

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Williamsburg County

Honorable Jocelyn J. Newman, Circuit Court Judge S.C. SUPREME COURT

SENTRELL LEE MCCULLOUGH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002515

APPENDIX

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1 THE STATE OF SOUTH CAROLINA

2 County of Williamsburg

3

4 The State of South Carolina,  
5 Plaintiffs  
6 vs.

Guilty Plea  
2014-GS-45-00283

7 Sentrell Lee McCullough  
8 Defendant

January 27, 2015  
Kingstree, S.C.

9

10

11 Before the Honorable George C. James, Jr.

12 Judge.

13

14

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

16 Ms. Kimberly Barr,  
17 Assistant Solicitor for the State

18 Mr. W. Legrand Carraway  
19 Attorney for Defendant

20

21

Margaret T. Sullivan,  
Court Reporter

22

23

24

25



1 mother. She does not want to be here. She actually  
2 was here earlier this morning. I had told her what  
3 the State's plea negotiations were, and so she  
4 doesn't -- she's elected not to be here if she  
5 didn't have to be here.

6 THE COURT: And will -- does it suit  
7 everybody if we refrain from saying the child's  
8 name, and the child was 5 years old at the time?

9 MS. BARR: That suits the State, Judge.

10 MR. CARRAWAY: That suits the defendant,  
11 Your Honor.

12 THE COURT: How old is the child now?

13 MS. BARR: She is still 5.

14 THE COURT: And the CDR code is it, did  
15 you write this, 0-160?

16 MS. BARR: Yes, sir.

17 THE COURT: And the sentencing range for  
18 this is 0 to 30 years. And you said a  
19 recommendation or negotiated, how many years?

20 MS. BARR: 20 years.

21 THE COURT: I thought you said two.

22 MR. CARRAWAY: She did say two.

23 THE COURT: You did say two.

24 MR. CARRAWAY: But I understand 20, yes.

25 THE COURT: A negotiated 20 years,

1 correct?

2 MS. BARR: Correct. And, Judge, let me  
3 clarify the victim turned 6 in August.

4 THE COURT: Mr. Carraway, does your client  
5 understand completely everything that the State has  
6 to prove?

7 MR. CARRAWAY: Yes, Your Honor.

8 THE COURT: And he understands completely  
9 the rights he gives up if he enters this plea.

10 MR. CARRAWAY: He does, Your Honor.

11 THE COURT: And I believe I did ask you,  
12 do you agree with his decision to waive presentment  
13 of a CSC in the first degree charge?

14 MR. CARRAWAY: I do, Your Honor. He is  
15 waiving -- yeah, they presented this. It was a CSC  
16 with a minor in the first degree. And now it's  
17 just CSC in the first degree.

18 THE COURT: Your name is Sentrell Lee  
19 McCullough.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. McCullough, I am going to  
22 be asking you some questions about or to make sure  
23 you've entered this plea properly. If at any time  
24 you would like to stop and speak with your lawyer,  
25 you need to let me know.

1

2 THE DEFENDANT: Yes.

3 THE COURT: If someone says something that  
4 you don't understand, or if you think it's  
5 incorrect, you need to let your lawyer know, and he  
6 will in turn bring it to my attention. Do  
7 understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How old are you?

10 THE DEFENDANT: 17.

11 THE COURT: You will be 18 on March 4th?

12 THE DEFENDANT: Yes, sir.

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

14 THE DEFENDANT: 12th grade.

15 THE COURT: Have you been working  
16 anywhere?

17 THE DEFENDANT: No, sir.

18 THE COURT: Now you have a belly chain on  
19 now. How much time have you spent in jail on this  
20 charge?

21 THE DEFENDANT: 6 months.

22 THE COURT: Is he in on a bench warrant  
23 served today, or is he in civilian clothes because  
24 of a possible trial?

25 MS. BARR: He's in civilian clothes

1 because of a possible trial.

2 MR. CARRAWAY: Yes, sir.

3 THE COURT: So he's been in jail since  
4 last July.

5 MS. BARR: Correct.

6 THE COURT: Do you have any mental  
7 problems?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has any doctor or other  
10 medical professional ever told you that you have any  
11 mental issues?

12 THE DEFENDANT: I used to take Ritalin.

13 THE COURT: There's somebody raising their  
14 hand back there, Mr. Carraway. If he has any  
15 information on that, I sure would like to hear from  
16 them. Your name, please.

17 MS. COOK: Ms. Minnie Cook.

18 THE COURT: Minnie Cook. And your  
19 relation to him. Your relation to him.

20 MS. COOK: I am his aunt, his legal  
21 guardian.

22 THE COURT: Do you have any information  
23 about his mental status?

24 MS. COOK: Yeah, he was on medication like  
25 since he was like 5 years old.

1 THE COURT: And he indicated it was  
2 Ritalin, is that correct?

3 MS. COOK: Yes.

4 THE COURT: And that was Attention Deficit  
5 Hyperactivity Disorder.

6 MS. COOK: Yes.

7 THE COURT: Is he still supposed to be  
8 taking that now?

9 MS. COOK: He's always supposed to be  
10 taking it.

11 THE COURT: Are you taking it now?

12 MS. COOK: No.

13 THE DEFENDANT: No.

14 THE COURT: Are you thinking clearly  
15 today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Carraway, it appears to me  
18 so far he's certainly able to understand my  
19 questions. Have you detected any issues about his  
20 ability to understand the charges, and to assist you  
21 in his defense?

22 MR. CARRAWAY: I have not detected any  
23 difficulties at all. I have spoken to him  
24 extensively back there today, within the last half  
25 hour, hour. And he seems fine to me. It seems as

1       though he understands everything.

2                   THE COURT: Mr. McCullough, you said you  
3       don't take medicine now.

4                   THE DEFENDANT: No, sir.

5                   THE COURT: Do you have any drug or  
6       alcohol addictions?

7                   THE DEFENDANT: I used to smoke marijuana  
8       and drink a little bit of liquor.

9                   THE COURT: But you haven't been doing  
10      that for the last 6 months.

11                  THE DEFENDANT: No, sir.

12                  THE COURT: Are you feeling okay?

13                  THE DEFENDANT: Yes, sir.

14                  THE COURT: So the defendant was -- had  
15      just turned 17 when he got charged, correct?

16                  MS. BARR: Correct, Your Honor.

17                  THE COURT: Are you on probation or parole  
18      now?

19                  THE DEFENDANT: No, sir.

20                  THE COURT: You have charge in your case  
21      that has been to the grand jury, criminal sexual  
22      conduct with a minor in the first degree. That  
23      carries 25 years to life in prison. According to  
24      what's been presented to me just a moment ago,  
25      you're wanting to plead guilty to a different

1 offense, called criminal sexual conduct in the first  
2 degree. That carries 0 to 30 years. Do you  
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Also under the law, this is  
8 what is called a most serious offense.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Which means that if you are  
11 convicted today by pleading guilty to this charge---

12 THE DEFENDANT: Yes, sir.

13 THE COURT: ---later on in your life if  
14 you are convicted of another most serious offense,  
15 there would be a possibility that you would be  
16 sentenced to life without parole. Do you understand  
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you think he understands  
20 that, Mr. Carraway?

21 MR. CARRAWAY: I do, Your Honor.

22 THE COURT: This is also the type of case,  
23 is it not, where he would have to do 85 percent of  
24 the sentence, is that correct?

25 MR. CARRAWAY: That is what I understand,

1 and that is what I have explained to him.

2 THE COURT: Do you understand that, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Of course, that would be  
5 85 percent less what time you've already done. Do  
6 you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The charge of criminal sexual  
9 conduct in the first degree alleges that on or about  
10 July 23, 2014, you engaged in sexual battery with a  
11 minor child who was 5 years old, through the use of  
12 aggravated force, or where the victim was also the  
13 victim of a forcible confinement or kidnapping.  
14 That is the charge that the State is presenting  
15 today for you plea, do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: That particular charge has not  
18 gone to the Williamsburg County Grand Jury.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You can imagine the grand jury  
21 has 18 people on it. In order for this charge to go  
22 forward, at least 12 of those 18 people would have  
23 to agree that you are probably guilty. Do you  
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You can give up that right of  
2 presentment and go forward with a plea today. Is  
3 that what you want to do?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are these your initials right  
6 here on this sheet confirming that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, Mr. Carraway, you've  
9 already said you agree with that decision.

10 MR. CARRAWAY: I do, Your Honor.

11 THE COURT: Now when you enter any type of  
12 guilty plea, you do give up some rights that you  
13 have under the United States Constitution.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: First is your right to be  
16 silent. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Basically what that means is,  
19 if you want to plead guilty, you're going to have to  
20 tell me at some point, whether or not you did what  
21 the State claims that you did. Do you understand  
22 that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Also another right that you  
2 give up if you plead guilty, is your right to a jury  
3 trial.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: If you wanted a jury trial,  
6 Ms. Barr, you said you would be calling this case  
7 tomorrow.

8 MS. BARR: Yes, sir.

9 THE COURT: There are probably 60 -- 50,  
10 60 people who have reported for jury duty this week.  
11 They would -- they're coming back tomorrow morning.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: They'll be sitting right  
14 there. You and your lawyer and the prosecutor would  
15 go through a process where you all would pick  
16 12 people to be on your jury. Do you understand  
17 that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: That jury is told than more 10  
20 times, more than 20 times, that you are presumed  
21 innocent, and that you don't have to prove anything.  
22 And that the only burden that exists in the case is  
23 for Ms. Barr, the prosecutor, to convince every  
24 juror that you're guilty beyond a reasonable doubt.  
25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The State has a very high  
3 burden under the law. And again, you have no burden  
4 whatsoever. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you went to trial, you  
7 would go to trial on the other charge. But whatever  
8 the charge, you could be found guilty. You could be  
9 found not guilty.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Or the jury might not be able  
12 to reach a decision. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you want a jury trial?

