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AUG 07 2017

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Barnwell County

Honorable Robert E. Hood, Circuit Court Judge

JOSEPH O'NEIL SIMMONS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002502

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
(803) 734-1330

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF Barnwell

Joseph Arnel Dimmons #00362201
Plaintiff(s)

vs.

State of South Carolina
Defendant(s)

(Please Print)

Submitted By: Joseph A. Dimmons #362201

Address: Allegheny Correctional Institute #44490
1057 Revolutonary Trail, P.O. Box 1151
Fairfax, S.C. 29827

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

~~2015-CP-06-00153~~^{CP}

SC Bar #: _____
Telephone #: _____
Fax #: _____
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| <input type="checkbox"/> Contracts | <input type="checkbox"/> Torts - Professional Malpractice | <input type="checkbox"/> Torts - Personal Injury | <input type="checkbox"/> Real Property |
| <input type="checkbox"/> Constructions (100) | <input type="checkbox"/> Dental Malpractice (200) | <input type="checkbox"/> Assault/Slander/Libel (300) | <input type="checkbox"/> Claim & Delivery (400) |
| <input type="checkbox"/> Debt Collection (110) | <input type="checkbox"/> Legal Malpractice (210) | <input type="checkbox"/> Conversion (310) | <input type="checkbox"/> Condemnation (410) |
| <input type="checkbox"/> Employment (120) | <input type="checkbox"/> Medical Malpractice (220) | <input type="checkbox"/> Motor Vehicle Accident (320) | <input type="checkbox"/> Foreclosure (420) |
| <input type="checkbox"/> General (130) | Previous Notice of Intent Case # | <input type="checkbox"/> Premises Liability (330) | <input type="checkbox"/> Mechanic's Lien (430) |
| <input type="checkbox"/> Breach of Contract (140) | 20__-CP-__ | <input type="checkbox"/> Products Liability (340) | <input type="checkbox"/> Partition (440) |
| <input type="checkbox"/> Other (199) | <input type="checkbox"/> Notice/ File Med Mal (230) | <input type="checkbox"/> Personal Injury (350) | <input type="checkbox"/> Possession (450) |
| | <input type="checkbox"/> Other (299) | <input type="checkbox"/> Wrongful Death (360) | <input type="checkbox"/> Building Code Violation (460) |
| | | <input type="checkbox"/> Other (399) | <input type="checkbox"/> Other (499) |

- | | | | |
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| <input checked="" type="checkbox"/> Inmate Petitions | <input type="checkbox"/> Administrative Law/Relief | <input type="checkbox"/> Judgments/Settlements | <input type="checkbox"/> Appeals |
| <input type="checkbox"/> PCR (500) | <input type="checkbox"/> Reinstate Drv. License (800) | <input type="checkbox"/> Death Settlement (700) | <input type="checkbox"/> Arbitration (900) |
| <input type="checkbox"/> Mandamus (520) | <input type="checkbox"/> Judicial Review (810) | <input type="checkbox"/> Foreign Judgment (710) | <input type="checkbox"/> Magistrate-Civil (910) |
| <input type="checkbox"/> Habeas Corpus (530) | <input type="checkbox"/> Relief (820) | <input type="checkbox"/> Magistrate's Judgment (720) | <input type="checkbox"/> Magistrate-Criminal (920) |
| <input type="checkbox"/> Other (599) | <input type="checkbox"/> Permanent Injunction (830) | <input type="checkbox"/> Minor Settlement (730) | <input type="checkbox"/> Municipal (930) |
| | <input type="checkbox"/> Forfeiture-Petition (840) | <input type="checkbox"/> Transcript of Judgment (740) | <input type="checkbox"/> Probate Court (940) |
| | <input type="checkbox"/> Forfeiture-Consent Order (850) | <input type="checkbox"/> Lis Pendens (750) | <input type="checkbox"/> SCDOT (950) |
| | <input type="checkbox"/> Other (899) | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Worker's Comp (960) |
| | | <input type="checkbox"/> Confession of Judgment (770) | <input type="checkbox"/> Zoning Board (970) |
| | | <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) | <input type="checkbox"/> Public Service Commission (990) |
| | | | <input type="checkbox"/> Employment Security Commission (991) |
| <input type="checkbox"/> Special/Complex /Other | <input type="checkbox"/> Pharmaceuticals (630) | <input type="checkbox"/> Other (799) | <input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Environmental (600) | <input type="checkbox"/> Unfair Trade Practices (640) | | |
| <input type="checkbox"/> Automobile Arb. (610) | <input type="checkbox"/> Foreign Subpoenas (630) | | |
| <input type="checkbox"/> Medical (620) | <input type="checkbox"/> Motion to Quash Subpoena in Out-of-County Action (660) | | |
| <input type="checkbox"/> Other (699) | | | |
| <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature: Joseph A. Dimmons

