

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

Steven H. John, Circuit Court Judge

RECEIVED

MAY 25 2016

SC SUPREME COURT

DUSTIN EVANS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-002141

A P P E N D I X

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Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA)

2013-CP-14-0078
IN THE COURT OF COMMON PLEASCounty of Clarendon)Dustin L. Evans)

Full name and prison number (if any) of Applicant)

v. CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE APPLICATION FOR

State of South Carolina

DATE 3/4/2013Beverly H. Rebertus
CLERK OF COURT
CLARENDON)

2013 MAR -4 PM 1:05

BEULAH FORTIS
CLERK OF COURT
CLARENDON COUNTY, SCINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Inst. P.O. Box 205, Ridgerville
2. Name and location of Court which imposed sentence General sessions, Clarendon Court
3. Name(s) of co-defendant(s) (if any) Jeremy shay sweat
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-14-0364, 2007-GS-14-0364, 2007-GS-14-0364
 - (b) 2007-GS-14-0363, 2007-GS-14-0363

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4/30/08, 3 consecutive - of INDICTMENT &
- (b) And for INDICTMENT NUMBER, 2007-GS-14-036
- (c) INDICTMENT is run concurrent with Indictment 2007
years Total
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel failed to file direct appeal w/
- (b) was in fact requested by the client.

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

(a) Ineffective counsel because no direct appeal was filed.

(b) Plea was involuntary due to ineffective counsel.

(c) _____

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

(a) Counsel failed to file direct appeal when requested to do or consult with client.

(b) Client and client's family tried to contact counsel during the 10 day time frame only to not get a response.

(c) _____

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

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

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

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

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

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

NO.

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

(a) which grounds have been presented:

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

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

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

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

(a) All grounds listed in section 10 and 11 above are because Counsel was ineffect
in filing direct appeal.

(b) _____

(c) _____

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

(a) your arraignment and plea? yes.

(b) your trial, if any? yes. Guilty plea.

(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?
No.

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

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

i. Scott Roderson 8 South Brooks street Manning S.C 29102

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

I seek A new trial And the possibility of a concurrent sentence.

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

STATE OF SOUTH CAROLINA)

County of Clarendon)

VERIFICATION

I, Dustin L Evans 328054, 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.

Dustin Evans

SWORN to and subscribed before me this 25th
day of February, 2013.

Lucrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

I, Dustin L Evans 328054, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Dustin Evans
Applicant

SWORN or affirmed to and subscribed before me this
25th day of February, 2013.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2020

II.

In his Application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel:
 - a. Failed to file direct appeal.
 - b. "plea was involuntary due to ineffective counsel."

For the purpose of this Return, the Respondent incorporates the Clarendon County Clerk of Court records and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offense(s) he challenges in this Application on April 30, 2008. This application was filed on March 4, 2013, approximately four years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

(1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Applicant has filed this application five years after he was convicted. The Respondent submits that the doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore the South Carolina legislature has recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. §17-27-45(a).

The Applicant's delay has greatly prejudiced the Respondent. It is unlikely that the attorneys' files will be available or that those involved in the case would have great memory of the case due to the lapse of time. Records of the proceedings (i.e. transcripts) may be unavailable. If the Applicant had sought post-conviction relief within a reasonable time after his plea, none of these problems would exist. Therefore, the Court should summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief.

V.

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

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired and Applicant has prejudiced the Respondent by making it difficult to call witnesses and locate transcripts, therefore being barred under the doctrine of laches.

(Signature block on following page)

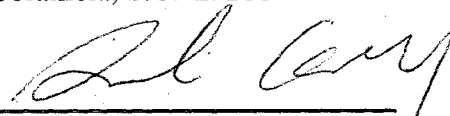
Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPECNER
Assistant Deputy Attorney General

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

By:


Attorneys for the Respondents

Columbia, South Carolina
Jun 27, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
	)	
	)	2013-CP-14-0078
	)	
DUSTIN L. EVANS, 328054,	)	
	)	
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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Dustin L. Evans, #328054
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472

DATED this 27th day of June, 2013.



Caroline Kaiser, Legal Assistant
For Respondent

State of South Carolina)
)
County Of Clarendon)

In the Court of Common Pleas
Third Judicial Circuit
2013-CP-14-0078

Dustin L. Evans,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record.

September 9, 2014
Sumter, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

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

Tommy A. Thomas, Esquire
Attorney for the Applicant

Daniel Gourley, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
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Cross-examination by Mr...	24
Redirect Examination by Mr. Thomas.. . . .	25
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EX.</u>
A-1	Copy of checks	19	20

1 THE COURT: Which case is this?

2 MR. GOURLEY: Judge, this is *Dustin Evans vs. the*
3 *State of South Carolina.*

4 THE COURT: Dustin Evans, all right.

5 MR. GOURLEY: And he is presently confined in the
6 South Carolina Department of Corrections pursuant to orders
7 of commitment of the clerk -- of the Clarendon County Clerk
8 of Court. He was true-bill indicted at the October 2007
9 term Clarendon County grand jury for one count of
10 kidnapping and one count of criminal sexual conduct in the
11 first degree. He was represented by Mr. Scott Robinson.

12 On April 30, 2008, he pled guilty to CSC first and
13 assault and battery with intent to kill. He was sentenced
14 by the Honorable George C. James, Jr., to a negotiated
15 sentence of sixteen years for assault and battery with
16 intent to kill and fifteen years for criminal sexual
17 misconduct first, first degree. Those sentences were
18 served concurrently. He did not appeal his conviction or
19 sentence.

20 Your Honor, he filed an application for
21 post-conviction relief March 4, 2013, alleging ineffective
22 assistance of counsel for failing to file a direct appeal,
23 and that his plea was involuntary due to ineffective
24 assistance of counsel.

25 State filed its return and motion to dismiss all

1 claims but the failure to file a direct appeal pursuant to
2 *White vs. State* on March -- or June 27, 2013, and, Your
3 Honor, Judge Young signed a conditional order of dismissal
4 March 26, 2014.

5 THE COURT: When you said sentences to be served
6 concurrently.

7 MR. GOURLEY: Yes, Your Honor.

8 THE COURT: I'm just looking at a sentencing sheet.
9 Were they all ---

10 MR. THOMAS: May it please the court? He does have
11 some consecutive sentences, and I know that that's kind of
12 an easy mistake. I made that as well at the beginning, but
13 he is serving a forty-seven year old -- forty-seven year
14 sentence.

15 MR. GOURLEY: I apologize, Your Honor.

16 THE COURT: Written under the one CSC first degree it
17 says sixteen years consecutive, forty-seven year something,
18 but some consecutive, some concurrent.

19 MR. GOURLEY: Yes, Your Honor.

20 MR. THOMAS: And, Your Honor, we did check with
21 Corrections and they've got him serving forty-seven years,
22 Your Honor, was the best of our calculation. That's what
23 my client says as well.

24 THE COURT: All right. All right, we're on Mr.
25 Evans's application, Mr. Thompson [sic].

1 MR. THOMAS: Your Honor, if it please the court?

2 THE COURT: Yes, sir.

3 MR. THOMAS: We're before the court today on basically
4 our motion in regards to conditional order of dismissal.
5 The state's argument was basically laches as well as
6 statute of limitations.

7 Your Honor, it's kind of twofold. My client has not
8 had an appeal, a direct appeal of his sentence, nor has he
9 had a post-conviction relief action. He was found guilty
10 or pled guilty actually to this April 30th of 2008.
11 Post-conviction was filed March 4th of 2013.

12 Be more than happy to put my client up in regards to
13 testimony, but in a nutshell, what he was -- what he is
14 arguing, Your Honor, is that he had asked Mr. Robinson to
15 appeal this case based upon the fact he thought that he was
16 going to get the sixteen. That was what was told to him,
17 and also he thought that these sentences were going to run
18 concurrent, and they were not running concurrent. They
19 were running consecutive, and he brought this up to Mr.
20 Robinson's attention and asked him, and Mr. Robinson told
21 him, well, we'll just appeal this, and we can basically get
22 this resolved. Thus his request for the appeal, Your
23 Honor.

24 THE COURT: And what am I to decide today?

25 MR. THOMAS: I'm sorry?

1 THE COURT: And what am I to decide today?

2 MR. THOMAS: Your Honor, you're just to decide whether
3 or not we should be able to go forward for an evidentiary
4 hearing. We do feel that there's prejudice in this case
5 because it's a really odd situation. I feel a little bit
6 uncomfortable going forward with this, but it is what it
7 is.

8 There was representations made by Mr. Robinson that if
9 he paid him an additional \$3,500 -- this was an appointed
10 case -- that he could get a better deal. My client is
11 saying that Mr. Robinson was ineffective for a couple of
12 things, one being the consecutive versus concurrent portion
13 of the sentence. And as well as -- it has some support for
14 his belief entering into the plea that he was going to get
15 the sixteen years because that's what his testimony would
16 be, Your Honor, that Mr. Robinson promised him for an
17 additional \$3,500.

18 Oddly, the family has a copy of the check that was
19 cashed. I do not know whether or not this was claimed on
20 the voucher. I don't have any idea of that. All I know is
21 that, based upon the representations for paying additional
22 money, he believed that he was going to get the benefit of
23 that deal by getting a sixteen-year sentence, and what he
24 ended up with, Your Honor, was the forty-seven years.

25 THE COURT: All right, Mr. Gourley.

1 MR. GOURLEY: And, Your Honor, we, we're just moving
2 to dismiss this based on the statute of limitations. Of
3 course he has one year to file his PCR application after
4 his guilty plea. Obviously he did not. He's filed this
5 five years later, and based of the statute of limitations,
6 and also laches on the fact that this has been five years
7 since he decided to pursue his post-conviction relief
8 claim.

9 THE COURT: And Mr. Thompson's claim that I should
10 rule that he is entitled to an evidentiary hearing, tell
11 me. What's that about?

12 MR. GOURLEY: Your Honor, I believe Mr. Thomas's
13 argument is they're entitled to an evidentiary hearing, but
14 again I believe that's barred by the statute of
15 limitations. The only exception to the statute of
16 limitations in support of Mr. Evan's case would be the
17 failure to file a direct appeal. Certainly we, we can have
18 a hearing on whether or not he's entitled to a direct
19 appeal, whether he knowingly and voluntarily waived that
20 right, but anything else, any claim of ineffective
21 assistance of counsel would be barred by the statute of
22 limitations, which have to be filed within one year.

23 THE COURT: In your conditional order of dismissal,
24 does that talk about whether or not he can file a direct
25 appeal?

1 MR. GOURLEY: It does, Your Honor.

2 THE COURT: What does it say about that? I mean, it
3 accepts that except for direct appeal?

4 MR. GOURLEY: It's a, it's a contested matter, Your
5 Honor.

6 MR. THOMAS: It's not like it's a denial all the way
7 across the board, Your Honor.

8 MR. GOURLEY: Right. We have Mr. Robinson here, and
9 we can ---

10 THE COURT: I'm sorry. I was looking at Christopher
11 Demery's paper.

12 MR. GOURLEY: Yes, sir.

13 THE COURT: Put that away.

14 MR. GOURLEY: The direct appeal is a contacted matter,
15 but we have Mr. Robinson here to take testimony on whether
16 or not he advised Mr. Evans on his right to a direct
17 appeal, and whether Mr. Evans indicated he wanted to pursue
18 that right.

19 THE COURT: All right.

20 MR. THOMAS: I apologize. Our argument would, would
21 be that he didn't file a post-conviction relief because he
22 thought that the appeal was pending. I know that it's,
23 it's quite some time, but that he only found out at a later
24 time that there was actually no appeal that had been filed
25 nor pending, and he filed the post-conviction relief after

1 that.

2 The other argument that we have, Your Honor, is I
3 think interesting in that the state argued both statute of
4 limitations and laches. In regards to the statute of
5 limitations, we would argue equitably that he should be
6 allowed to have at least one bite of the apple, being that
7 he's not had a direct appeal nor post-conviction relief,
8 and we believe that he has a meritorious claim for
9 post-conviction relief.

10 In addition, the laches is a little bit more
11 interesting in that laches allows for someone to go forward
12 if there is some explanation or justification for the
13 delay. That, of course, is in the return filed by the
14 state. They argue three different cases, I guess,
15 supporting that argument.

16 Our argument would be that we can present an
17 explanation and a justification for the delay. Therefore
18 -- and we'd be entitled to go forward on an evidentiary
19 hearing on the laches part, Your Honor.

20 THE COURT: All right. Before you proceed, let me ask
21 one additional question. That is are there exceptions to
22 the statute of limitations, the one-year statute in PCR
23 cases? Are estoppel cases or, or ---

24 MR. THOMAS: Your Honor.

25 THE COURT: --- is it just one year and you're out if

1 you don't file it, or are there exceptions through any case
2 law?

3 MR. THOMAS: I think that there is somewhat of a one
4 year that you're in, you're out, Your Honor. However,
5 there is a provision for after-discovered evidence that
6 would allow you to go forward after the one-year statute of
7 limitations.

8 And the question in this case would be if he thought
9 that the appeal was pending and then it was after
10 discovered that the appeal was not pending, something he
11 could not have known at the time, of course, of the
12 sentencing, then he would be allowed to file after that,
13 Your Honor.

14 THE COURT: All right.

15 MR. THOMAS: And then the other argument would be that
16 you got two, two prongs running here and would support a
17 decision to -- and issue the conditional order, one being
18 the statute of limitations and one laches. And the laches
19 clearly allows someone to go forward under certain
20 circumstances.

21 THE COURT: And one additional question. How are
22 these conditional orders issued? Are they issued without a
23 hearing?

24 MR. THOMAS: They are, Your Honor. They're issued
25 without a hearing. Then the client, the inmate, has twenty

1 days to, of course, file a return, which we did, Your
2 Honor. At that point, the court can either issue a final
3 order based on paper, or a hearing can be set to determine
4 whether or not he should be entitled to go for an
5 evidentiary hearing, and that's kind of where we are today.

6 THE COURT: All right.

7 MR. GOURLEY: Your Honor.

8 THE COURT: Yes, sir.

9 MR. GOURLEY: Just to clarify.. I believe the hearing
10 that's on the *White vs. State* claim for failing to file a
11 direct appeal, I believe that's why we're here today, not
12 necessarily on the evidentiary hearing aspect of it.

13 I think the exception to the one-year statute of
14 limitations is obviously is a failure to file a direct
15 appeal, or also it states a failure to file a PCR -- appeal
16 a denial of a PCR, which is *Ferguson vs. State*, mental
17 competency tolling the statute of limitations. I don't
18 know of anything that states -- any kind of case law that
19 states that a equitable tolling on a failure to file --
20 failure to understand that a direct appeal wasn't pending
21 and then five years later, you know, come to realize that
22 there was no direct appeal pending and, therefore, file a
23 PCR application.

24 MR. THOMAS: Your Honor, our position would be we
25 filed a return prior to the conditional order becoming a

1 final order. That we raised both issues of the appeal, as
2 well as the going forward to an evidentiary hearing.
3 Therefore, we'd be entitled to argue both today.

4 In addition, in all candor and honesty, I do think
5 that we were hindered somewhat by the statute of
6 limitations' argument, but the court issued a conditional
7 order based upon statute of limitations and laches, which
8 was argued in the return and motion for conditional
9 dismissal by the state.

10 It would be our position today by doing that, they
11 opened the door to allow us to come in and argue on the
12 laches side that they, they base the dismissal on both
13 prongs, and that we'd be entitled to -- or that it opened
14 the door for us to argue on the laches with an equitable
15 remedy, which would then be supported by case law that
16 would allow us to show reason as to why we can go forward.

17 THE COURT: Okay.

18 MR. GOURLEY: And the laches claim, Your Honor, is
19 specifically towards the failure to file a direct appeal
20 regarding the lack of a potential transcript of the guilty
21 plea hearing, witnesses, so on and so forth. The laches
22 was directed at that.

23 THE COURT: All right, I'm ready to hear whatever
24 should be presented.

25 MR. THOMAS: All right, Your Honor, if it please the

1 court?

2 THE COURT: All right.

3 MR. THOMAS: We'd call our client.

4 THE COURT: All right.

5 Evans, if you'll come forward.

6 BAILIFF: Come forward, please, sir.

7 DUSTIN L. EVANS, BEING DULY SWORN,

8 TESTIFIES AS FOLLOWS:

9 BAILIFF: State your full name, and spell your last
10 for the record.

11 WITNESS: Dustin Evans, E-v-a-n-s.

12 MR. THOMAS: Your Honor, please the court?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION BY MR. THOMAS:

15 Q. Mr. Evans, you are currently incarcerated with the
16 South Carolina Department of Corrections?

17 A. Yes, sir.

18 Q. And where are you being housed?

19 A. Lieber.

20 Q. All right, sir, and what kind of sentence are you
21 serving?

22 A. Forty-seven years.

23 Q. All right, sir, and how was that structured? How was
24 it -- is part of that sentence consecutive?

25 A. Yes, sir.

D. EVANS - DIRECT EXAMINATION BY MR. THOMAS

14

1 Q. And do you know offhand what your sentences are?

2 A. I believe it's a sixteen, sixteen, fifteen all run
3 consecutive, and another sixteen or fifteen run concurrent
4 with that.

5 Q. All right, sir, and were all of these ---

6 THE COURT: Just a moment, please.

7 (A PAUSE.)

8 Q. Dustin, you have -- did you plead to all these charges
9 at the same time?

10 A. Yes, sir.

11 Q. Here in court, and you pled to all these charges on
12 that day. Is that correct?

13 A. Yes, sir.

14 Q. So, what happened is that some of the charges are
15 running consecutive, and some of them are running
16 concurrent?

17 A. Yes, sir.

18 Q. For a total of forty-seven years?

19 A. Yes, sir.

20 Q. When is your max out?

21 A. 2046.

22 Q. 2046?

23 A. Yes, sir.

24 Q. All right, sir. Now, you initially wanted to go to
25 trial on this case?

1 A. Yes, sir.

2 Q. And, and then you entered into a plea?

3 A. Yes, sir.

4 Q. And what decisions did you make? Why did you enter
5 into this plea?

6 A. Mr. Scott Robinson thought we could get a better deal
7 if we took a plea.

8 Q. Okay, and did you have plea offers?

9 A. Yes, sir.

10 Q. And what were those plea offers?

11 A. Before, before I picked my jury and everything, it was
12 a plea bargain on the table for forty years with a cap on
13 it.

14 Q. All right, so a cap of forty years?

15 A. Yes, sir, so I couldn't get no more than forty years.

16 Q. All right. That was up to forty, or was it a
17 negotiated plea for forty?

18 A. It was up to forty, a cap of forty.

19 Q. Up to forty?

20 A. Yes, sir.

21 Q. Okay. Now, did Mr. Robinson tell you that he could
22 get a better deal for you?

23 A. Yes, sir.

24 Q. And what did he say in regards to getting a better
25 deal?

D. EVANS - DIRECT EXAMINATION BY MR. THOMAS

16

1 A. As, as he said, that he would need some funds, some
2 money.

3 Q. Some additional money?

4 A. It would really help me out in the long run.

5 Q. All right, and he was appointed at that time?

6 A. Yes, sir. State appointed him to me.

7 Q. And how much money did he want in addition?

8 A. It was \$3,500.

9 Q. All right, and did you pay that 3,500?

10 A. My mother right there, sitting out there, she -- her,
11 her and my grandma cut him a check out the bank.

12 Q. Okay, and for the 3,500, what were you supposed to
13 get?

14 A. As I, as I was acknowledged of, I, I thought
15 everything was going to be run concurrent. That's what ---

16 Q. All right.

17 A. That's -- and ---

18 Q. When -- I'm sorry..

19 A. And concurrent. I mean, I thought I was going to get
20 sixteen years. That's what I thought.

21 Q. And based upon that, that's what -- when you entered
22 into this plea, it was your belief that you were to get
23 \$16,000 -- I mean, 1,600 -- sixteen years?