15 THE DEFENDANT: No, sir.

16 THE COURT: Thirdly, if you plead guilty,  
17 you give up the right to look at and listen to and  
18 question all witnesses. And these witnesses would  
19 include the State's witnesses. And if you had any,  
20 they would include your witnesses. Do You  
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Mr. McCullough, have you  
24 understood everything we have been over so far?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand all the  
2 rights I've explained to you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Understanding those rights and  
5 the punishment that you face, do you plead guilty or  
6 not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: To criminal sexual conduct in  
9 the first degree.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that there  
14 is a negotiated sentence of 20 years?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand that if  
17 I do not think that is an appropriate sentence, I  
18 will just let you withdraw your plea.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: In other words, I can only  
21 give you the 20, or I will not take your plea at  
22 all. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Has anybody at all, other than  
25 this negotiated sentence, promised you anything?

1 THE DEFENDANT: No, sir.

2 THE COURT: Has anyone including your  
3 lawyer, used any type of pressure, force or  
4 intimidation to get you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anybody in law enforcement  
7 or from the prosecutor's office, made any threats or  
8 forced you to do this?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you think you've had enough  
11 time to make up your mind?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied with the  
14 manner in which Mr. Carraway has advised you and  
15 represented you.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you spent enough time  
18 with him?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you think he's answered  
23 all of your questions to your satisfaction?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All and all, do you think he

1 had done everything he could do to represent you  
2 properly?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Carraway, have you had a  
5 chance to review discovery?

6 MR. CARRAWAY: Yes, we have, Your Honor.

7 THE COURT: Are you satisfied with that?

8 MR. CARRAWAY: I am satisfied with it.

9 THE COURT: Mr. McCullough, do you agree  
10 that you had a chance to review the discovery  
11 produced by the State?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied with that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You do have 10 days to appeal  
16 the plea and the sentence. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Ms. Barr.

19 MS. BARR: Your Honor, please the court,  
20 this incident came to attention of law enforcement  
21 on July 23rd 2014. The incident occurred on Paris  
22 Circle, which is located in the Salters Community of  
23 Williamsburg County. The victim who was 5-years-old  
24 at the time, her mother contacted law enforcement.  
25 Apparently the child's paternal grandmother was

1 babysitting her while the mother was at work. The  
2 mother received a call from her mother indicating  
3 that Sentrell had molested her daughter.

4           When she came home, she talked to her  
5 mother. And I'm assuming, Judge, that the  
6 grandmother lives in the same neighborhood as the  
7 defendant. She gave a statement to the law  
8 enforcement indicating that earlier that day  
9 Mr. McCullough had offered to cook pancakes for the  
10 neighborhood kids. So she sent her granddaughter  
11 and another relative over. That other relative was  
12 about 8 years old.

13           The next thing she remembers happening is,  
14 the 8-year-old comes back and says that Sentrell was  
15 messing with the 5-year-old. The 8-year-old says  
16 that she was in some part of the house, heard the  
17 bed moving, I believe in Mr. McCullough's mother's  
18 bedroom. And she went in and saw the defendant  
19 behind the 5-year -- old. The 5-year-old's pants  
20 were down. And said the 5-year-old said that  
21 Sentrell had touched her coo coo as she called it.  
22 Referring to her vagina. When the grandmother  
23 learned about this, she ran over to the house. She  
24 observed Mr. McCullough coming out the bedroom with  
25 just a towel on. No shirt. Just a towel. Then she

1 asked---

2 THE COURT: Around his waist.

3 MS. BARR: Around his waist. She asked---

4 THE COURT: Let's do one thing. You all  
5 aren't going to say anything while she's talking.  
6 Don't disrupt her. If there's anything you want to  
7 say afterwards, you'll have to go either through  
8 Mr. Carraway or through Ms. Barr. Okay. Thank you.

9 MS. BARR: The grandmother at that point  
10 asked the 5-year-old what had happened. The  
11 5-year-old repeated that Mr. McCullough had picked  
12 her up, and taken her into the bedroom; had laid her  
13 down on the bed, and put his fingers inside. Again  
14 she referred to coo coo. Talking about her vaginal  
15 area.

16 Apparently as they're leaving,  
17 Mr. McCullough threatens to get a gun, and saying  
18 he's going to kill the next child that comes into  
19 the house. The grandmother gets all the kids out.  
20 Runs back to her residence. Locks the door. At  
21 some point either the grandmother or the 8-year-old  
22 sees Mr. McCullough on the porch, holding what they  
23 believe to be a gun, threatening to kill a police  
24 officer who comes up.

25 Judge, later that day Mr. McCullough was

1 reported to have left the area to go to Myrtle  
2 Beach. I believe that they actually picked him up  
3 the next day. His parents may have brought him in.  
4 I am not sure about how he came in contact with law  
5 information. He was mirandized. He gave a  
6 statement to the police. Initially denying what  
7 happened. Later told law enforcement that the  
8 child had called him into the room; that when he  
9 came to the room, the child's clothes were down, and  
10 that she is masturbating. My words, not his. And  
11 that she asked him to touch her. And he admitted  
12 that he digitally penetrated her. He said he only  
13 put one finger inside her. But he reported  
14 throughout the interview that he believed that she,  
15 the 5-year-old set him up.

16 And so, Judge, that's essentially the  
17 basis of the criminal sexual conduct, including the  
18 elements of the sexual battery.

19 THE COURT: Mr. McCullough, you've heard  
20 those facts?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you do what she described?

23 THE DEFENDANT: I had no gun though.

24 THE COURT: Did you digitally penetrate  
25 the child?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you did that back in the  
5 bedroom where the prosecutor described?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And she was 5 years old.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And whether she asked you to  
12 do that or not, that's what you did.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Anything else on the facts,  
17 Ms. Barr?

18 MS. BARR: No, your Honor.

19 THE COURT: I didn't know if the people  
20 the folks who were raising their hands were part of  
21 the victim's family, or the defendant's family. Do  
22 you know, Ms. Barr?

23 MS. BARR: I know the defendant's father  
24 is out there, and his grandmother.

25 THE COURT: But they're not aligned with

1 the State, is that correct?

2 MS. BARR: Correct, Judge.

3 THE COURT: Does he have any type of  
4 record?

5 MS. BARR: He had a juvenile record, but  
6 nothing as an adult.

7 THE COURT: Since this is a negotiated  
8 plea, I will be glad hear from you, Mr. Carraway,  
9 and from your client if he wants to talk. And also  
10 from anyone else you choose to present. Your name,  
11 please.

12 MS. FRAZIER: Libby Frazier.

13 THE COURT: Libby Frazier.

14 MS. FRAZIER: Uh-huh. (Affirmative.)

15 THE COURT: Yes, ma'am.

16 MS. FRAZIER: I am the grandma of Zamiah.

17 THE COURT: Oh, you are Zamiah's  
18 grandmother?

19 MS. FRAZIER: Uh-huh. (Affirmative.) And  
20 that's my nephew.

21 THE COURT: So the defendant is your  
22 nephew.

23 MS. FRAZIER: Uh-huh. (Affirmative.) But  
24 what I'm trying to say, do you all have to give him  
25 21 years? 20 years? If I decide to say 5 to 4,

1 would you all give him that?

2 THE COURT: If you decide what?

3 MS. FRAZIER: To give him 5 to 4 years,  
4 would that be good enough?

5 THE COURT: If you decide that?

6 MS. FRAZIER: Yes, sir.

7 THE COURT: Well I don't believe you're  
8 part of the negotiating process.

9 MS. FRAZIER: Uh-huh. (Affirmative.)

10 THE COURT: I can't tell you anything  
11 except that's what the defendant your nephew, and  
12 the State have agreed on. Do you know anything  
13 about the facts? Have you heard what the facts are?

14 MS. FRAZIER: Yes, I heard it.

15 THE COURT: And that's what happened?

16 MS. FRAZIER: Yes, that's what happened.  
17 But the only thing, I didn't went to his house. He  
18 come to me. I say not him. I didn't went to his  
19 house. He come to me with a towel around him.

20 THE COURT: And he admitted to you that he  
21 did this.

22 MS. FRAZIER: No, he didn't admit it to  
23 me. He said he didn't did it.

24 THE COURT: But you just heard him admit  
25 it, correct?

1 MS. FRAZIER: Uh-huh. (Affirmative.)

2 THE COURT: Ma'am?

3 MS. FRAZIER: Yes, I heard.

4 THE COURT: Well I appreciate your  
5 comments about the 4 to 5 years, but that's not for  
6 you determine. Okay.

7 MS. FRAZIER: Okay. Thank you.

8 THE COURT: Mr. McCullough, what would you  
9 like to tell me. And if you don't mind, speak up  
10 for a little bit.

11 THE DEFENDANT: Yes, sir. I was back  
12 there talking to Ms. Kimberly Barr. She been  
13 telling me that the victim want me to do 30 years.

14 MS. BARR: I didn't tell him that.

15 THE DEFENDANT: That's what Ms. Kimberly  
16 Barr tell me. That's when -- that's why I get of  
17 mad and I walk out. And my lawyer pulled me back in  
18 and talk to me. That's when he's negotiating. I  
19 tell him well I will plead to it.

20 THE COURT: Well do you understand your  
21 grandmother -- your aunt anyway, doesn't have any  
22 hand in determining what your sentence is?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So you're telling me that  
25 Ms. Barr told you that the victim wanted you to get

1 more time than you have agreed to get.

2 THE DEFENDANT: Yes, sir. That's what she  
3 said, the mama want me to do 30 years.

4 THE COURT: Well that might be true, I  
5 don't know. But anyway, do you have anything else  
6 to say about the facts of the case or the plea or  
7 anything else?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you sorry for what you've  
10 done?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you understand it was dead  
13 wrong.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Mr. Carraway.

16 MR. CARRAWAY: I would just ask that you  
17 agree to this negotiated sentence between myself and  
18 the solicitor's office.

19 THE COURT: You understand that you  
20 were -- under the other charge, you were facing up  
21 to life in prison.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: That's a lot more than 30.

24 THE DEFENDANT: Yes, sir.

25 MR. CARRAWAY: And a minimum of 25.

1 State Department of Corrections for a period of  
2 20 years.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It gives me no pleasure in  
5 doing that, but this type of crime certainly  
6 justifies the imposition of that kind of sentence.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Thank you. Good luck to you.

9 THE DEFENDANT: Yes, sir.

10 --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in General Sessions Court, on January 27, 2015, in Williamsburg County, Kingstree, South Carolina.