Date: 4/27/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Barnwell)
)
Joseph Ernest Simmons)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2015-CP-06-00153

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

FILED FOR RECORD
2015 MAY -5 PM 2:05
CLERK OF COURT
SOUTH CAROLINA

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 Alhambra Correctional Institution F-1-A40
P.O. Box 1151 Fairfax, S.C 29827
2. Name and location of Court which imposed sentence Barnwell
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 201465-600091
 - (b) criminal sexual conduct with minor.

(c) _____

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

(a) 11/17/15

(b) 10 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

no

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. n/a

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. n/a

ii. _____

iii. _____

(c) the date of each such result:

i. n/a

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. n/a

ii. _____

iii. _____

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

(a) no ground for appeal.

(b) _____

In his current application, the applicant held that he is being held in custody unlawfully for the following reasons: (1) The applicant guilty plea was not entered knowingly, voluntarily, and intelligently, when counsel was ineffective assistance of counsel.

"The Lawer"

The United State Supreme Court has held that guilty plea are no more foolproof than full trial to the court or jury... Accordingly, we take great precaution against unsound result. *Brady v. United States*, 397 U.S. 742, 758, 90 S.Ct. 1463, 1474 (1970). An unsound result occurs when a defendant does not knowingly, voluntarily, or intelligently plea guilty. see *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709 (1969) (Finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequences of his plea and the charges against him.

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2002). Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing. *Holder v. State*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011)

Furthermore, a defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's error, the defendant would not have pled guilty, but would have insisted on going to trial." *Rohrer v. State*, 384 S.C. 409, 693 S.E.2d 471 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 57-58 (1985); see *Ray v. State*, 303 S.C. 374, 401 S.E.2d 151 (1991).

(Finding defendant guilty, plea was not intelligent and voluntary made in light of the erroneous advice given by plea counsel).

In this case, plea counsel performance was deficient, as it fell below an objective standard of reasonableness. see *Strickland v. Washington* 466 U.S. 668, 687-89 (1984).

"The facts supporting ineffective assistance of counsel."

1. The applicant guilty plea was not entered knowingly, voluntarily and intelligently, under counsel's ineffective assistance of counsel. The plea counsel did not advise applicant with all the facts before this guilty plea, under the applicant could have filed a Pre-Trial Motion to suppress alleged evidence and litigate on Fourth Amendment claim of *Frank v. Delaware* violation. Officer Palourchek's affidavit contained false statement in which — disregard for the truth, under the Magistrate — was misled by issue this arrest warrant based upon this false statement, and without this false statement, the Magistrate would not have found probable cause that this alleged crime was alleged committed by the applicant.

"The affidavit stated as the following:"

The affiant states and truly believe that between the year 2010 and December 10, 2012, that Joseph Aerial Simmons allegedly did commit the alleged crime of criminal sexual conduct in the 2nd degree in that he allegedly did engage in — sexual intercourse with the alleged victim, *Harriet Wolf*, for two years with the alleged victim being eleven and fourteen years of age. This alleged crime taking place at 20 Cottonwood Circle Apt. 23 in the city of Williston in and against the statute of the State of South Carolina.

