3/12



286

Other conditions/comments:

Please note that the offer expires on 1/3/2012.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 1/3/2012 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,

Brandi Batson
Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
 STATE VS.
William David Wooten

AKA:

Race: WHITE Sex: M Age: 42DOB: 10-10-1969 SS#: 250-45-9401Address: 416 East Main StreetCity, State, Zip: Liberty, SC 29557DL#: 8937386 SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brand Batson 17844
Batson, Brandi SC Bar#Will D Wooten
DefendantPaul Aaron 272
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the

☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on;☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

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

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

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

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3901765A/W#: 1677544Date of Offense: 11/28/2010S.C. Code § 16-15-140CDR Code #: 2468

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.Paul Aaron 272
Attorney for Defendant SC Bar#☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on;☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

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

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

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

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ _____

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Presiding Judge

Judge Code:

Sentence Date:

PLAINTIFF'S
EXHIBIT4
4/20/15 CS

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.William David Wooten

AKA:

Race: WHITE Sex: M Age: 42DOB: 10-10-1969 SS#: 250-45-9401Address: P.O. Box 2834City, State, Zip: Easley, SC 29641DL#: 8937386 SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140

of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury WPKJ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State

WITNESSETH:

Brandi Batson
Batson, BrandiSC Bar# 77844

Defendant

Attorney for Defendant

Paul AaronSC Bar# 14727

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS3901763A/W#: K394786Date of Offense: 11/27/2010S.C. Code §: 16-15-140CDR Code #: 2468

SENTENCE SHEET

Presiding Judge:

Judge Code:

Sentence Date:

Hinton, Brandi

From: Batson, Brandi
Sent: Thursday, January 12, 2012 10:16 AM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

Mr. Aaron -

Unfortunately, that offer expired on 1/3/2012. I have no authority to further negotiate on this case.

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671
Phone: 864-898-5915
Fax: 864-898-5586
bbatson@greenvillecounty.org

From: S Paul Aaron Attorney [<mailto:spalegal@bellsouth.net>]
Sent: Thursday, January 12, 2012 9:57 AM
To: Batson, Brandi
Subject: Re: Wooten

Not a conflict

But I think we are close to a plea straight up no recommend except concurrent not consecutive
Lewd act two counts Pickens
Run Oconee case concurrent
Dismiss the other charges pending
Plea on 23 rd
What do you think

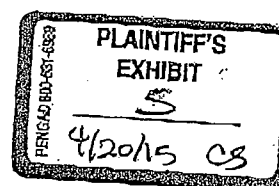
Sent from my iPhone
S Paul Aaron Attorney

On Jan 12, 2012, at 9:24 AM, "Batson, Brandi" <bbatson@greenvillecounty.org> wrote:

Mr. Aaron -

As I am sure you are aware, you once represented one of the victim's fathers (Scott Respass). I have spoken to him about it. I do not see it as a conflict. I just wanted to make sure you felt the same to avoid any issue as we prepare for trial. Please let me know. Thanks!

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671



290

Phone: 864-898-5915

Fax: 864-898-5586

bbatson@greenvillecounty.org

CONFIDENTIALITY NOTICE: *This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.*

Hinton, Brandi

From: Batson, Brandi
Sent: Thursday, January 12, 2012 1:43 PM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

They are downstairs.

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671
Phone: 864-898-5915
Fax: 864-898-5586
bbatson@greenvillecounty.org

-----Original Message-----

From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]
Sent: Thursday, January 12, 2012 1:39 PM
To: Batson, Brandi
Subject: Re: Wooten

Put them downstairs and I will get them

Sent from my iPhone
S Paul Aaron Attorney

On Jan 12, 2012, at 1:33 PM, "Batson, Brandi" <bbatson@greenvillecounty.org> wrote:

> If your client will enter a negotiated plea of 15 years to 2 counts of
> Lewd Act AND you provide me with signed sentencing sheets then I will
> take that information to the office and to my victims and let you know
> what they decide. This in no way is promising that he will be allowed
> to plea to the offer of 15 years, as it has already expired. However,
> I will consider it but not until we come to terms that he will plea to
> 15 years on 2 counts of lewd act and I have signed sentencing sheets
> in my hands. Please understand with an upcoming court term with 3
> cases on the docket as well as guilty pleas (and the fact that all of
> my victims now live in Greenville) I will not be in a position to plea
> this case for the January term. Please let me know your answer ASAP
> and I will send you the sentencing sheets.

>
> Brandi M. Batson
> Assistant Solicitor
> 13th Circuit Solicitor's Office
> 214 E. Main St., B-120
> Pickens, SC 29671

292

> Phone: 864-898-5915
> Fax: 864-898-5586
> bbatson@greenvillecounty.org

> -----Original Message-----

> From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]
> Sent: Thursday, January 12, 2012 1:31 PM
> To: Batson, Brandi
> Subject: Re: Wooten

>
> I believe your verbal offer during our discussion in court was 2 lewd
> acts 15 years and harassment (most recent warrant) That was December
> term The last day of which and through January second I was protected
> as I was out the state Obviously I had to have my clients agreement
> which I now have We have had no term of court since in which to do the
> plea I'm not sure why there needs to be a problem Your initial offer
> wasn't even tendered until November 18 That is less than 30 days
> before I left the state Certainly not an adequate time for any
> attorney to discuss the terms its ramifications Review the evidence
> all necessary according to our supreme court to provide adequate
> representation Please reconsider your position regards the plea for
> all concerned including the victims who don't need to suffer any
> further trauma through a trial

> Thank you for your consideration

>
> Sent from my iPhone
> S Paul Aaron Attorney

>
> On Jan 12, 2012, at 12:59 PM, "Batson, Brandi"
> <bbatson@greenvillecounty.org> wrote:

>
>> You are correct. I would not recommend anything other than fifteen
>> years. I made that offer of fifteen years to you. You still have
>> not accepted that offer. You are requesting to plea straight up,
>> concurrent. I am not willing to do that. Allowing your client to
>> plea straight up to two counts of lewd act only was never an option.

> Further,
>> the offer has expired.

>>
>> Brandi M. Batson
>> Assistant Solicitor
>> 13th Circuit Solicitor's Office
>> 214 E. Main St., B-120
>> Pickens, SC 29671
>> Phone: 864-898-5915
>> Fax: 864-898-5586
>> bbatson@greenvillecounty.org

>> -----Original Message-----

>> From: S Paul Aaron Attorney [mailto:spalegal@bellsouth.net]

>> Sent: Thursday, January 12, 2012 10:52 AM

>> To: Batson, Brandi

>> Subject: Wooten.

>>

>> If you will also remember you asked me to make a counter proposal and

> I

>> suggested an 8 or nine year sentence and you said you wouldn't

> recommend

>> anything other than the 15 years

>>

>> That is also when you suggested we do Oconee as well if they (Oconee

>> solicitor and mr Wooten and his Oconee public defender) would agree

>> I now have all of that done Let's do this plea and make it go away

>>

>> Sent from my iPhone

>> S Paul Aaron Attorney

>>

>>

>>

>>

>> CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it

> are confidential and may contain information which is legally

> privileged or otherwise exempt from disclosure. They are intended

> solely for the use of the individual or entity to whom this e-mail is

> addressed. If you are not one of the named recipients or otherwise

> have reason to believe that you have received this message in error,

> please immediately notify the sender and delete this message

> immediately from your computer. Any other use, retention,

> dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

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> CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited.

>

Hinton, Brandi

From: Batson, Brandi
Sent: Tuesday, January 17, 2012 1:24 PM
To: 'S Paul Aaron Attorney'
Subject: RE: Wooten

Paul -

Thank you for the quick return of the sentencing sheets. As we discussed, I took this offer back to my victims and let them have the final say so. They are confident in taking this case to trial and do not wish to allow him to plea to the expired offer. Thanks.

Brandi M. Batson
Assistant Solicitor
13th Circuit Solicitor's Office
214 E. Main St., B-120
Pickens, SC 29671
Phone: 864-898-5915
Fax: 864-898-5586
bbatson@greenvillecounty.org

-----Original Message-----

From: S Paul Aaron Attorney [<mailto:spalegal@bellsouth.net>]
Sent: Tuesday, January 17, 2012 12:24 PM
To: Batson, Brandi
Subject: Wooten

Plea sheets signed and tendered

Sent from my iPhone
S Paul Aaron Attorney

13th Circuit Solicitor - Pickens

CASE NOTES

Warrant: I677543

Prosecutor: Brandi Batson

Indictment #: 2011GS3901764

LE Case Number:

Defendant: William David Wooten

Victim:

Victim 2

Charge Code: 0396 - Sex / Criminal sexual conduct with minor, or Attempt - victim I1

Created By	Created Date	Created Time	NOTE	Changed By	Changed Date	Changed Time
DOWENS	3/17/2011	9:11:51AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
DOWENS	3/17/2011	9:11:35AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
DOWENS	3/17/2011	9:11:01AM	recv discovery request letter 3/3/11 (letter dated 3/2/11) sent discovery response letter 3/4/11			
AANTHONY	9/21/2011	3:57:06PM	John DeJong called today and said the Paul Aaron had been retained by Mr. Wooten. John has turned his file over to Paul	AANTHONY	9/21/2011	3:57:07PM
BROPER	9/26/2011	9:39:35AM	Okay this victim was originally in the custody of her father (the def) and the step mother Jo Wooten. She has since been placed in the custody of her mother. The mother's family court attorney has passed on a copy of the order. I am sending VIS to the mother today. I will talk to BMB about what to do about notifying the step-mother, b/c technically she doesn't have the victim anymore but we don't want to alienate her b/c she will be a good witness for us. The mother tells me that she gets along fine with the step mother.	BROPER	9/26/2011	9:42:06AM
BROPER	10/24/2011	3:03:34PM	I am faxing victim information to Asap monitoring. They brought by JD showing they are his bondsman and monitoring company and they need victim information to put a zone around victim's home so he can't go in there.	BROPER	10/24/2011	3:03:45PM
BROPER	10/28/2011	2:23:58PM	Victim's mother called and was going to be present for court. She was going to bring victim to court and I advised her not to do that b/c she wouldn't be allowed in the courtroom b/c she is a minor and there would be no need for her to come that day since he would not be pleading. The mother ended up not showing up and I called her today and told her what happened in that BMB talked to Paul and figured out that they are not interested in a plea. I told Mom that we need to meet with victim. She is going to call me back and set that up.	BROPER	10/28/2011	2:24:04PM
BROPER	11/8/2011	11:07:57AM	Have not heard from mother about setting up meeting. Called her back today she is going to talk to husband and I am going to talk to BMB about setting something up.	BROPER	11/8/2011	11:12:10AM

Created By Created Date Created Time

BROPER 11/9/2011 1:02:26PM

BROPER 12/21/2011 10:20:12AM

BROPER 1/4/2012 3:59:55PM

BBATSON 1/5/2012 11:00:34AM

BBATSON 1/12/2012 9:21:31AM

BROPER 2/3/2012 3:42:31PM

AANTHONY 2/9/2012 10:59:03AM

BROPER 2/14/2012 4:36:31PM

BROPER 2/24/2012 1:50:02PM

BROPER 9/13/2012 2:48:54PM

NOTE

Victim meeting set up for Friday in Greenville. BMB and I called victim today to discuss plea offer of 18 years or straight up and Victim is okay with that.

Set up meeting Jan 3 at 9

BMB AND MYSELF MET WITH VICTIMS AND WENT OVER THE OFFER. CALLED THEM BACK TODAY AND INFORMED THEM THAT WE DID NOT HEAR BACK FROM DEFENSE ATTY ON THE OFFER SO WE WILL PREPARE FOR TRIAL.

Spoke to Gville Co. DSS They do not have an open or closed case on William D. Wooten

Victim's father, Scott Respass called to speak to me about Paul Aaron representing him in the past. I told him I would address it. See email to Paul in filings.

Victim coming in Thursday at 8:30 on Feb 9

Paul Aaron came in today to pick up his discovery (which he only requested 2 days ago). We have DSS records that he said he would like to look through. We told him they are available and we will let him sit in the conference room to go through them. He said he didn't have time today, that he would reschedule another time to do that

I sat in on meeting with victim. She is pretty consistent and detailed. I believe she will be a good witness considering this is her biological father. She is believable. BMB met with her a good while and went through questions. We showed her courtroom etc. I set up another meeting next week for BMB. The step Father Matt seems to be a real nice guy and willing to work with us however needed.

Victim 2 GAL 322-3545

SCDC INFO SENT

Changed By Changed Date Changed Time

BROPER 11/9/2011 1:42:09PM

BROPER 12/21/2011 10:20:16AM

BROPER 1/4/2012 4:03:01PM

BROPER 2/3/2012 3:42:32PM

BROPER 2/14/2012 4:39:03PM

BROPER 2/24/2012 1:50:03PM

BROPER 9/13/2012 2:48:54PM

APR/28/2015/TUE 04:13 PM PC Clerk of Court

FAX No. 864-898-5863

P. 018

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

CLERK OF COURT
PICKENS COUNTY
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2012-CP-39-1196

WILLIAM DAVID WOOTEN, #349872)
Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)
Respondent.)

MEMORANDUM IN SUPPORT
OF POST-CONVICTION RELIEF

PROCEDURAL HISTORY

On February 27, 2012, the Applicant pled guilty pursuant to a negotiated plea agreement under the terms of which he entered pleas of guilty to one count of lewd act upon a child¹ and first-degree CSC with a minor² for a negotiated aggregate sentence of twenty-five (25) years. The Honorable Brooks P. Goldsmith accepted the negotiated plea agreement and sentenced the Applicant to concurrent terms of fifteen years for lewd act upon a child and twenty-five years for first-degree CSC with a minor. The Applicant did not pursue a direct appeal from said pleas and sentences.

This matter is currently before the Court by way of a Post-Conviction Relief action. The original application for Post-Conviction Relief filed on August 17, 2012, an Amended PCR application was filed on August 28, 2012 and a Second Amended Application was filed on April 17, 2014. In his applications Applicant has alleged that he is being held in custody unlawfully where his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his guilty plea proceeding. Applicant had expressly waived all his PCR allegations with exception of those addressing Defense Counsel's failure to provide him effective assistance of counsel during the plea negotiation process and during his absence from the State under an Order of Protection. The allegations on which Applicant went forward are found in his Second Amended Application for PCR filed on April 17, 2014 and are set forth in allegations number 7, 8, and 9 in that Amended Application. As

¹ 2011-GS-39-1765

² 2012-GS-39-0492

stated on the record at his April 20, 2015 PCR hearing, Applicant seeks a reversal of his judgments and sentences and the remand of his case for specific enforcement of the plea offer Defense Counsel failed to convey to him in a timely manner. In support of his allegations, Applicant would point to the following relevant PCR testimony.