24 A. Yes, sir.

25 Q. All right, sir, and what happened in court?

1 A. Things didn't go like they supposed to.

2 Q. What do you mean?

3 A. As you, as you see, my sentencing sheets, they could
4 check concurrent. My sentencing sheets are checked
5 concurrent, and they are scribbled out and marked
6 consecutive. And when I, when I signed them, that's what
7 they was looking like, and after I ---

8 Q. They were looking like what?

9 A. Everything was checked concurrent, and after I pleaded
10 out, the judge write, I think, consecutive and someone
11 signed off on them. Not sure who signed off on them,
12 though.

13 Q. All right, and you brought that to the attention of
14 your attorney?

15 A. Yes, sir. He said I had ten -- on the way out of
16 court, he said we got ten days to appeal it, and I told him
17 to appeal that. And during that ten days at R&E in
18 Kirkland, my family tried to get -- my mom and everybody
19 tried to get ahold of him, and he would never return their
20 call.

21 Q. All right. So at that time, though, you still
22 believed that your case was under appeal?

23 A. Yes, sir. I, I thought he filed direct appeal, and I
24 -- and he told, he told my momma that -- you know, give him
25 \$3,500 for the, for the sixteen years, whatever. If

D. EVANS - DIRECT EXAMINATION BY MR. THOMAS

18

1 anything was to go wrong, he will file or appeal or
2 whatever, and he didn't do that.

3 Q. All right. Now ---

4 MR. THOMAS: Your Honor, may I approach?

5 THE COURT: Yes, sir.

6 Q. Dustin, you've got a copy of a check?

7 A. Yes, sir. It'd be the second one down printed right
8 there.

9 Q. Can you identify that sheet? What's on that sheet?

10 A. Yes, sir. Johnson, Mackenzie, Robinson, \$3,500. It
11 was made on 3/6/2008.

12 Q. Okay.

13 A. Same time I went to court.

14 Q. All right, and was that -- is it -- does -- this is a
15 -- what is this sheet of paper?

16 A. This is a printout from the bank. I think it's NBSC,
17 my momma's bank.

18 Q. Okay.

19 A. It's a printout from the bank itself.

20 Q. All right.

21 A. And that was the last -- because when they print out,
22 it prints out four checks at a time. The second one...

23 Q. Was that check cashed?

24 A. Yes, sir. It was stamped on back cashed.

25 Q. All right.

1 MR. THOMAS: Your Honor, I'd like to mark that for
2 identification.

3 (COPY OF CHECKS MARKED AS APPLICANT'S EXHIBIT NUMBER 1
4 FOR IDENTIFICATION.)

5 THE COURT: Any objection?

6 MR. GOURLEY: Your Honor, I fail to see the relevancy
7 of this check to this actual hearing today. I think we're
8 beyond the basis of statute of limitations. I don't, I
9 don't see any relevance to a check in regards to whether or
10 not he is entitled to a PCR hearing.

11 THE COURT: What is ---

12 MR. THOMAS: I think it goes to two things, Your
13 Honor. One, I think it goes to the fact that it supports
14 his contention that he thought that he was going to get
15 sixteen years. They were going to be running concurrent,
16 and also if you look at that and he doesn't get concurrent
17 sentences, which would support his claim that he had
18 requested for an appeal and thought Mr. Robinson had filed
19 and was pursuing a direct appeal.

20 Also, it shows that there is potentially some
21 meritorious claim in regards to post-conviction that he had
22 an expectation by representation of counsel that he was
23 going to receive a, a concurrent sixteen-year sentence.
24 And if you look at the sentencing structure that's
25 presented, he did, in fact, get sixteen. He got some

D. EVANS - DIRECT EXAMINATION BY MR. THOMAS

20

1 fifteens, too, but that is, that is the predominant
2 sentences. And the question really is the consecutive
3 versus concurrent issue, which plays in both meritorious
4 claim for post-conviction relief as well as expectation
5 that this case was going to be appealed.

6 THE COURT: All right, I'll allow the document in as
7 an exhibit.

8 MR. THOMAS: All right. Thank you, Your Honor. In
9 this case, we would move it as Applicant's 1...

10 THE COURT: Okay.

11 (COPY OF CHECKS MARKED INTO EVIDENCE AS APPLICANT'S
12 EXHIBIT NUMBER 1.)

13 BY MR. THOMAS:

14 Q. Dustin, you said that you entered into your guilty
15 plea in April 30th of 2008?

16 A. Yes, sir.

17 Q. And it was at a later date that you discovered that
18 the appeal not been filed?

19 A. Yes, sir.

20 Q. Now, you have any experience, any training in the law?

21 A. No, sir.

22 Q. All right.

23 A. This is the first time I've ever been in trouble.

24 Q. Do you, do you understand or did you understand at the
25 time the concept of appealing cases or post-conviction or

1 anything of that nature?

2 A. No, sir.

3 Q. Okay, and after you found out that your appeal -- that
4 there wasn't an appeal ---

5 A. Yes, sir.

6 Q. --- you filed a post-conviction relief action?

7 A. Yes, sir.

8 Q. All right. Do you remember when you found out there
9 was no appeal?

10 A. About, about a year and a half after I was sentenced,
11 and I tried to get ahold of Mr. Robinson, and they told me
12 he moved to Ray Chandler's office, and I, I wrote Ray
13 Chandler's office and never gotten a return. And I wrote
14 him again about six months after that, and they said he
15 don't, he don't work in the office no more, and that's --
16 made more time go, you know.

17 Q. All right, and then it was after that date that you
18 filed your post-conviction?

19 A. Yes, sir.

20 MR. THOMAS: Your Honor, if I could beg the court's
21 indulgence?

22 THE COURT: Yes, sir.

23 Q. Dustin, you haven't had an appeal or post-conviction
24 relief hearing, have you?

25 A. No, sir.

D. EVANS - DIRECT EXAMINATION BY MR. THOMAS

22

1 Q. All right. All you've done is been sentenced and
2 serving time?

3 A. Yes, sir.

4 Q. All right. You're asking the court today that you be
5 allowed to go on the evidentiary hearing -- to go forward
6 on your post-conviction?

7 A. Yes, sir.

8 Q. And you're also asking for a belated direct appeal?

9 A. Yes, sir.

10 Q. All right.

11 THE COURT: I'll just ask a question while in the
12 midst of this. Does an evidentiary hearing grant, does it
13 grant anything,---

14 MR. THOMAS: No, sir.

15 THE COURT: --- other than a hearing?

16 MR. THOMAS: Other than a hearing.

17 THE COURT: But the direct appeal portion allows for a
18 late filing of an appeal?

19 MR. THOMAS: Yes, sir.

20 THE COURT: All right.

21 MR. THOMAS: Yes, sir, and, and in candor, I mean, I,
22 I think the problem -- I believe that he's entitled to a
23 belated appeal. My concern is that some of the issues or
24 maybe his strongest issues for -- in regards to what he's
25 claiming happened are more ineffective than related to

1 direct appeal, and that's why we feel that it is important
2 that he at least have an evidentiary hearing. The court at
3 that point could decide that is with merit or without merit
4 and, and just basically dismiss his action.

5 THE COURT: All right.

6 BY MR. THOMAS:

7 Q. Dustin.

8 A. Yes, sir.

9 Q. We've talked about this. This is your day in court.

10 A. Yes, sir.

11 Q. You know, I know this is important to you.

12 A. Yes, sir.

13 Q. I am not telling you that I've left something else out
14 or that I have forgotten something, but I just ---

15 A. Yes, sir.

16 Q. --- want to make sure. Is there anything that you
17 would like to bring to the court's attention today?

18 A. Yes, sir. As I was -- you know, like, I had a forty,
19 I had a forty-year plea with a cap on the, on the table.
20 My lawyer informed me I shouldn't take that; it was too
21 much. I gave him \$3,500 thinking I was getting sixteen
22 years and end up, end up with forty-seven years, and he was
23 appointed to me by the state. I just don't see why he
24 would take my money and be represented by the state,
25 already paid, and I get forty-seven years when I could have

D. EVANS - CROSS-EXAMINATION BY MR. GOURLEY

24

1 gotten lesser time, and my momma could have kept her money.

2 Q. That's what, that's what you thought?

3 A. Yes, sir.

4 Q. That was your, your belief at the time?

5 A. Yes, sir.

6 Q. All right.

7 MR. THOMAS: Your Honor, I have no further questions.

8 THE COURT: Counselor.

9 MR. GOURLEY: May it please the court, Your Honor?

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION BY MR. GOURLEY:

12 Q. Mr. Evans, you said you found out your appeal wasn't
13 filed, that Mr. Robinson hadn't filed your appeal about a
14 year and a half after you were sentenced?

15 A. That was about that time, yes, sir.

16 Q. And you were sentenced back in April 30, 2008. So,
17 some time around, what, a little -- sometime in 2010 is
18 when you discovered that your appeal wasn't filed?

19 A. It was right up in that time, yes, sir.

20 Q. Okay, and then you waited until March 4, 2013, some
21 three years later, to file the post-conviction relief
22 action?

23 A. Yes, sir.

24 Q. Okay.

25 MR. GOURLEY: Beg the court's indulgence, Your Honor.

1 Q. And the basis for you wanting an appeal was because
2 you didn't like the sentence that you got?

3 A. Yes, sir.

4 Q. Okay. So, you just -- you're just concerned about
5 your sentence, nothing else?

6 A. I was concerned, concerned I didn't get what I was
7 told I was going to get.

8 Q. Okay, which was sixteen years versus the forty-seven?

9 A. Yes, sir.

10 Q. Okay.

11 MR. GOURLEY: No further questions, Your Honor.

12 THE COURT: Mr. Thompson, anything else?

13 MR. THOMAS: Just one or two questions.

14 THE COURT: Sure.

15 REDIRECT EXAMINATION BY MR. THOMAS:

16 Q. Dustin, did you ever hear from Mr. Robinson that your
17 appeal was not filed?

18 A. I ain't heard from Mr. Robinson since the day I went
19 to court.

20 Q. All right, and -- but you made attempts to contact
21 him?

22 A. Yes, sir, I have.

23 Q. And actually someone else in your family was able to
24 discover that the appeal was not filed?

25 A. Yes, sir.

D. EVANS - REDIRECT EXAMINATION BY MR. THOMAS

26

1 Q. All right, and -- but you never heard that from Mr.
2 Robinson?

3 A. No. No, sir.

4 Q. So, during that period of time, the only way that you
5 would have known is that someone else was telling you, not
6 Mr. Robinson?

7 A. Yes, sir.

8 Q. And you came to conclude that it was necessary for you
9 to file a post-conviction?

10 A. Yes, sir.

11 Q. All right, and again you're not an attorney?

12 A. No, sir.

13 Q. You don't have any legal background or training?

14 A. No, sir, not much education either, and Mr. Robinson
15 knew that.

16 Q. How, how far did you go in school?

17 A. Seventh grade.

18 Q. Seventh grade?

19 A. Yes, sir.

20 Q. Okay, and going into the Department of Corrections,
21 did you know what a post-conviction relief action was?

22 A. Had no idea.

23 MR. THOMAS: Thank you, Your Honor.

24 MR. GOURLEY: I have nothing further, Your Honor.

25 THE COURT: All right. You may step down.

1 (THE WITNESS EXITS THE STAND.)

2 MR. THOMAS: Your Honor, may I beg the court's
3 indulgence just for a second?

4 THE COURT: Sir?

5 MR. THOMAS: May I beg the court's indulgence?

6 THE COURT: Yes, sir.

7 MR. THOMAS: Just for a second.

8 (A PAUSE.)

9 MR. THOMAS: Your Honor, if it please the court, we
10 have nothing further.

11 THE COURT: By the state?

12 MR. GOURLEY: I have no additional witnesses.

13 THE COURT: All right, argument, Mr. Thompson.

14 MR. THOMAS: Your Honor, if it please the court?

15 THE COURT: Let's see now, do you go first, or who --
16 is this a motion or a motion to dismiss?

17 MR. THOMAS: It's actually our return to their motion.

18 THE COURT: Return to the motion. So, you go first.

19 MR. THOMAS: Yes, sir.

20 THE COURT: All right. All right.

21 MR. THOMAS: Your Honor, if it please the court, I
22 think what we're talking about in post-conviction relief is
23 really fundamental fairness. And, you know, we're not in
24 front of the court with a situation where we've had
25 multiple PCRs and this is a successive post-conviction

1 relief action, or even a situation where, you know, any of
2 the issues have been before a higher court in any
3 proceeding.

4 Equitably, I think it's only fair to allow him to at
5 least go to an evidentiary hearing and let a court decide
6 whether or not he should be granted post-conviction or
7 whether or not his post-conviction relief should be denied.
8 I think that if we could sit here and say we really don't
9 have any merit or we had sketchy merit or a little bit of
10 merit or, or basically this is kind of a situation where I
11 don't think there's a lot here, I think that would be
12 another factor. But I do believe that we can present a
13 case to the court that would at least argue that his plea
14 was not freely, voluntarily, knowingly, intelligently
15 entered into because there were representations -- actually
16 money paid for an expectation that he was going to get
17 sixteen. And I think that on the face of the paper, there
18 is enough to show sixteen is what he got. Unfortunately he
19 is getting some of those others running consecutively,
20 which gives some credence to his argument that he
21 potentially has a meritorious case. So, I think it would
22 only be fair to allow him to go forward at least to an
23 evidentiary hearing.

24 Technically, you know, we have a problem with the
25 statute of limitations, laches. Laches allows you to come

1 if you can show a reason, and I think we can show certainly
2 the reason to be allowed to go to an evidentiary hearing on
3 a laches argument. Statute -- he's not trained in the law.
4 He doesn't know, and to hold him to a standard of an
5 attorney or even a paralegal or somebody who has some
6 training in the law I think is again just not fair.

7 He never heard from Mr. Robinson. So, technically he
8 never knew from anybody in the legal system that an appeal
9 had not been filed. He only learned that through a
10 relative who called the court. And I think we can make an
11 argument that he doesn't officially even know today that he
12 doesn't have an appeal unless Mr. Robinson is going to take
13 the stand and testify that he doesn't have one, or if he
14 had received a letter from the clerk of the Supreme Court
15 or the Court of Appeals, which he doesn't have.

16 The second part of that is, of course, the belated
17 appeal, and I think clearly he's entitled to a belated
18 appeal. There's testimony that would show that he had
19 asked Mr. Robinson to file an appeal. There is supporting
20 testimony as to the reason for filing that appeal, being
21 the fact that he had been promised that these sentences
22 were going to be concurrent but actually turned out to be
23 substantially more.

24 THE COURT: Is that an appellate issue that he thought
25 that he ---

1 MR. THOMAS: That's what I've been struggling with,
2 Your Honor. Is it? Is it? Offhand, I don't know the
3 answer to that. I'm afraid -- my concern -- and that's why
4 I'm arguing -- we argue strenuously for post-conviction is
5 that it is a -- ineffective assistance of counsel which,
6 which would make it a PCR issue. I don't know offhand --
7 and, of course, if we got a belated appeal, we would
8 certainly argue at that point, but I'm not sure that the
9 court would take that issue, which I think when we wrap it
10 all up, I just don't think it's equitably fair to not allow
11 some redress of these issues which I think potentially have
12 some meritorious face to it.

13 THE COURT: All right. How about it?

14 MR. THOMAS: Thank you, Your Honor.

15 MR. GOURLEY: Your Honor, I believe Mr. Evans is, is
16 barred by the statute of limitations. There's one year for
17 filing a post-conviction relief application after your
18 conviction or your guilty plea or after the remitter is
19 sent down from the direct appeal. Obviously in Mr. Evans's
20 case, he was under the impression that he had a pending
21 direct appeal and, therefore, that prevented him from
22 filing his PCR application. According to Mr. Evans, he
23 thought -- he learned that he didn't have a pending direct
24 appeal some time in 2010. We have another three-year delay
25 for filing a PCR application.

1 Mr. Thomas mentioned a newly-discovered evidence claim
2 earlier in his opening. Newly-discovered evidence is
3 required to be filed within one year of discovery.
4 Obviously any timely newly-discovered evidence, I think, is
5 out the window when Mr. Evans's lawyer back in 2010 -- that
6 his direct appeal was not filed. Certainly -- I'm sorry.
7 I lost my train of thought, Your Honor.

8 In regards to the equitable tolling aspect of this,
9 I'm unaware of any case law that allows an applicant to --
10 entitled to the statute of limitations to be equitably
11 tolled due to a failure to file a direct appeal. There is
12 an exception for the failure to file a direct appeal, and
13 that's obviously *White vs. State*. Our, our courts have
14 recognized that exception. Outside of that, *White vs.*
15 *State* doesn't allow for a hearing on the merits of an
16 ineffective assistance of counsel claim. It just
17 specifically allows for a hearing on whether or not he
18 knowingly and voluntarily waived his right to a direct
19 appeal.

20 THE COURT: Well, what kind of cases exist that
21 discusses whether someone has a right to an evidentiary
22 hearing?

23 MR. GOURLEY: Your Honor, I believe it would be barred
24 under the statute of limitations under *Pelaquin vs. State*
25 and so forth.

1 THE COURT: But if you don't have an evidentiary
2 hearing, then you don't get an opportunity to have your day
3 in court to try to prove whatever it is you're trying to
4 prove.

5 MR. GOURLEY: Absolutely, Your Honor, and it's his
6 burden to file his application within one year of his --
7 after his guilty plea.

8 THE COURT: The thing about this conditional discharge
9 -- and I ask, I guess I ask what it is and how is it issued
10 because it's issued without a hearing. So, I sort of
11 remember the creation or the history of it when all of
12 these PCRs would be filed, you know, like the previous
13 case. Soon as the guy gets to prison, he files a PCR. He
14 gets out of prison; he forgets about the PCR because he's
15 happy he's out of prison. So, all of the PCRs were being
16 filed by everyone as soon as they get to prison whether
17 they had a PCR claim or not. And rather than just
18 scheduling a hearing on every PCR that was filed, some
19 system seemingly was devised for the courts to -- on some
20 of them that appeared to be invalid to just issue an order
21 and doing a conditional discharge of them, but giving them
22 the right to request a hearing if they really, if they're
23 really serious about it. And then out of that, then most
24 of people you never heard from, the discharge was just a
25 discharge. They were out of prison and they were happy,

1 and they were not interested in pursuing a PCR. So, many
2 of them just disappear, but then some of them didn't
3 disappear. Some of them, soon as the inmate would get the
4 conditional discharge, they'd immediately write seeking a
5 hearing so they can try to prove whatever it is they had in
6 their application.

7 And this seemingly is one of those kinds of
8 situations. So, the question is do I just summarily
9 dismiss this, or is he entitled to a hearing to try to
10 prove whatever it is he's trying to prove?

11 Now, I was just reading a probation violation case in
12 which -- and many people on probation, they get a sentence
13 on one case and rather than coming for a probation
14 violation hearing, they just sign a consent form saying we
15 agree. I agree I violated probation, so give me -- run
16 this concurrent. Give me six months concurrent, and I
17 don't want to come before the judge.

18 So, in this one case the guy, what's his name, Brannon
19 or something in *State vs. Brannon*, the guy did that, but
20 when he got to prison for his six months, then he claimed
21 that he had filed an appeal. That he did not knowingly
22 waive his right to a hearing on the probation revocation.
23 And the appellate court -- well, when he filed, the
24 appellate counsel, like Mr. Thompson, sought a transcript.
25 There's no transcript because everything was just done by

1 waivers and signatures. So, the appellate court says they
2 are troubled by the fact that there is no record below
3 indicating that this guy knowingly and intelligently waived
4 his right to a probation revocation hearing. So, they
5 remanded it to the judge to make a finding that the guy
6 knowingly and voluntarily waived his right to a revocation
7 hearing. Of course, I'm sure the judge doesn't remember
8 anything about it; he just signed off on this waiver paper.