"The false statement in affidavit."

Joseph Ansel Dimmock allege did commit the alleged crime of criminal sexual conduct in the 2nd degree - that he allege did engage in - allege sexual intercourse with the alleged - victim, Denise Wolf, for two year with the allege victim being between eleven. This - statement of fact is false and without this statement the Magistrate would not have found probable cause to issue this arrest warrant.

"The proving facts."

Officer Patourakos use false statement in his affidavit to supported of probable cause with reckless disregard for the truth, when officer interviewed Mrs Wolf and she told him that this allege sexual was when she was 12 years old, but in his affidavit, Officer stated that she was eleven years old.

Officer Patourakos obtain an arrest warrant on the strength of his sworn statement that the applicant had allege committed the offense of alleged criminal sexual conduct in the 2nd degree. when officer sworn out the fact in the affidavit that he knew was false in reckless disregard for the truth, when Mrs. Wolf all in an intervewed that she was 12 years old and not eleven years old.

The applicant contended that the affirms thereby violated a clearly established duty not to seek a warrant on the basis of perjured testimony. This false statement is necessary to establish and/or finding of probable cause.

Under *Frank*, a police officer violated the constitution if, in order to obtain a warrant, he perjured himself or testified in reckless disregard of the truth. As the *Frank* court explained, when the Fourth Amendment demand a factual showing sufficient to compose "probable cause," the obvious assumption is that there will be a truthful showing ... This does not mean truthful in the sense that every fact recited in the warrant affidavit is necessary correct, for probable cause may be founded upon hearsay or ... as well as upon information within the affiant's own knowledge that sometimes must be garnered hastily. But surely it is to be truthful in the sense that the information put forth is believed or appropriately accepted by the affiant as true. *Frank v. Delaware*, 438 U.S. 154, 165-66, 98 S.Ct. 2674, 2681, 57 L.Ed.2d 667 (1978) (quoting *United States v. Halsey*, 257 F.Supp. 1002, 1005 [S.D.N.Y. 1966]).

Officer knows in the interview that Ms. Zeltz told him that this alleged sexual abuse when she was 12 years old, and not eleven years old. Officer's sworn statement in the affidavit was not believed or appropriately accepted by the officer or true. His misstatement violated Frank's.

without this false statement the Magistrate would not have found probable cause to issue the warrant for criminal sexual conduct in the 2nd degree.

cannot even, when he failed to litigate in Fourth Amendment claim of Frank violation that Officer - sworn testimony that was false to establish probable cause the applicant had alleged committed alleged crime of criminal sexual conduct in the 2nd degree.

cannot perform prosecution the applicant defense when he failed to move to suppress alleged evidence:

1. cell phone
2. any statement made by the applicant
3. alleged victim's mother statement
4. alleged victim's statement
5. any and all evidence in the cell phone.
6. any and all evidence of the false statement in the affidavit.
7. The P.O. and the interviewed

Had counsel would have informed the applicant of these facts before this guilty plea, he would not have plea guilty, but insisted in going to trial.

The facts of this case, if counsel would have informed the applicant that he can move to suppress alleged evidence from trial and statement in this illegal arrest and illegal statement, he would have insisted on standing trial knowing that this alleged evidence would have not use to convicted, and the state case against the applicant would be some weak and hard to obtain a guilty verdict.

2. The applicant guilty Plea was not entered knowingly, —
 voluntary and intelligent, when counsel was —
 ineffective assistance of counsel. The Plea counsel
 did not advise applicant with all the facts before
 the guilty Plea, when the applicant could have filed
 on Pre-trial Motion to suppress all the evidence
 like the cell phone and any other evidence was
 obtained in the cell phone because the police —
 officers seized the phone and searched in it —
 violated the Fourth Amendment right because
 they had been performing without a warrant
 or probable cause or without his consent.