- At August 25, 2014 hearing, Assistant Solicitor Brandi Batson Hinton, hereafter Sol. Hinton, testified that she believed her plea offer for Applicant to plead to two counts of Lewd Act for a sentence of 15 years was conveyed to Defense Counsel in an offer letter. August Hrg Tr. p. 42, ll. 7-18
- In her August PCR testimony Sol. Hinton admitted that at the time that offer was sent out she *was aware* that Defense Counsel was under an Order of Protection. She explained that the reason the letter offering a deal to 15 years for pleas to two counts of Lewd Act was because it “was just a further negotiation of the letter that had already been extended. Our first initial conversation in October of 2011 and was that Mr. Wooten was not interested in pleading.” August Hrg. Tr. p. 44, ll. 4-14. See, Plaintiff’s Exhibit No. 1, April 20, 2015 hearing. In her own words, “Yes. I was aware of that.” August Hrg. Tr. p. 45, ll. 2-7.
- In Sol. Hinton’s August PCR testimony she further acknowledged that she had discussed the plea negotiations with the victims and “they were in agreement with the fifteen years, so I sent some sort of communication to Mr. Aaron that they were willing to go as low as fifteen.” August Hr. Tr. p. 44, ll. 20-25.
- Sol. Hinton further testified that it was her recollection that the offer in question “came in” before Defense Counsel went out of town.
- *After the first PCR hearing*, despite an earlier subpoena for all records pertaining to plea negotiations, PCR Counsel was provided with copies of two offer letters; one dated December 20, 2011 and the other dated the same date the offer was to expire, January 3, 2012,. See, Plaintiff’s Exhibits No. 2 and 3, April 20, 2015 hearing. The text of both offer letters was identical with the exception of the dates.
- Days before the *de novo* hearing held in this matter on April 20, 2015, Sol. Hinton produced copies of two sentencing sheets from her file. These sheets, entered at the April 20, 2015 hearing as Plaintiff’s Exhibit No. 4, were signed and dated by Defense Counsel on January 17, 2012. They were also signed by Assistant Solicitor Hinton and Applicant.
- At the April 20, 2015 hearing, Sol. Hinton testified that she didn’t know Defense Counsel was under an Order of Protection at the time this offer was extended and she believed she had not found out about that fact until after he returned.
- In her April, 2015 testimony, Sol. Hinton admitted that the plea had not gone through on January 17, 2012 because the victims changed their minds and would not agree to the fifteen year deal once they were told Applicant had not accepted the deal before the January 3, 2012 expiration date. She expressly admitted, however, that she never told the victims that Applicant did not respond to the offer by that date because his lawyer had been under an Order of Protection, was out of State and had not received the offer and conveyed it to Applicant until after the expiration date.
- Sol. Hinton testified at the April, 2015 hearing that she could not have extended the time for accepting this offer without approval from her boss. She admitted, however, that she

never even requested permission to extend the deadline in light of the circumstances that had resulted in Defense Counsel not conveying the offer to Applicant in time.

- At the first PCR hearing Defense Counsel testified that he was under an Order of Protection when the plea offer in dispute was sent to him when he was out of State under an Order of Protection from “I think December 15th through January 8th or 9th, somewhere in that area.” August Hrg. Tr. p. 6, l. 24- p. 25, l. 9.
- He testified that he did not have a copy of his Order of Protection but that during that time period he typically took four weeks off that time of the year to visit his children. He could not recall the exact dates, but believed he was protected from “December 15th through the first week in January.” August Hrg. Tr. p. 8, l. 20- p. 9, l. 2.
- Although Mr. Aaron could not recall the exact date, his August PCR testimony reflected that he was certain he did not become aware of the plea offer in question until he returned from vacation sometime between January 7-9, 2012. August Hr. Tr. p. 10, l. 12- p. 11, l. 3.
- In Defense Counsel’s testimony at the April hearing he once again testified that he was under protection *through* the end of the first week in January, 2012.
- In the emails between Defense Counsel and Assistant Solicitor Hinton, introduced as part of Plaintiff’s Exhibit No. 5, April 20, 2015 hearing, there is an email from Defense Counsel dated January 12, 2012, at 1:31 pm, which acknowledges a December oral offer of 15 years for 2 lewd act charges, *and harassment* (which he says was the most recent warrant). In that same email, Defense Counsel expressly states that he was under an Order of Protection from the last day of the December term “*through January second.*”
- Defense Counsel’s testimony at the April, 2015 PCR hearing admits that while he vented his displeasure over the fact that Ms. Hinton would not extend the deadline for this deal with her boss, he did not file any sort of motion with the Court requesting specific enforcement of the plea deal in dispute. He indicated that he believed he said something about it during the guilty plea proceeding on February 27, 2012, at which Applicant pleaded to one count Criminal Sexual Conduct with a Minor, First Degree and one count, Lewd Act on a Minor, for an aggregate sentence of 25 years. The transcript of that plea proceeding does not reflect that there was any discussion of this issue during that hearing.
- Defense Counsel admitted that he made no arrangements for another attorney to cover for him in his absence. He did not check in with his staff on a regular basis while out of State nor could he be reached consistently by his staff while away from his practice.
- Defense Counsel acknowledged that he did not provide his clients any notice that he was going to be away from his practice and unavailable for approximately four weeks.
- Applicant’s PCR testimony reflects that he never was advised that his lawyer was leaving the State and would be under an Order of Protection. He testified that he never knew about the offer in dispute until it had expired and would have accepted it earlier had he known of it sooner. When he did sign sentencing sheets for the fifteen year negotiated sentence to two counts of Lewd Act on January 17, 2012, he did not know that the offer was contingent upon the victims agreeing to extend the time for the offer.

Clearly Applicant has demonstrated a violation of his Sixth Amendment right to effective assistance of counsel. Records of the email communications between Defense Counsel and the State confirm that his Order of Protection only protected him through Monday, January 2, 2012.

Had he conveyed this offer to Applicant on January 3, 2012, Applicant would have pleaded under the terms of a vastly more favorable deal. As result of Defense Counsel's failure to ensure that his staff had a way to communicate urgent matters to him while on vacation, he did not become aware of this offer until he returned to the office. Even then, he did not immediately seize upon the urgency of the situation and bring this offer to Applicant on January 3, 2012, in time to accept it before it expired. In *Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2008) our Supreme Court adopted the rule that failure to convey a plea offer constitutes deficient performance. In so ruling, the Court expressly found that even if they concluded the failure of Defense Counsel constituted excusable neglect, such neglect would not negate the deficient performance. *Id*, 381 S.C. at 610, 675 S.E.2d at 421.

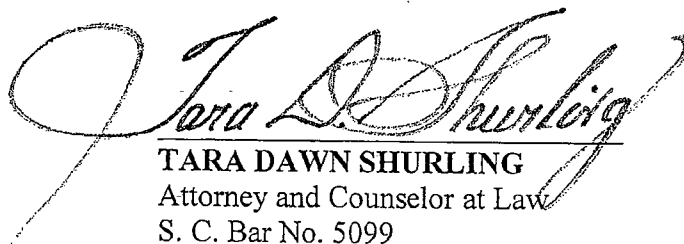
Applicant has demonstrated prejudice by proving that when he finally became aware of the offer on January 17, 2012, he not only agreed to accept it, but actually committed to the deal by signing sentencing sheets for the plea. Furthermore, testimony from the prosecutor in this case, as well as the documents introduced in evidence, establish that the victims only withdrew their agreement to this plea offer after they learned Applicant had not taken the deal before it expired January 3, 2012. In *Davie, supra*, the Supreme Court found the appropriate remedy was a resentencing proceeding. Indeed, on the facts of that case, *Davie* could in theory be made whole by that remedy. Here, Applicant can not.

As our Supreme Court has consistently recognized, the remedy for ineffective assistance of counsel, "should be tailored to the injury suffered from the constitutional violation and should not unnecessarily infringe on competing interests." *Davie*, 381 S.C. at 614, 675 S.E.2d at 423. (citations to authorities omitted). Likewise, the Court recognized in *Davie* that an Applicant may not be subjected to a greater punishment for exercising the right upon which he prevailed in a collateral attack. *Id*, 381 S.C. 601, 615, 675 S.E.2d at 424. Applicant therefore submits that the appropriate remedy in this case would be a remand for specific enforcement of the plea offer not timely conveyed to Applicant. This, Applicant argues, is particularly true where the State does not have entirely clean hands in this matter. It is apparent the offer in dispute was conveyed when the prosecutor either knew, or according to her own testimony should have known, Defense Counsel was under protection. When Defense Counsel made the prosecutor aware of why he had not conveyed this offer to Applicant before the offer expired, she did not explain the situation to the victims, but rather allowed them to believe that Applicant had simply failed to

accept this offer, which they no doubt viewed as generous, in a timely manner. Further, the prosecutor, once reminded that Defense Counsel had been under an Order of Protection, did not request approval from her supervisor to extend the deadline for the offer.

Applicant is mindful that under the terms of this plea agreement he was to receive a negotiated sentence of fifteen years. It was within the discretion of the State to reduce the original charges, however, the lower court may have, in its discretion, rejected the penalty of fifteen (15) years. Applicant therefore submits that the appropriate remedy is remand for specific enforcement of the plea offer. On remand, if the Court accepts the deal as negotiated, it would sentence Applicant to an aggregate term of fifteen years. Applicant submits that this Court's Order should provide, however, that if the Court declines to follow the *negotiated sentence* of fifteen (15) years, the Court could impose an aggregate sentence of no more than Applicant's original sentence of twenty-five years for the two counts of Lewd Act the State agreed to accept pleas to in lieu of the original charges.

Respectfully submitted,



TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 Fax
E-mail: tdslaw@shurlinglaw.com

ATTORNEY FOR APPLICANT

This 30th day of April, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF PICKENS)
)
)
)
)

2012-CP-39-1196

WILLIAM DAVID WOOTEN, 349872

Applicant,

v.

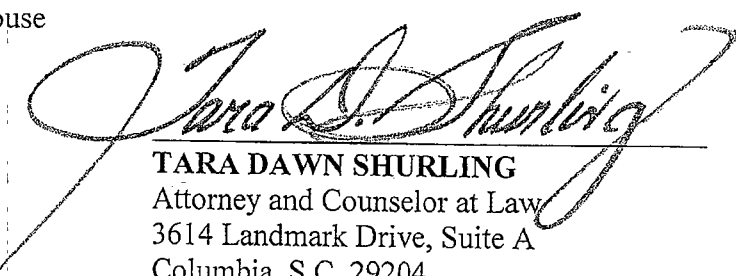
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Memorandum in Support of the Post-Conviction Relief Application in the above matter has been served on the Honorable Edward W. Miller, Circuit Court Judge on this 30th day of April, 2015, by mailing one (1) copy to:

Honorable Edward W. Miller
 Circuit Court Judge
 Greenville Cnty. Courthouse
 305 E. North St. Ste 219
 Greenville, SC 29601


TARA DAWN SHURLING

Attorney and Counselor at Law
 3614 Landmark Drive, Suite A
 Columbia, S.C. 29204

(803) 738-8622

(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 30th day ofApril, 2015.

Suzanne Graham (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA
 COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

2012-CP-39-1196

WILLIAM DAVID WOOTEN, 349872

Applicant,

v.

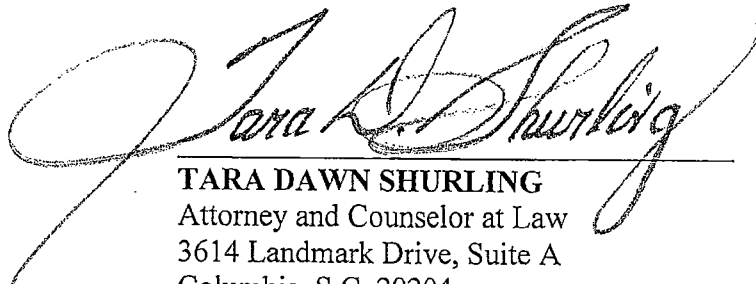
STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Memorandum in Support of the Post-Conviction Relief Application in the above matter has been served on opposing counsel this 30th day of April, 2015, by mailing one (1) copy to:

Karen C. Ratigan
 Senior Assistant Deputy Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211



TARA DAWN SHURLING
 Attorney and Counselor at Law
 3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax
 ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 30th day of

April, 2015.

Suzanne Graham (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/24



ALAN WILSON
ATTORNEY GENERAL

May 4, 2015

VIA EMAIL (emilerlc@sccourts.org)

The Honorable Edward W. Miller
305 East North Street, Suite 219
Greenville, SC 29601

RE: William David Wooten v. State
2012-CP-39-1196

Dear Judge Miller,

On February 27, 2012, Wooten pled guilty to first-degree CSC with a minor and lewd act upon a child. Wooten was represented by S. Paul Aaron, Esquire and Assistant Solicitor Brandi Hinton was the prosecuting attorney. Judge Goldsmith imposed the negotiated sentence of 25 years imprisonment.

In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the S.C. Supreme Court found a defendant must demonstrate – under Strickland – both that plea counsel's failure to communicate the plea offer was deficient and that he was prejudiced by counsel's performance. Wooten failed to prove either error or prejudice under the Davie analysis.

A. No Deficiency

Wooten did not prove plea counsel was deficient. Plea counsel communicated the plea offer in this case when returned to town after the conclusion of his order of protection. The plea offer had, however, expired by this time. The order of protection prevented the assistant solicitor from scheduling plea counsel for court appearances but did not limit her ability to convey plea offers. "Both the South Carolina Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands." State v. Thrift, 312 S.C. 282, 29-92, 440 S.E.2d 341, 346 (1997). "Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." Id. at 292, 440 S.E.2d at 346-47. Plea counsel conveyed the plea offer when he was able and attempted to have that offer honored by requesting such from the assistant solicitor, her supervisor, and the deputy solicitor. Counsel's representation was reasonable under the circumstances. See Strickland, 466 U.S. at 688, 104 S. Ct. at 2065 ("In any case presenting an

ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.").

B. No Prejudice

Wooten did not meet his burden of proving he suffered any prejudice. In order to prove prejudice, a defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). In cases concerning a potentially unconveyed plea offer, the defendant "must show actual prejudice." Davie, 381 S.C. at 613, 675 S.E.2d at 422.