9 So, that's in my mind as I sit listening to this type
10 of scenario where without hearing anything, I guess the
11 judge signs a conditional discharge and Mr. Thompson says,
12 well, no. We're entitled to a hearing at least for the
13 judge to decide whether or not this claim is valid or not
14 valid.

15 And of course in this case, particularly where you
16 have the applicant's contention that there was some
17 misconduct involved in him not filing a PCR, filing an
18 appeal, then it becomes sort of -- it becomes a matter of
19 equity in fairness and integrity of the court system that
20 would indicate that he is entitled to not have the matter
21 summarily dismissed but to have a hearing to address
22 whatever the issues are. So, you're seeking to have me
23 grant the conditional hearing, grant a hearing, an
24 evidentiary hearing?

25 MR. THOMAS: Yes, Your Honor. Just let us go forward

1 to, to an evidentiary hearing. That's all we're asking.

2 THE COURT: I think he's entitled to that.

3 MR. THOMAS: And, Your Honor, in re -- what we'd would
4 also ask the court, too, is just in the issue of the
5 belated appeal, I think it is more judicially economical to
6 say that that issue would also be carried over to the
7 evidentiary hearing because if that was granted -- I think
8 he's entitled to that, but if that was granted today, that
9 would then put us in a situation of having to file the, the
10 direct appeal when there is a provision for a direct appeal
11 and the post-conviction if it is denied.

12 THE COURT: Well, I'm deciding ---

13 MR. THOMAS: To save time.

14 THE COURT: I'm deciding he's entitled to an
15 evidentiary hearing on everything.

16 MR. THOMAS: Thank you, Your Honor.

17 THE COURT: And I'm not making any determination about
18 appellate rights ---

19 MR. THOMAS: Yes, Your Honor.

20 THE COURT: --- or not. Just an evidentiary hearing
21 because I don't know, other than this one exhibit, you
22 know, I don't know what the ---

23 MR. THOMAS: Yes, sir.

24 THE COURT: --- what the evidence will establish as
25 relates to any of it.

1 MR. THOMAS: Thank you. Thank you, Your Honor.

2 THE COURT: So, I am going to grant the right to an
3 evidentiary hearing on the two issues that were addressed
4 in the conditional discharge.

5 MR. THOMAS: Thank you, Your Honor.

6 THE COURT: I'll let you all return another day to
7 flesh it out in greater detail.

8 MR. THOMAS: Thank you.

9 MR. GOURLEY: Thank you, Your Honor.

10 THE COURT: All right.

11 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON
THE 9TH DAY OF SEPTEMBER, 2014.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/Elizabeth B. Harris, CVR-M

COLUMBIA, SOUTH CAROLINA.

NOVEMBER 12, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
		DOCKET NO.: 2013-CP-14-0078
DUSTIN EVANS #328054,	)	
	)	
Petitioner,	)	ORDER GRANTING EVIDENTIARY
	)	HEARING
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of a Motion Hearing held on September 9, 2014 in front of The Honorable Clifton Newman. Present before the Court is the Applicant, represented by his Attorney, Tommy A. Thomas. Daniel Gourley, Esq. is also present on behalf of the State.

PROCEDURAL HISTORY

Dustin L. Evans, who is an inmate of the South Carolina Department of Corrections (SCDC), filed an Application for Post-Conviction Relief on March 4, 2013. The Office of the Attorney General filed their Return and Motion to Dismiss on or about June 27, 2013. A Conditional Order of Dismissal was signed by The Honorable George C. James, Jr., on July 1, 2013 and received by the Applicant on January 8, 2014. On February 11, 2014, Tommy A. Thomas, Attorney for Applicant, filed a Return to Conditional Order of Dismissal requesting that the action not be dismissed, that an evidentiary hearing be scheduled or in the alternative a Motion hearing be scheduled. This hearing was scheduled pursuant to the State's Motion for Summary Dismissal and the Petitioner's Return.

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Mr. Evans is being held for convictions under a three count Indictment, Number 2007-GS-14-00364. The charges are kidnapping, assault and battery with intent to kill (ABWIK), and Criminal Sexual Conduct. He plea and was sentenced by The Honorable George C. James, Jr. as follows: 15 years on the kidnapping charge; 15 years on the ABWIK charge; and, 16 years on Criminal Sexual Conduct charge. The sentences run consecutively.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Argument was made that the Appellant had requested that his trial counsel appeal his conviction. He was told and believed that his original conviction was under appeal. He only discovered at a later date that his appeal had not been perfected. Any delay in the Applicant's filing of his Post-Conviction was based upon this erroneous belief. That Appellant is informed and believes that he has meritorious issues for Post-Conviction Relief and is also entitled to a belated Direct Appeal.

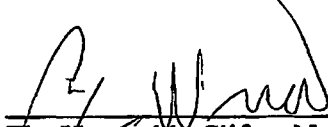
The Summary dismissal of a PCR Application is appropriate only when it is apparent on the face of the Application that there is no need for a hearing to develop any facts and the Applicant is not entitled to relief. McCoy v. State, 401 S.C. 363, 737 SE2d 623 (2013).

After full argument by counsel for the Petitioner and the Respondent, the Court finds and concludes that the Petitioner has not had a direct appeal of his conviction nor a Post-Conviction Relief Hearing.

Therefore based upon the foregoing, the Court grants an evidentiary hearing in the above referenced case.

AND, IT IS SO ORDERED this 30th day of November, 2014

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The Honorable Clifton Newman
Presiding Judge
Third Judicial Circuit

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State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Clarendon	)	Case No. 2013-CP-14-00078
	)	
Dustin Evans,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 16, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

Tommy Thomas, Esquire
Attorney for the Plaintiff

Daniel Gourley, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Letter		20
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1 JULY 16, 2015

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 9:44 a.m.)

5 THE COURT: Yes, sir, Mr. Attorney General?

6 MR. GOURLEY: May it please the Court, Your Honor. This
7 is Dustin Evans versus the State of South Carolina, Docket
8 Number 2013-CP-14-0078. He is presently confined in the South
9 Carolina Department of Corrections pursuant to orders of
10 commitment of the Clerk of Court from Clarendon County.

11 He was true-bill indicted October 2007 term of the
12 Clarendon County Grand Jury for kidnapping and criminal sexual
13 conduct in the first degree. He was represented by Mr.
14 Robinson.

15 On April 30th, 2008, he pled guilty to CSC 1st and assault
16 and battery with intent to kill. He was sentenced by the
17 Honorable George C. James Jr. to a negotiated sentence of 16
18 years for assault and battery with intent to kill and 15 years
19 for criminal sexual conduct, 1st degree.

20 That's not right, Your Honor. I apologize.

21 MR. ROBINSON: It was a total of 47 years.

22 MR. GOURLEY: It was a total of 40 years, Judge. My
23 return --

24 MR. THOMAS: Forty-seven.

25 MR. GOURLEY: Forty-seven years. I apologize, Your

1 Honor.

2 He filed a timely application for a PCR on March 4th,
3 2013, alleging ineffective assistance of counsel for failure
4 to file an appeal and plea was involuntary due to ineffective
5 assistance of counsel.. The State filed its return and motion
6 to dismiss on June 27th, 2013.

7 A hearing was held before the Honorable Clifton Newman on
8 the State's return and motion to dismiss. Your Honor, Judge
9 Newman issued an order granting the applicant an evidentiary
10 hearing on both the *White v. State* and belated appeal issue
11 and on his PCR issues.

12 Your Honor, at this time just for the record, we would
13 like to renew our motion to dismiss all of the PCR ineffective
14 assistance of counsel claims as the PCR application was filed
15 beyond the statute of limitations. We certainly don't dispute
16 that Mr. Evans is entitled to a hearing on whether or not he
17 knowingly and intelligently waived his right to a direct
18 appeal. As far as the PCR issues regarding ineffective
19 assistance of counsel, Your Honor, due to Mr. Evans' untimely
20 filing of his PCR, we would submit that those are barred by
21 the statute of limitations.

22 THE COURT: I believe that issue is premature until the
23 results of the evidentiary hearing are clear and, therefore,
24 the Court will not rule on that motion at this time.

25 MR. GOURLEY: Yes, Your Honor.

1 THE COURT: All right. Mr. Thomas, how about explain to
2 me what you believe the scope of this evidentiary hearing to
3 be.

4 MR. THOMAS: Your Honor, if it please the Court, there
5 are really two fairly straightforward issues.

6 One, of course, is the belated appeal. My client is
7 going to testify that it was his understanding and also the
8 family's understanding that an appeal had been filed -- had
9 been filed. He's got a sixth-grade education. He was waiting
10 for the results of that. It was only after that time that he
11 realized that the appeal had not been filed, and I can't
12 remember exactly, Your Honor, but it may have been possibly
13 after he contacted me. We contacted the Supreme Court and
14 determined that there was no report of appeal; so there was no
15 appeal filed.

16 A post-conviction relief application was timely filed
17 upon understanding or realizing that the appeal had not been
18 filed. And this matter was really actually fully heard in
19 front of Judge Newman. Testimony was taken while this was
20 more of a trial than just a motion hearing, and he determined
21 at that point in time that there was a reason why he should be
22 able to be allowed -- should be allowed to go forward with the
23 evidentiary hearing.

24 The second part of this is that this was a plea. We
25 would present to the Court that the plea was not freely and

1 voluntarily, knowingly and intelligently entered into. My
2 client is going to testify that, in short, there were reasons
3 as to why he believed that he was going to receive a lesser
4 sentence. He actually paid an additional amount of money,
5 which we are prepared to testify here for today, to receive
6 better results in that it was based upon this information that
7 had been given to him by counsel as to why he was -- a jury
8 had actually been struck -- as to why he decided to go forward
9 with the plea.

10 THE COURT: All right, sir. So -- all right. There --
11 you have -- and I don't have it. There was -- okay. There
12 was a record of the actual plea though; right? Did that
13 record exist?

14 MR. THOMAS: Your Honor, that record does not exist.
15 There is -- which we received not too long ago. There is a
16 transcript of the hearing in front of Judge Newman --

17 THE COURT: Okay.

18 MR. THOMAS: -- that does exist and -- but the record in
19 regards to the original plea does not exist.

20 THE COURT: All right. And so what's your intention
21 there?

22 MR. THOMAS: Your Honor, it's my understanding that what
23 we're going to do is I think the State is going to reconstruct
24 that plea transcript. I would assume that really the
25 information that would go into that reconstruction is the same

1 that's going to be presented today anyway.

2 Basically, the issue is whether or not he freely and
3 voluntarily entered into his plea, that he knew what he was
4 doing, and that's what we intend to show. That this was not a
5 plea that was freely and voluntarily entered into, Your Honor.

6 THE COURT: Okay. All right.

7 MR. THOMAS: I think the same questions that would be
8 answered -- I think the questions that would go into the
9 reconstruction are going to be answered in the presentation of
10 the post-conviction and testimony by plea counsel, Your Honor.

11 THE COURT: All right. So I -- I think that's probably
12 where we'll focus because the other part of it -- if any
13 purpose of this hearing is trying to reconstruct the plea,
14 what took place at the plea, since I didn't conduct the plea,
15 I don't see how I could possibly reconstruct the plea. That
16 would be --

17 MR. THOMAS: Actually --

18 THE COURT: That would be the judge that took the plea
19 would have to reconstruct what took place in front of him or
20 her. I can't do that. I didn't take the plea.

21 Now, I can hear the PCR application and if I hear what
22 transpired, but I'm not reconstructing the plea because I
23 didn't take it. I have no clue what happened, and I can't
24 possibly do that. That could only be done, if it could be
25 done, which I don't think it can be, but if it could be done,

1 it could only be done by the judge that took the plea to that,
2 that had it. So I'm not doing that.

3 MR. THOMAS: Your Honor -- and it's my position that we
4 don't need it anyway.

5 THE COURT: All right.

6 MR. THOMAS: I know that when I got here this morning,
7 the Attorney General takes the position that it does need to
8 be reconstructed. I knew that there wasn't a plea -- I mean
9 there wasn't a transcript of the plea. I don't think it's
10 necessary because I really do believe that those issues that
11 would be in some reconstruction are clearly going to come out
12 in the -- in the application for post-conviction relief, Your
13 Honor.

14 THE COURT: I'm going to hear his application for --

15 MR. THOMAS: Yes, sir.

16 THE COURT: -- post-conviction relief, and we'll hear the
17 testimony presented.

18 MR. THOMAS: Yes, sir.

19 THE COURT: There's just not going to be an actual record
20 of what was said or not said at the time of the plea that we
21 normally have, but we'll proceed in that fashion.

22 MR. THOMAS: All right, sir.

23 THE COURT: All right.

24 MR. THOMAS: All right. Your Honor, if it please the
25 Court, we'd call Mr. Dustin Evans to the stand.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 THE COURT: All right. Please come around here. All
2 right, sir. If you'd come around over here to the corner
3 right around over here? Keep going. And if you can get to a
4 point over there, just put your papers down. Right there
5 would be good. Raise your right hand.

6 THE APPLICANT: Yes, sir.

7 THE COURT: Do you solemnly swear or affirm to tell the
8 truth, the whole truth, and nothing but the truth, so help you
9 God?

10 THE APPLICANT: Yes, sir.

11 THE COURT: All right. Have a seat.

12 MR. THOMAS: Your Honor, if it please the Court?

13 THE COURT: Just one second.

14 MR. THOMAS: Yes, sir.

15 THE COURT: All right. Get situated and pull yourself up
16 closer to the microphone. All right. State your full name.

17 THE APPLICANT: Dustin Len Evans.

18 THE COURT: All right, sir. Go ahead, sir.

19 MR. THOMAS: Thank you, Your Honor. If it please the
20 Court -- and I apologize to the Court. I've got a horrible
21 allergy situation going on this morning; so I'm all stopped
22 up.

23 THE COURT: That's all right. Go ahead.

24 MR. THOMAS: Okay.

25 DUSTIN EVANS, being first duly

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. THOMAS:

4 Q: Mr. Evans, you are Dustin Evans?

5 A: Yes, sir.

6 Q: All right, sir. And you're serving time within the
7 Department of Corrections?

8 A: Yes, sir.

9 Q: And what kind of sentence are you serving?

10 A: I got forty-seven years.

11 Q: Are you on eighty-five percent?

12 A: Yes, sir.

13 Q: What's your max-out date?

14 A: 2046.

15 Q: 2000 when?

16 A: '46.

17 Q: How old will you be when you're released when you max
18 out?

19 A: Sixty-two years old.

20 Q: How old?

21 A: Sixty-two.

22 Q: Sixty-two? All right, sir.

23 A: Yes, sir.

24 Q: This hearing is important to you?

25 A: Yes, sir, it is.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: All right, sir. You understand that we've discussed this
2 that you had a number of charges?

3 A: Yes, sir.

4 Q: And that you pled to this and that you received this
5 sentence?

6 A: Yes, sir.

7 Q: If the Court grants your post-conviction relief and these
8 sentences are set aside or these convictions are set aside,
9 you could actually go back to trial?

10 A: Yes, sir.

11 Q: And it is possible that you could receive more time than
12 what you have?

13 A: Yes, sir.

14 Q: You understand that?

15 A: That's correct.

16 Q: You're willing to assume that risk?

17 A: Yes, sir, I am.

18 Q: And you want to go forward today?

19 A: Yes, sir.

20 Q: All right. Mr. Evans, you're how old now?

21 A: I just turned thirty in April.

22 Q: Okay. And what are you serving time for?

23 A: Criminal sexual conduct, first degree, kidnapping,
24 assault and battery with intent to kill, another criminal
25 sexual conduct, and another kidnapping.

DUSTIN EVANS - DIRECT BY MR. THOMAS

- 1 Q: All right, sir. And were you actually going to go to
2 trial on these charges?
- 3 A: Yes, sir, I was.
- 4 Q: Had -- and what position or what -- what position were
5 you in regards to trial? The jury had been actually selected?
- 6 A: Actually, two -- two juries was selected. The first one
7 -- the State forgot to put them in random order, and I had to
8 re-pick another jury again. So it was two juries picked.
- 9 Q: So your case had been called to trial?
- 10 A: Yes, sir.
- 11 Q: Okay. And you were prepared to go forward to trial?
- 12 A: Yes, sir, I was.
- 13 Q: All right. Who were you represented by?
- 14 A: Scott Robinson.
- 15 Q: And was he appointed or retained?
- 16 A: He was a public defender. He was appointed to me by the
17 State.
- 18 Q: Okay. And how many times did you meet with Mr. Robinson?
- 19 A: In the twenty-three-and-a-half months I was in the
20 county, mostly four times tops.
- 21 Q: All right. Did you -- did you ever make bond?
- 22 A: No, sir. I was denied three times.
- 23 Q: All right. So you remained in the -- in the detention
24 center until this case was called?
- 25 A: Yes, sir.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: All right. And how did you prepare this case with Mr.
2 Robinson for -- for your trial?

3 A: I didn't get to prepare it. The only thing he did is
4 about twenty days before trial he dropped a motion of
5 discovery off to me and told me to look through it.

6 Q: Okay. Did you get an opportunity to discuss that motion
7 for discovery with him?

8 A: No, sir.

9 Q: All right. Did you know a theory of the defense? Did
10 you know how he was going to defend your case?

11 A: Honestly, I really didn't know because he really never
12 explained to me.

13 Q: All right.

14 A: I never been in that kind of trouble before.

15 Q: What kind of education do you have?

16 A: I had a sixth grade education and, as I've been in SCDC,
17 I had to educate myself through programs.

18 Q: Okay. Let's take the issue of the -- of the belated
19 appeal first.

20 A: Yes, sir.

21 Q: Now, when you went into court and you pled, you received
22 what kind of sentence?

23 A: I got a sixteen to run consecutive with another sixteen
24 and a fifteen to run consecutive and another fifteen and
25 sixteen to run concurrent with the consecutive ones.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: All right, sir. So you got --

2 A: A total of forty-seven years.

3 Q: -- forty-seven?

4 A: Yes, sir.

5 Q: Now, you expected that you were going to receive less
6 than that?

7 A: Yes, sir.

8 Q: And what was your expectation?

9 A: I thought it -- I -- pretty much I -- he just led me out
10 there. I didn't understand what I was doing, and he knew I
11 wasn't very educated. And honestly, I thought I -- he said on
12 the paper it would say one thing and it would just be
13 something else totally different.

14 Q: All right. You thought you were going to get sixteen?

15 A: Yes, sir.

16 Q: Okay. And we'll come back to that as to why you thought
17 that.

18 A: Okay.

19 Q: But I wanted to ask you about the appeal. Were you
20 satisfied with his representation when you left the courtroom?

21 A: No, sir, I wasn't.

22 Q: And did you have any conversation with him about what
23 your next step should be do -- should be done?

24 A: Yes, sir. I asked him, and he said you can file a direct
25 appeal. And he explained to me he had ten days to do it. And

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 I told him in the -- after my -- after I got my time, I was in
2 the courtroom. They let me hold my kids and everything and
3 talk to my family, and I told him then. I said file my direct
4 appeal.