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

3/18/16  
DATE

Margaret T. Sullivan  
COURT REPORTER  
My Commission expires: 9/7/21

FORM 5

STATE OF SOUTH CAROLINA )  
County of Williamsburg County )  
Sentrell McCullough 362851 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

NOV -9 PM 1:44  
15 CP45 544

v.

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee County Correctional Inst.
2. Name and location of Court which imposed sentence Williamsburg County Courthouse 125 West Main Street Kingstree, SC 29556
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014-GS-45-0283
  - (b) Criminal sexual conduct with a minor in the first degree



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

- (a) Ineffective counsel (Assiant Counsel)
- (b) Excessive time / subject matter jurisdiction
- (c) ~~Police mistreatment~~ / Due process violation

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (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. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- 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. \_\_\_\_\_
- 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. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- 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) This was my first time I had the chance
- (b) to present these grounds
- (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? \_\_\_\_\_
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
\_\_\_\_\_

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

- (a) the name and address of each attorney who represented you:
  - i. LeGrand Cartaway  
124 S. Academy St. Kingstree, S.C. 29556
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Plea Bargain
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

I will like for this sentence to be vacated  
and sentence for the original charge I was  
arrested for which was CSC in the 3rd degree.

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

No

STATE OF SOUTH CAROLINA )

County of LEE )

VERIFICATION

I, SENTRELL McCollough, 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.

Sentrell McCollough

SWORN to and subscribed before me this 28TH day of SEPTEMBER, 2015.

Paul J. Duggan (L.S.)  
Notary Public

My Commission Expires: 11-05-2019

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

I, SEANTRELL McCULLOUGH, 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.

Seantrell McCullough  
Applicant

SWORN or affirmed to and subscribed before me this  
20~~14~~ day of SEPTEMBER, 2015.

Janet D. Higgins  
Notary Public

My Commission Expires: 11-05-2019

Ineffective Assistance of Counsel, Due to the fact that he didn't do no proper investigation on my case OR he wouldn't know that I was originally arrested for CSC in the 3<sup>rd</sup> degree, which that charge was never dismissed in the preliminary hearings like the Judge ordered them to do, so therefore my charge should've still been CSC in the 3<sup>rd</sup> degree.

---

Excessive time, being that this was my 1<sup>st</sup> major offense I shouldn't have gotten that much time and the courts should've recommended me to see a doctor OR any such person in that field to counsel me.

---

Subject matter Jurisdiction, Due to the fact that the CSC in the 3<sup>rd</sup> degree was never dismissed, so therefore the courts shouldn't have heard the CSC in the 1<sup>st</sup> degree.

---

Due Process Violation, being that when I was first arrested was charged with CSC 3<sup>rd</sup> degree and later on after the investigators talk to me they upgraded the charge to CSC 1<sup>st</sup> degree, which they never took me to the preliminary hearings to get the CSC in the 3<sup>rd</sup> degree dismissed like the Judge ordered them to.

STATE OF SOUTH CAROLINA )  
 COUNTY OF WILLIAMSBURG )  
 )  
 Sentrell McCullough, #362851, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

2015-CP-45-544

**RETURN**

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 9, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant waived presentment to the September 2014 term of the Williamsburg County Grand Jury for criminal sexual conduct – first degree (2014-GS-45-0283). William LeGrand Carraway, Esquire represented Applicant. On January 27, 2015, Applicant pled guilty before the Honorable George C. James, Jr. Judge James sentenced Applicant pursuant to negotiations to a twenty year term of imprisonment for criminal sexual conduct – first degree. Applicant did not appeal his guilty plea or sentence.

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

## II.

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

1. Ineffective assistance of counsel
  - a. Failure to investigate
  - b. Originally charged for csc-3<sup>rd</sup> degree and never dismissed.
2. Excessive time
  - a. "excessive time, being that was my 1<sup>st</sup> major offense and I should have gotten that much time and the courts should've recommend me to see a doctor or any such person in that field to counsel me."
3. Subject matter jurisdiction
  - a. "Subject matter jurisdiction, due to the fact that the CSC in the 3<sup>rd</sup> degree was never dismiss, so therefore the courts shouldn't have heard the CSC in the 1<sup>st</sup> degree."
4. Due Process Violation
  - a. "Due process violation, being that when I was first arrested was charge with CSC 3<sup>rd</sup> degree and later on after the investigators talk to me they upgraded the charge to CSC 1<sup>st</sup> degree. Which they never took me to the preliminary hearing to get the CSC in the 3<sup>rd</sup> degree dismiss (sic) like the judge order them to."

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

## III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

#### V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and

such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

## VI.

Respondent submits that the second allegation should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss these allegations as they are not proper in a post-conviction relief action.

#### VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCF 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCF Rule 11. Filings by inmates will not be considered at the PCR hearing.

#### VIII.

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

IX.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

JOHANNA VALENZUELA  
Senior Assistant Deputy Attorney General

DANIEL GOURLEY  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

April 8, 2016.





I N D E X

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E X H I B I T S

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	No Exhibits Introduced.	

1 MS. COLEMAN: May it please the court, Your Honor?

2 THE COURT: Yes, ma'am.

3 MS. COLEMAN: Ready to begin. All right, this is  
4 *Sentrell McCullough vs. State of South Carolina,*  
5 2015-CP-45-544. The applicant is presently confined in the  
6 South Carolina Department of Corrections pursuant to orders  
7 of commitment of the Williamsburg County clerk of court.  
8 The applicant waived presentment to the September 2014 term  
9 of the Williamsburg County grand jury for criminal sexual  
10 conduct first degree, 2014-GS-45-0283. William Legrand  
11 Carraway, esquire, represented applicant.

12 On January 27, 2015, the applicant pled guilty before  
13 the Honorable George C. James, Jr. Judge James sentenced  
14 applicant, applicant pursuant to negotiations to a  
15 twenty-year term of imprisonment for criminal sexual  
16 conduct first degree. Applicant did not appeal his guilty  
17 plea or sentence.

18 Applicant filed a timely application for  
19 post-conviction relief on November 9, 2015, alleging that  
20 he was being held unconstitutionally for the following  
21 reasons: ineffective assistance of counsel, excessive time,  
22 subject-matter jurisdiction, and due-process violation.

23 Respondent filed his return to the application on  
24 April 8, 2016. Applicant is present today in the courtroom  
25 and represented in this matter by Lance Boozer.

S. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

4

1 THE COURT: All right, Mr. Boozer.

2 MR. BOOZER: Thank you, Your Honor. If it pleases the  
3 court, Judge, we'd go ahead and call Mr. McCullough to the  
4 stand.

5 THE COURT: Yes, sir. Mr. McCullough, come on  
6 forward, please.

7 SENTRELL McCULLOUGH, BEING DULY  
8 SWORN, TESTIFIES AS FOLLOWS:

9 BAILIFF: State your full name. Spell your last name  
10 for the record.

11 WITNESS: My name is Sentrell McCullough,  
12 M-c-c-u-l-l-o-u-g-h.

13 DIRECT EXAMINATION BY MR. BOOZER:

14 Q. Mr. McCullough, how are you doing this morning?

15 A. Fine.

16 Q. Good. All right, if you could, and I think you'll be  
17 fine at it, just keep your voice up and speak slowly so  
18 Madame Court Reporter can take down everything you're  
19 saying, okay?

20 A. Yes, sir.

21 Q. All right. Mr. McCullough, do you know why you're  
22 here today?

23 A. Yes, sir, for my PCR hearing. For my PCR hearing.

24 Q. Okay, and you filed an application for post-conviction  
25 relief?

S. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

5

1 A. Yes, sir.

2 Q. All right, and you are currently serving a twenty-year  
3 sentence for what?

4 A. Criminal sexual conduct first degree.

5 Q. Okay, first degree?

6 A. Yes, sir.

7 Q. What were you originally charged with?

8 A. Originally I was charged with criminal sexual conduct  
9 third degree.

10 Q. Okay, and you understand that the only thing that this  
11 court can do for you if this court grants your application  
12 for post-conviction relief generally speaking is to give  
13 you a new trial?

14 A. Yes, sir.

15 Q. Okay, and you understand that if you go back to have  
16 a new trial, there is a potential you could get more time  
17 than what you have remaining on your sentence?

18 A. Yes, sir.

19 Q. All right, and what is it that you're asking the court  
20 for?

21 A. I'm asking the court that, that my lawyer did not did  
22 his job. He did ineffective assistance of counsel.

23 Q. Okay, and, and what do you want this court to do for  
24 you as a result of that?

25 A. I want the court that, that -- resend -- do the thing

1 that -- what him and the solicitor and the judge talking  
2 about.

3 Q. Okay. Do you feel that -- and that's part of your  
4 excessive time claim. Do you feel that there was some sort  
5 of agreement?

6 A. Yes, sir.

7 Q. That was not gone by?

8 A. Yes, sir.

9 Q. At the plea? Okay. Let's talk a little bit about  
10 your case. Who represented you for your plea?

11 A. Mr. Carraway.

12 Q. Legrand Carraway represented you?

13 A. Yes, sir.

14 Q. All right. How did he come about representing you?  
15 Was he appointed to represent you, or did your family hire  
16 him to represent you?

17 A. My family hired him.

18 Q. All right. Do you recall when you were first arrested  
19 on these charges?

20 A. Yes, sir.

21 Q. Do you know when that would have been?

22 A. No, sir.

23 Q. Do you have kind of a roundabout date whether it was  
24 July 2014 or when it may have been that you were first  
25 arrested?

S. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

7

- 1 A. I was arrested in July 2014.
- 2 Q. Okay. When did y'all hire Mr. Carraway?
- 3 A. Probably about, probably a couple days after I been  
4 locked, locked up in the county.
- 5 Q. How many times do you think you met with him prior to  
6 your plea?
- 7 A. Only time I see him when I went to court. He didn't  
8 answer my phone calls or write me back.
- 9 Q. Okay. Did you try, did you try to call him?
- 10 A. Yes, sir.
- 11 Q. How many times did you try to call him?
- 12 A. Like eight or nine times.
- 13 Q. Would you ever leave a voice mail or...
- 14 A. I only talked to his secretary.
- 15 Q. Okay. Do you remember her name?
- 16 A. No, sir.
- 17 Q. Do you know if your parents were speaking to Mr.  
18 Carraway at all?
- 19 A. My mom and daddy used to tell me they talked to him,  
20 go by and see him. Sometime he don't be in his office.
- 21 Q. All right. So, your plea, when was your plea?
- 22 A. My plea? January the 27th.
- 23 Q. Of what year?
- 24 A. 2015.
- 25 Q. Okay. Now, is it your testimony that the first time,

1 the only time you met with Mr. Carraway was that day?