"The incident report stated:"

On the above date and time R/10 responded to the
 above location, because the complainant, who is
 the 14 year old alleged victim Mother, alleged found
 a video on her husband's cell phone of her 14
 year old Daughter performing sexual acts.
 The Mother got mad and threw the phone at the
 subject and call 911. The District the video was
 to R/10 arriving on the scene. The complainant
 gave the phone to R/10.

court even when he failed to file a Pre-trial Motion to suppress the cell phone and any alleged evidence was obtain from the cell phone, because the police officers seized the phone and searched it without the Fourth Amendment right because they had been performed without a warrant or probable cause or without his consent.

court should have known that the applicant never gave his consent to his wife or officer to search his phone without first obtained a warrant. The applicant cell phone was on the bed and she had reasonable expectation of privacy in the cell phone that was given and was searched by the officer without first obtain a warrant. My wife lacked a reasonable expectation of privacy in the [cell phone] because she lacked control or dominion over the property of the applicant when she gave it to the officer as for evidence.

court performance prejudiced the applicant defense when he failed to moved with a Motion to suppress the cell phone and any alleged evidence that was obtain from the phone that was the fruit of an unconstitutional seized and searched.

The Fourth Amendment provides:

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly described the place to be searched, and the person or thing to be seized.

As the text makes clear, the ultimate touchstone of the Fourth Amendment is reasonableness. *Brigham City v. Stuart*, 547 U.S. 398, 403, 124 S.Ct. 1943, 164 L.Ed.2d 656 (2006) Our courts have determined that where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the obtaining of a judicial warrant. *Illinois School Dist. 47 v. State*, 515 U.S. 646, 653, 115 S.Ct. 2384, 132 L.Ed.2d 544 (1996) Such a warrant means that the officer to support a search was drawn by a neutral and detached Magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. *Johann v. United States*, 337 U.S. 10, 14, 68 S.Ct. 367, 92 L.Ed. 436 (1948) In absence of a warrant, a search is reasonable only if, it falls within a specific exception to the warrant requirement. *Kentucky v. King*,

131 S.Ct. 1849, 1856, 1857, 79 L.Ed.2d 965 (2011)

Had counsel ~~been~~ informed the applicant of the facts before this guilty plea, he would not have pled guilty but insisted on going to trial knowing that absent the cell phone and any other evidence in it would weaken the State case against applicant and make it hard for the State to obtain a guilty verdict.

3. The applicant guilty plea was not entered knowingly, voluntarily, and intelligently, when counsel was ineffective assistance of counsel. The plea — counsel ~~was~~ did not advise applicant with all the facts before this guilty plea, when the applicant could have filed on pre-trial motion to quash defective indictment for failed to alleged specific act or essential fact in support of offense of ["sexual battery"] depriving applicant of the requisite regarding the — charged.

"The indictment is the following:"

That Joseph oriel Simmons allege did in Rowan County on or between December 19, 2009 and December 18, 2012, commit the crime of criminal sexual conduct with a minor in the second degree, in that the defendant allege did commit a sexual battery upon Foreal with a minor who was fourteen [14] years of age or less, but who was at least eleven [11] years of age at the time of the incident. All in violation of section 16-3-655 of the Code of laws of South Carolina [1976], as amended.

The applicant argues that the indictment fail to allege specific set or essential facts in support of the offense, — [sexual battery] thereby depriving applicant of the requisite notice regarding the charges that violated due process of the Fourteenth Amendment.

"The same."

an indictment will be deemed sufficient, if the allegation closely follow the relevant statutory language. see United State v. Brandon, 298 F.3d 307, 310 (4th cir. 2002) (quoting United State v. Zwick, 187 F.3d 426, 427 (4th cir. 1999)) However, the words used in the indictment must, directly and expressly, without any uncertainty or ambiguity, set forth all the elements necessary

to constitute the offense. *Id.* (quoting *Hawley v. United States*, 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974)) simply reciting the generic statutory language in the indictment may nevertheless be insufficient. See *Brandon*, 298 F.3d at 310. When the statutory language is used to describe the offense in general terms, it must be accompanied with such a statement of the fact and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged. *Id.* (quoting *Hawley*, 418 U.S. at 117-18, 94 S.Ct. 2887). Accordingly, the indictment must also include a statement of the essential fact constituting the offense charged. *Id.*

cannot waive an error when he failed to litigate on due process violation and moved to quash an defective indictment before the guilty plea, when indictment fails to inform applicant of essential fact or [sexual battery] that constituting the offense for which he is charged, thereby depriving applicant of the notice regarding the charges and purpose of his defense.