5 Q: All right.

6 A: Yes, sir.

7 Q: Because you -- you were not -- that's not what you
8 thought that you were going to receive?

9 A: No, sir.

10 Q: All right.

11 A: That's why I told him to file a direct appeal.

12 Q: All right. And it was -- your family was there?

13 A: Yes, sir.

14 Q: All right. I don't want you to say what anybody else
15 said, but your family was present at that time?

16 A: Yes, sir.

17 Q: And -- and they went back at a later date actually and
18 spoke with Mr. Robinson about the appeal?

19 A: No, sir. It was a telephone call.

20 Q: A telephone call?

21 A: Yes, sir.

22 Q: Okay. All right. But based upon what you knew, it was
23 your understanding that this case had been appealed?

24 A: Yes, sir. That's right.

25 Q: And you assumed -- or did you assume while you were in

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 the Department of Corrections that you were waiting for some
2 sort of decision from --

3 A: Yes, sir. I thought I was waiting on a decision. Like I
4 said, I never been in that kind of trouble before; so I didn't
5 know what the process was. That's why I was -- I was waiting.

6 Q: Okay. And then when you found out that you did not have
7 an appeal pending, you filed a post-conviction?

8 A: Yes, sir.

9 Q: Okay. And in your post-conviction, you're asking for a
10 belated appeal?

11 A: Yes, sir.

12 Q: And also that your conviction be set aside?

13 A: Yes, sir.

14 Q: Because that you didn't understand your guilty plea?

15 A: Yes, sir.

16 Q: Okay. And that is why there's been a delay --

17 A: Yes, sir.

18 Q: -- between the time --

19 A: Yes, sir.

20 Q: -- from when you were convicted and why you're in court
21 today?

22 A: Yes, sir.

23 Q: Okay. Now, tell me a little bit about preparing this
24 case for trial. Did you receive a plea offer?

25 A: Yes, sir, I did.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: And --

2 A: It was on March the 3rd, 2006 [sic], sir.

3 Q: Okay. Have you actually had a copy of the letter?

4 A: Yes, sir, I do.

5 Q: Okay.

6 MR. THOMAS: Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 BY MR. THOMAS:

9 Q: Can you show me that?

10 A: Yes, sir. It's the separate piece of paper right there.

11 Q: Okay. You can't reach it?

12 A: No, sir.

13 Q: Okay. That's okay. All right.

14 MR. THOMAS: Your Honor, may I approach?

15 THE COURT: Yes, sir, please.

16 BY MR. THOMAS:

17 Q: Mr. Evans, I want to show you this letter.

18 A: Yes, sir.

19 Q: And can you identify that letter? Can you tell me what

20 that is?

21 A: It's a -- it's a plea bargain.

22 Q: All right. Who is the letter from?

23 A: Amy Land.

24 Q: And who is she?

25 A: She -- she was my solicitor.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: Okay. And who is the letter to?

2 A: Dustin Evans and Jeremy Sweat.

3 Q: Okay.

4 A: And there is Scott Robinson here.

5 Q: Okay. So it went to your attorney?

6 A: Yes, sir.

7 Q: And what's the date of that letter?

8 A: That would be March the 3rd, 2008, sir.

9 Q: Is that prior to your plea?

10 A: Yes, sir. It was about a month before.

11 Q: Okay. And that letter talks about a plea offer?

12 A: Yes, sir, it does.

13 Q: Okay. And how did you get a copy of that?

14 A: Mr. Robinson came to the county and gave it to me.

15 Q: He gave you a copy of it?

16 A: Yes, sir.

17 Q: All right.

18 MR. THOMAS: Your Honor, if it please the Court, we'd
19 like to introduce this as Applicant's 1.

20 THE COURT: Any objection?

21 MR. GOURLEY: Your Honor, I think that's more appropriate
22 through Ms. Land versus the applicant, as it was Ms. Land's
23 letter as far as I know.

24 THE COURT: Well, I appreciate it, but he said he
25 received a copy of it, and I'm going to allow it. Have it

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 marked.

2 MR. GOURLEY: Okay.

3 THE COURT: It's into evidence.

4 MR. THOMAS: Thank you, Your Honor.

5 (WHEREUPON, Plaintiff's Exhibit Number 1, a letter, was
6 marked and admitted into evidence.)

7 BY MR. THOMAS:

8 Q: Mr. Evans, in that letter you were offered a plea?

9 A: Yes, sir.

10 Q: And do you know what that plea was?

11 A: Forty years with a cap on it.

12 Q: A cap of forty years?

13 A: Yes, sir.

14 Q: Okay. And you discussed that with your attorney?

15 A: Yes, sir.

16 Q: And what kind of conversation, if any, did you have with
17 him regarding that plea offer?

18 A: He told -- he told me basically he thought it was way too
19 much time, and he told me -- he told me that let him see what
20 he could do in the next couple days and notify my mama and see
21 -- see what I can do about -- about trying to -- about a
22 little bit of money. So I called my mama and --

23 Q: All right. Let's stop there. Now, you had -- there was
24 a time limit on that offer?

25 A: Yes, there was. Yes, sir.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: And how long was that time limit?

2 A: Three days. She wanted to know by March the 6th.

3 Q: Okay. And in the long run, did you accept that plea
4 offer?

5 A: No, sir.

6 Q: Okay. And why didn't you accept it?

7 A: It was in my attorney's -- my attorney told me not to.

8 Q: All right. Now, did you have any kind of idea as to what
9 you were going to receive? It's a cap of forty. What was
10 your understanding through your attorney as to what you were
11 going to get?

12 A: I believe -- nowhere -- he said under forty. He said it
13 would be under forty. He said anywhere probably around twenty
14 years he probably could work with.

15 Q: Okay. Now, you had mentioned sixteen earlier?

16 A: Yes, sir.

17 Q: So what was the difference between the sixteen and the
18 twenty?

19 A: A lot. A long ways from forty.

20 Q: Okay. All right. So that was some sort of range that
21 you were -- that you believed was somewhere between sixteen to
22 twenty?

23 A: Yes, sir.

24 Q: All right. Now, was there ever any discussion in regards
25 to how he was going to get a better deal for you?

DUSTIN EVANS - DIRECT BY MR. THOMAS

- 1 A: He said sometimes a little money helps basically.
- 2 Q: And can you explain that?
- 3 A: He -- he asked me if I had any money, and I told him I
- 4 don't have no money, but my mom -- I got to call her and talk
- 5 to her.
- 6 Q: All right. And what kind of money were we talking about?
- 7 A: He explained to her the amount and everything. He --
- 8 basically, \$3,500. That's all she had.
- 9 Q: And what was this money going to do?
- 10 A: It was going to help me get a better plea.
- 11 Q: Okay. And so if you paid the \$3,500, you were going to
- 12 get a better deal?
- 13 A: Yes, sir.
- 14 Q: Okay. And did you, in fact, pay the \$3,500?
- 15 A: Yes, sir. As far as I know, my mama says she had to
- 16 close out her savings account, and it was 3,400 and some, and
- 17 she put \$100 with it to make it thirty-five.
- 18 Q: Okay.
- 19 A: That's what he asked for.
- 20 MR. THOMAS: Your Honor, may I approach?
- 21 THE COURT: Yes, sir.
- 22 BY MR. THOMAS:
- 23 Q: Mr. Evans, I want to show you this document and see if
- 24 you can identify that.
- 25 A: Yes, sir.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: And what is that?

2 A: The second check down, that's a check wrote out to Mr.
3 Scott Robinson's law firm on 3/6 from Shirley H. Evans. That
4 would be my mom.

5 Q: All right. And that's a photocopy that was obtained from
6 the bank?

7 A: Yes, sir, it was.

8 Q: And it's payable to who?

9 A: Robinson, McKenzie -- let me make sure I get that right.

10 Q: I know it's small.

11 A: Johnson, McKenzie, Robinson, \$3,500, and it was cashed on
12 the last date of me taking the plea bargain on the 6th.

13 Q: Okay. So you, in fact, did pay the 3,500? Or your mom
14 paid the \$3,500?

15 A: Yes, sir, she did.

16 Q: Okay. And this is what was obtained from the bank in
17 regards to a copy of that check?

18 A: Yes, sir.

19 Q: All right.

20 A: She actually had to clean her savings account out
21 because, you know, she's a single mom. So --

22 Q: Okay. All right.

23 MR. THOMAS: Your Honor, we'd like to move this at this
24 time as Applicant's 1. I think counsel has already seen this.
25 It was introduced at the -- the other hearing in regards to

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 this.

2 THE COURT: Okay. It would be 2; right? It would be 2.

3 But anyway, is there any objection to that?

4 MR. GOURLEY: Your Honor, I guess authentication.

5 MR. THOMAS: I'd be glad to call her, Your Honor.

6 THE COURT: All right, sir. Let's have it marked at this
7 time for identification.

8 MR. THOMAS: Okay.

9 THE COURT: Applicant's 2. And then --

10 MR. THOMAS: Yes, sir. I'm going to call his mom anyway,
11 Your Honor.

12 THE COURT: All right. Very good.

13 MR. THOMAS: Yes, sir.

14 (WHEREUPON, Plaintiff's Number 2, a copy of a check, was
15 marked for identification.)

16 BY MR. THOMAS:

17 Q: Now, Mr. Evans, so when you -- all of this transpired how
18 close to your plea? I'm looking for a time frame.

19 A: Let's see. March the 6th when the money -- when she gave
20 the money was March the 6th, 2008. I went to trial -- I picked
21 my jury April -- around the end of April. I know that. No
22 more than a month apart.

23 Q: Okay. And then you ended up doing the plea what day?

24 A: I think it was April 29th I believe. I'm not positive on
25 the exact date.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: All right. I've got it here somewhere, but anyway -- but
2 you pled in April?

3 A: Yes, sir.

4 Q: April 20th, 2008; is that correct?

5 A: That sounds about right.

6 Q: All right, sir. Now, did the -- and I'll ask you these
7 questions to see if you remember.

8 A: Yes, sir.

9 Q: When you entered into this plea, the Court would
10 generally ask you questions, such as are you entering into
11 this plea freely and voluntarily --

12 A: Yes, sir.

13 Q: -- and knowingly and intelligently. Do you remember that
14 question?

15 A: Yes, sir, I do.

16 Q: And how did you answer that question?

17 A: I answered yes.

18 Q: All right. And had you been instructed by counsel as to
19 what questions were going to be asked of you at the plea?

20 A: Yes, sir. Yes, I was.

21 Q: So you knew? So Mr. Robinson spoke with you about those
22 questions?

23 A: Yes, sir.

24 Q: And did he suggest in any manner how you should answer
25 those questions?

DUSTIN EVANS - DIRECT BY MR. THOMAS

- 1 A: Yes, sir.
- 2 Q: And what was that suggestion?
- 3 A: He told me if I told the judge that I was promised
4 anything that he wouldn't let the plea go through.
- 5 Q: Okay. And the issue of the forty-year cap, was that
6 brought before -- was that -- was that discussed in front of
7 the judge?
- 8 A: No, sir.
- 9 Q: Okay. So as far as the judge knew, this was a straight-
10 up plea?
- 11 A: Yes, sir.
- 12 Q: Okay. And did the judge ask you if anybody forced you or
13 coerced you to enter into this plea?
- 14 A: Yes, sir.
- 15 Q: And how did you respond to that?
- 16 A: I told him no.
- 17 Q: Did the judge ask you if you were under the influence of
18 alcohol or drugs?
- 19 A: I can't -- I can't remember that one.
- 20 Q: You don't remember that one?
- 21 A: No, sir.
- 22 Q: Were you under the influence of alcohol or drugs?
- 23 A: No, sir.
- 24 Q: Okay.
- 25 A: I was in the past two years before that, but when I was

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 in the county, I was clean for two years.

2 Q: Okay. So you had been sober for two years?

3 A: Yes, sir. I was in --

4 Q: Okay.

5 A: Yeah.

6 Q: And so you answered those. And did the judge ask you if

7 you were satisfied with the representation of your attorney?

8 Do you remember?

9 A: I can't remember that one.

10 Q: You don't remember? Okay.

11 A: No, sir.

12 Q: At that point in time, were you satisfied?

13 A: Honestly, not really because I felt like that he didn't

14 -- he didn't go over my paperwork with me enough, even -- even

15 for trial. If I'd have went through trial, I think I would

16 have had to do most of the talking and stuff because I don't

17 feel like he could have represented me the best of his ability

18 because he -- he really didn't go over my case with me.

19 Q: These were serious charges?

20 A: Yes, sir. Yes, sir.

21 Q: Okay. And you were facing serious time?

22 A: Yes, sir.

23 Q: All right.

24 A: Like -- like I said, for one instance he told me he was

25 going to get me a mental evaluation and everything. That

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 never took place either.

2 Q: Why did -- why did you talk about a mental evaluation?

3 A: Because when he come to see me the first time, I
4 explained to him that I was on drugs real bad because my daddy
5 just died in 2005, and me and my daddy was real close. So I
6 got on drugs, and I was on drugs a little bit, but I just got
7 on drugs heavier. I started popping pills, snorting cocaine,
8 and smoking a lot of weed and drinking.

9 Q: Yeah.

10 A: And in that time frame, I don't think -- I think a mental
11 evaluation probably would have been probably good for me to
12 find out what's going on with me.

13 Q: All right. Let me ask you this question then. Did the
14 judge ask you whether or not you had any mental health issues?

15 A: I remember him asking me during my bond hearing about my
16 educational level.

17 Q: All right.

18 A: And he -- I think he did ask me about drug issues too
19 because he went down the line.

20 Q: All right.

21 A: Yes, sir.

22 Q: How about when you did the plea? Did the judge at your
23 plea -- did he ask about any mental health issues?

24 A: No, sir.

25 Q: All right.

DUSTIN EVANS - DIRECT BY MR. THOMAS

- 1 A: No, sir.
- 2 Q: But let me ask you this. Do you feel like that you were
3 mentally competent at the time that you entered into this
4 plea?
- 5 A: No, sir. I really don't. I really don't.
- 6 Q: How come?
- 7 A: Because I set in the county for almost two years. That's
8 the longest I ever been away from my family. I just had a
9 little girl born while I was in the county and I had a two-
10 year-old son at the time, and it was putting a lot of stress
11 on me.
- 12 Q: So you were just -- you were having a lot of stress?
- 13 A: Yes, sir.
- 14 Q: But at the time that you entered into the plea, you knew
15 what was going on?
- 16 A: Yes, sir. But I didn't know -- I didn't know the time I
17 was really getting.
- 18 Q: Okay.
- 19 A: I trusted my attorney.
- 20 Q: So that all goes back to your -- to your issue today
21 about how much time you thought that you were going to get?
- 22 A: Yes, sir.
- 23 Q: Okay. Now, do you feel that your plea was entered into
24 freely and voluntarily?
- 25 A: I feel like I was done wrong. Yes, sir.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 Q: Okay. And do -- do you feel like that you knew what you
2 were going to receive -- what your possibilities of your
3 sentence that you were going to receive from the judge?

4 A: Sir?

5 Q: Did you -- what did you think you were going to get? I
6 know I've asked you this question --

7 A: Yes, sir.

8 Q: -- but I want to make sure that we cover that.

9 A: I thought -- I thought everything was -- I thought
10 everything would be run concurrent. That's what I thought.

11 Q: Okay. And this wasn't just some sort of wish on your
12 part, was it?

13 A: No, sir. No, sir.

14 Q: Did you have a basis for thinking that?

15 A: No, sir.

16 Q: Well --

17 A: I thought --

18 Q: Let me rephrase the question. Why did you think that you
19 were going to receive something less?

20 A: Because my attorney was telling -- told me that and I
21 trusted -- I trusted his word.

22 Q: All right. And you also felt that the extra \$3,500 was
23 going to get you a better deal?

24 A: Yes, I did.

25 Q: Okay.

DUSTIN EVANS - DIRECT BY MR. THOMAS

1 MR. THOMAS: Your Honor, if I could beg the Court's
2 indulgence?

3 THE COURT: Yes, sir.

4 BY MR. THOMAS:

5 Q: Dustin, I'm going to ask you this question. I'm not
6 suggesting an answer that you need to say anything.

7 A: Okay.

8 Q: But I know that you've got a lengthy sentence and this is
9 a very important hearing for you today.

10 A: Yes, sir.

11 Q: Is there anything else that I have forgotten to ask you
12 or anything else that you believe that you need to bring to
13 the attention of the Court?

14 A: The only -- the only thing -- I just had a forty-year cap
15 on the table. Mr. Robinson told me to turn that down. My mom
16 closed out her savings account and gave him \$3,500. I got
17 seven extra years on top of that and paid 3,500 extra dollars
18 that the State had appointed him to represent me. That's why
19 I don't understand how he can just run me out there like that.

20 Q: Okay.

21 A: I don't understand it. That's really all else I got to
22 say on that.

23 Q: All right.

24 MR. THOMAS: Your Honor, I have no further questions.

25 THE COURT: Very good. Cross-examination?

26

DUSTIN EVANS - CROSS BY MR. GOURLEY

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

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. GOURLEY:

6 Q: Mr. Evans, you stated you met with Mr. Robinson
7 approximately three times?

8 A: Three to four.

9 Q: Three to four times?

10 A: Yes, sir.

11 Q: And where did those meetings take place?

12 A: Clarendon County Detention Center.

13 Q: Okay. And then you had three bond hearings?

14 A: Yes, sir.

15 Q: So you met with Mr. Robinson at the bond hearings as
16 well?

17 A: Yes, sir.

18 Q: So about seven times then?

19 A: The bond hearings was straight for bond. He never really
20 talked about the --

21 Q: Okay.

22 A: -- the case.

23 Q: And then you pled?

24 A: Yes, sir.

25 Q: Okay. Did you and Mr. -- well --

DUSTIN EVANS - CROSS BY MR. GOURLEY

1 MR. GOURLEY: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. GOURLEY:

4 Q: So you -- Mr. Robinson gave you a copy of --

5 MR. GOURLEY: And I'm showing him Plaintiff's 1 for the
6 record, Your Honor.

7 BY MR. GOURLEY:

8 Q: -- about a forty-year plea offer?

9 A: Yes, sir.

10 Q: And that was the last three days?

11 A: Sir?

12 Q: It was lasting -- it was open for three days?

13 A: Yes, sir, it was.

14 Q: Okay. And Mr. Robinson told you not to accept that plea
15 offer?

16 A: Yes, sir. He said it was too much time.

17 Q: But it was your decision ultimately to either accept it
18 or not accept it; correct?

19 A: Yes, sir.

20 Q: And you chose not to?

21 A: Yes, sir. Because I was going on my attorney's opinion
22 because he was --

23 Q: But your attorney --

24 A: -- representing me.

25 Q: I'm sorry. But your attorney is not doing the time

DUSTIN EVANS - CROSS BY MR. GOURLEY

1 though, is he?

2 A: No, sir.

3 Q: You are?

4 A: Yes, sir.

5 Q: So it's your decision?

6 A: Yes, sir.

7 Q: It's your life?

8 A: Yes, sir.

9 Q: And you chose not to accept the forty-year offer?

10 A: With my attorney's decision, yes, sir.

11 Q: Okay. Now, did your attorney explain to you what a

12 negotiated sentence was prior to your plea?

13 A: Run that by me one more time?

14 Q: Did your attorney -- did Mr. Robinson explain to you what

15 a negotiated sentence meant?

16 A: Not really.

17 Q: Not really? Yes or no?

18 A: No.

19 Q: Okay. And did the judge explain to you what a negotiated

20 sentence was during --

21 A: No, sir.

22 Q: -- your plea?

23 A: No, sir.

24 Q: You don't recall anything about this?

25 A: No, sir.

DUSTIN EVANS - CROSS BY MR. GOURLEY

- 1 Q: Okay. Well, basically what negotiation is, is the
2 sentence is already set out and the judge decides whether or
3 not he's going to accept it.
- 4 A: Yes, sir.
- 5 Q: So the negotiation in this case -- you had a negotiated
6 sentence for forty-seven years; right?
- 7 A: No, sir. I thought it would be sixteen.
- 8 Q: You thought it was sixteen?
- 9 A: Yes, sir.
- 10 Q: So despite the fact that it says negotiations on your
11 sentencing sheet and that's what the judge signed off on, you
12 were under the impression that it was sixteen years?
- 13 A: Yes, sir.
- 14 Q: And you never raised that to the judge?
- 15 A: No, sir. Because Mr. Robinson told me for him to take
16 the plea bargain and everything run concurrent that I can't
17 say that I was offered anything.
- 18 Q: Okay. During the plea colloquy, did Judge James advise
19 you of the sentences that you potentially faced individually
20 for each charge?
- 21 A: I think he did, yes, sir.
- 22 Q: Okay. And did he explain to you that he could run them
23 concurrent or consecutive and you could face an exponential
24 amount of time?
- 25 A: Yes, sir.