2 A. When I went to the bond court, too.

3 Q. What did you go to bond court?

4 A. I can't remember because I went to bond court about  
5 three or four times.

6 Q. Was he there every time you went or just one time?

7 A. Yes, sir.

8 Q. He was there every time?

9 A. Yes, sir.

10 Q. Would you speak with him while you were at the bond  
11 court?

12 A. Only one time.

13 Q. What did you discuss with him that time?

14 A. I asked him that -- I asked him did, did he had any  
15 allegation on me. Why, why he didn't answer my calls or  
16 write me back.

17 Q. What was his response?

18 A. He didn't say nothing.

19 Q. Okay. When you had your plea, were you on a trial  
20 roster, or did you know that you were going in to enter a  
21 plea?

22 A. No. They been going to take me to trial.

23 Q. When did you find out that you were going to trial?

24 A. The same day that, that I was going -- when I went up  
25 to bond court, when I was there in bond court.

S. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

9

1 COURT REPORTER: Repeat that, please.

2 A. When I went to my last bond hearing, that when they  
3 telling me that I was going to trial January 28, 2015.

4 Q. When was that last bond hearing?

5 A. That been -- I can't remember.

6 Q. Who told you that you would be going to trial in  
7 January?

8 A. Kimberly Barr, the solicitor.

9 Q. Did you have a discussion with your lawyer, Mr.  
10 Carraway, about going to trial?

11 A. No, sir.

12 Q. Did you have any idea about what your strategy would  
13 be had you had a trial?

14 A. No, sir.

15 Q. Did you review any evidence in the case with Mr.  
16 Carraway prior to your plea?

17 A. No, sir.

18 Q. Did you review any evidence or what's called responses  
19 to Rule 5 materials with Mr. Carraway?

20 A. No, sir.

21 Q. Did you have a preliminary hearing?

22 A. No, sir.

23 Q. All right. Now in your allegations, you've got  
24 allegation of excessive time, subject-matter jurisdiction,  
25 and a due-process violation, and you indicate you were

1 first charged with CSC third. Then it was upgraded to  
2 CSC first. Never had a preliminary hearing like the judge  
3 ordered them to have?

4 A. Yes, sir.

5 Q. What are you talking about when you say you never  
6 had a preliminary hearing like the judge ordered them to  
7 have?

8 A. The judge, the judge tell them that.

9 Q. And when did the judge say this?

10 A. The judge tell them, he say that -- on my motion, they  
11 say the judge tell them that y'all have to take Mr.  
12 McCullough to have a hearing to get the third degree  
13 dismissed so y'all can charge him with the first degree.

14 Q. Did that ever happen?

15 A. No, sir.

16 Q. Do you recall what judge that was?

17 A. No, but he -- the investigation -- asked several  
18 judges, but I think Judge Williams, Judge Richardson, and  
19 two other judges. I can't remember the names.

20 Q. When you entered your guilty plea, did you have any  
21 idea what sentence you would get?

22 A. No, sir. I thought I'd be getting the two years, what  
23 they'd agreed.

24 Q. Why did you think that?

25 A. Because, because when, when my lawyer said in court

S. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

11

1 that, that, that solicitor say two years, I thought I'd be  
2 going to get two years, but I find that it was twenty  
3 years.

4 Q. Did you have any discussion with your parents about  
5 how much time you thought you were going to get?

6 A. Yes, sir. My daddy, my daddy and my momma told me  
7 that my lawyer tell them I'm going to get two or four  
8 years.

9 Q. When did they tell you that?

10 A. When I been in the county. That been in January  
11 before I went to court.

12 Q. Why did you go into court -- why did you end up  
13 entering a guilty plea? Why did you plead guilty in this  
14 case?

15 A. Because they tell me I'm be going to get two years.

16 Q. And you never had any discussion with Mr. Carraway  
17 about a twenty-year sentence?

18 A. No, sir.

19 MR. BOOZER: Court's indulgence, Your Honor?

20 THE COURT: Yes, sir.

21 (A PAUSE.)

22 MR. BOOZER: May I approach the witness, Your Honor?

23 THE COURT: Yes, sir.

24 MR. BOOZER: Thank you.

25 BY MR. BOOZER:

1 Q. Mr. McCullough, I'm going to hand you a copy, or I'm  
2 going to show you a copy of your transcript, and I'm  
3 looking specifically at page 2 of the plea transcript.

4 A. Yes, sir.

5 Q. And on page 2, I'm looking down at line, beginning at  
6 line 17.

7 A. Yes, sir.

8 Q. Do you see that?

9 A. Yes, sir.

10 Q. Okay, and it says the court: And the sentencing range  
11 is zero to thirty years, and you said a recommendation or a  
12 negotiated how many years? Then Ms. Barr says: Twenty  
13 years. The court says: I thought you said two. Mr.  
14 Carraway says: She did say two. Court says: You did say  
15 two. Mr. Carraway says: But I understand twenty, yes. The  
16 court: a negotiated twenty years.

17 Do you recall that occurring in court?

18 A. Yes, sir.

19 Q. Okay.

20 A. They talked about the two years, yes, sir.

21 Q. What discussion did you have with Mr. Carraway  
22 specifically about two to four years?

23 A. I ain't never had a discussion with him. He tell my  
24 mom and daddy that.

25 Q. Okay. How much time do you think you spoke with --

S. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

13

1 you spent time with Mr. Carraway discussing your case?

2 A. Probably about five or ten minutes one time.

3 Q. Have you ever seen what I would call responses to any  
4 Rule 5 request?

5 A. No, sir.

6 Q. Have you ever see any evidence in this case?

7 A. No, sir.

8 Q. How about after your plea? Did you see anything then?

9 A. No, sir. Only thing I seen when I got my motion up  
10 the road, that, that they ain't had nothing on me, nothing.

11 Q. When -- do you recall when you specifically spoke with  
12 your parents about a two or four-year sentence?

13 A. Say can I recall?

14 Q. Yes, sir. Do you recall when that conversation would  
15 have occurred?

16 A. Happened, happened on the, happened on the 20, -- the  
17 24th. That, that Saturday when my daddy came to see me.

18 Q. So, the day before the plea?

19 A. Yes, sir.

20 Q. And where, where would that conversation have  
21 occurred? In person at the jail or on the phone?

22 A. In the jail.

23 Q. All right. Now, you indicated originally you were  
24 charged with CSC third?

25 A. Yes, sir.

S. McCULLOUGH - DIRECT EXAMINATION / CROSS-EXAMINATION 14

1 Q. What happened?

2 A. When I got charged with criminal sexual conduct third,  
3 I got investigation and I tell them that, tell them that --  
4 that they went to upgrade all my charges on me.

5 Q. Mr. McCullough, other than what you've alleged in your  
6 application and what you've already testified to, is there  
7 anything else you want to bring to this court's attention  
8 regarding your PCR case? Have we raised all of your  
9 allegations?

10 A. That's it.

11 Q. I'm sorry?

12 A. I said that's it.

13 Q. That's it?

14 A. Yes, sir.

15 Q. Okay.

16 MR. BOOZER: Please answer any questions Madame  
17 Attorney General may have for you.

18 WITNESS: All right.

19 CROSS-EXAMINATION BY MS. COLEMAN:

20 Q. Good morning, Mr. McCullough. How are you?

21 A. Good.

22 Q. Just a few questions for you.

23 A. Yes, ma'am.

24 Q. You said you met with your attorney one time for five  
25 or ten minutes to discuss the case. Is that correct?

S. McCULLOUGH - CROSS-EXAMINATION BY MS. COLEMAN

15

1 A. Yes, sir.

2 Q. Okay.

3 A. Yes, ma'am.

4 Q. Did you give your attorney any leads or witnesses to  
5 investigate?

6 A. No, ma'am.

7 Q. Do you recall waiving your constitutional rights at  
8 the guilty plea, like your right to remain silent or your  
9 right to a jury trial?

10 A. Yes, ma'am, when I take the plea.

11 Q. Yes. Do you recall telling the plea judge that you  
12 were satisfied with the attorney's services?

13 A. No, ma'am.

14 Q. No? Let's see.

15 MS. COLEMAN: Your Honor, may I approach the witness?

16 THE COURT: Yes, ma'am.

17 BY MS. COLEMAN:

18 Q. I'm turning to page 14 of the transcript from the  
19 guilty plea. Let's see. If you'll look at line 13 right  
20 here? Will you read that out loud, please?

21 A. The court: Are you satisfied with the manner in which  
22 Mr. Carraway had advised you and represented you?

23 Defendant: Yes. Yes, sir.

24 Q. And the next line?

25 A. The court: Have, have you -- satisfied enough time

1 with him? Defendant: Yes. Yes, sir.

2 Q. Thank you. Does that refresh your recollection from  
3 the guilty plea? Do you remember saying that?

4 A. Yes, ma'am.

5 Q. Okay, and you had no complaints against Mr. Carraway  
6 at the time?

7 A. No, ma'am.

8 Q. Do you recall telling the judge that no one was  
9 promising or threatening you in order for you to plead  
10 guilty?

11 A. Yes, ma'am.

12 Q. Do you recall telling the plea judge that you wished  
13 to plead guilty?

14 A. No, ma'am.

15 MS. COLEMAN: And, Your Honor, I'm turning back to  
16 page 13.

17 THE COURT: Yes, ma'am.

18 BY MS. COLEMAN:

19 Q. Line 24 at the bottom there it says: Has anybody at  
20 all other than this negotiated sentence promised you  
21 anything?