Counsel performance prejudicial applicant defense
when the body of indictment on equal footing
facts to nature of the essential fact, on what
specific acts, he alleges to committed in support
the charges. Counsel should have filed the
pre-trial motion to quash, it would have
been successful. Had counsel informed
applicant of the facts, he could have moved
to quash the indictment, he would have
insisted on going to trial.

(c) _____

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

- (a) The applicant guilty plea was not entered knowingly
- (b) the attorney was not intelligent, sober counsel was
- (c) ineffective assistance of counsel.

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

- (a) see the white sheet of paper that has the
- (b) facts to supported ineffective assistance
- (c) of counsel.

12. Prior to this application have you filed with respect to this conviction: no

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

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

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

(c) the disposition thereof:

- i. w/lt
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. w/lt
- ii. _____
- iii. _____
- iv. _____

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

- 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. w/lt
- ii. _____
- iii. _____

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

- i. w/lt
- 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: ineffective assistance of counsel

- (a) This is after my guilty plea and the state of South
- (b) Carolina had told me to bring it in a PC & first
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Glenn Walters
Attorney at Law
 - ii. P.O. Box 1346
Orangeburg, S.C. 29116
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arrest and plea, sentencing
 - ii. _____
 - iii. _____

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

guilty plea overturn

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

no

FILED FOR RECORD
2015 MAY -5 PM 2:05
MARGARET B. MELBY
CLERK OF COURT
BARNWELL COUNTY, S.C.

STATE OF SOUTH CAROLINA)
County of _____)

VERIFICATION

I, x Joseph O'neal Simmons, 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.

x Joseph O. Sim

SWORN to and subscribed before me this 29th day of April, 2015.

Debbie J. McCasky (L.S.)
Notary Public

My Commission Expires: 9-10-24

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

I, Joseph O'Neal Simmons, 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.

Joseph O. Simmons
Applicant

SWORN or affirmed to and subscribed before me this
29th day of April, 2015.

Debbie L. McCook
Notary Public

My Commission Expires: 7-10-24

FILED FOR RECORD
2015 MAY -5 PM 2:05
MARGA D. FLETCHER
CLERK OF COURT
BARNWELL COUNTY, S.C.

nocs

STATE OF SOUTH CAROLINA)
 COUNTY OF BARNWELL)
)
 Joseph Oneal Simmons, #362201,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2015-CP-06-00153

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT**

FILED FOR RECORD
 2015 JUL 27 PM 2:38
 HONORABLE D. NIGELVEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

The Respondent, making its Return to the application for post-conviction relief filed May 5, 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 Barnwell County Clerk of Court. The Applicant was true bill indicted during the February 2014 term of the Barnwell County Grand Jury for criminal sexual conduct with minor – third degree (2014-GS-06-000081). Applicant was represented by Glenn Walters, Sr., Esquire. On November 17, 2014, the Applicant pled guilty as indicted without negotiations or recommendations before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to ten year term of imprisonment. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Barnwell County Clerk of Court regarding the subject conviction(s). The Applicant's records from the South Carolina Department of Corrections and the guilty plea transcript will be forwarded upon receipt. 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.¹

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, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was

¹ Respondent is unable to read Applicant's application due to Applicant's handwriting.

deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he or she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

In his application, Applicant alleges that he is being held in custody unlawfully based on ineffective assistance of counsel. However, Applicant has wholly failed to set forth any legible "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only

on the day of the hearing prejudices the Respondent and plea counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRCP.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 23, 2015.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)
)
)
)
 JOSEPH ONEAL SIMMONS, #362201,)
)
) Applicant,)
)
) vs)
)
 STATE OF SOUTH CAROLINA,)
)
) Respondent.)