Wooten cannot prove prejudice because there is no evidence – other than his self-serving testimony – that he would have accepted the 15 year offer. Wooten rejected the 18 year offer and asked plea counsel to make a 5 year counteroffer. It is improbable Wooten would have accepted a recommendation 3 years below the original offer when he had just demonstrated that he wanted a recommendation 13 years below the original. There is no credible argument Wooten would have accepted the 15 year plea offer if it had been conveyed earlier.

The S.C. Supreme Court has noted "a plea bargain rests on contractual principles." Thrift, 312 S.C. at 292, 440 S.E.2d at 347. The January 12th emails indicate Wooten never accepted the 15 year offer in question. Rather, these emails indicate the parties were still negotiating the terms of a potential plea agreement – plea counsel brought up an 8-9 year counteroffer and mentioned the idea of a "straight up" plea. See Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus., Inc., 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) (finding "no contract is formed if the acceptance varies the terms of the offer. Instead, an acceptance which adds different or additional terms is treated as a counteroffer. . . ."); see also Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (noting common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement). The 15 year offer was rejected once plea counsel made a counteroffer of 8-9 years. See Am. Jur. Contracts § 65; Restatement 2d Contracts § 39.

Conclusion

Wooten has not met his burden of proving he is entitled to relief because he failed to prove both deficiency and prejudice. If you have any questions or comments, do not hesitate to contact me: 803-734-3737 or kratigan@scag.gov.

Sincerely,



Karen C. Ratigan
Senior Assistant Deputy Attorney General

cc: Tara D. Shurling, Esquire (via e-mail)

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

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2015 MAY 11 A 11:0

2012-CP-39-1196

WILLIAM DAVID WOOTEN, #349872)
 Applicant,)
)
 v.) REPLY TO RESPONDENT'S
) MEMORANDUM
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

In Reply to the Memorandum submitted to the Court on May 4, 2015, Applicant would show unto this Honorable Court the following:

A. DEFICIENCY ISSUE

Contrary to Plea Counsel's PCR testimony, the thread of email communications between the Assistant Solicitor in this case¹, introduced during the April 20, 2015, PCR hearing as Petitioner's Exhibit No. 5, evidenced the fact that Plea Counsel was only under Order of Protection *through January 2, 2012*. Further, the record before this Court verifies that the offer in dispute was sent to Plea Counsel *twice*. While the letter conveying this offer was originally sent to Plea Counsel on December 20, 2011, documents provided to PCR Counsel by the Solicitor's Office indicate that the same letter was regenerated on January 3, 2012. Assistant Solicitor Brandi Hinton has testified that it was her recollection that the second printing of this letter was provided to Plea Counsel on that date through some method of delivery. She testified that the letter may have been hand-delivered. *See*, Plaintiff's Exhibits No. 2 and 3. In any event, Plea Counsel acknowledged receiving this offer when he returned from his trip.

¹ At the time of the plea negotiations, the prosecutor's name was Brandi Batson. She has subsequently married and goes by her married name; Brandi Hinton.

1 

Therefore, Plea Counsel had the opportunity to convey this offer to Applicant on the last day it was valid; January 3, 2012. Either he returned to his practice on the first day after his Order of Protection ended, in which case he could and should have conveyed the offer to Applicant while it was still valid *or* he did not return to work until beyond the term of his protection. Petitioner submits that if he was not going to return to his practice immediately after his term of protection expired, he had an obligation to insure that communications with him were sufficiently monitored to protect against there being urgent, time sensitive matters which went neglected in his absence.

B. PREJUDICE

In the State's Memorandum, Respondent asserts that there is no evidence, save Applicant's own self-serving PCR testimony, which supports his contention that he definitely would have accepted the plea offer for 15 years for two counts of Lewd Act on a minor. This assertion is simply not accurate. Days before the second PCR hearing held in this case, Assistant Solicitor Brandi Hinton, turned over to Applicant's Counsel copies of two sentencing sheets. These sheets were signed by Assistant Solicitor, Brandi Hinton, Applicant and Plea Counsel, Paul Aaron. Attorney Aaron's signature on both sheets is dated January 17, 2012. These documents verify that Applicant and Plea Counsel signed plea sheets for negotiated sentences to two counts of Lewd Act on a Minor on January 17, 2012. *See*, Petitioner's Exhibit No. 4. In addition, Applicant presented testimony from Detention Center Correctional Officer, Leisa Spangler, who recalled Plea Counsel coming to the jail and getting her to bring Applicant out in the hall to sign some legal documents. She expressly remembered overhearing conversation between Plea Counsel and Applicant, but the only thing she recalled specifically hearing was one of the men saying something about it being for fifteen (15) years. The fact that these plea sheets were

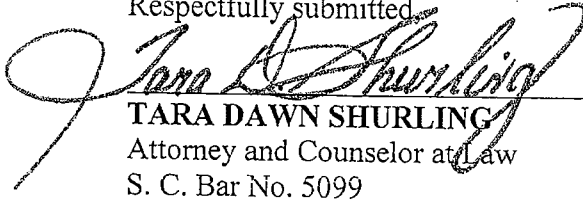
signed and tendered to Assistant Solicitor Hinton on January 17, 2012 is further confirmed by email communication between Plea Counsel and Assistant Solicitor Hinton dated January 17, 2012 and transmitted at 12:24 p.m. *See*, Petitioner's Exhibit 5. Interestingly this same email thread verifies that Assistant Solicitor Hinson prepared these sentencing sheets and left them "downstairs" at Plea Counsel's request on January 12, 2012. Despite the fact that time was clearly of the essence, Plea Counsel apparently did not get Applicant's signature on these sheets until five (5) days later, January 17, 2012.

In light of all of the above, Petitioner submits that there exists contemporaneous evidence which collaborates his present day assertion that he would have accepted the plea offer in dispute had it been presented for his consideration before it expired.

CONCLUSION

For all these reasons, as well as those previously articulated by Petitioner, he asks that his Application for Post-Conviction Relief be granted.

Respectfully submitted,


TARA DAWN SHURLING
 Attorney and Counselor at Law
 S. C. Bar No. 5099

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 Columbia, South Carolina 29204
 (803)738-8622
 (803)738-1600 Fax
 E-mail: tdslaw@shurlinglaw.com

ATTORNEY FOR APPLICANT

This 6th day of May, 2015

STATE OF SOUTH CAROLINA)
) CLERK OF COURT
) PICKENS COUNTY IN THE COURT OF COMMON PLEAS
) SOUTH CAROLINA
 COUNTY OF PICKENS

2012-CP-39-1196

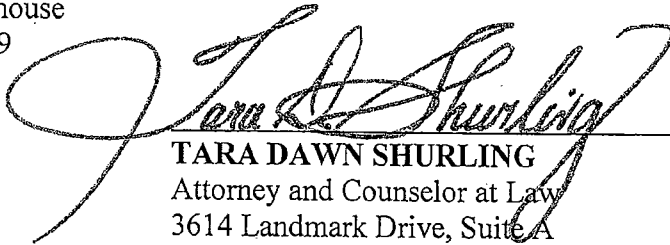
WILLIAM DAVID WOOTEN, 349872) 2015 MAY 11 A 11:00

CERTIFICATE OF SERVICE

Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

The undersigned hereby certifies that a true copy of the Reply to Respondent's Memorandum in the above matter has been served on the Honorable Edward W. Miller, Circuit Court Judge on this 6th day of May, 2015, by mailing one (1) copy to:

Honorable Edward W. Miller
 Circuit Court Judge
 Greenville Cnty. Courthouse
 305 E. North St. Ste 219
 Greenville, SC 29601



TARA DAWN SHURLING
 Attorney and Counselor at Law
 3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax
 ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 6th day of

May, 2015.

Jeananne Graham (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
) CLERK OF THE COURT OF COMMON PLEAS
 COUNTY OF PICKENS) PICKENS COUNTY
) SOUTH CAROLINA 2012-CP-39-1196

WILLIAM DAVID WOOTEN, 349872 2015 MAY 11 A 11:00

CERTIFICATE OF SERVICE

Applicant,)

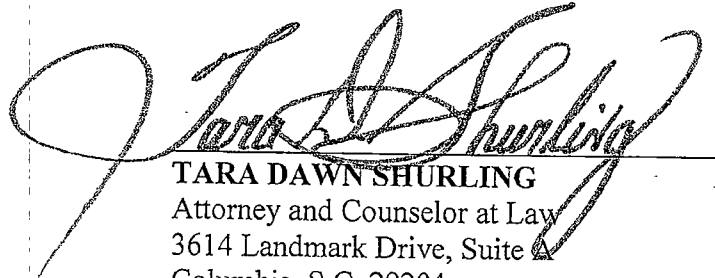
v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

The undersigned hereby certifies that a true copy of the Reply to Respondent's Memorandum in the above matter has been served on opposing counsel this 10th day of May, 2015, by mailing one (1) copy to:

Karen C. Ratigan
 Senior Assistant Deputy Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211



TARA DAWN SHURLING
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 (803) 738-8622
 (803) 738-1600 Fax
 ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 10th day of

May, 2015.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
William David Wooten,)
S.C.D.C. No. 349872,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-39-1196

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 OCT -6 P 1:

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 17, 2012 (and amended August 28, 2012 and April 17, 2015). The Respondent made its return on February 12, 2013. An evidentiary hearing was held on April 20, 2015 at the Pickens County Courthouse.¹ The Applicant was present and represented by Tara D. Shurling, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were: Lisa Spangler, assistant solicitor Brandi Batson Hinton, Jean Cowan, Richard Douglas Wooten, III, and the Applicant's plea counsel, S. Paul Aaron, Esquire. The Court had before it the guilty plea transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibits 1-6.

¹ This Court notes a full hearing was had on this matter on August 25, 2014 before the Honorable James R. Barber, III. At the conclusion of the hearing, Judge Barber took the matter under advisement and subsequently re-opened the record in order to take additional testimony. In an order filed December 16, 2014, Judge Barber ordered a de novo hearing in this case.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Pickens County Grand Jury indicted the Applicant for two counts of lewd act upon a child (2011-GS-39-1763, -1765), first-degree criminal sexual conduct (CSC) with a minor (2012-GS-39-0492), and second-degree CSC with a minor (2012-GS-39-0493). He was represented by S. Paul Aaron, Esquire.

On February 27, 2012, the Applicant pled guilty – pursuant to a negotiated sentence – to one count of lewd act upon a child² and first-degree CSC with a minor. The Honorable Brooks P. Goldsmith sentenced the Applicant to concurrent terms of fifteen years for lewd act upon a child and twenty-five years for first-degree CSC with a minor. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to convey a plea offer in a timely fashion.
2. Involuntary guilty plea:
 - a. "The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation."

In his second amended PCR application, the Applicant makes the following additional allegations:

1. Ineffective assistance of counsel:
 - a. "Plea Counsel was ineffective for allowing the State to force the Applicant to make a decision about the plea offer extended to him on February 27, 2012, the date of his pleas, where the Applicant was not indicted for two separate charges of First Degree Criminal Sexual Conduct and Second Degree Criminal Sexual Conduct with a minor relating to his daughter until February 21, 2012, and was not made aware of these charges until immediately prior to his plea

² 2011-GS-39-1765.

- proceeding.”
- b. “Plea Counsel was ineffective for failing to adequately advise the Applicant of measures which could be taken to ask the Court to sever the prosecution of his charges which involved two separate victim’s neither of whom were witnesses to acts alleged to have been committed with the other.”
 - c. “Plea Counsel was ineffective for neglecting to fully advise the Applicant concerning what use the defense could make of a recantation made by the Applicant’s daughter if his case had proceeded to trial by jury.”
 - d. “Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State.”
 - e. “Plea Counsel was ineffective for failing to fully discuss with the Applicant what use the defense could make of the domestic history between the Applicant and his daughter’s mother, if the Applicant exercised his right to trial by jury, where allegations of sexual battery were not made against the Applicant until after he sought child support from his ex-wife sometime after he was awarded custody of their daughter.”
 - f. “Plea Counsel was ineffective for failing to consult with Attorney Nick Lavery concerning the fact that the Applicant’s daughter had made a statement in the presence of Attorney Lavery, recanting her allegations of sexual battery.”
 - g. “Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner.”
 - h. “Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order.”
 - i. “Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection.”
 - j. “Plea Counsel failed to provide the Applicant reasonable professional assistance of counsel in that he failed to adequately inform the Applicant of the elements of the charges against him.”
 - k. “Plea Counsel was ineffective for failing to give the Applicant accurate advise concerning his sentencing exposure if he proceeded to trial by jury.”
 - l. “Plea Counsel was ineffective for failing to object to the Applicant’s re-indictment for First Degree Criminal Sexual Conduct with a Minor and Second Degree Criminal Sexual

Conduct with a Minor on charges of sexual battery upon his daughter where the second indictments broke the time period covered in a earlier single indictment into two separate offenses.”

- m. “Plea Counsel was ineffective for neglecting to review all the discovery materials produced by the State with the Applicant before he was required to make a decision regarding exercising his right to a jury trial.”
- n. “Plea Counsel was ineffective for failing to consult with his daughter’s guardian ad litem, Liz Young, where Ms. Young’s testimony would have helped develop a defense to the Applicant’s charges pertaining to his daughter.”
- o. “Plea Counsel was ineffective for failing to advise the Applicant concerning how the defense could use the testimony of a child interviewer who was the first to interview his daughter after the allegations concerning the daughter came to light.”
- p. “Plea Counsel was ineffective for failing to object to a conflict of interest where the Plea Judge’s daughter was close friends with the Prosecutor in the Applicant’s case.”
- q. “Plea Counsel was ineffective for failing to review favorable evidence from a Pickens County investigation concerning a recantation by Applicant’s daughter with the Applicant and in failing to discuss the potential admissibility of that evidence in a jury trial with the Applicant before he was required to make a decision concerning a waiver of his right to a jury trial in Pickens County.”

At the PCR hearing, counsel for the Applicant stated they would proceed solely upon the following issues:

- 1. Ineffective assistance of counsel because the plea offer was not conveyed to the Applicant in a timely fashion.
- 2. Prosecutorial misconduct because the plea offer was conveyed to plea counsel when counsel had an order of protection.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

A.