22 And then top of the next page, defendant said: No,  
23 sir. Do you remember that?

24 A. Yes, ma'am.

25 COURT REPORTER: Repeat that, please.

S. McCULLOUGH - CROSS-EXAM / REDIRECT EXAM

17

1 A. Yes, ma'am.

2 Q. Do you remember telling the judge that you were indeed  
3 guilty?

4 A. Yes, ma'am.

5 Q. Do you remember agreeing to the facts presented by the  
6 state at the hearing, at the plea hearing?

7 A. When?

8 Q. When they read the, the facts of the cases and said  
9 what happened and you agreed with it, do you recall that?

10 A. Yes, ma'am.

11 Q. Okay. Do you want to go back for a trial on these  
12 charges?

13 A. Yes, ma'am.

14 Q. Okay.

15 MS. COLEMAN: Thank you. No further questions.

16 THE COURT: Anything further?

17 MR. BOOZER: Briefly, Your Honor.

18 THE COURT: Yes, sir.

19 REDIRECT EXAMINATION BY MR. BOOZER:

20 Q. Mr. McCullough.

21 A. Yes, sir.

22 Q. Why did you tell the court at the plea that you were  
23 satisfied with your lawyer?

24 A. Because I, like really, I really didn't know what they  
25 were talking about because this was my first time ever

S. McCULLOUGH - REDIRECT EXAMINATION BY MR. BOOZER 18

1 being in some serious situation like this.

2 Q. Why did you also tell the court that you'd had enough  
3 time to meet with your lawyer?

4 A. I, I didn't know all -- the only thing I telling him I  
5 been -- have enough time because he was -- he did ten  
6 minutes with me.

7 Q. Had you known that you could get -- or that you were  
8 not getting the two to four-year sentence, would you have  
9 pled guilty?

10 A. No, sir.

11 Q. Okay.

12 MR. BOOZER: Thank you, Your Honor.

13 THE COURT: All right, Mr. McCullough, you can go back  
14 and sit next to your lawyer.

15 WITNESS: Yes, ma'am.

16 (THE WITNESS EXITS THE STAND.)

17 THE COURT: Any other witnesses, Mr. Boozer?

18 MR. BOOZER: Yes, sir. We would call Ms. Darveen  
19 McCullough to the stand.

20 DARVEEN W. McCULLOUGH, BEING DULY  
21 SWORN, TESTIFIES AS FOLLOWS:

22 BAILIFF: Please state your full name. Spell your  
23 last name for the record.

24 WITNESS: Darveen Williams McCullough,  
25 M-c-c-u-l-l-o-u-g-h.

D. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

19

1 DIRECT EXAMINATION BY MR. BOOZER:

2 Q. Good morning, Ms. McCullough. How are you?

3 A. Good morning. I'm fine, and yourself?

4 Q. I'm doing fine. I appreciate you asking.

5 Tell me. What's your relationship with Sentrell  
6 McCullough?

7 A. I'm his stepmother.

8 Q. You're his stepmother?

9 A. Yes, sir.

10 Q. Okay. How long have you known Sentrell?

11 A. Ever since birth.

12 Q. All right. Are you aware, are, are you aware that Mr.  
13 McCullough, Sentrell, ended up pleading guilty to some, to  
14 some charges or a charge?

15 A. I was told on the day of court.

16 Q. Were you at the plea that day in 2015?

17 A. I was for a minute.

18 Q. All right. Prior to that, did you -- who hired Mr.  
19 Carraway?

20 A. My husband did.

21 Q. All right. Were you at any meetings with your husband  
22 and Mr. Carraway, or were you ever in meetings with Mr.  
23 Carraway?

24 A. I was in several meeting with Mr. Carraway. I went by  
25 his office several time, and we did discuss the Sentrell

1 matters several times.

2 Q. And what would you discuss?

3 A. We discussed that he was going to trial and that  
4 Sentrell, he probably was going to get from two to four  
5 years. He said he was going to talk to Ms. Kimberly Barr  
6 and see if they could work that out. We was going to a  
7 roundtable, which we never had.

8 Q. When you say a roundtable, who was going to be at the  
9 roundtable?

10 A. Myself, my husband, and him, and Ms. Kimberly Barr.

11 Q. Do you recall when you were told that he may get two  
12 to four years?

13 A. Not the exact date, but I recall being in his office  
14 and he said that with me.

15 Q. Okay. Did you have any conversations with your son  
16 about that?

17 A. No. My husband usually went to visit him.

18 Q. Okay. At the plea -- well, let me ask you this. On  
19 -- January 27th of 2015 was the date of the guilty plea.  
20 Did you think that your son was going to have a trial, or  
21 did you think that he was going to have a plea?

22 A. I know he was going to have a plea, but I didn't know  
23 that twenty years was what he was going up under because  
24 Mr. Carraway never discussed no more than that two or four  
25 years to us.

D. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

21

1 Q. Okay, and did you ever have any discussion with Mr.  
2 Carraway that he could potentially get a much greater  
3 sentence than two to four years?

4 A. No.

5 Q. So, going in the plea that day, what did you think was  
6 going to happen?

7 A. Well, I was there at the plea for a moment. The  
8 mother of the child wanted to be there, and she keep  
9 calling and they keep telling the mother that Sentrell  
10 wasn't going to court, and on the day that Sentrell was in  
11 the courtroom, Mr. Carraway didn't even call us to let us  
12 know. We know through Ms. Kimberly Barr because I was in  
13 his office that morning, and I told -- I asked him was  
14 Sentrell going to court, and he said no. Sentrell wasn't  
15 going to court under that judge from Sumter because that  
16 judge didn't know anything about it. And I got a call from  
17 Ms. Kimberly that afternoon stating that Sentrell was going  
18 to court.

19 Q. So, you found out at the last minute?

20 A. At the last minute.

21 Q. Okay.

22 MR. BOOZER: Ms. McCullough, I don't have any further  
23 questions for you, but please answer any that Madame  
24 Attorney General may have.

25 WITNESS: Sure.

1 MS. COLEMAN: I have no questions, Your Honor.

2 THE COURT: All right. Thank you, Ms. McCullough.

3 You may have a seat.

4 (THE WITNESS EXITS THE STAND.)

5 MR. BOOZER: Your Honor, may we approach?

6 THE COURT: Yes, sir.

7 (OFF-THE-RECORD BENCH CONFERENCE.)

8 MR. BOOZER: Your Honor.

9 THE COURT: Your Honor.

10 MR. BOOZER: I do have an issue to bring to the  
11 court's attention. We do have Mr. McCullough, my client's  
12 father.

13 THE COURT: Yes.

14 MR. BOOZER: He does want to enter some testimony.  
15 Very briefly, we would just request that if we could just  
16 clear the courtroom of any nonparticipants so that we may  
17 do that?

18 THE COURT: Absolutely.

19 So, all of you folks sitting out there in the back,  
20 I'm going to have to ask you to step out of the courtroom  
21 into the hallway for a second, and somebody will come get  
22 you when you can come back in. Mr. Carraway can stay and  
23 any family members, I guess, of Mr. McCullough.

24 (A PAUSE.)

25 MR. BOOZER: Thank you, Your Honor.

F. McCULLOUGH - DIRECT EXAMINATION BY MR. BOOZER

23

1 THE COURT: Yes.

2 MR. BOOZER: At this time, we would call Fred  
3 McCullough to the stand.

4 THE COURT: Yes, sir.

5 Mr. McCullough, come forward, please.

6 FRED McCULLOUGH, BEING DULY SWORN,  
7 TESTIFIES AS FOLLOWS:

8 BAILIFF: Please state your full name. Spell your  
9 last name for the record.

10 WITNESS: Fred, Fred McCullough, M-c-C-u-l-l-o-u-g-h.

11 DIRECT EXAMINATION BY MR. BOOZER:

12 Q. Mr. McCullough, how are you?

13 A. Doing all right.

14 Q. Okay, and what's your relationship with Sentrell  
15 McCullough?

16 A. Father.

17 Q. All right. Did, did you hire or assist in hiring Mr.  
18 Carraway to represent your son?

19 A. Yeah. I hired Carraway.

20 Q. You, you assisted in hiring him?

21 A. Yes, sir.

22 Q. Okay, and did you ever have any discussions with Mr.  
23 Carraway?

24 A. Yes, sir.

25 Q. All right. Did he ever tell you of any sentencing

1 ranges he thought your son would receive as a result of  
2 the ---

3 A. Well, he thought ---

4 Q. --- plea?

5 A. -- it may be two or four years.

6 Q. That he would get two to four years?

7 A. Yes, sir.

8 Q. Do you recall when you had that discussion with Mr.  
9 Carraway?

10 A. Well, back in 2015, I guess.

11 Q. Okay. Did you tell that to your son?

12 A. Yeah.

13 Q. What did you tell your son?

14 A. I told him Carraway say he might get two to four  
15 years.

16 Q. Do you recall what your son said?

17 A. Well, was the whole thing, he agree with it.

18 Q. Okay.

19 MS. COLEMAN: Thank you, Mr. McCullough. That's all  
20 the questions I have for you.

21 THE COURT: Mr. McCullough, don't -- wait one second.

22 MS. COLEMAN: I have no questions.

23 THE COURT: Okay. All right. I just wanted to make  
24 sure she didn't have any questions. Now you can go sit  
25 back down. Thank you, sir.

W.L. CARRAWAY - DIRECT EXAMINATION BY MS. COLEMAN

25

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Any further witnesses?

3 MR. BOOZER: No further witnesses on behalf of the  
4 applicant, Your Honor.

5 THE COURT: All righty, Ms. Coleman.

6 MS. COLEMAN: Yes, and we can bring everyone back in,  
7 if you want.

8 THE COURT: We'll just leave them out there until we  
9 finish this case.

10 MS. COLEMAN: All right. The state would call Legrand  
11 Carraway.

12 WILLIAM LEGRAND CARRAWAY, BEING  
13 DULY SWORN, TESTIFIES AS FOLLOWS:

14 BAILIFF: Please state your full name. Spell your  
15 last name for the record.

16 WITNESS: William Legrand Carraway, C-a-r-r-a-w-a-y.

17 DIRECT EXAMINATION BY MS. COLEMAN:

18 Q. Good morning, Mr. Carraway. Thank you for coming  
19 today. Have long have you been practicing law?

20 A. Twenty-five years -- twenty-six.

21 Q. Were you retained in this case?

22 A. Yes, I was.

23 Q. Okay. How many times did you meet with the applicant  
24 prior to his guilty plea?

25 A. Probably seven or eight times.

1 Q. And you met with his parents as well?

2 A. Yes, I did.

3 Q. How many times do you think you met with them?

4 A. Four, five, six, seven. I'm not sure.

5 Q. Okay. Did you file any Rule 5 or Brady motions?

6 A. No.

7 Q. Did you review any discovery with the applicant?

8 A. The only discovery we really had was he confessed.

9 Q. Okay.

10 A. So, and I did go over his statement in here. They  
11 presented a statement with the investigator or whatever.

12 Q. Okay. So, he had given a statement to the, to the ---

13 A. Yes, he did.

14 Q. --- investigators? Okay. Did you discuss his version  
15 of the facts with him?

16 A. Yes, I did.

17 Q. Okay, and can you tell us a little bit about his  
18 confession and the facts of this case?

19 A. Well, the facts of the case are this. He -- they  
20 lived in a little area, in an area but there were three or  
21 four families who are related out there, live in this small  
22 area, and there's three or four homes.