IN THE COURT OF COMMON PLEAS

2015-CP-06-00153


AFFIDAVIT OF SERVICE BY MAIL

FILED FOR RECORD
 2015 JUL 27 PM 2:38
 HONORABLE PATRICK MEEHAN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 23rd day of July, 2015.



 Caroline Collins, Legal Assistant
 For Respondent

Joseph O Neal Jimmons SCJLT# 362201
 Allendale Correctional Institution
 F4/A40 (BAMBERG)
 1057 Revolutionary Trail
 P.O. Box 1151
 Fair Fax, SC 29827

September 22 2015

FILED FOR RECORD
 2015 SEP 24 PM 1:35
 RHONDA D. McELVEEN
 CLERK OF COURT
 BARNWELL COUNTY, S.C.

Attn: Rhonda McElveen
 Clerk of Court
 Post Office Box 723
 Barnwell, SC 29812

RE: C/A No: 2015-CP-06-00153
 Rule violation check, Rule (s)
 8(d) and 12(b) SCRPC

Dear Hon, Rhonda McElveen

Please, be informed, and advised, that for the
 Case No: 2015-CP-06-00153; that was filed May 5 2015, in
 Barnwell County, that the SC (respondents) are currently
 in a procedural default, by the rule(s) and have waived,
 the original pleadings, by not responding back in a (60)
 sixty-day time frame as stipulated by rule(s) 8(d)
 and 12(b) SCRPC; there by dictating a waiver, based
 on such infraction of the rule (s) and procedures, of
 rule (s) and principle (s).

With the kindest regards,
Joseph O. Jimmons
 Joseph O. Simmons # 362201

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL)	C/A NO: 2015-CP-06-153
)	
Joseph Simmons, #362201,)	
)	
Applicant,)	
)	FIRST AMENDMENT TO PRIOR
v.)	APPLICATION FOR PCR
)	
State of South Carolina,)	
)	
<u>Respondent.</u>)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed May 5, 2015. Applicant's original attachments to his application were illegible. The Applicant's legible, original application is attached.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 April 12, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF BARNWELL)	C/A NO: 2015-CP-06-153
)	
Joseph Simmons, #362201,)	
)	
Applicant,)	
)	CERTIFICATE OF SERVICE
v.)	
)	
State of South Carolina,)	
)	
<u>Respondent.</u>)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
April 12, 2016

Joseph O. Simmons

In his current application, the applicant states that he is being held in custody unlawfully for the following reasons: [1] The applicant guilty plea was not entered knowingly, voluntarily, and intelligently, where counsel was Ineffective Assistance Of Counsel.

"THE LAWS"

The United States Supreme Court has held that guilty pleas are no more foolproof than full trial to the court or jury....

Accordingly, we take great precaution against unsound result.

BRODY v. UNITED STATES, 397 U.S. 742, 758, 90 S.Ct. 1463, 1474 (1970).

An unsound result occurs when a defendant does not knowingly, voluntarily, or intelligently plea guilty. see *BOYKIN v. ALABAMA*, 395 U.S. 238, 89 S.Ct. 1709 (1969) (Finding a guilty plea is voluntarily and knowingly entered into when the accused has a full understanding of the consequence of his plea and the charges against him.