DUSTIN EVANS - CROSS BY MR. GOURLEY

1 Q: Okay. And at that point in time, you never had a cause
2 for concern to say, hey, Judge, Mr. Robinson told me sixteen
3 years, you're telling me a lot more than that, what's the
4 deal?

5 A: Well, the reason I thought they couldn't do like that
6 because when I signed my sentence sheets they was run
7 concurrent. Yes, sir.

8 Q: When you signed your sentencing sheet --

9 A: Yes, sir.

10 Q: -- they were run concurrent?

11 A: Yes, sir.

12 Q: Okay. So --

13 MR. GOURLEY: Your Honor, may I approach?

14 THE COURT: Yes, sir.

15 BY MR. GOURLEY:

16 Q: Mr. Evans, I want you to look at this for me.

17 A: Okay.

18 MR. GOURLEY: And, Your Honor, I'm just handing him a
19 copy of the sentencing sheet. It's already part of the
20 record.

21 BY MR. GOURLEY:

22 Q: Mr. Evans, is that your signature there?

23 A: Yes, sir, it is.

24 Q: Okay. And is that box checked negotiated sentence?

25 A: Yes, sir, it is.

DUSTIN EVANS - CROSS BY MR. GOURLEY

1 Q: And does that not say sixteen years consecutive, forty-
2 seven-year total?

3 A: It's wrote in right there up under negotiated plea.

4 Q: And right above your signature?

5 A: Yes, sir. I don't -- I don't remember that though.

6 Q: You don't remember that? You don't -- do you remember
7 whether you signed your sentencing sheets before or after your
8 plea?

9 A: I signed them before my plea.

10 Q: Okay. But you also signed sentencing sheets that were
11 checked concurrent?

12 A: Yes, sir. As you can see, it was scratched out.

13 Q: All right.

14 MR. GOURLEY: Your Honor, may I approach again?

15 THE COURT: Yes, sir.

16 MR. GOURLEY: And, Your Honor, for the record, I'm
17 showing him sentencing sheets with the indictment number 2007-
18 GS-14-0368.

19 BY MR. GOURLEY:

20 Q: Mr. Evans, is that your signature?

21 A: Yes, sir.

22 Q: All right. And now is this the sentencing sheet showing
23 fifteen years concurrent? Correct?

24 A: Yes, sir, it is.

25 Q: So maybe this is the sheet that you're talking about with

DUSTIN EVANS - CROSS BY MR. GOURLEY

- 1 it checked concurrent?
- 2 A: Yes, sir. But if you see the other sheet -- you had it.
- 3 It had concurrent checked with it scribbled out, sir.
- 4 Q: All right. Let me grab it real quick. Right. And Judge
- 5 James had initialed that and checked it consecutive; right?
- 6 A: Yes, sir. What I'm saying is it was checked concurrent
- 7 when I signed it, sir.
- 8 Q: Okay.
- 9 A: And it got scribbled out.
- 10 Q: And the negotiated aspect wasn't checked or was checked?
- 11 A: I'm not sure, sir. To be honest with you, I'm not sure.
- 12 Q: Okay. That's fair.
- 13 A: I'm not sure.
- 14 Q: It's been a long time ago; right?
- 15 A: Yes, sir.
- 16 Q: But during the entire plea colloquy, Judge James never
- 17 advised you that this was a negotiated sentence for forty-
- 18 seven years?
- 19 A: I can't -- I can't -- I can't recall, sir, to be honest
- 20 with you.
- 21 Q: Okay.
- 22 A: I can't recall.
- 23 Q: Your attorney never advised you that this was a forty-
- 24 seven-year negotiated sentence?
- 25 A: All my -- all my attorney said is that -- that he was

DUSTIN EVANS - CROSS BY MR. GOURLEY

1 going to take care of me and I -- he made me think I was
2 getting sixteen years. That's what I thought. I had it --
3 like I said, I had a sixth-grade education.

4 Q: I gotcha.

5 A: I had a lot of pressure on me and, like I said, that's
6 what I thought I was getting.

7 Q: Okay.

8 A: Yes, sir.

9 Q: The solicitor never put on the record that you were
10 getting a forty-seven-year negotiated sentence?

11 A: I don't know, sir. I'm not -- I'm not --

12 Q: Okay. You just don't recall? Long time ago; right?

13 A: Yes, sir.

14 Q: You were going to trial on these charges; right?

15 A: Yes, sir.

16 Q: Why did you plead?

17 A: Because my attorney told me it was in my best value to
18 plead to the sixteen years.

19 Q: Okay. But it was your decision to plead and not go to
20 trial; right?

21 A: Yes, sir. I would have went. Like I said, I would have
22 went through trial. I would have went through trial if I --
23 if I didn't -- if I thought I wasn't getting the sixteen
24 years, I would have went on through trial. That's why I had
25 my jury picked, sir.

DUSTIN EVANS - CROSS BY MR. GOURLEY

- 1 Q: So you pled guilty to avoid harsher punishment in
2 essence? If you were found guilty, you could have potentially
3 gotten more time?
- 4 A: If I was found guilty, yes, sir.
- 5 Q: So -- okay. But during the guilty plea, you admitted
6 your guilt; right?
- 7 A: Yes, sir.
- 8 Q: Okay.
- 9 A: Because you had to to plead out. Yes, sir.
- 10 Q: You had to, but you were under oath; right?
- 11 A: Yes, sir.
- 12 Q: And so when you told Judge James that you were guilty,
13 that's under oath; correct?
- 14 A: I was doing what my lawyer told me to do. Like I said, I
15 never been in trouble before and this was the first time I had
16 been in trouble. So I was doing what my lawyer told me to do
17 as best I could.
- 18 Q: But it's basic education of understanding of taking an
19 oath, putting your hand on a Bible, and swearing to tell the
20 truth; right? You know the different between truth and not?
- 21 A: Yeah. Yes, sir. Yes, sir.
- 22 Q: Okay. And when you took an oath to tell the truth, you
23 were telling the truth; right?
- 24 A: Yes, sir.
- 25 Q: Okay. So when you were admitting your guilt, that was

DUSTIN EVANS - CROSS BY MR. GOURLEY

1 the truth; correct?

2 A: Actually -- actually, Amy Land is the one that read
3 everything out when -- because I didn't want -- I didn't want
4 to read that out.

5 Q: So you remember the solicitor reading the facts in the
6 case?

7 A: She -- she -- she -- she read everything. Usually,
8 you're supposed to read everything, but she did it.

9 Q: Okay.

10 A: Because they knew I was -- like I said, they knew I was
11 uneducated so I couldn't do it myself.

12 Q: Okay. And you didn't want to read the -- read the facts
13 out?

14 A: No, sir. I didn't want to read it out because, like I
15 say, the only reason I pled guilty was because my attorney
16 told me to.

17 Q: Okay. Did you object to those facts?

18 A: No, sir.

19 Q: Okay. So did you agree with the facts?

20 A: Yeah.

21 Q: Okay. And were the facts read by Ms. Land true?

22 A: I -- no, sir. I had to plead guilty based on the fact
23 because that was -- that was for me to get the sixteen years.

24 Q: Okay. So when you agreed with Ms. Land's recitation of
25 the facts, that was a lie?

DUSTIN EVANS - CROSS BY MR. GOURLEY

- 1 A: I don't understand, sir.
- 2 Q: Well, you just said just a second ago that Ms. Land read
3 the facts on the record and you agreed with those facts during
4 your colloquy.
- 5 A: To plead guilty, and I thought I was getting sixteen
6 years.
- 7 Q: Okay. But that's not my question. You stated that you
8 agreed with Ms. Land's facts; right? And you didn't have an
9 objection to them; right?
- 10 A: Yes, sir. To plead guilty.
- 11 Q: Okay. And so were Ms. Land's facts as stated by her at
12 the plea true?
- 13 A: No, sir.
- 14 Q: Okay. So when you told the judge that you didn't have an
15 objection and you agreed with the facts, that was a lie
16 because they weren't true?
- 17 A: You've got to slow down just a little bit, man.
- 18 Q: Okay. I gotcha. I'm sorry.
- 19 A: I got ADD. I got ADD, man.
- 20 Q: I understand. I understand.
- 21 A: Yes, sir.
- 22 Q: You just stated that Ms. Land's facts were not true at
23 the colloquy; right?
- 24 A: No, sir.
- 25 Q: And you just stated that you didn't object and that they

DUSTIN EVANS - CROSS BY MR. GOURLEY

- 1 were true during your plea.
- 2 A: Because my lawyer told me.
- 3 Q: Okay. Because Mr. Robinson told you, you agreed with the
- 4 facts?
- 5 A: I was going -- I was going off of my attorney. I was
- 6 going off of my attorney the best -- the best of my life. You
- 7 know, I was going off of him.
- 8 Q: I understand. So --
- 9 A: I trusted him.
- 10 Q: So when you told the judge that those facts were true,
- 11 was that a lie? Just a yes or no answer.
- 12 A: Run that by me one more time, man. When I told --
- 13 Q: When you told Judge James --
- 14 A: Uh-huh.
- 15 Q: -- that Ms. Land's recitation of the facts were true, was
- 16 that a lie? Just a yes or no.
- 17 A: I don't understand what you're trying to say, man.
- 18 Q: All right. How about this? You admitted your guilt at
- 19 the plea; right?
- 20 A: Yeah.
- 21 Q: Are you guilty?
- 22 A: Yeah. No. No. I'm not guilty.
- 23 Q: You're not guilty?
- 24 A: The reason I --
- 25 Q: So when you told the --

DUSTIN EVANS - CROSS BY MR. GOURLEY

1 A: The reason I pleaded out was because Scott Robinson told
2 me to plead out in the best of his ability.

3 Q: Okay. So when you told the judge you were guilty, that's
4 not true?

5 A: No, sir.

6 Q: So that's a lie?

7 A: I don't want to answer.

8 Q: You've got to answer.

9 MR. GOURLEY: Judge, will you instruct the witness to
10 answer, please.

11 THE COURT: Sir, you're under oath. You must answer the
12 question.

13 BY MR. GOURLEY:

14 A: No, sir.

15 Q: It's not a lie?

16 A: Would you ask the question one more time, please?

17 Q: When you told Judge James that you were guilty of the
18 charges that you were indicted with, was that a lie? Are you
19 guilty of those charges that you were indicted with? Yes or
20 no?

21 A: No.

22 Q: Okay.

23 MR. GOURLEY: I beg the Court's indulgence, Your Honor.

24 THE COURT: Yes, sir.

25 MR. GOURLEY: Your Honor, I don't have any other

DUSTIN EVANS - DIRECT BY THE COURT

1 questions. Thank you, Mr. Evans.

2 DIRECT EXAMINATION BY THE COURT

3 THE COURT: Mr. Evans?

4 THE APPLICANT: Yes, sir?

5 THE COURT: You are telling the Court here today that you
6 are not guilty of the crime to which you pled guilty to; is
7 that correct?

8 THE APPLICANT: Yes, sir.

9 THE COURT: Judge James asked you that same question.
10 Are you guilty of this offense? And you told him yes;
11 correct?

12 THE APPLICANT: Yes, sir.

13 THE COURT: So you were not telling Judge James the
14 truth; correct?

15 THE APPLICANT: The only reason -- the only reason I --

16 THE COURT: I appreciate --

17 THE APPLICANT: Yes, sir.

18 THE COURT: -- the reason.

19 THE APPLICANT: Yes, sir.

20 THE COURT: I understand the reason is you say your
21 attorney told you what to do.

22 THE APPLICANT: Yes, sir.

23 THE COURT: But when you answered Judge James, you were
24 not telling him the truth, were you?

25 THE APPLICANT: No, sir.

DUSTIN EVANS - REDIRECT BY MR. THOMAS

1 THE COURT: All right. Thank you.

2 THE APPLICANT: It was under the --

3 THE COURT: Further questions?

4 MR. THOMAS: Yes, Your Honor, if it please the Court.

5 REDIRECT EXAMINATION

6 BY MR. THOMAS:

7 Q: Mr. Evans?

8 A: Yes, sir.

9 Q: Let me ask you this. How well do you read or write?

10 A: I'm in GED now. I can't -- I can't spell that good. I
11 can't -- I don't read. I don't read. I can't hardly read.

12 Q: Okay. Now, we're talking about -- counsel asked you
13 about those -- those plea sheets that he showed you?

14 A: Yes, sir.

15 Q: And some of them said concurrent and some of them said
16 consecutive?

17 A: Yes, sir.

18 Q: Can you read those?

19 A: Some stuff. Some stuff, no.

20 Q: So when you saw concurrent, that's what you were
21 expecting to see?

22 A: Yes, sir.

23 Q: Okay. And so when you signed those sheets, it was your
24 understanding that you thought that these sentences were
25 concurrent?

DUSTIN EVANS - REDIRECT BY MR. THOMAS

- 1 A: Yes, sir.
- 2 Q: Okay. Now, when -- let me ask you this question.
- 3 A: Yes, sir.
- 4 Q: Why did you accept the negotiated plea for forty-seven
- 5 years when you'd been offered forty?
- 6 A: Because Scott Robinson told me to turn the forty down.
- 7 He could get me something better.
- 8 Q: Okay.
- 9 A: And I thought I was getting sixteen or I would never have
- 10 pleaded.
- 11 Q: But you ended up pleading and getting forty-seven?
- 12 A: Yes, sir.
- 13 Q: When you had a plea offer of forty?
- 14 A: Yes, sir.
- 15 Q: Okay. And the reason for that was why?
- 16 A: Because I thought I was getting sixteen. I thought -- I
- 17 thought I was getting sixteen to run concurrent.
- 18 Q: If you thought that you were getting forty-seven, you
- 19 would have accepted the forty?
- 20 A: Sir?
- 21 Q: If you thought that you were getting forty-seven, you
- 22 would have accepted the forty?
- 23 A: Yes, I would have. If it --
- 24 Q: Now, this all happened -- the plea offer, the money paid,
- 25 and the plea all happened within several months?

DUSTIN EVANS - REDIRECT BY MR. THOMAS

1 A: Yes, sir.

2 MR. THOMAS: No further questions, Your Honor.

3 THE COURT: Anything on those questions?

4 MR. GOURLEY: No, Your Honor.

5 THE COURT: All right, sir. You may step down.

6 THE APPLICANT: Yes, sir.

7 THE COURT: Further witnesses on behalf of the applicant,

8 Mr. Thomas?

9 MR. THOMAS: Yes, Your Honor. If it would please the

10 Court, we'd like -- I'd like to call Mr. Evans' mother --

11 THE COURT: All right.

12 MR. THOMAS: -- to the stand.

13 THE COURT: All right. Please come around, ma'am.

14 MR. THOMAS: And her name, Your Honor, is Shirley Evans.

15 THE COURT: All right. Can that chair be moved?

16 THE BAILIFF: Yes, Your Honor. I can put it over here.

17 THE COURT: All right. Very good. Thank you. Thank

18 you, ma'am. Can you -- can you raise your right hand, ma'am?

19 Do you solemnly swear or affirm to tell the truth, the whole

20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Can you state your full name,

23 please, ma'am?

24 THE WITNESS: Shirley Ann Evans.

25 THE COURT: All right. Go ahead, Mr. Thomas.

SHIRLEY EVANS - DIRECT BY MR. THOMAS

1 MR. THOMAS: Your Honor, if it please the Court.

2 SHIRLEY EVANS, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. THOMAS:

6 Q: Ms. Evans, how are you related to Dustin Evans?

7 A: He's my son.

8 Q: All right. Do you understand that you're under oath
9 today?

10 A: Yes, sir.

11 Q: Do you know what that means?

12 A: Yes, sir.

13 Q: To tell the truth?

14 A: Yes, sir.

15 Q: All right. And is that your intention to tell the truth?

16 A: Oh, yes, sir.

17 Q: All right.

18 MR. THOMAS: Your Honor, may I approach?

19 THE COURT: Please.

20 BY MR. THOMAS:

21 Q: Ms. Evans, I want to show you something that's been
22 marked as Applicant's -- for identification -- 1. Let's see.
23 And -- actually, it's marked as 2 for identification. And ask
24 you if you can identify anything on that page. Do you see the
25 check?

SHIRLEY EVANS - DIRECT BY MR. THOMAS

1 A: Yes, sir.

2 Q: Can you read it?

3 A: Not really.

4 Q: Okay. Do you need glasses?

5 A: I've had sixteen eye surgeries.

6 Q: Okay. All right. Now, did you take a check to his

7 attorney -- to Mr. Robinson?

8 A: My daughter did.

9 Q: Okay. Did you obtain a check? Did you get money for

10 him?

11 A: Oh, yes, sir.

12 Q: Okay. You went to the bank and did that?

13 A: Oh, yes, sir.

14 Q: And how much was that check for?

15 A: Thirty-five -- it was thirty -- well, 3,500.

16 Q: Yes, ma'am.

17 A: But I took 3,400 out of my savings. I closed it out, and

18 I put \$100 with it.

19 Q: Okay. To the best of your knowledge, is that the -- is

20 that a copy of the check that was taken to Mr. Robinson?

21 A: Yes, sir.

22 Q: Okay. And it was made payable to -- to his law firm?

23 A: Yes, sir.

24 Q: All right. And what bank do you bank with?

25 A: NBSC in Manning.

SHIRLEY EVANS - DIRECT BY MR. THOMAS

- 1 Q: Okay. And that's where the check came from?
- 2 A: Yes, sir.
- 3 Q: All right. Did you know what the check was for?
- 4 A: Yes, sir.
- 5 Q: And what was the check for?
- 6 A: My son for Mr. Robinson.
- 7 Q: And what was your understanding as to why you were paying
- 8 this extra money?
- 9 A: He was supposed to get my son a better bargain.
- 10 Q: A better deal?
- 11 A: Yes, sir.
- 12 Q: And is that why you paid the money?
- 13 A: Yes, sir.
- 14 Q: All right.
- 15 MR. THOMAS: Your Honor, if it please the Court, we'd
- 16 like to move this as Applicant's 1 -- or Applicant's 2.
- 17 THE COURT: Any objection?
- 18 MR. GOURLEY: No, Your Honor.
- 19 THE COURT: All right. It's into evidence.
- 20 (WHEREUPON, Plaintiff's Exhibit Number 2, a copy of a
- 21 check, was admitted into evidence.)
- 22 MR. THOMAS: All right. Thank you, Your Honor.
- 23 BY MR. THOMAS:
- 24 Q: Now, Ms. Evans, do you know anything about the appeal?
- 25 A: Yes, sir.