23 And on, on this particular day, two small -- two  
24 children went over to his house or whatever. I think it  
25 was something about cooking pancakes or whatever, but

1 anyway there came a time when an older child who was  
2 fourteen, fifteen or whatever said that the five-year-old  
3 was in the bedroom with Sentrell. And she said she heard  
4 the bed shaking, and she said she went into the bedroom,  
5 and she said the five-year-old's pants were down around her  
6 ankles and Sentrell was standing behind her, and that's  
7 where it all began there.

8 And then he was arrested originally and charged with  
9 criminal sexual conduct in the third degree. But he, he  
10 was questioned by Investigator Archie Kennedy and during  
11 this questioning, he admitted to digitally penetrating this  
12 child. So, that's where all that came from.

13 And I met with the McCulloughs. We had two or three  
14 bond hearings. I remember we had one before Judge Newman  
15 or whatever. We had one and we talked about getting him a  
16 bond or whatever. And the first judge we had, I don't know  
17 whether it was Judge Newman, but what he said was, you  
18 know, well, you've got no plan. Where, where is this child  
19 -- you put the child right back out, you know, put Sentrell  
20 right back out into this area here where all these families  
21 live together and this small child lives.

22 So, we had another bond hearing, and what we were  
23 going to do is we had a plan to where we were going to send  
24 Sentrell, I think, to an aunt that lived in Andrews or  
25 whatever, and Judge Newman expressed at that time. He

1 said, well, why do I want to send him -- why are you asking  
2 me to send him to Andrews here to where he can go into an  
3 area where nobody knows him or whatever here, and he can  
4 potentially prey on other children. And he questioned Mr.  
5 McCullough there or whatever, Mr. Fred McCullough about  
6 that and went back and forth.

7 And it became very obvious to -- of course, it had  
8 always been obvious to me even before once we had a  
9 confession here and -- of what -- this was not -- this was  
10 -- I was public defender in Williamsburg County twenty-four  
11 years. I was the only public defender there for  
12 twenty-four years. Forty-six counties in South Carolina,  
13 only one had one public defender and that was Williamsburg  
14 County, and I enjoyed doing that, and one thing you learned  
15 during that time is a case such as this with a thirty-year  
16 maximum sentence here, the last thing you ever want to do  
17 is -- you want to make sure you're going to win this case  
18 if you're going to try it. And when you have this  
19 confession, along with what, what the child would say up  
20 there, you never want to be that guy sitting at the defense  
21 table with a child pointing to you saying he did this to me  
22 because -- and it's very difficult for the public to  
23 understand that these are thirty-year sentences that  
24 someone is looking at, thirty years. They cannot grasp or  
25 they think: you mean just for this or whatever? Well, yes.

1 That is what it is. Whatever it may seem like to you, that  
2 is what he is looking at here.

3 So -- and it is true what the McCulloughs say. I  
4 represented -- the reason I represented Sentrell in this is  
5 I'd represented him two or three times in some minor things  
6 he was involved in as a juvenile. Kimberly Barr is a  
7 wonderful solicitor. I've worked with her for fifteen,  
8 twenty years, and she also handles the juveniles. So, she  
9 was very familiar with Sentrell, and Sentrell is a very  
10 likable guy. He's a, he's a nice fellow, very personable  
11 guy, and we liked him.

12 So, I figured then this is our best chance here. We  
13 couldn't ask for a better solicitor here to look at all the  
14 facts here and to work something out here. And I explained  
15 to -- I remember explaining to Fred and Darveen and  
16 Sentrell after this second bond hearing. Judge Newman made  
17 it very clear about what he felt about this or whatever  
18 else, putting him out in a neighborhood or whatever. I'm  
19 not letting him go anywhere where he can potentially prey  
20 on other people. They understood that, that there wasn't  
21 going to be a trial here. This was going to be a guilty  
22 plea. We were going to try to work something out, and we  
23 did talk about two to four years or whatever there, the  
24 case at this time.

25 Then what happens is two things happen. The family,

1 these other family members out in this area, they started  
2 talking about that this wasn't the first time something  
3 like this had happened. So, Ms. Barr -- I don't know that  
4 Kim Barr and I ever talked about two to four, two or four  
5 years because at this point we hadn't really gotten into  
6 any negotiations about it or whatever, but that's what I  
7 was hoping for, something like this or whatever. So, then  
8 this one thing came out.

9 Another thing came out was they testified that he,  
10 after this incident, that he said that -- and this was what  
11 Ms. Barr -- there were things she took into account as to  
12 what his sentence should be. That an aunt said that he had  
13 a gun and was sitting up on the porch, and he told them if  
14 you'll call any law enforcement or whatever, I'm going to  
15 shoot somebody or whatever. So, whatever, and anyway, and  
16 they said that this was not the first time this had  
17 happened. So, we were talking. So, we were looking at a  
18 little more time there.

19 Then as things went along or whatever, then what  
20 happened was, what really influenced Ms. Barr's decision as  
21 to what -- how much time or whatever was there was -- there  
22 came forward -- law enforcement informed her a case maybe  
23 six months before when a woman around twenty-five claimed  
24 that Sentrell had pulled her off into some woods and had --  
25 I don't know whether sexually assaulted her or whatever but

1 fought her or whatever, and Ms. Barr questioned law  
2 enforcement about that, and she said did y'all go out  
3 there? And he said yeah, we went out there, and she told  
4 us that he had ripped some clothes or some jewelry had  
5 fallen off or whatever. So, we went out there, and we went  
6 to the scene of this, and we could see that something had  
7 happened out there.

8 But somehow -- it seems like we had a preliminary  
9 hearing, and I think for some, for some reason -- I, of  
10 course, cross-examined her, defending my client or  
11 whatever. Apparently she, for whatever reason, she felt  
12 intimidated by that. She felt somehow that, you know --  
13 she, she just didn't want to go through with it or  
14 whatever, and I don't think she -- she didn't cooperate  
15 after that in anything then.

16 Ms. Barr told me, she told me, she said I'm just --  
17 she was very affected by that. She said it's as if we let  
18 this woman down here. We should have followed up on this,  
19 and I should have talked to her, and I should have  
20 explained to her this is just a preliminary hearing, and  
21 that's just what Mr. Carraway's job is is to ask you these  
22 questions and whatever here.

23 I didn't know anything about this, and she said she  
24 was very affected by that, and she was very affected by the  
25 family saying that this had happened two other times. And

1 she told me about -- that I've spent more time thinking  
2 about this. I've woken up in the middle of the night  
3 thinking about this, wondering what I should do. I said,  
4 well, keep in mind he's only -- he was seventeen years old.  
5 She said -- I said you need to -- I said just keep this in  
6 mind.

7 I don't, I don't need to admonish Ms. Barr. She  
8 knows. She, she, she's -- she tries to look at things down  
9 the middle, and she felt like that she had failed the  
10 community here or whatever. That if they'd done something  
11 before, then this wouldn't have happened here. And she  
12 felt like -- I feel just like if I -- unless I give him --  
13 and she was talking about twenty-two years is what she was  
14 talking about here.

15 I mean, of course I'm sitting here, and if anybody's  
16 ever been involved in these criminal sexual conduct cases  
17 or whatever, I mean, it's not a -- it's, it's not a, it's  
18 not a -- you know, and particularly with these sentences  
19 that are -- that, that, that you can get for these or  
20 whatever, thirty years or whatever. And it's just -- I  
21 mean, you're pretty much -- and Sentrell knew Ms. Barr  
22 well, too, and he talked to her. She talked to him up  
23 there in the holding room up there. We brought him into a  
24 room there, and she talked to him about that. And he knew  
25 in the, in the couple of days before this that things had

1 changed here, and she told him why.

2 And she did a lot of the talking because, you know,  
3 she knew him. She knew the situation. She explained to  
4 him why she was doing this and whatever and why she felt  
5 like she had to do this. And he spoke to her and said,  
6 well, can we do, you know, can we do -- and I talked to her  
7 about, well, can we do fifteen? She said no, no. I don't  
8 know. No. I said, well, think about it overnight or  
9 whatever, and she came back.

10 And I said keep in mind he's seventeen years old or  
11 whatever here. I mean, you know, and she said, yeah, I've,  
12 I've thought, I thought about it and I've thought about it.  
13 I just can't do it. And finally she came down to the very  
14 last. She was talking to him and she said I'll do twenty  
15 is what I'll do. But, of course, she knows that the  
16 alternative between twenty-two and twenty is not -- that  
17 we're going to have a trial because that's just -- it's  
18 just, it's just not practical to do that when you've got a  
19 confession here.

20 And I explained that to him and his parents after that  
21 second bond hearing a few months before this. I said, you  
22 know, just get that out of your head. That's, that's not  
23 happening here. I mean, y'all may not know that, but let  
24 me tell you. This is not going to happen here. This,  
25 this, this is not going to end well here. Our best chance

1 is to throw ourselves on the mercy of Ms. Barr because, I  
2 said, she's a very, very, very good solicitor, and she  
3 looks at both sides and whatever here, and that's just the  
4 way she felt. She was holding all the cards here. It's,  
5 it's -- we -- it's, it's -- as you know here, and I talked  
6 to her over two or three days. Tried to get it down more  
7 and more, and I think I had mentioned to her also.