The Applicant stated he went to court in October 2011 but it was not for him to plead guilty. The Applicant stated he never saw an 18-year offer and never made a 5-year counteroffer. The Applicant stated plea counsel brought him sentencing sheets on January 17, 2012 and that plea counsel mentioned a 15-year offer, so he signed the sheets. The Applicant stated he did not know the 15-year offer had expired on January 3, 2012. The Applicant stated he did not make a counteroffer of 8-9 years to the State. The Applicant stated he was dissatisfied with plea counsel on the day of the plea hearing but stated he did not inform the plea judge of

this because he wanted "to go along." The Applicant acknowledged he did not tell the plea judge about wanting the 15-year offer because he did not "feel it was proper" to say this. The Applicant stated he would have wanted plea counsel to file a motion to enforce the 15-year plea offer.

Jean Cowan stated she was the Applicant's mother. Cowan stated she was unaware of the existence of a 15-year plea offer.

Richard Douglas Wooten, III stated he was the Applicant's brother. Wooten stated the Applicant told him about a 15-year plea offer and mentioned the sentencing sheets. Wooten stated the Applicant was committed to the 15-year offer but that the Applicant did not know if this would be "solid."

Brandi Batson Hinton, the assistant solicitor, testified the Applicant was brought to court to plead guilty on October 27, 2011 but that she was told he did not want to plead guilty. The assistant solicitor confirmed, however, that she later made an 18-year plea offer and the Applicant made a 5-year counteroffer. The assistant solicitor testified she recalled plea counsel saying he had protection at some point but stated she does not check the order of protection list when she makes a plea offer. The assistant solicitor confirmed that, in the series of emails exchanged with plea counsel on January 12, 2012, he asked for an 8-9 year offer. The assistant solicitor testified they were still negotiating the offer. The assistant solicitor testified she told plea counsel to take sentencing sheets to the Applicant to see if he would sign them but that she would then discuss a plea with the victims. The assistant solicitor testified she did not make any promises they would proceed with the 15-year offer. The assistant solicitor testified she received blank but signed sheets and called the victims to discuss it, but that the victims did not want an offer. The assistant solicitor noted plea counsel never stated the Applicant accepted the 15-year

offer. The assistant solicitor testified she was not allowed to extend the expiration date of the 15-year plea offer because of the case management system. The assistant solicitor testified her supervisors allowed her to extend a 25-year offer on the day of the plea hearing and stated the plea that day should have been without a sentence recommendation. The assistant solicitor testified she never received confirmation at any point that the Applicant actually accepted the 15-year offer.

Lisa Spangler stated she was a detention center officer. Spangler stated plea counsel came to visit the Applicant at the jail in January 2012 and brought a paper for the Applicant to sign. Spangler stated plea counsel mentioned this was a plea for 15 years.

Plea counsel testified the assistant solicitor made a plea offer for an 18-year sentence.³ Plea counsel testified he conveyed this offer to the Applicant and explained the risks and advantages of the offer. Plea counsel testified the offer was to expire on January 3, 2012 but that the Applicant rejected it. Plea counsel testified he did not recall whether or not the Applicant made a counteroffer. Plea counsel testified he spoke to the assistant solicitor around December 15, 2011, she mentioned a 15-year offer, and he said he was going out of town. Plea counsel testified he received an order of protection for when he would be out of town and believed this order covered December 20, 2011 – January 5, 2012. Plea counsel testified that, when he returned from his out-of-town trip, there were two letters from the assistant solicitor. The first letter was dated December 20, 2011 and was an offer for the Applicant to plead guilty to two counts of lewd act (and nol pros all other charges) in exchange for a 15-year recommendation.⁴ The second letter was dated January 3, 2012 and was a re-conveyance of the December offer.⁵

³ Applicant's Exhibit 1.

⁴ Applicant's Exhibit 2.

⁵ Applicant's Exhibit 3.

Plea counsel testified both offers expired on January 3, 2012. Plea counsel testified he and the assistant solicitor exchanged a series of emails when he returned from his trip.⁶ Plea counsel acknowledged he made a counteroffer of an 8-9 year recommendation and testified he was still negotiating with the State. Plea counsel testified that, pursuant to one of these emails, he took sentencing sheets to the jail for the Applicant to sign. Plea counsel testified, however, the assistant solicitor later reiterated the plea offer expired on January 3rd. Plea counsel testified he spoke to both the assistant solicitor's supervisor and the deputy solicitor about enforcing the 15-year offer but they did not change their position and the case was placed on the trial docket. Plea counsel testified that – on the morning of the Applicant's plea – he told the judge about the conveyance of the offer while he was protected.

B.

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the South Carolina Supreme Court found a defendant must demonstrate – under Strickland – both that plea counsel's failure to communicate the plea offer was deficient and that he was prejudiced by counsel's performance. This Court finds the Applicant failed to prove either error or prejudice under the Davie analysis.

This Court finds the Applicant failed to demonstrate plea counsel's representation was deficient. Plea counsel communicated the plea offer in this case when returned to town after the conclusion of his order of protection. The plea offer had, however, expired by this time. The order of protection prevented the assistant solicitor from scheduling plea counsel for court appearances but did not limit her ability to convey plea offers. "Both the South Carolina

⁶ Applicant's Exhibit 5.

Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands." State v. Thrift, 312 S.C. 282, 29-92, 440 S.E.2d 341, 346 (1997). "Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." Id. at 292, 440 S.E.2d at 346-47. Plea counsel believed the order of protection would have protected him from being responsible for any court-related activities.⁷ Regardless, he conveyed the plea offer when he was able and attempted to have that offer honored by requesting such from the assistant solicitor, her supervisor, and the deputy solicitor. This Court finds plea counsel's actions and representation in this case were reasonable under the circumstances. See Strickland, 466 U.S. at 688, 104 S. Ct. at 2065 ("In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.").

This Court finds the Applicant failed to demonstrate he was prejudiced as the result of plea counsel's representation. In order to prove prejudice, a defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). In cases concerning a potentially unconveyed plea offer, the defendant "must show actual prejudice." Davie, 381 S.C. at 613, 675 S.E.2d at 422. This Court finds the Applicant cannot prove prejudice because there is no evidence – other than his self-serving testimony – that he would have accepted the 15-year offer. This Court finds credible the assistant solicitor's testimony that the Applicant rejected the 18-year offer and asked plea counsel to make a 5-year

⁷ Plea counsel also noted he was a sole practitioner at that time, so he did not have another attorney who could have stood in for him for court. Regardless, plea counsel stated he did not believe it would have been appropriate to have another attorney (one unfamiliar with the case) stand in for him in a General Sessions matter.

counteroffer. It is improbable the Applicant would have accepted a recommendation 3 years below the original offer when he had just demonstrated that he wanted a recommendation 13 years below the original. This Court finds it is simply not credible that the Applicant would have accepted the 15-year plea offer if it had been conveyed earlier. See Lafler v. Cooper, __ U.S. ___, 132 S. Ct. 1376, 1385 (2012) (in the context of ineffective assistance of counsel regarding plea bargains, defendant must show he “would have accepted the plea” to show prejudice). Furthermore, the Applicant cannot demonstrate prejudice because he cannot show “the plea would have been entered without the prosecution canceling it or the trial judge refusing to accept it.” Id. The assistant solicitor testified she discussed the 15-year offer with the victims (after plea counsel returned the signed sentencing sheets in mid-January 2012) and that the victims did not agree with this offer. In addition, while the plea judge was advised of the expired 15-year offer (and the circumstances surrounding the conveyance and expiration of that offer), he would not re-visit that sentence and instead imposed the 25-year sentence recommended by the State that day. As such, the Applicant cannot prove actual prejudice under Davie and Lafler.

This Court also finds the Applicant cannot demonstrate prejudice because the 15-year offer was never actually accepted. The South Carolina Supreme Court has noted “a plea bargain rests on contractual principles.” Thrift, 312 S.C. at 292, 440 S.E.2d at 347. The January 12th emails indicate the Applicant never accepted the 15-year offer in question. Rather, these emails indicate the parties were still negotiating the terms of a potential plea agreement – plea counsel brought up an 8-9 year counteroffer and mentioned the idea of a “straight up” plea. See Weisz Graphics Div. of Fred B. Johnson Co. v. Peck Indus., Inc., 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) (finding “no contract is formed if the acceptance varies the terms of the offer. Instead, an acceptance which adds different or additional terms is treated as a

counteroffer. . . ."); see also Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (noting common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement). The 15-year offer was rejected once plea counsel made a counteroffer of 8-9 years. See Am. Jur. Contracts § 65; Restatement 2d Contracts § 39.

C.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was actually prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Prosecutorial Misconduct

The Applicant argues there was prosecutorial misconduct in this case because the assistant solicitor conveyed the 15-year plea offer while plea counsel had an order of protection and this offer expired before the end date of the order of protection. This Court finds the Applicant has failed to meet his burden of proving prosecutorial misconduct.

"The presumption of regularity supports" prosecutorial decisions and, "in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." United States v. Chem. Found., Inc., 272 U.S. 1, 14-15, 47 S. Ct. 1, 6 (1926). "Undoubtedly, the solicitor has discretion in choosing how to proceed with a case, including

whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” State v. Langford, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012); see also State v. Fletcher, 322 S.C. 256, 261, 471 S.E.2d 702, 705 (Ct. App. 1996) (noting “the solicitor is charged with the responsibility of prosecuting criminal charges”). In the ordinary case, “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” -United States v. Armstrong, 517 U.S. 456, 464, 116 S. Ct. 1480, 1486 (1996); see also Bordenkircher v. Hayes, 434 U.S. 357, 364, 98 S. Ct. 663, 668 (1978) (“In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”).

In order to establish prejudicial misconduct on the part of the prosecutor the alleged misconduct must have “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 180-81, 106 S. Ct. 2464, 2471 (1986) (quotation omitted).

This Court finds the Applicant has failed to demonstrate there was prosecutorial misconduct in his case. The solicitor’s office is imbued with the power to make (or not make) plea offers in a criminal case. See State v. Langford, 400 S.C. at 436 n.6, 735 S.E.2d at 479 n.6. The assistant solicitor made an 18-year plea offer to the Applicant, who made a 5-year counteroffer. The assistant solicitor was not obligated to make another plea offer. Regardless, she made a subsequent plea offer for a 15-year sentence. The assistant solicitor testified she did not consult the order of protection list before she made this plea offer. This Court finds her testimony to be credible and does not find the 15-year plea offer that expired on January 3, 2012

was purposefully crafted and conveyed in order to be received by plea counsel's office while he was out of town and had an order of protection. Further, there can be no misconduct from the assistant solicitor's failure to extend the plea offer past the January 3rd expiration date because she was bound by the case management system at that point. While plea counsel properly asked the assistant solicitor for such an extension – and then appealed to her supervisor and the deputy solicitor – the State was not obligated to extend the 15-year plea offer at that point. The Applicant has failed to demonstrate the assistant solicitor did not properly discharge her official duties. See United States v. Chem. Found., Inc., 272 U.S. at 14-15, 47 S. Ct. at 6. The Applicant has failed to demonstrate he suffered a denial of due process in this case as a result of the assistant solicitor's actions in this case.⁸ See Darden v. Wainwright, 477 U.S. at 180-81, 106 S. Ct. at 2471.

Accordingly, this Court finds the Applicant failed to meet his burden of proving the existence of prosecutorial misconduct in this case. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

⁸ This Court notes that, as discussed supra, the Applicant failed to demonstrate either that he would have accepted the 15-year offer or that the State would re-convey this offer at any point.

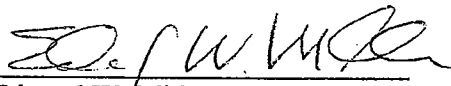
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2 day of October, 2015. -


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Ad, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

WILLIAM DAVID WOOTEN, 349872)

2012-CP-39-1196

Applicant,)

v.)

THE STATE OF SOUTH CAROLINA,)

Respondent.)

**MOTION TO ALTER OR AMEND
 PURSUANT TO RULE 59(e), SCRCP**

2015 OCT 26 PM 2 36
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRCP, to alter or amend its Order of Dismissal in the above captioned PCR matter which was filed on October 6, 2015. The undersigned PCR Counsel received the clocked Order of Dismissal on October 12, 2015. Applicant now serves and files a timely Motion pursuant to Rule 59(e), SCRCP, requesting that the Order of Dismissal be Altered or Amended in light of the following.

The Order of Dismissal fails to make findings of fact and rulings of law on all of the issues advanced by Applicant in this PCR action. At the outset of the *de novo* PCR hearing held in this matter on April 15, 2015, Applicant advised the Court that he was proceeding only on the allegations which related to the representation he received in the plea negotiation process and the failure of Defense Counsel to convey an offer made by the State in a timely manner. He also advanced a claim of prosecutorial misconduct predicated upon the fact that the State sent the written plea offer at issue in this case during a time period when the Assistant Solicitor assigned to this case knew Applicant's attorney was under an order of protection. PCR II p. 5, l. 13 – p. 6, l. 2. Of those issues, the Order of Dismissal filed in this case failed to address several relevant allegations found in Applicant's Second Amended Application and advanced by him during his PCR hearing.

Specifically, the Order of Dismissal fails to make findings of fact and conclusions of law concerning the following allegations.¹

4. Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State. (Referenced as Allegation I (d) in the Order of Dismissal).
7. Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner. (Referenced as Allegation I (g) in the Order of Dismissal).
8. Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order. (Referenced as Allegation I (h) in the Order of Dismissal).
9. Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection. (Referenced as Allegation I(i) in the Order of Dismissal).

In addition to the omission of the issues set forth above, the Order of Dismissal makes inaccurate findings of fact not supported by the records before this Court. The Order states that Applicant has failed to demonstrate prejudice inasmuch as he failed to present evidence, *“other than his own self-serving testimony”* that he would have accepted the fifteen (15) year deal had it been presented to him in time for him to accept it. Order of Dismissal, p. 9, para. 2. This finding is simply inaccurate. The records before this Court, *other than Applicant’s own testimony*, confirm the following.

- The exhibits before this Court show that Applicant signed plea sheets for two counts of lewd act on a minor on January 17, 2012. These plea sheets specifically reflect that they are for a negotiated sentence. They were signed by Applicant, defense Counsel and the Assistant Solicitor. PCR II, Plaintiff’s Exhibit 4.

¹ Numerical references for each allegation are taken from their number in the second Amended PCR Application in which they were presented.