SHIRLEY EVANS - DIRECT BY MR. THOMAS

1 Q: Did you have any -- any communication with Mr. Robinson
2 regarding the appeal?

3 A: He never called me.. He was supposed to put an appeal in
4 and he never did give me a call or nothing else.

5 Q: Were you in the courtroom the day of the plea?

6 A: Yes, sir.

7 Q: All right. And you were there when your son was
8 sentenced?

9 A: Yes, sir.

10 Q: Was it your understanding that it was going to be
11 appealed?

12 A: Yes, sir.

13 Q: And who was going to do that appeal?

14 A: Mr. Robinson.

15 Q: Did you believe that that had been done?

16 A: Yes, sir. Honestly, yes, sir.

17 Q: Okay. And it was only at a later -- much later date that
18 you found out that it had not been done?

19 A: Yes, sir.

20 Q: Okay.

21 MR. THOMAS: Your Honor, I have no further questions.

22 THE COURT: All right. Cross-examination?

23 MR. GOURLEY: Yes, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. GOURLEY:

SHIRLEY EVANS - CROSS BY MR. GOURLEY

- 1 Q: Hi, Ms. Evans. When did you discuss with Mr. Robinson
2 your son's appeal?
- 3 A: Oh, gosh.
- 4 Q: Do you know how long after the plea it was?
- 5 A: It wasn't -- when I discussed it with him?
- 6 Q: Yes, ma'am.
- 7 A: He never did call me.
- 8 Q: He never did call you about it?
- 9 A: No, sir.
- 10 Q: Okay. And did you ask him to file an appeal or did you
11 think your son asked him to file an appeal?
- 12 A: My son had asked him.
- 13 Q: Okay. And you never heard from Mr. Robinson about it?
- 14 A: No, sir.
- 15 Q: Did you ever try to call him and ask him about it?
- 16 A: I called him a couple times and he never returned my
17 call.
- 18 Q: Okay. And you said that Mr. Robinson was supposed to do
19 the appeal?
- 20 A: Yes, sir.
- 21 Q: Did y'all have any kind of contract with him saying
22 you're going to do my appeal or anything like that?
- 23 A: I didn't.
- 24 Q: No, ma'am? Do you know if your son did?
- 25 A: As far as I know, he did.

SHIRLEY EVANS - CROSS BY MR. GOURLEY

1 Q: Okay. All right. Thank you, Ms. Evans.

2 MR. GOURLEY: Your Honor, I don't have any other
3 questions.

4 THE COURT: All right.

5 THE WITNESS: Yes, sir.

6 THE COURT: Any redirect?

7 MR. THOMAS: No, Your Honor.

8 THE COURT: All right. She can come down. Thank you.

9 THE WITNESS: Thank you, sir.

10 THE COURT: All right. Mr. Thomas, further witnesses --

11 MR. THOMAS: Yes.

12 THE COURT: -- on behalf of the applicant?

13 MR. THOMAS: Your Honor, just one more. I'd like to call
14 his sister, Anna Evans Dubose, Your Honor.

15 THE COURT: All right. Please come around to be sworn,
16 ma'am. Just come around all the way around up here, please.
17 Stop about right there, please, ma'am, and you can raise your
18 right hand. Do you solemnly swear or affirm to tell the
19 truth, the whole truth, and nothing but the truth, so help you
20 God?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Have a seat and get situated.
23 And state your full name, please, ma'am.

24 THE WITNESS: Anna Evans Dubose.

25 THE COURT: Okay. Could you pull up just a little bit

ANNA EVANS DUBOSE - DIRECT BY MR. THOMAS

1 closer to the microphone? Thank you, ma'am. All right. Go
2 ahead, sir.

3 MR. THOMAS: Your Honor, if it please the Court.

4 ANNA EVANS DUBOSE, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. THOMAS:

8 Q: Ms. Dubose, are you -- Mrs. Dubose, are you related to
9 Dustin Evans?

10 A: Yes, sir. That's my brother.

11 Q: All right. And you understand that you're under oath
12 today?

13 A: Yes, sir.

14 Q: You understand what that means?

15 A: Yes, sir.

16 Q: To tell the truth?

17 A: Uh-huh.

18 Q: You're not here to try to help your brother?

19 A: No, sir.

20 Q: And by not telling the truth?

21 A: Right.

22 Q: You intend to tell the truth?

23 A: Yes, sir.

24 Q: All right. Let me ask you --

25 MR. THOMAS: Your Honor, may I approach?

ANNA EVANS DUBOSE - DIRECT BY MR. THOMAS

1 THE COURT: Please.

2 BY MR. THOMAS:

3 Q: I have a copy of a check that's been marked as
4 Applicant's 2, and ask you if you'll look at that page,
5 please?

6 A: Uh-huh.

7 Q: Do you see a copy of a check?

8 A: Yes, sir.

9 Q: And have you seen that -- have you seen that check
10 before?

11 A: Yes, sir.

12 Q: And how have you seen it?

13 A: I took it to Scott Robinson's office.

14 Q: Okay. And how much was it for?

15 A: \$3,500.

16 Q: All right. Do you know what the check was for?

17 A: It was supposed to be to help my brother.

18 Q: And do you know how it was supposed to help him?

19 A: My mom just asked me to drop it off.

20 Q: Okay. So you didn't know anything about exactly what it
21 was for?

22 A: Right.

23 Q: Okay. Now, do you have any information in regards to the
24 -- to a possible appeal?

25 A: I know it was -- Dustin called me from Kirkland and said

ANNA EVANS DUBOSE - DIRECT BY MR. THOMAS

1 that he was supposed to get an appeal, had we heard from Mr.
2 Robinson. And this was after some time when he was there, and
3 Mama had tried to call him and he never called her back.

4 Q: Did you try to call him?

5 A: I tried to call one time, but I didn't talk to him.

6 Q: All right. So you never heard anything about it?

7 A: Uh-uh.

8 Q: But it was your understanding that the case had been
9 appealed?

10 A: Right.

11 Q: Okay.

12 MR. THOMAS: Your Honor, I have no further questions.

13 THE COURT: Cross-examination?

14 MR. GOURLEY: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. GOURLEY:

17 Q: Mrs. Dubose, do you recall when you tried to contact Mr.
18 Robinson? About how long after the plea?

19 A: It was not long. It was long enough for him to get to
20 Kirkland, and they have, like, a process before they can call.

21 Q: Okay.

22 A: And then he called us and asked had we heard from him.

23 Q: All right. So shortly following after his plea, y'all
24 tried to attempt to contact Mr. Robinson to determine whether
25 or not an appeal had been filed?

ANNA EVANS DUBOSE - CROSS BY MR. GOURLEY

1 A: Right.

2 Q: And did y'all pursue it anymore after that?

3 A: I didn't hear from him anymore after that, no.

4 Q: Okay. All right.

5 MR. GOURLEY: No further questions, Your Honor. Thank
6 you, Mrs. Dubose.

7 THE COURT: Any redirect?

8 MR. THOMAS: No, Your Honor.

9 THE COURT: You may step down, ma'am. Further witnesses
10 on behalf of the applicant?

11 MR. THOMAS: No, Your Honor. That's the applicant's
12 case.

13 THE COURT: All right. Very good. Witnesses on behalf
14 of the State?

15 MR. GOURLEY: Yes, Your Honor. We'd call Mrs. Land to
16 the stand, please.

17 THE COURT: All right. Please come around to be sworn,
18 ma'am. All right. Ma'am, could you raise your right hand,
19 please?

20 THE WITNESS: Yes, sir.

21 THE COURT: Do you solemnly swear or affirm to tell the
22 truth, the whole truth, and nothing but the truth, so help you
23 God?

24 THE WITNESS: I do.

25 THE COURT: Very good. Have a seat and get situated and

AMY LAND - DIRECT BY MR. GOURLEY

1 then state your name for the record, please.

2 THE WITNESS: Okay. My name is Amy Anders Land.

3 THE COURT: Go ahead, sir.

4 AMY LAND, being first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. GOURLEY:

8 Q: Mrs. Land, were you the prosecutor in this case?

9 A: I was.

10 Q: Okay. And did you have the opportunity -- or did you
11 arrange for Mr. Robinson to meet with Mr. Evans or how did
12 that work?

13 A: You mean on that day or beforehand?

14 Q: Prior. Prior to.

15 A: Yes. When we would have General Sessions, it would be
16 the Solicitor's Office to have -- job to have people
17 transported, and we had him brought over, as we did his co-
18 defendant, Mr. Sweat, several times so that they could meet
19 with their attorneys. At that time, the public defender
20 didn't have their own office; so they would meet with their
21 clients in the grand jury room.

22 Q: And do you have any recollection of a specific number or
23 was it more than four?

24 A: It was definitely more than four, but I wouldn't know the
25 exact number.

AMY LAND - DIRECT BY MR. GOURLEY

1 Q: Okay. And you mentioned Mr. Evans had a co-defendant.

2 Do you recall who that was?

3 A: His name was Jeremy Sweat.

4 Q: Okay. And is that the same --

5 MR. GOURLEY: Your Honor, may I approach?

6 THE COURT: Yes, sir.

7 MR. GOURLEY: And I'm showing her Applicant's Exhibit 1,
8 Your Honor.

9 BY MR. GOURLEY:

10 Q: Is that the same Mr. Sweat referenced in this letter?

11 A: That's correct.

12 Q: And you offered him a forty-year deal as well?

13 A: I did. Yes, sir.

14 Q: And did he accept that?

15 A: He did.

16 Q: Okay. And do you recall the result of his plea?

17 A: Yes. We went forward with a recommendation by the State.
18 Judge James explained to him, as he does to all defendants,
19 that a recommendation is something that he could accept as
20 we've stated or make his own terms, and the negotiated is --
21 the sentence that we agree on, he can accept it or not accept
22 it. He took the guilty plea and then Judge James gave him
23 eighty years.

24 Q: Okay. So he did not follow the State's recommendation?

25 A: He did not follow the State's recommendation.

AMY LAND - DIRECT BY MR. GOURLEY

1 Q: Did that have any impact on any future offers with Mr.
2 Evans?

3 A: It did. We were prepared at that time to go to trial
4 with Mr. Evans.

5 Q: Okay. And did you -- were you able to work out a
6 negotiation with Mr. Robinson in this case?

7 A: We were. We came to a negotiated term of forty-seven
8 years.

9 Q: And when did that come about?

10 A: That came about shortly after the incident with Mr.
11 Sweat, and we went back and forth and there were several
12 factors involved in the forty-seven years. What Mr. Robinson
13 presented to me was that his client hoped to get out of jail
14 alive one day. What we wanted was for our -- our victim, who
15 was a juvenile at the time of the very heinous crime, not to
16 have to go in front of the jury and explain in detail what
17 happened to her. That was a big factor.

18 Q: Okay. And did -- well, let me ask this. Is it typical
19 for Judge James to advise what a negotiated sentence is?

20 A: Oh, yes. Judge James is -- I don't know if you've ever
21 been in front of him. He's one of the most thorough,
22 articulate judges I've ever been in front of, and he always
23 advises this is the negotiated sentence. This is how much
24 time it carries. You should count on serving that much time.
25 You should not count on any time for good behavior. You

AMY LAND - DIRECT BY MR. GOURLEY

1 should not count on eighty-five percent. You should
2 anticipate doing the full time.

3 Q: Okay. And would Judge James be willing to accept a plea
4 where the defendant didn't answer the questions appropriately?

5 A: Absolutely not.

6 Q: And if there would have been any hesitation on the part
7 of the defendant to enter the plea, would Judge James have
8 accepted it?

9 A: No. Especially not in the middle of jury selection.

10 Q: Okay. And these were fairly serious charges; correct?

11 A: It was the most serious crime that I -- I saw in my
12 eleven-and-a-half years of doing this.

13 Q: And so you were -- it's fair to say that you were paying
14 close attention to what was going on there in the colloquy?

15 A: Oh, absolutely. And can I add one more thing?

16 Q: Yes, ma'am, please.

17 A: When I fill out the plea sheets -- and I don't know if
18 it's still done by hand, but back then it was done by hand. I
19 wrote -- I checked negotiated, and under that you can see in
20 my handwriting six years consecutive, forty-seven years total.

21 Q: Yes, ma'am.

22 A: On the second one, sixteen years consecutive, forty-seven
23 years total. And then the last one fifteen years consecutive,
24 forty-seven years total. I filled that part out and then give
25 it to Mr. Robinson. Mr. Robinson discussed it with Mr. Evans.

AMY LAND - DIRECT BY MR. GOURLEY

1 They signed it and then gave it to the Clerk of Court.

2 Q: Okay.

3 A: So that in my handwriting was written on that plea sheet
4 before it was -- before Mr. Evans signed it.

5 Q: Okay. Thank you, Ms. Land.

6 MR. GOURLEY: Judge, I don't have any other questions.

7 THE WITNESS: Okay.

8 THE COURT: Cross-examination?

9 MR. THOMAS: Your Honor, I think I only have one
10 question.

11 THE COURT: All right.

12 MR. THOMAS: May it please the Court.

13 CROSS-EXAMINATION

14 BY MR. THOMAS:

15 Q: You said that you filled out the plea sheet and then gave
16 that to Mr. Robinson?

17 A: Yes, sir.

18 Q: Okay. You wouldn't know at the time though how well Mr.
19 Evans could read or write, would you?

20 A: Well, I don't think your ability to read or write affects
21 your reading of numbers.

22 Q: Right.

23 A: So he clearly saw the forty-seven. It was written on
24 there. He signed directly under it, but I mean I can't say
25 what he noticed or didn't notice.

AMY LAND - CROSS BY MR. THOMAS

1 Q: Okay.

2 MR. THOMAS: Your Honor, I have no further questions.

3 THE COURT: Anything else?

4 MR. GOURLEY: No, Your Honor.

5 THE COURT: All right. Do you wish the witness to be
6 excused?

7 MR. GOURLEY: Yes, please, Judge.

8 MR. THOMAS: No objection, Your Honor.

9 THE COURT: All right. Ma'am, you are excused to go back
10 to your regular duties.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: Yes, ma'am. Next witness?

13 MR. GOURLEY: Your Honor, we'd call Mr. Robinson to the
14 stand.

15 THE COURT: All right. Please come around to be sworn,
16 sir. Do you solemnly swear or affirm to tell the truth, the
17 whole truth, and nothing but the truth, so help you God?

18 THE WITNESS: Yes, sir, I do.

19 THE COURT: Very good. Have a seat, get situated, and
20 then state your full name.

21 THE WITNESS: Scott L. Robinson.

22 THE COURT: Go ahead, Solicitor.

23 MR. GOURLEY: Thank you, Judge.

24 THE COURT: I'm sorry, Mr. Attorney General.

25 MR. GOURLEY: No problem, Judge.

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 SCOTT ROBINSON, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GOURLEY:

5 Q: Mr. Robinson, how many times did you meet with Mr. Evans
6 approximately?

7 A: Honestly, that long ago I don't have any recollection,
8 but based on the numbers I've heard today, it sounds like it
9 was probably at least ten.

10 Q: Okay.

11 A: If we picked a jury, I met him at the jail three or four
12 times, had three or four bond hearings, and then as Ms. Land
13 said what we would do was, because it was during a term of
14 court, she would often have the jail transport him with other
15 inmates just for a time and a situation where I wouldn't have
16 to leave court, go down to the jail, and meet with him. So I
17 would imagine it would have been at least ten times.

18 Q: Okay. And obviously, y'all were proceeding to trial;
19 right?

20 A: Not really.

21 Q: Not really?

22 A: No. That was something that I felt that we had to do
23 basically to try to get the forty-seven-year deal out of Ms.
24 Land after Mr. Sweat pled.

25 Q: Okay.

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 A: Quite frankly, she -- she was interested in going to
2 trial. For obvious reason, she had a very strong case. She
3 had a co-defendant who had just pled and gotten, in layman's
4 terms, hammered, and was looking for a reason to help himself
5 out by testifying against Mr. Evans.

6 And we really, quite frankly, didn't have any defense in
7 this case. It was no I wasn't there, I've got an alibi,
8 anything like that. The only conversations that Dustin and I
9 ever had about the incidents was just basically him trying to
10 minimize his involvement, that he didn't know that it was a
11 rape, he thought it was consensual, different things like
12 that.

13 Q: Okay.

14 A: But no, we were not very serious about going to trial.
15 That was obviously something we did to force the solicitor's
16 hand basically as she testified to that in hopes that she
17 would see that she didn't want to put the victim through a
18 trial and give us a better deal.

19 Q: Okay.

20 MR. GOURLEY: Your Honor, may I approach?

21 THE COURT: Absolutely.

22 BY MR. GOURLEY:

23 Q: Mr. Robinson, I'm showing you Plaintiff's Exhibit 1. Do
24 you recall the State offering a forty-year offer recommended?

25 A: I mean I remember discussions about a lot of numbers. I

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 do remember that, yes.

2 Q: Okay. Do you --

3 A: I don't remember that letter specifically, but I do
4 remember that.

5 Q: Do you recall what your advice was to Mr. Evans regarding
6 this plea offer?

7 A: Not specifically.

8 Q: Okay.

9 A: I do not recall advising him to reject it and not to take
10 it. I think at that point in time Mr. Evans was hesitant and
11 the issue at that point in time was who was going to go to
12 trial first.

13 Q: Right.

14 A: I had talked to Ms. Land, quite frankly, and tried to
15 explain to her that I felt that Mr. Evans was the less
16 culpable party based on information that he had given me. I
17 didn't go into specifics with her about the information that
18 he had given me, but just basically felt that he was less
19 culpable and that if Mr. Sweat went to trial, who I think she
20 was planning to call first, that we would be willing to
21 testify in exchange for some help.

22 Q: Right.

23 A: And, you know, I don't ever specifically remember telling
24 him to turn down the forty, but if he had -- had Mr. Sweat
25 gone to trial, we would have gotten a better deal than the

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 forty, yes.

2 Q: Okay. Did you promise Mr. Evans any kind of sentences? I
3 think a sixteen-year sentence has been mentioned.

4 A: No, sir.

5 Q: Okay.

6 A: The only sentence I ever promised him was the forty-seven
7 years, and that was right around -- I don't remember the exact
8 date, whether it was that Monday of trial or that Friday
9 before the trial. I know Judge James and Ms. Land and the
10 court reporter and I spent a significant amount of time going
11 and pre-marking exhibits and doing stuff like that on the
12 Friday before, and I really don't recall that long ago the
13 exact date that that came about. But that's the only number
14 that he was promised with any certainty was forty-seven years.

15 Q: And y'all had an adequate discussion explaining what a
16 negotiated sentence meant and so on and so forth?

17 A: Absolutely. Especially in light of Mr. Sweat's
18 predicament --

19 Q: Right.

20 A: -- where he had a recommendation that was doubled by the
21 judge.

22 Q: And does Judge James typically advise the defendant of
23 what a negotiation means and the possible sentences?

24 A: He does. As Ms. Land said, he's very thorough. And I
25 don't mean this as any knock on Judge James. We had him last

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 week in Clarendon County. He's one of the slower plea judges
2 because he is so thorough, but he thoroughly explains how much
3 time he could get, what the effect of a negotiation is, that
4 he has no choice in the sentence, that the sentence is the
5 number that the State and his attorney have agreed upon, and
6 that all he can do is either accept the plea or not accept the
7 plea, that he has no authority as to sentencing. And then as
8 Ms. Land said about time calculation, that he makes no
9 representations about how much time you're looking at or can
10 get. That you have to assume that if you're pleading to
11 forty-seven years, that you're going to do forty-seven years,
12 and anything else is up to the Department of Corrections.

13 Q: Okay. Do you recall any hesitation on Mr. Evans' part to
14 enter the plea?

15 A: Oh, yeah. I mean he was -- not in court, but I mean --

16 Q: Right.

17 A: -- leading up to that, certainly. That is a significant
18 amount of time. Basically, the conversations were daylight at
19 the end of the tunnel, for lack of a better term. Any -- the
20 other offers -- and especially an eighty-year sentence is a
21 life sentence for Mr. Evans. So what I had to get the
22 solicitor to do was to give him some carrot, some incentive to
23 plead and not go through with a trial. And unfortunately,
24 forty-seven years was as low as she would go, but that would
25 give him the opportunity to get out basically at retirement

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 age, where he did have some life left and some hope while he
2 was serving his time, something to look forward to.

3 Q: And based off of your experience in pleading defendants
4 in front of Judge James, would he have accepted a plea if
5 there was hesitation on the part of Mr. Evans?