8 And I said now this isn't, isn't -- is only a part of  
9 what a plea is, but I said your family -- this family and  
10 this girl's mother wants even more time than that. And, of  
11 course, the mother had been telling Darveen something  
12 different or whatever. And she said, well, she tells me  
13 something different, and I said let me tell you something.  
14 This is what Kimberly Barr says. I believe Kimberly Barr.

15 And we actually had this thing set up for a guilty  
16 plea a term before that, and they brought him over there  
17 and we talked there. They brought him over there for a  
18 couple of days, and then what happened was Ms. Barr -- as  
19 we all know, it just, it just didn't work. Other things  
20 came about in court or whatever, and she was involved in  
21 something else, and she said just not going to be able to  
22 do it this week because I want to have all these people  
23 here. I've got to have all the -- I've got to be prepared  
24 just in case somehow we have to try the case or whatever.  
25 So, it got put off then. I think probably in November or

1 something like late November. So, then it came back up to  
2 January here.

3 But the McCulloughs are right that this only -- I only  
4 became aware pretty much right there the last couple of  
5 weeks that -- of this other hearing -- of, of this other  
6 charge that had not gone through by this  
7 twenty-five-year-old woman about him dragging her off in  
8 the woods and doing this stuff and whatever, and Ms. Barr  
9 wasn't aware of it.

10 So, you know, I was hopeful that we could do less than  
11 ten years and two to four, I think when we started, when I  
12 first heard about it, I thought, well, maybe we can do that  
13 or whatever. But then a little while later I knew, well,  
14 if they're saying about this is not the first or whatever  
15 and this has happened before or whatever that, you know,  
16 rather, rather than someone just being curious or whatever,  
17 we got somebody being -- who may be a pedophile predator or  
18 whatever. So, I thought, well, well, and that's what Ms.  
19 Barr looked at.

20 Then when she heard about this twenty-five-year-old  
21 woman and looked into all that and questioned the officers  
22 about the, about the facts of the -- what they discovered  
23 out there during their investigation as to did this really  
24 happen or whatever and all of that, she was very affected  
25 by that. And she felt like I have not protected the

1 community here. We've done this before or whatever. I  
2 really feel bad about this or whatever, and I feel like --  
3 we talked many, many, many times during these, these last  
4 few days here about could she do a little better than that.  
5 Could she find it in -- she find it to where she could do  
6 fifteen years or whatever there. Could we somehow meet  
7 somewhere in the middle, and she stuck to twenty-two years  
8 until right there at the last. She said -- I think it may  
9 have been overnight or whatever, and we came back the next  
10 day to do the plea or whatever, and she said I'll do twenty  
11 and whatever. And I said, well -- of course, if it'd been  
12 twenty-two, we were -- you know, what are you going to do?

13 I mean, because if you go and have a trial and they  
14 start -- you start putting children up on the stand and all  
15 that or whatever, things can go worse. And you're not  
16 going to win with a confession there and the child saying  
17 the same thing, and you've got another witness saying I  
18 viewed this or whatever here. I viewed her pants were down  
19 around her ankles or whatever. So, that's really where we  
20 were there. There are not many triable criminal sexual  
21 conduct cases. There are some, but this wasn't one of  
22 them. This was one, and if they aren't, they are  
23 definitely not.

24 Q. Right.

25 A. So.

W.L. CARRAWAY - DIRECT EXAMINATION BY MS. COLEMAN

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1 Q. Did you think it was in the applicant's best interest  
2 to plead guilty?

3 A. Yes.

4 Q. Okay. So ---

5 A. It wasn't, it wasn't, it, it wasn't any wonderful  
6 thing, hallelujah or whatever, but it was, it was, I guess,  
7 a Hobson's choice, the best of bad choices of, of -- there  
8 wasn't any good choice for us there, and we were --  
9 fortunately Ms. Barr is a -- you know, I've dealt with a  
10 lot of solicitors over the years. I've been lucky in  
11 Williamsburg County and I've dealt with some in other  
12 counties, and the ones we have in Williamsburg County are  
13 better than a lot of them that I've run into in other  
14 counties and assistant solicitors particularly, or  
15 whatever, that, you know, are just difficult to deal with.  
16 But no one could be better than -- I've dealt with Ronnie  
17 Sabb, Clifton Newman, and Kimberly Barr in my time. So,  
18 I've been very, very lucky.

19 And it's, and it's, it's tough for Sentrell. It's  
20 tough for him. Seventeen years old, and here he is gone  
21 for this length of time. And I talked to Ms. Barr about  
22 that. I said just keep that in mind when you're thinking  
23 about this. Just keep this in mind or whatever here, and  
24 she did.

25 And this went on, this was -- the last two or three

1 days is really when, when this other twenty-five year-old  
2 came about. That's when all of this really sort of changed  
3 here, and ---

4 Q. As the case progressed and as your negotiations  
5 changed with the addition of these new cases, did you  
6 discuss all of this and explain the changes to the  
7 applicant and to his parents?

8 A. Yes, I did.

9 Q. Do you think they ---

10 A. They, they knew right there at the end what was going  
11 on because that, that's really where it came down to was  
12 maybe three or four days before, the last three or four  
13 days before, that's where all this really came about here,  
14 but before that, no.

15 I mean, that two to four years is, is probably because  
16 I didn't know up until then. I probably figured it was  
17 going to be a little bit more or whatever once I heard  
18 about this wasn't the first time this had happened out  
19 there, but other than that, that's pretty much the way it  
20 went.

21 Q. Okay. Just a couple questions about the guilty plea  
22 itself. Right before the plea, did you review the  
23 applicant's constitutional rights with him?

24 A. Yes, I did.

25 Q. Do you think he understood what he was pleading to and

W.L. CARRAWAY - DIRECT EXAMINATION / CROSS-EXAMINATION 39

1 giving up in that process?

2 A. Yeah. He went -- he actually talked with Kimberly  
3 Barr a good bit and went back and forth with her some, and  
4 she talked to him about that and, of course, said the same  
5 things I would have said, any of us would have said, and  
6 asked if, if, if, if -- could something else be done, could  
7 something less be done.

8 Q. Did he ever tell you that he did not understand  
9 something?

10 A. No.

11 Q. Ultimately, whose decision was it to plead guilty?

12 A. It was his.

13 Q. Did the applicant ever indicate that he wanted to go  
14 to trial?

15 A. No.

16 MS. COLEMAN: I have no further questions. Thank you  
17 for answering those.

18 THE COURT: All right, Mr. Boozer.

19 MR. BOOZER: Thank you, Your Honor.

20 CROSS-EXAMINATION BY MR. BOOZER:

21 Q. Mr. Carraway, how are you?

22 A. I'm good.

23 Q. Good. At the plea that day, did both you and Mr.  
24 McCullough know that it was going to be a twenty-year  
25 sentence?

1 A. Yes, we did. I, I thought it was going to be a  
2 twenty-two year sentence when we got there that day. I  
3 think it may have been that morning when she -- and, and  
4 not the day before when she dropped from twenty-two to  
5 twenty.

6 Q. Do you recall when the discussion was with his parents  
7 about trying to get a two to four-year sentence?

8 A. Yes, I do.

9 Q. When, when would that have been?

10 A. That would've been for a long time. For -- from the  
11 time I started representing him for a long time.

12 Q. Well, I know you -- I think you said you represented  
13 him on some juvenile charges.

14 A. Yeah.

15 Q. Was it for this case in particular, the two to  
16 four-year sentence?

17 A. Yeah.

18 Q. Okay.

19 A. I thought that was -- I thought, I thought that was  
20 possible here. The things that -- Kimberly Barr always --  
21 for some reason -- I didn't know that she thought that  
22 these things that he was involved in in juvenile court were  
23 more serious. I don't think they were. I didn't see these  
24 things as serious he was involved in in juvenile court.  
25 And, I mean, you know, these were just -- in juvenile

1 court, it's not necessarily things you do. It's the things  
2 you don't do that you're supposed to do like school and  
3 stuff like that. As I remember, there wasn't anything real  
4 serious in juvenile court, but Kimberly Barr viewed it a  
5 little different.

6 Q. Were y'all ever scheduled for a trial?

7 A. We were scheduled. She was going to try to do it a  
8 term later before then, but -- and, you know, I don't ever  
9 try to, you know, you know -- she knew and I knew that this  
10 was not going to be a trial.

11 Q. Do, do you recall at the, at the trial, and I'm  
12 looking specifically -- excuse me -- at the plea, and I'm  
13 looking specifically at page 1 of the transcript, and I'll  
14 just read a couple of lines from it. Do you recall -- this  
15 is on line 13 of page 1 where the solicitor is speaking and  
16 she says:

17 Your Honor please? The state and defense counsel  
18 have negotiated a sentence of two years if the  
19 court finds it acceptable.

20 And then flip over to page 2. There is some  
21 discussion where Ms. Barr then says: Twenty years. The  
22 court says: I thought you said two. You say: She did say  
23 two. The court says: You did say two. And then you say:  
24 But I understand twenty, yes.

25 Do, do you have any explanation for ---

1 A. I don't have any explanation, and I don't remember any  
2 of that at all. And that, that may be twenty-two to twenty  
3 or whatever, what it may be, and -- but I don't recall  
4 anything about any -- if she said something like that or  
5 whatever, I certainly didn't take it as anything serious  
6 because we had gone over and over that for quite a while  
7 to, to get it to where it was, to get it to where it was  
8 either twenty-two or twenty.

9 Q. Did you speak more with Mr. McCullough, Sentrell  
10 McCullough, or did you speak more with his parents, Mr. and  
11 Ms. McCullough?

12 A. I had more opportunity to speak to them or whatever,  
13 but he -- we had different bond hearings, and we had  
14 another time we had preliminary hearings, and that we had  
15 -- or a time when his bond was set when they -- when we  
16 were going to have a preliminary hearing and they wanted to  
17 push it up from a third to a first.

18 Q. Did y'all discuss about -- well, was there ever a  
19 preliminary hearing on the CSC third charge?

20 A. No. When we got there for that, they wanted to put it  
21 up to a first, and they told -- and they explained to me  
22 why.