- The testimony of the Assistant Solicitor in this case confirms that the negotiated sentence in that deal was for a fifteen (15) sentence. PCR II, p. 53, ll. 22-25. This fact is confirmed in the plea offer letter entered into evidence as Petitioner's Exhibits No. 2 and 3.
- Defense Counsel expressly testified that Applicant accepted the fifteen (15) year deal when he conveyed it to him at the detention center. PCR II p. 32, l. 18- p. 33, l.10.
- Not only did the evidence before this Court establish that Applicant accepted this offer the first time it was presented to him, it further established that the plea sheets Applicant signed were returned to the State. In an email from the Assistant Solicitor to Defense Counsel, she thanked him for getting the sheets back to her and then, in that same email, advised him that the victims would not agree for Applicant to plead under the offer as it had expired. PCR II, Petitioner's Exhibit 5.

In addition, the Order of Dismissal states that it finds credible the Assistant Solicitor's claim that at the time she sent Defense Counsel her written plea offer to the fifteen (15) year deal she was unaware that Defense Counsel was under Order of Protection. It is true that this Assistant Solicitor vehemently denied knowing that Defense Counsel was under Order of Protection at the time the written offer was extended at the second PCR hearing held on April 15, 2015. In her previous testimony at the first PCR hearing held on August 25, 2014, she expressly acknowledged that she knew Defense Counsel was gone and under Order of Protection when the offer was extended in writing. PCR I p. 44, l. 4 – p. 45, l. 7. ² The testimony of Defense Counsel and the Assistant Solicitor from the first PCR hearing was admitted into evidence during the second PCR hearing by agreement of the parties. PCR II, p. 72, ll. 11-21; Petitioner's Exhibit 6.

In addition, this Honorable Court finds that Petitioner has not demonstrated

² In his testimony at the second PCR hearing, defense Counsel recalled standing in the hall at the courthouse and having a discussion with the Assistant Solicitor during which she told him she was going to send him an offer for fifteen years in this case. He testified that he then reminded her that the day of this conversation was his "last day of availability until into January." PCR II, p. 32, ll. 8-17. During the first PCR hearing, this Assistant Solicitor testified that she "believed" she extended this offer before Defense Counsel left tow, but she could not produce the letter in which the offer was extended. PCR I, p. 44- p. 46, l. 4. The letter, produced before the de novo proceeded, was dated December 20, 2011. PCR II, Petitioner's Exhibit 2. That was what Defense Counsel recalled to be the first day covered by his Order of Protection. PCR II, p. 11, ll. 15-20.

prejudice where he can not prove that the presiding Judge would have agreed to allow Applicant to plead under the terms of the negotiated deal at issue herein. Applicant would assert that the Supreme Court's decision in Davie v. State, 381 S.C.601, 675 S.E.2d 416 (2009), indicates that the PCR Court has the authority to tailor a remedy consistent with the harm to the Applicant caused by the ineffective assistance of counsel proven by an applicant for Post-Conviction Relief. Clearly the Sixth Amendment right to effective assistance of Counsel has been extended to the plea negotiation process in this State. The only remedy that can make this Applicant whole is for the Court to set aside his judgments and sentences and remand his case to the circuit court for a new plea proceeding for specific performance of the State's agreement to allow him to plea to the two counts of Lewd Act on a Minor charged in Indictments No. 2011-GS-39-01763 and 01765. The decision of the prosecution dismiss the charge of First degree Criminal Sexual Conduct with a Minor found in Indictment 2012-GS-39-492, as part of this plea agreement, did not require judicial approval. It would then be up to the presiding judge to determine whether he would accept the negotiated sentence agreed upon as part of this negotiated plea bargain not timely conveyed to Applicant.³

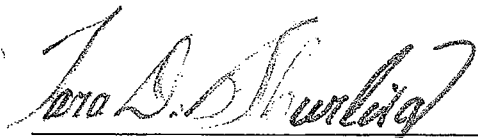
CONCLUSION

For all the above reasons, the Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRPC, grant relief and remand the Applicant's case to the Pickens County Court of General Sessions for specific enforcement of the State's plea agreement to allow him to plead to two counts of Lewd Act on a Minor and dismiss the charge of First Degree Criminal Sexual Conduct with a minor, with a negotiated sentence of fifteen (15) years. Inasmuch as the parties to this plea agreement could not bind the Court to impose the sentence negotiated by them,

³ The plea/sentencing sheets introduced in this PCR action as Petitioner's Exhibit No. 4 confirm that the two counts of Lewd Act on a Minor Applicant was to be allowed to plead to under the terms of the fifteen (15) year deal that was extended by the State, approved by the family of the victims and valid through January 3, 2012, were those found in these two indictments; 2011-GS-39-01763 and 01765. Pursuant to S.C. Code Ann. §16-15-140, each of these counts would carry a maximum term of imprisonment of fifteen (15) years.

Applicant seeks this Court's Order granting him leave of court to request that the presiding judge accept and impose the negotiated sentence for the two counts of Lewd Act on a Minor agreed upon as a part of that deal. In the alternative, the Applicant would respectfully request that the Court issue an Amended Order of Dismissal making findings of fact and rulings of law, as required by S.C. Ann. § 17-27-80, on the allegations not addressed in the previously filed Order of Dismissal and correcting the factual inaccuracies found in that Order as well.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law
S. C. Bar No. 5099

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(803) 738-8622
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tdslaw@shurlinglaw.com

Attorney for the Applicant

This 22nd day of October, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

WILLIAM DAVID WOOTEN, 349872)
 Applicant,)

2012-CP-39-1196

v.)

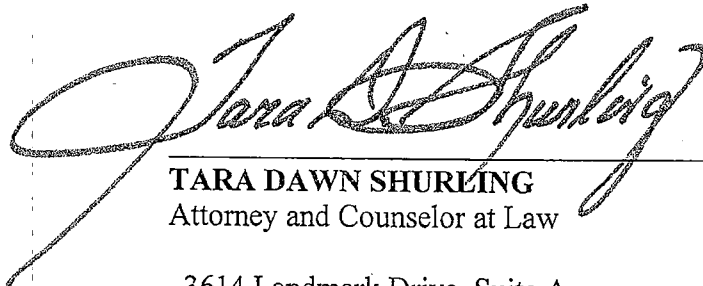
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

2015 OCT 26 PM 2 36
 CLERK OF COURT
 PICKENS COUNTY

The undersigned attorney hereby certifies that one copy of the Rule 59(e) SCRCP, Motion to Alter or Amend in the above-entitled cause has been served upon, Senior Assistant Deputy Attorney General, Karen C. Ratigan, by depositing in the U.S. Mail, postage prepaid, on this the 22nd day of October, 2015 to:

Karen C. Ratigan
 Senior Assistant Deputy Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211

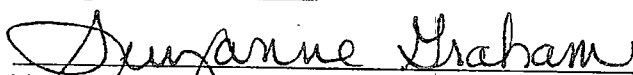

TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 22nd day of

October, 2015.

 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

WILLIAM DAVID WOOTEN, 349872)
Applicant,)

- 2012-CP-39-1196

v.)

CERTIFICATE OF SERVICE

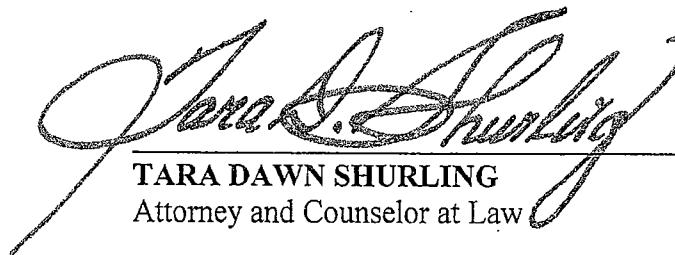
THE STATE OF SOUTH CAROLINA,)
Respondent.)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 OCT 26 PM 2 36

The undersigned attorney hereby certifies that one copy of the Rule 59(e) SCRCF, Motion to Alter or Amend in the above-entitled cause has been served upon, the Honorable Edward W. Miller, Circuit Court Judge for the Thirteenth Judicial Circuit, by depositing in the U.S. Mail, postage prepaid, on this the 22nd day of October, 2015 to:

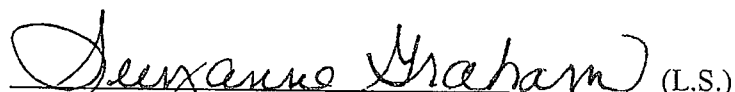
The Honorable Edward W. Miller
305 E. North St., Ste. 219
Greenville, South Carolina 29601


TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 22nd day of
October, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

William David Wooten,
S.C.D.C. No. 349872,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-39-1196CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2015 OCT -6 P 1:

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 17, 2012 (and amended August 28, 2012 and April 17, 2015). The Respondent made its return on February 12, 2013. An evidentiary hearing was held on April 20, 2015 at the Pickens County Courthouse.¹ The Applicant was present and represented by Tara D. Shurling, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were: Lisa Spangler, assistant solicitor Brandi Batson Hinton, Jean Cowan, Richard Douglas Wooten, III, and the Applicant's plea counsel, S. Paul Aaron, Esquire. The Court had before it the guilty plea transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibits 1-6.

¹ This Court notes a full hearing was had on this matter on August 25, 2014 before the Honorable James R. Barber, III. At the conclusion of the hearing, Judge Barber took the matter under advisement and subsequently re-opened the record in order to take additional testimony. In an order filed December 16, 2014, Judge Barber ordered a de novo hearing in this case.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Pickens County Grand Jury indicted the Applicant for two counts of lewd act upon a child (2011-GS-39-1763, -1765), first-degree criminal sexual conduct (CSC) with a minor (2012-GS-39-0492), and second-degree CSC with a minor (2012-GS-39-0493). He was represented by S. Paul Aaron, Esquire.

On February 27, 2012, the Applicant pled guilty – pursuant to a negotiated sentence – to one count of lewd act upon a child² and first-degree CSC with a minor. The Honorable Brooks P. Goldsmith sentenced the Applicant to concurrent terms of fifteen years for lewd act upon a child and twenty-five years for first-degree CSC with a minor. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to convey a plea offer in a timely fashion.
2. Involuntary guilty plea:
 - a. "The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation."

In his second amended PCR application, the Applicant makes the following additional allegations:

1. Ineffective assistance of counsel:
 - a. "Plea Counsel was ineffective for allowing the State to force the Applicant to make a decision about the plea offer extended to him on February 27, 2012, the date of his pleas, where the Applicant was not indicted for two separate charges of First Degree Criminal Sexual Conduct and Second Degree Criminal Sexual Conduct with a minor relating to his daughter until February 21, 2012, and was not made aware of these charges until immediately prior to his plea

² 2011-GS-39-1765.

- proceeding."
- b. "Plea Counsel was ineffective for failing to adequately advise the Applicant of measures which could be taken to ask the Court to sever the prosecution of his charges which involved two separate victim's neither of whom were witnesses to acts alleged to have been committed with the other."
 - c. "Plea Counsel was ineffective for neglecting to fully advise the Applicant concerning what use the defense could make of a recantation made by the Applicant's daughter if his case had proceeded to trial by jury."
 - d. "Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State."
 - e. "Plea Counsel was ineffective for failing to fully discuss with the Applicant what use the defense could make of the domestic history between the Applicant and his daughter's mother, if the Applicant exercised his right to trial by jury, where allegations of sexual battery were not made against the Applicant until after he sought child support from his ex-wife sometime after he was awarded custody of their daughter."
 - f. "Plea Counsel was ineffective for failing to consult with Attorney Nick Lavery concerning the fact that the Applicant's daughter had made a statement in the presence of Attorney Lavery, recanting her allegations of sexual battery."
 - g. "Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner."
 - h. "Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order."
 - i. "Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection."
 - j. "Plea Counsel failed to provide the Applicant reasonable professional assistance of counsel in that he failed to adequately inform the Applicant of the elements of the charges against him."
 - k. "Plea Counsel was ineffective for failing to give the Applicant accurate advise concerning his sentencing exposure if he proceeded to trial by jury."
 - l. "Plea Counsel was ineffective for failing to object to the Applicant's re-indictment for First Degree Criminal Sexual Conduct with a Minor and Second Degree Criminal Sexual

Conduct with a Minor on charges of sexual battery upon his daughter where the second indictments broke the time period covered in a earlier single indictment into two separate offenses.”

- m. “Plea Counsel was ineffective for neglecting to review all the discovery materials produced by the State with the Applicant before he was required to make a decision regarding exercising his right to a jury trial.”
- n. “Plea Counsel was ineffective for failing to consult with his daughter’s guardian ad litem, Liz Young, where Ms. Young’s testimony would have helped develop a defense to the Applicant’s charges pertaining to his daughter.”
- o. “Plea Counsel was ineffective for failing to advise the Applicant concerning how the defense could use the testimony of a child interviewer who was the first to interview his daughter after the allegations concerning the daughter came to light.”
- p. “Plea Counsel was ineffective for failing to object to a conflict of interest where the Plea Judge’s daughter was close friends with the Prosecutor in the Applicant’s case.”
- q. “Plea Counsel was ineffective for failing to review favorable evidence from a Pickens County investigation concerning a recantation by Applicant’s daughter with the Applicant and in failing to discuss the potential admissibility of that evidence in a jury trial with the Applicant before he was required to make a decision concerning a waiver of his right to a jury trial in Pickens County.”

At the PCR hearing, counsel for the Applicant stated they would proceed solely upon the following issues:

- 1. Ineffective assistance of counsel because the plea offer was not conveyed to the Applicant in a timely fashion.
- 2. Prosecutorial misconduct because the plea offer was conveyed to plea counsel when counsel had an order of protection.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

A.

The Applicant stated he went to court in October 2011 but it was not for him to plead guilty. The Applicant stated he never saw an 18-year offer and never made a 5-year counteroffer. The Applicant stated plea counsel brought him sentencing sheets on January 17, 2012 and that plea counsel mentioned a 15-year offer, so he signed the sheets. The Applicant stated he did not know the 15-year offer had expired on January 3, 2012. The Applicant stated he did not make a counteroffer of 8-9 years to the State. The Applicant stated he was dissatisfied with plea counsel on the day of the plea hearing but stated he did not inform the plea judge of

this because he wanted "to go along." The Applicant acknowledged he did not tell the plea judge about wanting the 15-year offer because he did not "feel it was proper" to say this. The Applicant stated he would have wanted plea counsel to file a motion to enforce the 15-year plea offer.

Jean Cowan stated she was the Applicant's mother. Cowan stated she was unaware of the existence of a 15-year plea offer.

Richard Douglas Wooten, III stated he was the Applicant's brother. Wooten stated the Applicant told him about a 15-year plea offer and mentioned the sentencing sheets. Wooten stated the Applicant was committed to the 15-year offer but that the Applicant did not know if this would be "solid."