6 A: If Mr. Evans had waffled the slightest during the
7 recitation of the facts, he would not have taken it. Again,
8 Judge James is a stickler about that and is very -- doesn't
9 just ask the question "and you're pleading guilty because you
10 are guilty" just kind of as a matter of course. He goes a
11 little bit further and says tell me exactly what you did, you
12 know, beyond just a recitation of the facts by the solicitor.
13 He makes the defendant actually make some admission on the
14 record.

15 Q: Okay. Regarding the appeal, did Mr. Evans ever ask you
16 to file an appeal on his behalf?

17 A: I don't think so.

18 Q: Okay.

19 A: Not that I recall, and certainly I would probably have
20 told him at that time I'm not appealing a negotiated forty-
21 seven-year sentence because your co-defendant just got eighty.

22 Q: Uh-huh.

23 A: And I -- you know.

24 Q: Okay.

25 A: But I don't recall him asking me that because we had that

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 discussion in advance.

2 Q: Were there any objections during the plea?

3 A: Not that I recall.

4 Q: Okay.

5 A: And again, I don't recall that plea specifically in

6 detail, but --

7 Q: In your opinion, was there any basis for an appeal?

8 A: No. None whatsoever.

9 Q: And had he asked you -- obviously -- obviously, it's been

10 quite a length of time, but if a defendant asks you to appeal,

11 would you have perfected an appeal?

12 A: Absolutely.

13 Q: Okay. And there was no reason why you wouldn't have

14 appealed had Mr. Evans asked you to file an appeal?

15 A: No. I mean it, you know, didn't affect me one way or the

16 other.

17 Q: Right. Regarding the \$3,500 paid by Ms. Evans, can you

18 explain that just a little bit?

19 A: Yes. I was in private practice from 1995 until I think

20 February of 2013. From -- and I really don't recall whether

21 it was 2000 or 2001. As part of my private practice, I was an

22 independent contractor for what started out as the Clarendon

23 County Public Defender Corporation before we had circuit

24 defenders. I did that as part of my private practice and was

25 just paid a lump sum of money.

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 I quit that position 2007 perhaps -- I don't recall
2 exactly when it was -- and was replaced by Ms. Butcher. I had
3 conversations with Mr. Evans, as I did with all of my
4 appointed clients when I quit, and said I'm not your public
5 defender anymore, your case is going to be transferred to Ms.
6 Butcher, and advised Mr. Evans because I had time invested in
7 his case and had done a lot of work on it and the discussions
8 that if they wanted me to continue, they could retain me.

9 Q: Uh-huh.

10 A: And my fee based on the amount of work, quite frankly,
11 that had been done by me as a public defender was only \$3,500.
12 Now, that sounds to them like a lot of money, but for a case
13 of that magnitude in private practice, \$3,500 doesn't get you
14 very far. But I did not penalize him or double dip him for
15 the work that I had already done as a solicitor -- I mean as a
16 public defender. That was simply to finish out the case.

17 Q: Okay.

18 MR. GOURLEY: I beg the Court's indulgence, Your Honor.

19 THE COURT: Yes, sir.

20 BY MR. GOURLEY:

21 Q: Mr. Robinson, do you ever tell your clients to answer a
22 question in a certain manner during pleas?

23 A: Absolutely not. I'll tell you exactly what I tell them
24 every time I talk to them. I don't care what you tell the
25 judge. If you're going to take the plea, take the plea. If

SCOTT ROBINSON - DIRECT BY MR. GOURLEY

1 you're guilty, tell him you're guilty. If you're not guilty,
2 we're not going forward with the plea, but do not try to
3 sugarcoat it or make yourself look better in front of the
4 judge because he will not accept your plea. That is pretty
5 much my pat instruction to every defendant I represent.

6 Q: All right.

7 MR. GOURLEY: Your Honor, I don't have any other
8 questions. Thank you, Mr. Robinson.

9 THE COURT: All right. Cross-examination?

10 MR. THOMAS: Your Honor, may it please the Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. THOMAS:

14 Q: Mr. Robinson, good morning.

15 A: Good morning.

16 Q: Did you feel like you had enough -- you had adequate time
17 to meet with Mr. Evans to prepare this case?

18 A: Yes, sir.

19 Q: Okay. And was it posturing for trial or for -- what was
20 the situation?

21 A: Basically, yeah. Mr. Evans had admitted to me that he
22 was there, that he was involved. We had discussed -- you
23 know, very early on in the representation, he told me that,
24 you know, what appears at least to be based on the other
25 evidence in the case kind of self-servicing. That we went

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 down there, I didn't know what was going to happen. Yes, I
2 had sex with her, but I thought it was consensual. I stopped
3 when she started crying. That kind of stuff.

4 Q: All right.

5 A: However, based on Mr. Sweat's plea and the victim's
6 statements -- the victim -- the juvenile victim spoke at the
7 plea and she, quite frankly, was a devastating witness against
8 any defendants, and that was not what she said. So based on
9 that, like I said, it was posturing for trial in hopes that
10 the State would not want to put her through that through
11 cross-examination, et cetera, to give Mr. Evans some sentence
12 that would give him life after prison.

13 Q: Why did the co-defendant get so much time?

14 A: Because I guess just based on the heinous nature of the
15 crime. It was two separate victims.

16 The juvenile victim -- they got a cell phone from a
17 friend of hers, called, lured her out to the road, told her
18 that this friend was waiting at their house, and they were
19 going to go back there and party. Picked her up, took her
20 back there. They both raped her, took her in the bathroom,
21 made her wash the evidence off, and then stabbed her multiple
22 times and left her for dead.

23 According to her, they were having discussions about
24 going to get supplies out of their vehicle to cut her up and
25 dispose of her body. When they left, she jumped out of the

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 window and ran to a neighbor's house.

2 The second victim was not nearly as innocent, but was
3 just as bad. They picked up a young lady who I think perhaps
4 did this on a professional basis. Both of them had sex with
5 her. Then they raped her with a broom handle and poured
6 Clorox in her private areas to try to get rid of the evidence.

7 Q: Was --

8 A: And so based on those facts, I think the judge was just
9 kind of outraged.

10 Q: Was the co-defendant more culpable? Is that why the co-
11 defendant probably got more time?

12 A: I -- it was our contention that he was. Ms. Land --

13 Q: Okay.

14 A: -- didn't believe that, quite frankly. I think he got
15 more time because he just went -- he had the bad luck of the
16 draw I guess. He went first. Had Mr. Evans taken that forty-
17 year deal and gone first, he would probably be sitting on the
18 bad end of that eighty-year sentence.

19 Q: All right. Did you -- did you know the educational level
20 of Mr. Evans?

21 A: I'm sure I did.

22 Q: All right.

23 A: I mean when I talk to them, that's one of the first -- I
24 have a little basic questionnaire sheet that I ask them when I
25 first meet with them, name, address, how far did you go in

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 school, married, single, divorced, how many children, et
2 cetera, just to get a basic biographic setting of them.

3 Q: Yes, sir. Did you know his -- what his level of being
4 able to read and write was? Were you able to determine that?

5 A: I honestly don't recall, quite frankly.

6 Q: All right.

7 A: I mean if there would have been trouble in the
8 communication -- I don't usually give, you know, any type of
9 literature and ask them to read to assess that, but just in
10 our discussion, if I feel that there is a communication gap or
11 an understanding gap or something, I would have addressed it
12 further.

13 I don't recall any such gap between Dustin and myself.
14 Regardless of how limited his formal education was, he seemed
15 perfectly knowledgeable and capable of understanding our
16 conversations and carrying on an informed conversation --

17 Q: Yes, sir.

18 A: -- with me.

19 Q: Now -- so the only plea offer that was made prior to the
20 actual plea itself was the forty years?

21 A: The only official plea.

22 Q: Yes, sir.

23 A: Ms. Land and I batted around some numbers, some what-if
24 numbers. If Mr. Sweat had gone to trial and we testified,
25 would you give me twenty? You know, I asked her about twenty.

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 Q: Right.

2 A: She certainly never committed that, but I think that's
3 the only official offer I ever had from her was the forty.

4 Q: Did you discuss with Mr. Evans the conversations that you
5 were having with the solicitor?

6 A: Oh, absolutely.

7 Q: Okay. So he knew that if he was -- if there was a trial
8 with the co-defendant and he testified that -- I think you
9 mentioned twenty. Then it could have possible been in the
10 range of twenty years?

11 A: Well, no. That -- I think what my conversation with him
12 was that I was asking for twenty, but I didn't think she would
13 go anywhere below thirty, which I firmly believe. I don't
14 have that in writing, but I do recall that. Had Mr. Sweat
15 gone to trial rather than pleading and Mr. Evans testified
16 against him, that he would have received a thirty-year
17 sentence.

18 Q: Okay. So he would have received less than the forty-
19 seven?

20 A: Right.

21 Q: Okay. Now, you said that he was hesitant to enter into
22 the plea offer -- into the plea agreement?

23 A: Absolutely.

24 Q: Okay. And why was that?

25 A: Well, just because of the reality of that. When you drop

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 forty-seven years on somebody's lap, it's -- I've never had
2 any defendants that have gotten any type of significant time
3 that weren't hesitant.

4 Q: All right.

5 A: Anytime you have to talk somebody into going to prison,
6 they're hesitant, you know. Typically, when I go do you want
7 time served and probation, there's no hesitation. Anything
8 beyond that, there's always -- well, I don't know, you know,
9 but that's what I mean. Just the usual hesitation.

10 Q: Right.

11 A: Nothing unusual about it.

12 Q: Were you able to develop a theory of defense in this
13 case? I mean what would your defense have been?

14 A: Basically what Mr. Evans had told me, trying to make him
15 be the less culpable. That, you know, it was not a very good
16 defense, quite frankly, in my opinion, and that's why I said
17 in my mind we were more or less posturing. I didn't tell Ms.
18 Land that certainly because that would have defeated the
19 purpose of us posturing, but, you know, just that Mr. Evans
20 did not realize it wasn't consensual.

21 And I don't think he was the one -- I think the victim
22 testified or had given statements that Mr. Sweat was actually
23 the one who did the actual stabbing, even though Mr. Evans was
24 there. So there were some -- some facts that, you know, I
25 could at least build on to say this supports our theory of the

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 case.

2 Q: Right. Now, in regards to the extra money -- and you
3 said that you were -- you were in a contractual relationship
4 with -- as a public defender?

5 A: Independent contractor, yes.

6 Q: Independent contractor up until prior to this going to
7 plea?

8 A: Yes.

9 Q: All right. And then --

10 A: I quit, and then was replaced by Debbie Butcher.. And the
11 time was a year and a half, two years, and then she went to
12 Lee County and I was -- came back to Clarendon as an
13 independent contractor.

14 Q: Okay. Now, the additional funds were paid for continued
15 representation?

16 A: Basically, they retained me as a private attorney after I
17 quit the Public Defender's Office.

18 Q: Okay. Is there any way that he could have misunderstood
19 that and felt like that he was paying additional monies for
20 some better representation?

21 A: I mean I can't really say what he thought, but certainly
22 I don't think there was any opportunity for him to gather any
23 misunderstanding from --

24 Q: Right.

25 A: -- anything that I told him. No, sir.

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 Q: Okay. And I'm just kind of confused. I wonder what his
2 ability was with a sixth-grade education to understand the
3 mechanics of something that would be pretty easy for us in
4 regards to the whole situation with being an independent
5 contractor.

6 A: Well, I don't think I went into great detail about the
7 nature of it. Basically, I told him I was quitting as public
8 defender. I wasn't going to be the public defender anymore.
9 Somebody else was taking over his case. If he wanted me to
10 continue, he could hire me.

11 Q: Okay.

12 A: I think that -- I put it on a level he could understand.

13 Q: All right.

14 A: Most of my clients, quite frankly, are not highly
15 educated people.

16 Q: Yeah. And he's not highly educated and I don't mean that
17 to disparage him.

18 A: And I don't either, but I mean I -- what I'm saying is
19 I'm used to breaking it down into terms where, again, I try to
20 make it very simple and very straightforward without a whole
21 lot of what I call legal mumbo-jumbo.

22 Q: Yeah. Do you remember talking with the family in regards
23 to why there was additional money to be paid?

24 A: Well --

25 Q: I know it's been a long time.

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 A: I don't know. Well, you keep saying additional money.
2 That was the only money that was ever paid.

3 Q: Well, the only money. Yeah.

4 A: And I really don't know. I do remember meeting with his
5 mom and his sister on different occasions, and I'm sure I must
6 have to explain to them why they were paying me money.

7 Q: Right.

8 A: But the details -- specific details I'm -- I would assume
9 I told them the same thing I told Dustin, that I wasn't doing
10 it anymore and somebody else would take over their case unless
11 they wanted to hire me.

12 Q: Okay.

13 MR. THOMAS: Your Honor, could I beg the Court's
14 indulgence?

15 THE COURT: Yes, sir.

16 BY MR. THOMAS:

17 Q: Now, the appeal. When the plea was over, was -- do you
18 remember if Dustin was upset with that -- with the forty-
19 seven?

20 A: Well, I wouldn't say upset. Obviously, he was sad. As
21 he told you, he had a new daughter and there was -- again,
22 there's always a lot of emotion at the finality when the judge
23 says the Department of Corrections and there's time involved,
24 but again, nothing that I thought was unusual that indicated
25 that he was surprised by that sentence or didn't understand

SCOTT ROBINSON - CROSS BY MR. THOMAS

1 that sentence.

2 Q: Okay.

3 A: Just the usual remorse of, you know, I'm going to prison
4 for a very long time.

5 Q: How about the -- the issue of an appeal? Was -- did you
6 discuss that with him? The possibility of an appeal?

7 A: I would have -- I don't have any specific recollection.
8 Typically, I do, you know, explain to my clients what their
9 rights are --

10 Q: Yes, sir.

11 A: -- before the plea and after the plea, but I don't have
12 any specific recollection about talking to Mr. Evans that day.

13 Q: Okay.

14 A: I can't answer that specifically.

15 Q: And in regards to the plea colloquy, do you as a matter
16 of practice talk with your client in regards to what questions
17 are going to be asked?

18 A: Yes.

19 Q: Okay. So you said that you don't advise certainly as to
20 how they should be answered, but you do discuss with them in
21 regards to what the questions are going to be?

22 A: Yes, sir.

23 Q: Okay.

24 MR. THOMAS: Your Honor, if I could beg the Court's
25 indulgence?

26

1 THE COURT: Yes, sir.

2 MR. THOMAS: Your Honor, if it please the Court, we have
3 no further questions.

4 MR. GOURLEY: Nothing further, Your Honor.

5 THE COURT: All right, sir. You may step down.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Do you wish the witness to be excused?

8 MR. GOURLEY: Yes, please, Your Honor.

9 THE COURT: Any objection?

10 MR. THOMAS: No objection, Your Honor.

11 THE COURT: All right, sir. You are released. You may
12 go back to your regular activities. Further witnesses on
13 behalf of the State?

14 MR. GOURLEY: No, Your Honor.

15 THE COURT: All right. All right. Mr. Thomas, anything
16 other than a final statement to the Court?

17 MR. THOMAS: Your Honor, nothing further.

18 THE COURT: All right, sir. Would you like to make a
19 final statement to the Court?

20 MR. THOMAS: Your Honor, if I may just very briefly?

21 THE COURT: Yes, sir.

22 MR. THOMAS: Not to rehash everything, we would just say
23 that the evidence which has been presented today would
24 certainly reach the level of ineffective assistance of counsel
25 or involuntary guilty plea in that we feel like that the

1 relief requested should be granted.

2 THE COURT: Okay. All right. Mr. Attorney General?

3 MR. GOURLEY: Yes, Your Honor. I would just submit to
4 the Court that the testimony of Mr. Evans, Ms. Land, and Mr.
5 Robinson here today established that there was no -- that the
6 guilty plea was freely and voluntarily entered with the
7 understanding that it was a forty-seven-year negotiated
8 sentence.

9 Furthermore, Your Honor, according to Mr. Robinson's
10 testimony, he typically advises his clients of their right to
11 appeal and, had Mr. Evans requested an appeal, he would have
12 filed one. Certainly, Your Honor, with a negotiated sentence,
13 there's not much to appeal on. But regardless, Your Honor, I
14 would submit to the Court that there is no evidence here today
15 presented that Mr. Evans actually inquired and requested an
16 appeal be filed.

17 Furthermore, Your Honor, I would renew my objections as
18 to the statute of limitations. Mr. Evans has not presented
19 any extraordinary circumstance that would require a tolling of
20 the statute of limitations in regards to the ineffective
21 assistance of counsel claims. Your Honor, he was sentenced in
22 2007. He filed this application I believe in 2013, some six
23 years later. Certainly, the statute of limitations is one
24 year.

25 Even assuming that we're going to suggest that he didn't

1 file his PCR with the understanding -- or due to an appeal was
2 pending, Ms. Dubose stated that they contacted Mr. Robinson
3 shortly after the plea to inquire about whether or not an
4 appeal had been perfected. No further inquiry was gone on
5 and, Your Honor, I would submit to the Court that a six-year
6 delay in filing his PCR is just certainly beyond the statute
7 of limitations. Thank you.

8 --- THE COURT: Thank you very much. All right, gentlemen.
9 I'm going to take the matter under advisement. I'll inform
10 counsel of the ruling as quickly as possible.

11 MR. GOURLEY: Thank you, Judge.

12 MR. THOMAS: Thank you, Your Honor..

13 THE COURT: Thank y'all very much.

14 (WHEREUPON, the proceedings ended at 11:06 a.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

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25

The State of South Carolina



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March 3, 2008

COPY

Johnson, McKenzie & Robinson
Scott Robinson
2 N. Brooks Street
Manning, SC 29102

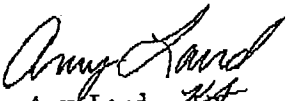
Re: Dustin L. Evans and Jeremy Shay Sweat

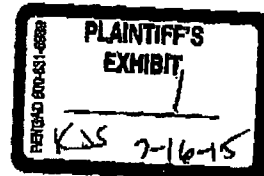
Dear Scott and Harry:

As you are aware, I am prepared to go forward with the above referenced cases on Tuesday, March 11, 2008. I also anticipate going forward with Indictment number 2007-GS-14-0363 on March 17, 2008.

In exchange for guilty please to all counts in both cases, I am willing to offer a 40 year cap. Please let me know by Thursday, March 6, 2008 if your clients wish to accept this offer.

Sincerely,


Amy Land
Assistant Solicitor



STANLEY H. ROSE 100.00 10.78 10.50 300.74	1762	03-11-2008
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 MIAppID:2

STANLEY H. ROSE 1762	03-11-2008
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 MIAppID:2

STANLEY H. ROSE 1757	03-14-2008
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STANLEY H. ROSE 9999	03-28-2008
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 MIAppID:2



STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEA
FOR THE THIRD JUDICIAL CIRCUIT

Dustin Evans, #328054

2013-CP-14-0078

Applicant,

v.

State of South Carolina,

Respondent.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE

9/18/15

ORDER OF DISMISSAL

Beulah S. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

2015 SEP 18 P 2:06

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 4, 2013. An evidentiary hearing into the matter was convened on July 16, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Clarendon County. Applicant was true bill indicted at the October 2007 term of the Clarendon County Grand Jury for kidnapping and criminal sexual conduct—first Degree, (2007-GS-14-0363) and kidnapping, criminal sexual conduct—first degree and assault and battery with intent to kill (2007-GS-14-0364). Applicant was represented by Scott Robinson. On April 30, 2008, Applicant pled guilty to two counts criminal sexual conduct—first degree, two counts of kidnapping, and one count of assault with intent to kill. Applicant was sentenced by the Honorable George C. James, Jr. to a negotiated sentence of fifteen years for kidnapping running concurrent to a fifteen year sentence for criminal sexual conduct—1st degree. Those sentences

[Signature]

ran consecutively to a sixteen year sentence for assault and battery with intent to kill concurrent with a fifteen year sentence for kidnapping. Those sentences were run consecutive to a sixteen year sentence for criminal sexual conduct – first degree. Overall, Applicant was sentenced to forty-seven year term of imprisonment. Applicant did not appeal his conviction or sentence.