23 Q. Was there ever any discussion, or was there ever any  
24 order or directive issued by a judge to have a preliminary  
25 hearing on the CSC third?

W.L. CARRAWAY - CROSS-EXAMINATION BY MR. BOOZER

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1 A. I don't -- no. On the third or first, no, but we were  
2 there. It seems like we were there. We were there and  
3 they wanted -- it was a third, and they explained that they  
4 had questioned him, what he had admitted to about the  
5 digital penetration. So, they were upgrading it to a  
6 first. That's what I recall.

7 Q. And I think your testimony earlier was you didn't  
8 file any or send any Rule 5 requests or request pursuant to  
9 Rule 5?

10 A. I've got Rule 5. I'm not real sure when we got those,  
11 but it really would have been just a perfunctory thing  
12 because we had the confession there.

13 Q. Did you ever discuss with Mr. McCullough about trying  
14 to suppress any statements that he may have given?

15 A. We talked about under what circumstances, under what  
16 circumstances did you get this or whatever, and I asked  
17 him. I said did you tell him this? I said is this, is  
18 this, is this correct because all I was reading was just  
19 the words on the paper or whatever, and he said yeah. And  
20 he never denied to me, he never said to me I told him this,  
21 but I told him this for this reason, and it's really not  
22 true. He never told me that.

23 Q. Mr. Carraway, the plea, I think, was on January 25th  
24 -- or, excuse me, January 27, 2015. Did -- when did -- was  
25 that a trial roster date, or was that set for -- to

1 actually take the plea?

2 A. It was set to take the plea, but of course what would  
3 have happened is if somehow the plea had not gone through  
4 and he'd said look, I'm not, I'm not taking this plea, I  
5 want a trial or whatever, then it would have been set. But  
6 that was set, that was set for a plea because we'd gone  
7 over that, and she did talk to him numerous times about  
8 that. He has a chance to talk to her about the plea and  
9 about time.

10 Q. And when you say he, you're talking about Sentrell?

11 A. I'm talking about Sentrell.

12 Q. Did y'all have any discussion at all about having a  
13 trial or what could happen at trial and defenses you might  
14 have at trial or anything like that?

15 A. No. What he had said was this. He said that he -- he  
16 told Kim Barr or he told law enforcement during his  
17 statement that he thought they had set him up. He said  
18 that this child came into the room and asked him to do this  
19 or whatever.

20 Q. Did y'all explore that at all about ---

21 A. No, we didn't. We didn't explore it at all, no.

22 MR. BOOZER: Thank you, Mr. Carraway. That's all the  
23 questions I have.

24 MS. COLEMAN: Nothing further, Your Honor.

25 THE COURT: All right. Good to see you.

1 (THE WITNESS EXITS THE STAND.)

2 THE COURT: Anything further from the state?

3 MS. COLEMAN: No further witnesses, Your Honor.

4 THE COURT: Would either of you like to make a brief  
5 argument?

6 MR. BOOZER: Your Honor, I believe the testimony can  
7 stand on its own. We would just ask the court to please  
8 review these allegations, as well as the testimony that was  
9 heard today by both Mr. McCullough and his family.

10 THE COURT: All right. I will let you know.

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 WILLIAMSBURG COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF JULY, 2016.

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

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MARCH 8TH, 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )

Sentrell McCullough, #362851, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS )  
THIRD JUDICIAL CIRCUIT )

2015-CP-45-544 )

ORDER OF DISMISSAL )

FILED  
REC-5 PM 12:19  
A CERTIFIED TRUE COPY  
*Sharon W. Stagers*  
SHARON W. STAGGERS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on November 9, 2015. Respondent submitted its return on April 8, 2016. An evidentiary hearing was convened on July 26, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. Applicant waived presentment to the September 2014 term of the Williamsburg County Grand Jury for criminal sexual conduct – first degree (2014-GS-45-0283). William LeGrand Carraway, Esquire represented Applicant. On January 27, 2015, Applicant pled guilty before the Honorable George C. James, Jr. Judge James sentenced Applicant pursuant to negotiations to a twenty year term of imprisonment for criminal sexual conduct – first degree. Applicant did not appeal his guilty plea or sentence.

## II. ALLEGATIONS

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

1. Ineffective assistance of counsel
  - a. Failure to investigate
  - b. Originally charged for CSC-3<sup>rd</sup> degree and never dismissed.
2. Excessive time
  - a. "excessive time, being that was my 1<sup>st</sup> major offense and I should have gotten that much time and the courts should've recommend me to see a doctor or any such person in that field to counsel me."
3. Subject matter jurisdiction
  - a. "Subject matter jurisdiction, due to the fact that the CSC in the 3<sup>rd</sup> degree was never dismiss, so therefore the courts shouldn't have heard the CSC in the 1<sup>st</sup> degree."
4. Due Process Violation
  - a. "Due process violation, being that when I was first arrested was charge with CSC 3<sup>rd</sup> degree and later on after the investigators talk to me they upgraded the charge to CSC 1<sup>st</sup> degree. Which they never took me to the preliminary hearing to get the CSC in the 3<sup>rd</sup> degree dimiss (sic) like the judge order them to."

## III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel



rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, 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).

#### IV. 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

Applicant raises several allegations arguing that Plea Counsel was ineffective in his representation surrounding his guilty plea. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-

Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). This Court finds that the testimony presented at the PCR hearing satisfies neither prong of the Strickland test; Applicant can show neither ineffectiveness nor prejudice, thus these allegations should be denied and dismissed with prejudice.

This Court finds that Plea Counsel's representation did not fall below the standard of reasonableness under professional norms set out in Strickland. Plea Counsel acted competently in Applicant's best interest throughout the course of his representation and went above and beyond what was required of him.

At the hearing, Plea Counsel credibly testified that he and Applicant always knew that he was going to plead guilty and Applicant never wanted to go to trial. He stated that there was an eyewitness that saw Applicant with his pants down behind the victim after he heard the bed shaking in the bedroom. He further stated that Applicant had given law enforcement a statement confessing to his guilt, and he could find no legal reason to move to suppress the statement.

Based on this testimony, this Court finds that Plea Counsel was not ineffective for failing to investigate Applicant's case because it was reasonable to pursue plea negotiations rather than investigate to prepare for trial. This Court further finds that Applicant has failed to prove that Plea Counsel was ineffective in any way regarding his charges or indictments.

Because Applicant has failed to meet his burden in proving that Plea Counsel was ineffective and that his ineffectiveness prejudiced him, these allegations are denied and dismissed with prejudice.

#### EXCESSIVE TIME

Applicant's second allegation that he was given excessive time should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C.

Code Ann. § 17-27-10 to -160. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, this allegation is denied and dismissed as it is not proper in a post-conviction relief action.



### SUBJECT MATTER JURISDICTION

Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

An applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, supra. However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, supra, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, to meet his burden, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Therefore, because Applicant has failed to meet his burden in proving that the court lacked subject matter jurisdiction, this allegation is denied and dismissed with prejudice.

### DUE PROCESS VIOLATION

Applicant alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976).



This Court finds that Applicant did not present any meritorious evidence of a due process violation and thus has failed to meet his burden of proof, and this allegation is denied and dismissed with prejudice.

#### 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.

#### V. 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 application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

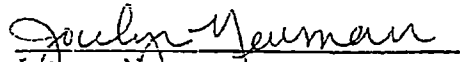
This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an 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 is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

**AND IT IS SO ORDERED** this 30<sup>th</sup> day of November, 2016.

  
JOELYN NEWMAN  
Presiding Judge  
Third Judicial Circuit

Columbia, South Carolina

**WITNESSES**

Inv. Archie Kennedy  
Williamsburg County Sheriff's Office

**DOCKET NO. 2014-GS-45-0283**

**The State of South Carolina**

**County of WILLIAMSBURG**

**COURT OF GENERAL SESSIONS**

**SEPTEMBER      TERM      2014**

**THE STATE**

vs.

**SENTRELL LEE MCCULLOUGH**

**ARREST WARRANT NUMBER**

2014A4510100612


**Indictment for**

**CRIMINAL SEXUAL CONDUCT WITH A  
MINOR IN THE FIRST DEGREE**

**ACTION OF GRAND JURY**

**TRUE BILL**

Date 9/11/14



**ERNEST A. FINNEY, III, SOLICITOR**

**VERDICT**

Foreperson of Grand Jury  
Date: 9/11/14

Foreperson of Petit Jury  
Date:

SHARON W. STAGGERS  
CLERK OF COURT  
KINGSTREE, S.C.

2014 SEP 11 PM 2:14

**FILED**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF WILLIAMSBURG )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A  
MINOR IN THE FIRST DEGREE

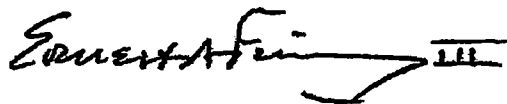
At a Court of General Sessions convened on September 11, 2014, the Grand Jurors of WILLIAMSBURG County did present upon their oath:

**COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE 1st DEGREE**

That the defendant, Sentrell Lee McCullough (D/O/B: [redacted]) did in Williamsburg County, South Carolina commit the offense of criminal sexual conduct with a minor in the first degree in that he did digitally penetrate the vagina of the victim, [redacted] (D/O/B: [redacted] 2008), a minor child who was less than eleven years of age, in violation of §16-3-655 of the South Carolina Code of Laws, 1976, as amended.

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

Solicitor

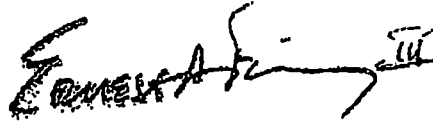


ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR **CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE** ON INDICTMENT NUMBER 2014-GS-45-283, THE AFORESAID COUNT SHOWN THEREON:

**COUNT TWO – CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE**

That the defendant, **Sentrell Lee McCullough** (D/O/B: [redacted] did in Williamsburg County, South Carolina on or about July 23, 2014 violate §16-3-652 of the South Carolina Code of Laws in that he did engage in sexual battery with the victim, [redacted] a minor child who was five (5) years old, though the use of aggravated force or where the victim was also the victim of a forcible confinement or kidnapping, in violation of §16-3-652 of the South Carolina Code of Laws.

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



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ERNEST A. FINNEY, III  
SOLICITOR