Brandi Batson Hinton, the assistant solicitor, testified the Applicant was brought to court to plead guilty on October 27, 2011 but that she was told he did not want to plead guilty. The assistant solicitor confirmed, however, that she later made an 18-year plea offer and the Applicant made a 5-year counteroffer. The assistant solicitor testified she recalled plea counsel saying he had protection at some point but stated she does not check the order of protection list when she makes a plea offer. The assistant solicitor confirmed that, in the series of emails exchanged with plea counsel on January 12, 2012, he asked for an 8-9 year offer. The assistant solicitor testified they were still negotiating the offer. The assistant solicitor testified she told plea counsel to take sentencing sheets to the Applicant to see if he would sign them but that she would then discuss a plea with the victims. The assistant solicitor testified she did not make any promises they would proceed with the 15-year offer. The assistant solicitor testified she received blank but signed sheets and called the victims to discuss it, but that the victims did not want an offer. The assistant solicitor noted plea counsel never stated the Applicant accepted the 15-year

offer. The assistant solicitor testified she was not allowed to extend the expiration date of the 15-year plea offer because of the case management system. The assistant solicitor testified her supervisors allowed her to extend a 25-year offer on the day of the plea hearing and stated the plea that day should have been without a sentence recommendation. The assistant solicitor testified she never received confirmation at any point that the Applicant actually accepted the 15-year offer.

Lisa Spangler stated she was a detention center officer. Spangler stated plea counsel came to visit the Applicant at the jail in January 2012 and brought a paper for the Applicant to sign. Spangler stated plea counsel mentioned this was a plea for 15 years.

Plea counsel testified the assistant solicitor made a plea offer for an 18-year sentence.³ Plea counsel testified he conveyed this offer to the Applicant and explained the risks and advantages of the offer. Plea counsel testified the offer was to expire on January 3, 2012 but that the Applicant rejected it. Plea counsel testified he did not recall whether or not the Applicant made a counteroffer. Plea counsel testified he spoke to the assistant solicitor around December 15, 2011, she mentioned a 15-year offer, and he said he was going out of town. Plea counsel testified he received an order of protection for when he would be out of town and believed this order covered December 20, 2011 – January 5, 2012. Plea counsel testified that, when he returned from his out-of-town trip, there were two letters from the assistant solicitor. The first letter was dated December 20, 2011 and was an offer for the Applicant to plead guilty to two counts of lewd act (and nol pros all other charges) in exchange for a 15-year recommendation.⁴ The second letter was dated January 3, 2012 and was a re-conveyance of the December offer.⁵

³ Applicant's Exhibit 1.

⁴ Applicant's Exhibit 2.

⁵ Applicant's Exhibit 3.

Plea counsel testified both offers expired on January 3, 2012. Plea counsel testified he and the assistant solicitor exchanged a series of emails when he returned from his trip.⁶ Plea counsel acknowledged he made a counteroffer of an 8-9 year recommendation and testified he was still negotiating with the State. Plea counsel testified that, pursuant to one of these emails, he took sentencing sheets to the jail for the Applicant to sign. Plea counsel testified, however, the assistant solicitor later reiterated the plea offer expired on January 3rd. Plea counsel testified he spoke to both the assistant solicitor's supervisor and the deputy solicitor about enforcing the 15-year offer but they did not change their position and the case was placed on the trial docket. Plea counsel testified that – on the morning of the Applicant's plea – he told the judge about the conveyance of the offer while he was protected.

B.

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the South Carolina Supreme Court found a defendant must demonstrate – under Strickland – both that plea counsel's failure to communicate the plea offer was deficient and that he was prejudiced by counsel's performance. This Court finds the Applicant failed to prove either error or prejudice under the Davie analysis.

This Court finds the Applicant failed to demonstrate plea counsel's representation was deficient. Plea counsel communicated the plea offer in this case when returned to town after the conclusion of his order of protection. The plea offer had, however, expired by this time. The order of protection prevented the assistant solicitor from scheduling plea counsel for court appearances but did not limit her ability to convey plea offers. "Both the South Carolina

⁶ Applicant's Exhibit 5.

Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands." State v. Thrift, 312 S.C. 282, 29-92, 440 S.E.2d 341, 346 (1997). "Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." Id. at 292, 440 S.E.2d at 346-47. Plea counsel believed the order of protection would have protected him from being responsible for any court-related activities.⁷ Regardless, he conveyed the plea offer when he was able and attempted to have that offer honored by requesting such from the assistant solicitor, her supervisor, and the deputy solicitor. This Court finds plea counsel's actions and representation in this case were reasonable under the circumstances. See Strickland, 466 U.S. at 688, 104 S. Ct. at 2065 ("In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.").

This Court finds the Applicant failed to demonstrate he was prejudiced as the result of plea counsel's representation. In order to prove prejudice, a defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). In cases concerning a potentially un conveyed plea offer, the defendant "must show actual prejudice." Davie, 381 S.C. at 613, 675 S.E.2d at 422. This Court finds the Applicant cannot prove prejudice because there is no evidence – other than his self-serving testimony – that he would have accepted the 15-year offer. This Court finds credible the assistant solicitor's testimony that the Applicant rejected the 18-year offer and asked plea counsel to make a 5-year

⁷ Plea counsel also noted he was a sole practitioner at that time, so he did not have another attorney who could have stood in for him for court. Regardless, plea counsel stated he did not believe it would have been appropriate to have another attorney (one unfamiliar with the case) stand in for him in a General Sessions matter.

counteroffer. It is improbable the Applicant would have accepted a recommendation 3 years below the original offer when he had just demonstrated that he wanted a recommendation 13 years below the original. This Court finds it is simply not credible that the Applicant would have accepted the 15-year plea offer if it had been conveyed earlier. See Lafler v. Cooper, __ U.S. __, 132 S. Ct. 1376, 1385 (2012) (in the context of ineffective assistance of counsel regarding plea bargains, defendant must show he “would have accepted the plea” to show prejudice). Furthermore, the Applicant cannot demonstrate prejudice because he cannot show “the plea would have been entered without the prosecution canceling it or the trial judge refusing to accept it.” Id. The assistant solicitor testified she discussed the 15-year offer with the victims (after plea counsel returned the signed sentencing sheets in mid-January 2012) and that the victims did not agree with this offer. In addition, while the plea judge was advised of the expired 15-year offer (and the circumstances surrounding the conveyance and expiration of that offer), he would not re-visit that sentence and instead imposed the 25-year sentence recommended by the State that day. As such, the Applicant cannot prove actual prejudice under Davie and Lafler.

This Court also finds the Applicant cannot demonstrate prejudice because the 15-year offer was never actually accepted. The South Carolina Supreme Court has noted “a plea bargain rests on contractual principles.” Thrift, 312 S.C. at 292, 440 S.E.2d at 347. The January 12th emails indicate the Applicant never accepted the 15-year offer in question. Rather, these emails indicate the parties were still negotiating the terms of a potential plea agreement – plea counsel brought up an 8-9 year counteroffer and mentioned the idea of a “straight up” plea. See Weisz Graphics Div. of Fred B. Johnson Co., v. Peck Indus., Inc., 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) (finding “no contract is formed if the acceptance varies the terms of the offer. Instead, an acceptance which adds different or additional terms is treated as a

counteroffer. . . ."); see also *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989) (noting common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement). The 15-year offer was rejected once plea counsel made a counteroffer of 8-9 years. See Am. Jur. Contracts § 65; Restatement 2d Contracts § 39.

C.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was actually prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See *Frasier v. State*, 351 S.C. at 389, 570 S.E.2d at 174.

Prosecutorial Misconduct

The Applicant argues there was prosecutorial misconduct in this case because the assistant solicitor conveyed the 15-year plea offer while plea counsel had an order of protection and this offer expired before the end date of the order of protection. This Court finds the Applicant has failed to meet his burden of proving prosecutorial misconduct.

"The presumption of regularity supports" prosecutorial decisions and, "in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." United States v. Chem. Found., Inc., 272 U.S. 1, 14-15, 47 S. Ct. 1, 6 (1926). "Undoubtedly, the solicitor has discretion in choosing how to proceed with a case, including

whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” State v. Langford, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012); see also State v. Fletcher, 322 S.C. 256, 261, 471 S.E.2d 702, 705 (Ct. App. 1996) (noting “the solicitor is charged with the responsibility of prosecuting criminal charges”). In the ordinary case, “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” United States v. Armstrong, 517 U.S. 456, 464, 116 S. Ct. 1480, 1486 (1996); see also Bordenkircher v. Hayes, 434 U.S. 357, 364, 98 S. Ct. 663, 668 (1978) (“In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”).

In order to establish prejudicial misconduct on the part of the prosecutor the alleged misconduct must have “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 180-81, 106 S. Ct. 2464, 2471 (1986) (quotation omitted).

This Court finds the Applicant has failed to demonstrate there was prosecutorial misconduct in his case. The solicitor’s office is imbued with the power to make (or not make) plea offers in a criminal case. See State v. Langford, 400 S.C. at 436 n.6, 735 S.E.2d at 479 n.6. The assistant solicitor made an 18-year plea offer to the Applicant, who made a 5-year counteroffer. The assistant solicitor was not obligated to make another plea offer. Regardless, she made a subsequent plea offer for a 15-year sentence. The assistant solicitor testified she did not consult the order of protection list before she made this plea offer. This Court finds her testimony to be credible and does not find the 15-year plea offer that expired on January 3, 2012

was purposefully crafted and conveyed in order to be received by plea counsel's office while he was out of town and had an order of protection. Further, there can be no misconduct from the assistant solicitor's failure to extend the plea offer past the January 3rd expiration date because she was bound by the case management system at that point. While plea counsel properly asked the assistant solicitor for such an extension – and then appealed to her supervisor and the deputy solicitor – the State was not obligated to extend the 15-year plea offer at that point. The Applicant has failed to demonstrate the assistant solicitor did not properly discharge her official duties. See United States v. Chem. Found., Inc., 272 U.S. at 14-15, 47 S. Ct. at 6. The Applicant has failed to demonstrate he suffered a denial of due process in this case as a result of the assistant solicitor's actions in this case.⁸ See Darden v. Wainwright, 477 U.S. at 180-81, 106 S. Ct. at 2471.

Accordingly, this Court finds the Applicant failed to meet his burden of proving the existence of prosecutorial misconduct in this case. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

⁸ This Court notes that, as discussed supra, the Applicant failed to demonstrate either that he would have accepted the 15-year offer or that the State would re-convey this offer at any point.

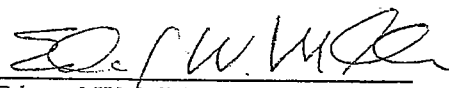
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2 day of October, 2015.


 Edward W. Miller
 Presiding Judge
 Thirteenth Judicial Circuit

Lee, South Carolina.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

WILLIAM DAVID WOOTEN, 349872)

2012-CP-39-1196

Applicant,)

v.)

**MOTION TO ALTER OR AMEND
 PURSUANT TO RULE 59(e), SCRCP**

THE STATE OF SOUTH CAROLINA,)

Respondent.)

NOW COMES the Applicant in the above-captioned case, acting by and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRCP, to alter or amend its Order of Dismissal in the above captioned PCR matter which was filed on October 6, 2015. The undersigned PCR Counsel received the clocked Order of Dismissal on October 12, 2015. Applicant now serves and files a timely Motion pursuant to Rule 59(e), SCRCP, requesting that the Order of Dismissal be Altered or Amended in light of the following.

The Order of Dismissal fails to make findings of fact and rulings of law on all of the issues advanced by Applicant in this PCR action. At the outset of the *de novo* PCR hearing held in this mater on April 15, 2015, Applicant advised the Court that he was proceeding only on the allegations which related to the representation he received in the plea negotiation process and the failure of Defense Counsel to convey an offer made by the State in a timely manner. He also advanced a claim of prosecutorial misconduct predicated upon the fact that the State sent the written plea offer at issue in this case during a time period when the Assistant Solicitor assigned to this case knew Applicant's attorney was under an order of protection. PCR II p. 5, l. 13 – p. 6, l. 2. Of those issues, the Order of Dismissal filed in this case failed to address several relevant allegations found in Applicant's Second Amended Application and advanced by him during his PCR hearing.

Specifically, the Order of Dismissal fails to make findings of fact and conclusions of law concerning the following allegations.¹

4. Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State. (Referenced as Allegation I (d) in the Order of Dismissal).
7. Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner. (Referenced as Allegation I (g) in the Order of Dismissal).
8. Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order. (Referenced as Allegation I (h) in the Order of Dismissal).
9. Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection. (Referenced as Allegation I(i) in the Order of Dismissal).

In addition to the omission of the issues set forth above, the Order of Dismissal makes inaccurate findings of fact not supported by the records before this Court. The Order states that Applicant has failed to demonstrate prejudice inasmuch as he failed to present evidence, *“other than his own self-serving testimony”* that he would have accepted the fifteen (15) year deal had it been presented to him in time for him to accept it. Order of Dismissal, p. 9, para. 2. This finding is simply inaccurate. The records before this Court, *other than Applicant’s own testimony*, confirm the following.

- The exhibits before this Court show that Applicant signed plea sheets for two counts of lewd act on a minor on January 17, 2012. These plea sheets specifically reflect that they are for a negotiated sentence. They were signed by Applicant, defense Counsel and the Assistant Solicitor. PCR II, Plaintiff’s Exhibit 4.

¹ Numerical references for each allegation are taken from their number in the second Amended PCR Application in which they were presented.

- The testimony of the Assistant Solicitor in this case confirms that the negotiated sentence in that deal was for a fifteen (15) sentence. PCR II, p. 53, ll. 22-25. This fact is confirmed in the plea offer letter entered into evidence as Petitioner's Exhibits No. 2 and 3.
- Defense Counsel expressly testified that Applicant accepted the fifteen (15) year deal when he conveyed it to him at the detention center. PCR II p. 32, l. 18- p. 33, l.10.
- Not only did the evidence before this Court establish that Applicant accepted this offer the first time it was presented to him, it further established that the plea sheets Applicant signed were returned to the State. In an email from the Assistant Solicitor to Defense Counsel, she thanked him for getting the sheets back to her and then, in that same email, advised him that the victims would not agree for Applicant to plead under the offer as it had expired. PCR II, Petitioner's Exhibit 5.