Applicant filed his post-conviction relief application on March 4, 2013. Respondent filed its return and motion to dismiss on June 28, 2013. The Honorable George C. James, Jr., issued a conditional order of dismissal on July 1, 2013. On February 11, 2014, Applicant responded to the court's conditional order of dismissal asserting that Plea Counsel failed to appeal his guilty plea. A motion's hearing was held on September 9, 2014, before the Honorable Clifton Newman. Applicant was present and represented by Tommy Thomas, Esquire. Respondent was present and represented by Daniel Gourley, Esquire. The Respondent moved to dismiss all claims except for the failure to file a notice of appeal because Applicant failed to timely file his post-conviction relief application. By Order dated November 30, 2014, Judge Newman denied Respondent's motion to dismiss and ordered a full evidentiary hearing on all issues. An evidentiary hearing into the matter was convened on July 16, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to file direct appeal.
 - b. "plea was involuntary due to ineffective counsel."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from his mother, Shirley Evans (hereinafter "Mother") and Applicant's sister, Anna Evans Dubose (hereinafter "Sister"). The State presented testimony from Scott Robinson, Esquire. (hereinafter "Plea Counsel") and Amy Land (hereinafter "Assistant Solicitor Land"). This Court also had before it a copy of the Clarendon County Clerk of Court records, Applicant's South Carolina Department of Correction records, the PCR application, and Respondent's return and motion to dismiss, the court's conditional order of dismissal, Applicant's response to the court's conditional order of dismissal, the transcript of the motion's hearing on September 9, 2014.

Applicant testified that he is currently serving a forty-seven year sentence at eight-five percent. Applicant stated that he will be sixty two years old when he maxes out his sentence. Applicant indicated that he understood that if he were successful in his PCR he could be sentenced to more time. Applicant stated that he is currently thirty years old. Applicant stated that he pled guilty to kidnapping, criminal sexual conduct – first degree, and assault and battery with intent to kill. Applicant stated that he wanted a trial and had selected the jury prior to pleading guilty. Applicant stated Plea Counsel was appointed to represent him.

Applicant stated that he met with Plea Counsel approximately four times prior to his plea. Applicant stated that his bond was denied at least three times. Applicant stated Plea Counsel dropped off his discovery about twenty days prior to his plea. Applicant stated Plea Counsel never explained any trial strategy. Applicant stated that he has a sixth grade education. Applicant stated that he cannot read well and misunderstood the sentencing sheets. Applicant stated that he was under the expectation that he would receive a sixteen year sentence. Applicant stated Plea Counsel failed to explain that he would be receiving a forty-seven year sentence.

Applicant claimed the plea judge did not advise of the negotiations during the plea. Applicant continually asserted he thought it was a sixteen year sentence despite the sentencing sheets showing that it was a negotiated forty-seven year sentence. Applicant stated the sentencing sheet checked concurrent when he signed it. Applicant stated that he was not satisfied with Plea Counsel's services. Applicant stated his family was present during the plea.

Applicant stated that he received a plea offer for a recommended cap of forty years on March 3, 2006. Applicant stated this offer was received about a month prior to his plea. Applicant stated the plea offer was open for three days. Applicant stated Plea Counsel advised him not to accept the plea offer because Plea Counsel opined that it was too much time. Applicant stated that he did not accept the plea offer because Plea Counsel advised against it. However, Applicant acknowledged that it was his decision whether to accept or decline the offer. Applicant stated Plea Counsel told him that he would probably receive a sentence between sixteen and twenty years. Applicant stated that he pled guilty to avoid a longer sentence.

Applicant stated that his mother paid Plea Counsel three thousand five hundred dollars (\$3,500.00) to secure a better plea deal. Applicant stated that Plea Counsel advised him of the questions that would be asked during the plea. Applicant stated that Plea Counsel advised him that if he told the plea judge that he was promised anything then the plea judge would not accept the plea. Applicant further stated that he told the plea judge that no one was forcing him to plead guilty. Applicant could not recall whether the plea judge asked him if he was sober, but Applicant stated that he was not under the influence of any drugs or alcohol during the plea. Applicant stated that he could not recall if the plea judge asked him if he was satisfied with Plea Counsel, but Applicant stated that he was not satisfied with Plea Counsel's services.

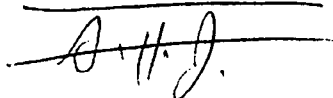
Applicant stated that he should have had a mental evaluation performed prior to his plea. Applicant stated that the plea judge did not ask about his mental health history. Applicant opined that he was not mentally competent at the time of his plea because he was stressed. However, Applicant stated that he knew what was going on during the plea. Applicant stated that he thought everything would run concurrently. Applicant recalled the Assistant Solicitor Land reading the facts during the plea and Applicant stated that he had no objections to the facts. Applicant said the facts recited at the plea were not true, but he agreed to them based on the advice of plea counsel.

Applicant stated that he thought his plea was appealed. Applicant stated that he did not know the process and was relying on plea counsel. Applicant stated that he filed his PCR when he found the appeal was not filed.

Following both direct and cross, this Court asked the Applicant whether he was telling the truth when answering the plea judge's questions. Applicant stated that he lied to the plea judge when answering his questions.

Following Applicant's testimony, Mother was called to testify. Mother stated that she wrote a check to Plea Counsel for three thousand four hundred dollars (\$3,400.00) and added a one hundred dollar bill. Mother stated that she was under the impression that Plea Counsel filed an appeal. However, Mother stated that she never discussed an appeal with Plea Counsel. Mother stated that she thought Applicant requested an appeal. Mother stated that she called Plea Counsel, but Plea Counsel never returned her call. Mother stated that she thought her son had a contract with Plea Counsel for an appeal.

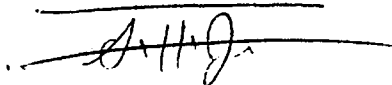
Following Applicant's testimony, Sister was called to testify. Sister stated that she understands she is under oath and intends to tell the truth. Sister stated that she took her



mother's check to Plea Counsel's office. Sister stated Plea Counsel was supposed to help Applicant. Sister stated that she did not know exactly why they were paying Plea Counsel. Sister stated Applicant called her from Kirkland and asked about his appeal. Sister stated she contacted Plea Counsel's office shortly after Applicant's plea to inquire about Applicant's appeal. Sister stated she did not contact Plea Counsel again.

Following Applicant's testimony, Assistant Solicitor Land was called to testify by Respondent. Assistant Solicitor Land stated that she was the prosecutor for Applicant's case. Assistant Solicitor Land stated she had Applicant brought over from prison to meet with Plea Counsel more than four times. Assistant Solicitor Land stated Applicant's Co-Defendant, Jeremy Sweat was offered and accepted the recommended forty year cap. Assistant Solicitor Land stated Co-Defendant Jeremy Sweat pled in front of the Honorable George C. James, Jr., who sentenced him to an eighty year sentence. Following Co-Defendant's plea, Assistant Solicitor Land offered a forty-seven year negotiated sentence. Assistant Solicitor Land stated the forty-seven year sentence gave Applicant hope that he would get out of jail at some point. Assistant Solicitor Land stated Judge James would not have accepted Applicant's plea if he showed any hesitation. Assistant Solicitor Land stated this was the most serious crime she ever handled. Assistant Solicitor Land noted that she filled out the sentencing sheet and wrote 47 year total on the sentencing sheet prior to Applicant signing it. Assistant Solicitor Land opined that Applicant's inability to read/write would not affect his ability to understand numbers.

Following Assistant Solicitor Land's testimony, Plea Counsel was called to testify. Plea Counsel stated that he met with Applicant at least ten times prior to his plea. Plea Counsel stated that they were never proceeding to trial. Plea Counsel explained that they had to try and get a decent plea offer after Co-Defendant, Jeremy Sweat, received an eighty year sentence. Plea

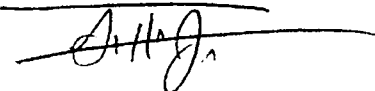
A handwritten signature, possibly reading "A. H. J.", is written over a horizontal line.

Counsel stated Applicant had no defense. Plea Counsel stated that he was concerned if Applicant had gone to trial prior to Co-Defendant Jeremy Sweat's plea, then Co-Defendant Jeremy Sweat would have testified against Applicant.

Plea Counsel stated that there was no communication gap between himself and Applicant. Plea Counsel stated that he has multiple clients with a low educational background and he is able to effectively communicate with them. Plea Counsel stated Applicant's only defense at trial was to attempt to mitigate his involvement and depict him as a follower not a leader.

Plea Counsel stated that he recalled the forty-seven year plea offer, but did not specifically recall the letter. Plea Counsel stated that the forty-seven year plea offer was the only official offer. Plea Counsel stated that he never promised Applicant that he would receive a sixteen year sentence. Plea Counsel recalled Applicant was hesitant during plea because he was about to be sentenced to prison for a substantial amount of time. Plea Counsel stated Judge James was very thorough. Plea Counsel noted that Judge James goes very slow and explains everything in detail during his colloquy. Plea Counsel stated that he never tells his clients to answer the plea judge's questions a certain way. Plea Counsel stated Judge James would not have accepted the plea if Applicant wavered in any way. Plea Counsel opined that the forty-seven year sentence gave Applicant some light at the end of the tunnel.

Plea Counsel stated that Applicant paid him three thousand five hundred dollars (\$3,500.00) to continue to represent him. Plea Counsel stated that he had a contract with the public defender's office and was originally appointed to represent Applicant. Plea Counsel stated he then quit the contract public defender job and remained in private practice. Plea Counsel stated Deborah Butcher was appointed to represent Applicant. Plea Counsel stated that



he advised Applicant that if he wanted him to continue his representation then he would need to pay three thousand five hundred dollars (\$3,500.00). Plea Counsel stated this fee did not include time spent as a contract public defender. Plea Counsel stated that he met with Applicant's mother and sister and explained the reasons behind the fee.

Plea Counsel explained that Applicant would be able to get out of prison at retirement age. Plea Counsel stated that he could not recall if Applicant ever asked him to file an appeal. Plea Counsel stated that had Applicant requested an appeal he would have filed an appeal. Plea Counsel opined that there was no basis for an appeal.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

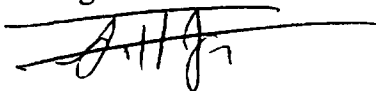
rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

ALLEGATIONS

1. Ineffective assistance of counsel for failing to file an appeal.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to file an appeal stemming from his guilty plea to be wholly meritless. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for



appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing.” *Id.* “[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings.” *Id.*

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving trial counsel failed to file an appeal on his behalf. This Court finds credible Plea Counsel testimony that he would have filed a notice of appeal on Applicant’s behalf if Applicant requested him to file one. This Court notes Applicant received a negotiated forty-seven year sentence for multiple counts of kidnapping, multiple counts of criminal sexual conduct – first degree, and one count of assault and battery with intent to kill. This Court finds that there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal.

2. Involuntary guilty plea due to ineffective assistance of counsel.

This Court finds Applicant’s allegation must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

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

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty to the offense(s) he challenges in this Application on April 30, 2008.



Therefore, the Applicant had to file his application by May 1, 2009. This Application was filed March 4, 2013, which was well after the statutory filing period had expired.

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

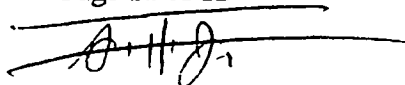
This Court notes that even if the statute of limitations had not run, the facts, as presented, do not necessitate the granting of the PCR Application. In order to prove counsel was ineffective, the PCR applicant must show: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The Court finds that Plea Counsel's performance was not deficient, and therefore was not ineffective.

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 that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

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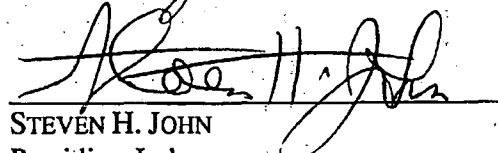
application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of August, 2015.


STEVEN H. JOHN
Presiding Judge
Third Judicial Circuit

 South Carolina

WITNESSES

T. Burgess - CCSO

ARREST WARRANT NUMBER

J121891 J121890

J121889

J121892

ACTION OF GRAND JURY

True Bill

Shaver K. Beatson

Foreperson of Grand Jury

Date: 10-4-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-14-0363

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

DUSTIN EVANS

JEREMY SHAY SWEAT

Indictment for

KIDNAPPING
CRIMINAL SEXUAL CONDUCT 1ST
DEGREE

C. KELLY JACKSON, SOLICITOR

CERTIFIED TRUE COPY

COUNT ONE - KIDNAPPING

COUNT TWO – CRIMINAL SEXUAL CONDUCT 1ST DEGREE

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/4/2013
FILED IN COURT
CLARENDON COUNTY, SC

E. Kelly Jabon
SOLICITOR

WITNESSES

T. Burgess - CCSO

ARREST WARRANT NUMBER

J121849 J121850

J121845 J121848

J121851 J121850

ACTION OF GRAND JURY

True Bill

Glover K. Beston Jr.

Foreperson of Grand Jury

Date: 10-4-07

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-14- 0364

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

DUSTIN EVANS

JEREMY SHAY SWEAT

Indictment for

KIDNAPPING
CRIMINAL SEXUAL CONDUCT
ASSAULT AND BATTERY WITH INTENT
TO KILL

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)
INDICTMENT FOR
KIDNAPPING
CRIMINAL SEXUAL CONDUCT
ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on October 4, 2007, the Grand Jurors of CLARENDON County present upon their oath:

COUNT ONE - KIDNAPPING

That DUSTIN EVANS and JEREMY SHAY SWEAT did in Clarendon County on or about July 3, 2006, violate Section 16-3-910 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully seize, confine, abduct, and carry away, without the authority of law, and by the use of force

COUNT TWO – CRIMINAL SEXUAL CONDUCT

That DUSTIN EVANS and JEREMY SHAY SWEAT did in Clarendon County on or about July 3, 2006, violate Section 16-3-652 of the Code of Laws of South Carolina (1976), as amended, in that the said Dustin Evans and Jeremy Shay Sweat did engage in, or attempt to engage in, a sexual battery in and upon [REDACTED] by using aggravated force and aggravated coercion upon her and assaulting her with the intent to engage sexual battery and/or while the said [REDACTED] was the victim of a kidnapping, with the said Dustin Evans and Jeremy Shay Sweat.

COUNT THREE – ASSAULT AND BATTERY WITH INTENT TO KILL

That DUSTIN EVANS and JEREMY SHAY SWEAT did in Clarendon County on or about July 3, 2006, violate Section 16-3-620 of the Code of Laws of South Carolina (1976), as amended, in that they with malice aforethought, committed an assault and battery upon one [REDACTED] by stabbing her about the body numerous times, with intent to kill the said [REDACTED]

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

C. Kelly Jackson

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

SOLICITOR

DATE

3/4/2013

Lee Ann H. Roberts

COURT
CLARENDON COUNTY, SC

158
STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE VS.

DUSTIN L. EVANS

AKA:

Race: White

Sex: Male

Age: 23

DOB: [REDACTED] 1985

SS#: [REDACTED]

Address: [REDACTED]

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-14-0368

AW#: J121889

Date of Offense: June 20, 2006

S.C. Code §: 16-03-0652

CDR Code #: 0160

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/4/2013
[Signature]

CLARENDON COUNTY, SC

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Criminal Sexual Conduct - 1st Degree

in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 011610

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

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

ATTEST: [Signature] 15 years concurrent to J121891, Concurrent to Ind. # 2007-GS-14-364

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ct. 1 of this indictment and counts 1-3 (07-364)

☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

*Recipient:

*Fine: \$ _____

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

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

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

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

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

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

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

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

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

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

B. Roberts
Clerk of Court/Deputy Clerk

Court Reporter: M. Wenfield

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
2/14/13
4/30/08

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE VS.

DUSTIN L. EVANS

AKA:

Race: White

Sex: Male

Age: 23

DOB: [REDACTED] 1985

SS#: [REDACTED]

Address: [REDACTED]

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-08-0363

AW#: J121891

Date of Offense: June 20, 2006

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE 3/14/2013

59
CLARENDON COUNTY

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 9, 5

☒ 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 initial)

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

ATTEST:

[Signature]
Solicitor

Dustin Evans
Defendant

[Signature]
Attorney for Defendant

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.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ct 2 and ct 3 + 3 (07-GS-14-364)

☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

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

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

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

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

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

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

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

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$100 \$100.00
\$100 \$100.00
\$12 \$12.00
\$500 \$500.00
\$25 \$25.00
\$100 \$100.00
\$50 \$50.00
\$40/ea \$40.00
\$3.75
\$128.25

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Court Reporter:

B. Roberts
Clerk of Court/ Deputy Clerk

M. Winfield

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
413
4/20/04

160
STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

STATE VS.

DUSTIN L. EVANS

AKA:

Race:

DOB: [REDACTED] 1985

Sex: M

Age: 23

SS#: [REDACTED]

Address: [REDACTED]

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-14-0364

AW#: J121851

Date of Offense: January 01, 1990 7-3-06 AR

S.C. Code §: 16-03-0620

CDR Code #: 0014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Assault and Battery w/ intent to kill

in violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 010114

☐ 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 initial)

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

ATTEST:

[Signature]
Solicitor

Dustin Evans
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 16 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: Counts 1 & 2 (07-GS-14-0364)

☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ 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	\$ 100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75
TOTAL		\$ 128.75

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CLARENDON

INDICTMENT/CASE#: 2007-GS-14-0364

STATE VS.

DUSTIN L. EVANS

AW#: J121845

AKA:

Race:

Sex: M

Age: 23

Date of Offense: January 01, 1990 7-3-06 N

DOB: [REDACTED] 1985

SS#: [REDACTED]

S.C. Code §: 16-03-0652

CDR Code #: 0160

Address: [REDACTED]

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Criminal Sexual Conduct - 1st Degreein violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 6 1 0☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Cherry Land
SolicitorDustin Evans
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 16 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: counts 1 + 3 (ST-G)☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.☐ RESTITUTION: ☐ Deferred, ☐ Defendant 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	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75
TOTAL		\$ 128.75

SPECIAL CONDITIONS:

PTUP

days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Court Reporter:

B. Roberts
Clerk of Court/ Deputy Clerk

M. Winfield

SCCA/217 (10/2007)

PRESIDING JUDGE

Judge Code:

Sentence Date:

2/4/08 413

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OF ORIGINAL FILED IN THE
CLERK OF COURT
CLARENDON COUNTY, SC
DATE 3/4/2013

STATE OF SOUTH CAROLINA

162

COUNTY OF CLARENDON

STATE

VS.

DUSTIN L. EVANS

AKA:

Race:

DOB: [REDACTED] 1985

Sex: M

Age: 23

SS#: [REDACTED]

Address: [REDACTED]

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-14-0364

A/W#: J121849

Date of Offense: January 01, 1990 7-3-06

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0, 0, 9, 5

☐ 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 initial)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: (15 years consecutive - 47 years total)[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, 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 _____ yearsand/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of _____
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: Counts 2 and 3 (07-GS-12-13)
☒ 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred, ☐ Defendant 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	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$3.75
TOTAL	\$	\$128.75

PTUP

days/hours Public Service Employment

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

[Signature]
Clerk of Court/Deputy Clerk
Court Reporter: [Signature]

PRESIDING JUDGE

Judge Code:

Sentence Date:

[Signature]
25/1/4/38/08 413