In addition, the Order of Dismissal states that it finds credible the Assistant Solicitor's claim that at the time she sent Defense Counsel her written plea offer to the fifteen (15) year deal she was unaware that Defense Counsel was under Order of Protection. It is true that this Assistant Solicitor vehemently denied knowing that Defense Counsel was under Order of Protection at the time the written offer was extended at the second PCR hearing held on April 15, 2015. In her previous testimony at the first PCR hearing held on August 25, 2014, she expressly acknowledged that she knew Defense Counsel was gone and under Order of Protection when the offer was extended in writing. PCR I p. 44, l. 4 – p. 45, l. 7. ² The testimony of Defense Counsel and the Assistant Solicitor from the first PCR hearing was admitted into evidence during the second PCR hearing by agreement of the parties. PCR II, p. 72, ll. 11-21; Petitioner's Exhibit 6.

In addition, this Honorable Court finds that Petitioner has not demonstrated

² In his testimony at the second PCR hearing, defense Counsel recalled standing in the hall at the courthouse and having a discussion with the Assistant Solicitor during which she told him she was going to send him an offer for fifteen years in this case. He testified that he then reminded her that the day of this conversation was his "last day of availability until into January." PCR II, p. 32, ll. 8-17. During the first PCR hearing, this Assistant Solicitor testified that she "believed" she extended this offer before Defense Counsel left tow, but she could not produce the letter in which the offer was extended. PCR I, p. 44- p. 46, l. 4. The letter, produced before the de novo proceeded, was dated December 20, 2011. PCR II, Petitioner's Exhibit 2. That was what Defense Counsel recalled to be the first day covered by his Order of Protection. PCR II, p. 11, ll. 15-20.

prejudice where he can not prove that the presiding Judge would have agreed to allow Applicant to plead under the terms of the negotiated deal at issue herein. Applicant would assert that the Supreme Court's decision in Davie v. State, 381 S.C.601, 675 S.E.2d 416 (2009), indicates that the PCR Court has the authority to tailor a remedy consistent with the harm to the Applicant caused by the ineffective assistance of counsel proven by an applicant for Post-Conviction Relief. Clearly the Sixth Amendment right to effective assistance of Counsel has been extended to the plea negotiation process in this State. The only remedy that can make this Applicant whole is for the Court to set aside his judgments and sentences and remand his case to the circuit court for a new plea proceeding for specific performance of the State's agreement to allow him to plea to the two counts of Lewd Act on a Minor charged in Indictments No. 2011-GS-39-01763 and 01765. The decision of the prosecution dismiss the charge of First degree Criminal Sexual Conduct with a Minor found in Indictment 2012-GS-39-492, as part of this plea agreement, did not require judicial approval. It would then be up to the presiding judge to determine whether he would accept the negotiated sentence agreed upon as part of this negotiated plea bargain not timely conveyed to Applicant.³

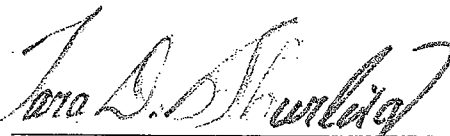
CONCLUSION

For all the above reasons, the Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRCP, grant relief and remand the Applicant's case to the Pickens County Court of General Sessions for specific enforcement of the State's plea agreement to allow him to plead to two counts of Lewd Act on a Minor and dismiss the charge of First Degree Criminal Sexual Conduct with a minor, with a negotiated sentence of fifteen (15) years. Inasmuch as the parties to this plea agreement could not bind the Court to impose the sentence negotiated by them,

³ The plea/sentencing sheets introduced in this PCR action as Petitioner's Exhibit No. 4 confirm that the two counts of Lewd Act on a Minor Applicant was to be allowed to plead to under the terms of the fifteen (15) year deal that was extended by the State, approved by the family of the victims and valid through January 3, 2012, were those found in these two indictments; 2011-GS-39-01763 and 01765. Pursuant to S.C. Code Ann. §16-15-140, each of these counts would carry a maximum term of imprisonment of fifteen (15) years.

Applicant seeks this Court's Order granting him leave of court to request that the presiding judge accept and impose the negotiated sentence for the two counts of Lewd Act on a Minor agreed upon as a part of that deal. In the alternative, the Applicant would respectfully request that the Court issue an Amended Order of Dismissal making findings of fact and rulings of law, as required by S.C. Ann. § 17-27-80, on the allegations not addressed in the previously filed Order of Dismissal and correcting the factual inaccuracies found in that Order as well.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law
S. C. Bar No. 5099

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Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

Attorney for the Applicant

This 22nd day of October, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

WILLIAM DAVID WOOTEN, 349872)
 Applicant,)

2012-CP-39-1196

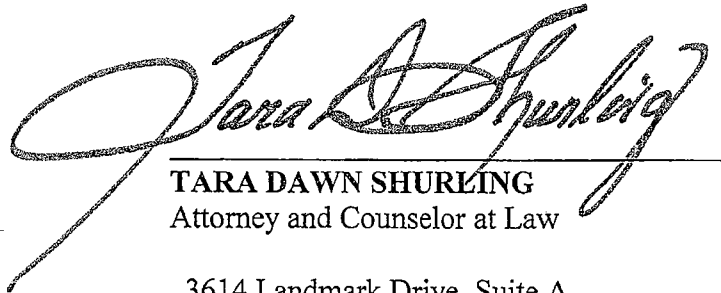
v.)

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

The undersigned attorney hereby certifies that one copy of the Rule 59(e) SCRCF,
 Motion to Alter or Amend in the above-entitled cause has been served upon, Senior Assistant
 Deputy Attorney General, Karen C. Ratigan, by depositing in the U.S. Mail, postage prepaid, on
 this the 22nd day of October, 2015 to:

Karen C. Ratigan
 Senior Assistant Deputy Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211

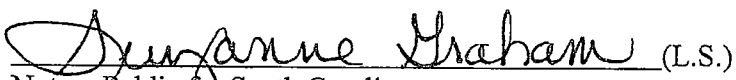

TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 22nd day of

October, 2015.

 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

WILLIAM DAVID WOOTEN, 349872)
 Applicant,)

2012-CP-39-1196

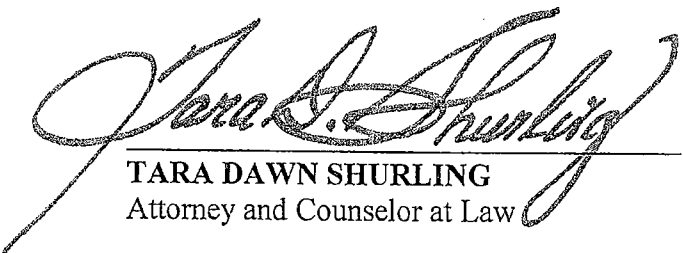
v.)

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

The undersigned attorney hereby certifies that one copy of the Rule 59(e) SCRCF, Motion to Alter or Amend in the above-entitled cause has been served upon, the Honorable Edward W. Miller, Circuit Court Judge for the Thirteenth Judicial Circuit, by depositing in the U.S. Mail, postage prepaid, on this the 22nd day of October, 2015 to:

The Honorable Edward W. Miller
 305 E. North St., Ste. 219
 Greenville, South Carolina 29601

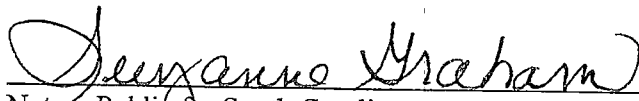

TARA DAWN SHURLING
 Attorney and Counselor at Law

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 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 22nd day of

October, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires:

2/28/24

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-39-1196CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

COUNTY OF PICKENS)

2015 OCT -6 P 1:

William David Wooten,
S.C.D.C. No. 349872,)

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)
_____)

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 17, 2012 (and amended August 28, 2012 and April 17, 2015). The Respondent made its return on February 12, 2013. An evidentiary hearing was held on April 20, 2015 at the Pickens County Courthouse.¹ The Applicant was present and represented by Tara D. Shurling, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were: Lisa Spangler, assistant solicitor Brandi Batson Hinton, Jean Cowan, Richard Douglas Wooten, III, and the Applicant's plea counsel, S. Paul Aaron, Esquire. The Court had before it the guilty plea transcript, the Pickens County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibits 1-6.

¹ This Court notes a full hearing was had on this matter on August 25, 2014 before the Honorable James R. Barber, III. At the conclusion of the hearing, Judge Barber took the matter under advisement and subsequently re-opened the record in order to take additional testimony. In an order filed December 16, 2014, Judge Barber ordered a de novo hearing in this case.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Pickens County Grand Jury indicted the Applicant for two counts of lewd act upon a child (2011-GS-39-1763, -1765), first-degree criminal sexual conduct (CSC) with a minor (2012-GS-39-0492), and second-degree CSC with a minor (2012-GS-39-0493). He was represented by S. Paul Aaron, Esquire.

On February 27, 2012, the Applicant pled guilty – pursuant to a negotiated sentence – to one count of lewd act upon a child² and first-degree CSC with a minor. The Honorable Brooks P. Goldsmith sentenced the Applicant to concurrent terms of fifteen years for lewd act upon a child and twenty-five years for first-degree CSC with a minor. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to convey a plea offer in a timely fashion.
2. Involuntary guilty plea:
 - a. "The Applicant's pleas of guilt were coerced by counsel's failure to provide adequate representation."

In his second amended PCR application, the Applicant makes the following additional allegations:

1. Ineffective assistance of counsel:
 - a. "Plea Counsel was ineffective for allowing the State to force the Applicant to make a decision about the plea offer extended to him on February 27, 2012, the date of his pleas, where the Applicant was not indicted for two separate charges of First Degree Criminal Sexual Conduct and Second Degree Criminal Sexual Conduct with a minor relating to his daughter until February 21, 2012, and was not made aware of these charges until immediately prior to his plea

² 2011-GS-39-1765.

- proceeding.”
- b. “Plea Counsel was ineffective for failing to adequately advise the Applicant of measures which could be taken to ask the Court to sever the prosecution of his charges which involved two separate victim’s neither of whom were witnesses to acts alleged to have been committed with the other.”
 - c. “Plea Counsel was ineffective for neglecting to fully advise the Applicant concerning what use the defense could make of a recantation made by the Applicant’s daughter if his case had proceeded to trial by jury.”
 - d. “Plea Counsel was ineffective for failing to maintain copies of any and all plea agreements accepted and signed by the Applicant after they were extended by the State.”
 - e. “Plea Counsel was ineffective for failing to fully discuss with the Applicant what use the defense could make of the domestic history between the Applicant and his daughter’s mother, if the Applicant exercised his right to trial by jury, where allegations of sexual battery were not made against the Applicant until after he sought child support from his ex-wife sometime after he was awarded custody of their daughter.”
 - f. “Plea Counsel was ineffective for failing to consult with Attorney Nick Lavery concerning the fact that the Applicant’s daughter had made a statement in the presence of Attorney Lavery, recanting her allegations of sexual battery.”
 - g. “Plea Counsel was ineffective in that he failed to make adequate arrangements for someone to cover for him during a vacation out of South Carolina where said failure resulted in the Applicant not receiving a plea offer from the State in a timely manner.”
 - h. “Plea Counsel was ineffective for failing to move for specific enforcement of a plea offer from the State where said offer was made during a time period during which Plea Counsel was under an Order of Protection and the State was on notice of said order.”
 - i. “Plea Counsel was ineffective for failing to convey an advantageous plea offer to the Applicant immediately upon receipt of said offer by Plea Counsel when he returned to South Carolina after the expiration of his Order of Protection.”
 - j. “Plea Counsel failed to provide the Applicant reasonable professional assistance of counsel in that he failed to adequately inform the Applicant of the elements of the charges against him.”
 - k. “Plea Counsel was ineffective for failing to give the Applicant accurate advise concerning his sentencing exposure if he proceeded to trial by jury.”
 - l. “Plea Counsel was ineffective for failing to object to the Applicant’s re-indictment for First Degree Criminal Sexual Conduct with a Minor and Second Degree Criminal Sexual

- Conduct with a Minor on charges of sexual battery upon his daughter where the second indictments broke the time period covered in a earlier single indictment into two separate offenses.”
- m. “Plea Counsel was ineffective for neglecting to review all the discovery materials produced by the State with the Applicant before he was required to make a decision regarding exercising his right to a jury trial.”
 - n. “Plea Counsel was ineffective for failing to consult with his daughter’s guardian ad litem, Liz Young, where Ms. Young’s testimony would have helped develop a defense to the Applicant’s charges pertaining to his daughter.”
 - o. “Plea Counsel was ineffective for failing to advise the Applicant concerning how the defense could use the testimony of a child interviewer who was the first to interview his daughter after the allegations concerning the daughter came to light.”
 - p. “Plea Counsel was ineffective for failing to object to a conflict of interest where the Plea Judge’s daughter was close friends with the Prosecutor in the Applicant’s case.”
 - q. “Plea Counsel was ineffective for failing to review favorable evidence from a Pickens County investigation concerning a recantation by Applicant’s daughter with the Applicant and in failing to discuss the potential admissibility of that evidence in a jury trial with the Applicant before he was required to make a decision concerning a waiver of his right to a jury trial in Pickens County.”

At the PCR hearing, counsel for the Applicant stated they would proceed solely upon the following issues:

1. Ineffective assistance of counsel because the plea offer was not conveyed to the Applicant in a timely fashion.
2. Prosecutorial misconduct because the plea offer was conveyed to plea counsel when counsel had an order of protection.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but-for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

A.

The Applicant stated he went to court in October 2011 but it was not for him to plead guilty. The Applicant stated he never saw an 18-year offer and never made a 5-year counteroffer. The Applicant stated plea counsel brought him sentencing sheets on January 17, 2012 and that plea counsel mentioned a 15-year offer, so he signed the sheets. The Applicant stated he did not know the 15-year offer had expired on January 3, 2012. The Applicant stated he did not make a counteroffer of 8-9 years to the State. The Applicant stated he was dissatisfied with plea counsel on the day of the plea hearing but stated he did not inform the plea judge of

this because he wanted "to go along." The Applicant acknowledged he did not tell the plea judge about wanting the 15-year offer because he did not "feel it was proper" to say this. The Applicant stated he would have wanted plea counsel to file a motion to enforce the 15-year plea offer.

Jean Cowan stated she was the Applicant's mother. Cowan stated she was unaware of the existence of a 15-year plea offer.

Richard Douglas Wooten, III stated he was the Applicant's brother. Wooten stated the Applicant told him about a 15-year plea offer and mentioned the sentencing sheets. Wooten stated the Applicant was committed to the 15-year offer but that the Applicant did not know if this would be "solid."

Brandi Batson Hinton, the assistant solicitor, testified the Applicant was brought to court to plead guilty on October 27, 2011 but that she was told he did not want to plead guilty. The assistant solicitor confirmed, however, that she later made an 18-year plea offer and the Applicant made a 5-year counteroffer. The assistant solicitor testified she recalled plea counsel saying he had protection at some point but stated she does not check the order of protection list when she makes a plea offer. The assistant solicitor confirmed that, in the series of emails exchanged with plea counsel on January 12, 2012, he asked for an 8-9 year offer. The assistant solicitor testified they were still negotiating the offer. The assistant solicitor testified she told plea counsel to take sentencing sheets to the Applicant to see if he would sign them but that she would then discuss a plea with the victims. The assistant solicitor testified she did not make any promises they would proceed with the 15-year offer. The assistant solicitor testified she received blank but signed sheets and called the victims to discuss it, but that the victims did not want an offer. The assistant solicitor noted plea counsel never stated the Applicant accepted the 15-year

offer. The assistant solicitor testified she was not allowed to extend the expiration date of the 15-year plea offer because of the case management system. The assistant solicitor testified her supervisors allowed her to extend a 25-year offer on the day of the plea hearing and stated the plea that day should have been without a sentence recommendation. The assistant solicitor testified she never received confirmation at any point that the Applicant actually accepted the 15-year offer.

Lisa Spangler³ stated she was a detention center officer. Spangler stated plea counsel came to visit the Applicant at the jail in January 2012 and brought a paper for the Applicant to sign. Spangler stated plea counsel mentioned this was a plea for 15 years.

Plea counsel testified the assistant solicitor made a plea offer for an 18-year sentence.³ Plea counsel testified he conveyed this offer to the Applicant and explained the risks and advantages of the offer. Plea counsel testified the offer was to expire on January 3, 2012 but that the Applicant rejected it. Plea counsel testified he did not recall whether or not the Applicant made a counteroffer. Plea counsel testified he spoke to the assistant solicitor around December 15, 2011, she mentioned a 15-year offer, and he said he was going out of town. Plea counsel testified he received an order of protection for when he would be out of town and believed this order covered December 20, 2011 – January 5, 2012. Plea counsel testified that, when he returned from his out-of-town trip, there were two letters from the assistant solicitor. The first letter was dated December 20, 2011 and was an offer for the Applicant to plead guilty to two counts of lewd act (and nol pros all other charges) in exchange for a 15-year recommendation.⁴ The second letter was dated January 3, 2012 and was a re-conveyance of the December offer.⁵

³ Applicant's Exhibit 1.

⁴ Applicant's Exhibit 2.

⁵ Applicant's Exhibit 3.

Plea counsel testified both offers expired on January 3, 2012. Plea counsel testified he and the assistant solicitor exchanged a series of emails when he returned from his trip.⁶ Plea counsel acknowledged he made a counteroffer of an 8-9 year recommendation and testified he was still negotiating with the State. Plea counsel testified that, pursuant to one of these emails, he took sentencing sheets to the jail for the Applicant to sign. Plea counsel testified, however, the assistant solicitor later reiterated the plea offer expired on January 3rd. Plea counsel testified he spoke to both the assistant solicitor's supervisor and the deputy solicitor about enforcing the 15-year offer but they did not change their position and the case was placed on the trial docket. Plea counsel testified that – on the morning of the Applicant's plea – he told the judge about the conveyance of the offer while he was protected.

B.

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective. In Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009), the South Carolina Supreme Court found a defendant must demonstrate – under Strickland – both that plea counsel's failure to communicate the plea offer was deficient and that he was prejudiced by counsel's performance. This Court finds the Applicant failed to prove either error or prejudice under the Davie analysis.

This Court finds the Applicant failed to demonstrate plea counsel's representation was deficient. Plea counsel communicated the plea offer in this case when returned to town after the conclusion of his order of protection. The plea offer had, however, expired by this time. The order of protection prevented the assistant solicitor from scheduling plea counsel for court appearances but did not limit her ability to convey plea offers. "Both the South Carolina

⁶ Applicant's Exhibit 5.

Constitution and South Carolina case law place the unfettered discretion to prosecute solely in the prosecutor's hands." State v. Thrift, 312 S.C. 282, 29-92, 440 S.E.2d 341, 346 (1997). "Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety." Id. at 292, 440 S.E.2d at 346-47. Plea counsel believed the order of protection would have protected him from being responsible for any court-related activities.⁷ Regardless, he conveyed the plea offer when he was able and attempted to have that offer honored by requesting such from the assistant solicitor, her supervisor, and the deputy solicitor. This Court finds plea counsel's actions and representation in this case were reasonable under the circumstances. See Strickland, 466 U.S. at 688, 104 S. Ct. at 2065 ("In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.").

This Court finds the Applicant failed to demonstrate he was prejudiced as the result of plea counsel's representation. In order to prove prejudice, a defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). In cases concerning a potentially unconveyed plea offer, the defendant "must show actual prejudice." Davie, 381 S.C. at 613, 675 S.E.2d at 422. This Court finds the Applicant cannot prove prejudice because there is no evidence – other than his self-serving testimony – that he would have accepted the 15-year offer. This Court finds credible the assistant solicitor's testimony that the Applicant rejected the 18-year offer and asked plea counsel to make a 5-year

⁷ Plea counsel also noted he was a sole practitioner at that time, so he did not have another attorney who could have stood in for him for court. Regardless, plea counsel stated he did not believe it would have been appropriate to have another attorney (one unfamiliar with the case) stand in for him in a General Sessions matter.

counteroffer. It is improbable the Applicant would have accepted a recommendation 3 years below the original offer when he had just demonstrated that he wanted a recommendation 13 years below the original. This Court finds it is simply not credible that the Applicant would have accepted the 15-year plea offer if it had been conveyed earlier. See Lafler v. Cooper, __ U.S. __, 132 S. Ct. 1376, 1385 (2012) (in the context of ineffective assistance of counsel regarding plea bargains, defendant must show he “would have accepted the plea” to show prejudice). Furthermore, the Applicant cannot demonstrate prejudice because he cannot show “the plea would have been entered without the prosecution canceling it or the trial judge refusing to accept it.” Id. The assistant solicitor testified she discussed the 15-year offer with the victims (after plea counsel returned the signed sentencing sheets in mid-January 2012) and that the victims did not agree with this offer. In addition, while the plea judge was advised of the expired 15-year offer (and the circumstances surrounding the conveyance and expiration of that offer), he would not re-visit that sentence and instead imposed the 25-year sentence recommended by the State that day. As such, the Applicant cannot prove actual prejudice under Davie and Lafler.

This Court also finds the Applicant cannot demonstrate prejudice because the 15-year offer was never actually accepted. The South Carolina Supreme Court has noted “a plea bargain rests on contractual principles.” Thrift, 312 S.C. at 292, 440 S.E.2d at 347. The January 12th emails indicate the Applicant never accepted the 15-year offer in question. Rather, these emails indicate the parties were still negotiating the terms of a potential plea agreement – plea counsel brought up an 8-9 year counteroffer and mentioned the idea of a “straight up” plea. See Weisz Graphics Div. of Fred B. Johnson Co., v. Peck Indus., Inc., 304 S.C. 101, 106, 403 S.E.2d 146, 149 (Ct. App. 1991) (finding “no contract is formed if the acceptance varies the terms of the offer. Instead, an acceptance which adds different or additional terms is treated as a

counteroffer. . . ."); see also Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (noting common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement). The 15-year offer was rejected once plea counsel made a counteroffer of 8-9 years. See Am. Jur. Contracts § 65; Restatement 2d Contracts § 39.

C.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was actually prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Prosecutorial Misconduct

The Applicant argues there was prosecutorial misconduct in this case because the assistant solicitor conveyed the 15-year plea offer while plea counsel had an order of protection and this offer expired before the end date of the order of protection. This Court finds the Applicant has failed to meet his burden of proving prosecutorial misconduct.

"The presumption of regularity supports" prosecutorial decisions and, "in the absence of clear evidence to the contrary, courts presume that they have properly discharged their official duties." United States v. Chem. Found., Inc., 272 U.S. 1, 14-15, 47 S. Ct. 1, 6 (1926). "Undoubtedly, the solicitor has discretion in choosing how to proceed with a case, including

whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain.” State v. Langford, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012); see also State v. Fletcher, 322 S.C. 256, 261, 471 S.E.2d 702, 705 (Ct. App. 1996) (noting “the solicitor is charged with the responsibility of prosecuting criminal charges”). In the ordinary case, “so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.” United States v. Armstrong, 517 U.S. 456, 464, 116 S. Ct. 1480, 1486 (1996); see also Bordenkircher v. Hayes, 434 U.S. 357, 364, 98 S. Ct. 663, 668 (1978) (“In our system, so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.”).

In order to establish prejudicial misconduct on the part of the prosecutor the alleged misconduct must have “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Darden v. Wainwright, 477 U.S. 168, 180-81, 106 S. Ct. 2464, 2471 (1986) (quotation omitted).

This Court finds the Applicant has failed to demonstrate there was prosecutorial misconduct in his case. The solicitor’s office is imbued with the power to make (or not make) plea offers in a criminal case. See State v. Langford, 400 S.C. at 436 n.6, 735 S.E.2d at 479 n.6. The assistant solicitor made an 18-year plea offer to the Applicant, who made a 5-year counteroffer. The assistant solicitor was not obligated to make another plea offer. Regardless, she made a subsequent plea offer for a 15-year sentence. The assistant solicitor testified she did not consult the order of protection list before she made this plea offer. This Court finds her testimony to be credible and does not find the 15-year plea offer that expired on January 3, 2012

was purposefully crafted and conveyed in order to be received by plea counsel's office while he was out of town and had an order of protection. Further, there can be no misconduct from the assistant solicitor's failure to extend the plea offer past the January 3rd expiration date because she was bound by the case management system at that point. While plea counsel properly asked the assistant solicitor for such an extension – and then appealed to her supervisor and the deputy solicitor – the State was not obligated to extend the 15-year plea offer at that point. The Applicant has failed to demonstrate the assistant solicitor did not properly discharge her official duties. See United States v. Chem. Found., Inc., 272 U.S. at 14-15, 47 S. Ct. at 6. The Applicant has failed to demonstrate he suffered a denial of due process in this case as a result of the assistant solicitor's actions in this case.⁸ See Darden v. Wainwright, 477 U.S. at 180-81, 106 S. Ct. at 2471.

Accordingly, this Court finds the Applicant failed to meet his burden of proving the existence of prosecutorial misconduct in this case. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

⁸ This Court notes that, as discussed *supra*, the Applicant failed to demonstrate either that he would have accepted the 15-year offer or that the State would re-convey this offer at any point.

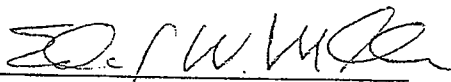
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 2 day of October, 2015.


 Edward W. Miller
 Presiding Judge
 Thirteenth Judicial Circuit

Gal, South Carolina.

CLERK OF COURT
 STATE OF SOUTH CAROLINA PICKENS COUNTY COURT OF COMMON PLEAS
 COUNTY OF PICKENS SOUTH CAROLINA THIRTEENTH JUDICIAL CIRCUIT

2016 JUL 25 P 2:31 CASE NO: 2012-CP-39-1196
 WILLIAM DAVID WOOTEN,

vs.

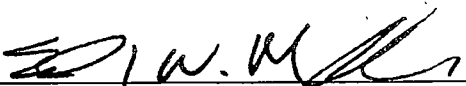
**ORDER DENYING MOTION TO
 ALTER OR AMEND**

STATE OF SOUTH CAROLINA,
 Defendant.

THIS MATTER is before the Court on the Petitioner's Motion to Alter or Amend Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. After careful consideration of the issues raised in the Motion, the Motion is denied and the Court's previous ruling is reaffirmed.

THEREFORE, it is ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion for to Alter or Amend is DENIED.

IT IS SO ORDERED.


 The Honorable Edward W. Miller
 Judge, Thirteenth Judicial Circuit

Dated: 7/17/16
 Greenville, South Carolina

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Edward W. Miller, Presiding Judge

2012-CP-39-1196

RECEIVED

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S.C. SUPREME COURT

WILLIAM DAVID WOOTEN,

Applicant,

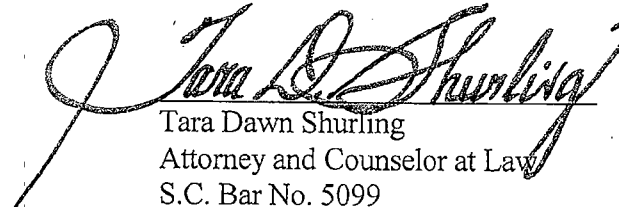
v.

THE STATE OF SOUTH CAROLINA,

Respondent.

NOTICE OF APPEAL

NOW COMES the Applicant in the above-captioned Post-Conviction Relief matter, acting by and through his undersigned counsel, giving notice of his appeal from the Final Order of Dismissal denying his Post-Conviction Relief filed October 6, 2015 and the Order Denying the Applicant's Motion to Alter or Amend pursuant to Rule 59(e), SCRCP, which was filed with the Pickens County Clerk of Court on July 25, 2016 and received by Counsel on August 1, 2016.


Tara Dawn Shurling
Attorney and Counselor at Law
S.C. Bar No. 5099

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

This 31st day of August, 2016.

ATTORNEY FOR APPLICANT

Other Counsel of Record:

Karen C. Ratigan, Senior Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211
Attorney for Respondent
(803) 734-3737

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Edward W. Miller, Presiding Judge

2012-CP-39-1196

RECEIVED
SEP 06 2016
S.C. SUPREME COURT

WILLIAM DAVID WOOTEN,

Applicant,

v.

THE STATE OF SOUTH CAROLINA,

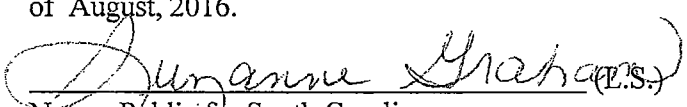
Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Applicant's Notice of Appeal in the above-entitled cause has been served upon opposing counsel, Karen C. Ratigan, Senior Assistant Deputy Attorney General, by mailing in an envelope properly addressed with postage prepaid on this 31st day of August, 2016.


Tara Dawn Shurling
Attorney for Applicant

SWORN TO BEFORE me this 31st day
of August, 2016.


Notary Public for South Carolina
My Commission Expires: 2/28/24