"In determining a guilty plea issue, it is proper to consider plea of guilty transcript as well as evidence at the PCR Hearing. *SUBER v. STATE*, 371 S.C. 554, 558, 640, S.E.2d 884, 886 (2002). Specifically the Voluntarism of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both records made at the time of the entry of the guilty plea, and also from the record of the PCR Hearing. *HOLDEN v. STATE*, 393 S.C. 565, 572-74, 713 S.E.2d 611, 612-15 (2011)

Furthermore, a defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent characters of a plea by showing that counsel representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel error, the defendant would not have pled guilty, but would have insisted on going to trial." *ROLEN v. STATE*, 384 S.C. 409, 683 S.E.2d 471 (2009) (Citing *HILL v. LOCKHART*, 474 U.S. 52, 57-58 (1985); see *RAY v. STATE*, 303 S.C. 374, 401 S.E.2d 151 (1991). (Finding defendant guilty plea was not intelligent and voluntarily made in light of the erroneous advice given by plea counsel). In this case, plea counsel performance was deficient, as it fell below an objective standard of reasonableness. see *STRICKLAND v. WASHINGTON* 466 U.S. 668, 687-88 (1984).

"THE FACTS SUPPORTING INEFFECTIVE ASSISTANCE OF COUNSEL"

[1] The applicant guilty plea was not entered knowingly, voluntarily, and intelligently, where counsel was ineffective assistance of counsel. The plea counsel did not advise applicant with all the facts before this guilty plea, when the applicant could have filed on a PRE-TRIAL MOTION to suppress allege evidence and litigate on FOURTH AMENDMENT CLAIM of FRANK v. DELAWARE VIOLATION. Officer Patsourakos warrant affidavit contained a false statement in reckless disregard for the truth, when the Magistrate was misled by issuing this arrest warrant based upon this false statement,

and without this false statement, the MAGISTRATE would not have found "probable cause" that this allege crime was allege committed by the applicant.

"THE AFFIDAVIT STATED AS THE FOLLOWING:"

The affiant states and verily believe that between the year 2010 and december 10, 2012, that Joseph O'neal Simmons allege did commit the allege crime of CRIMINAL SEXUAL CONDUCT in the 2nd DEGREE in that he allege did engage in sexual intercourse with the allege victim GABRIKA WOLFE, for two years with the allege victim being between eleven and fourteen years of age. This allege crime taking place at 21 Cottonwood Circle Apt. C-3 in the city of Williston in and against the statute of the "STATE OF SOUTH CAROLINA".

"THE FALSE STATEMENT IN AFFIDAVIT"

Joseph O'neal Simmons allege did commit the allege crime of CRIMINAL SEXUAL CONDUCT in the 2nd DEGREE in that he allege did engage in allege sexual intercourse with the allege victim, GABRIKA WOLFE, for two years with the allege victim being between eleven. This statement of fact is false and without this statement the MAGISTRATE would not have found probable cause to issue this arrest warrant.

"THE PROVING FACTS"

Officer PATSOURAKOS used a false statement in his affidavit to support for probable cause with reckless disregard for the truth, when officer interviewed Ms. Wolfe and she told him that this allege sexual intercourse was when she was 12 years old, but in his affidavit, Officer stated that she was eleven years old.

Officer PATSOURAKOS obtained an arrest warrant on the strength of his sworn statement that the applicant had allege committed the offense of alleged CRIMINAL SEXUAL CONDUCT in the 2nd DEGREE. When officer sworn out the fact in the affidavit that he knew was false in reckless disregard for the truth, when Ms. WOLFE all in an interview stated that she was 12 years old and not eleven years old.

The applicant contend that the officer thereby violated a clearly establish duty not to seek a Warrant on the basis of perjured testimony. This false statement is necessary to establish and/or finding of probable cause.

Under Frank, a police officer violated the Constitution if, in order to obtain a warrant, he perjured himself or testified in reckless disregard of the truth. As the FRANK court explained, when the "FOURTH AMENDMENT" demand a factual showing sufficient to comprise "PROBABLE CAUSE", the obvious assumption is that there will be a truthful showing... This does not mean truthful in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay... as well as upon information within the affiant's own knowledge that sometime must be gathered hastily. But surely it is to be truthful in the sense that the information put forth is believed or appropriately accepted by the affiant as true. FRANK v. DELAWARE, 438 U.S. 154, 165-166, 98 S.Ct. 2674, 2681, 57 L.Ed.2d 667 (1978) (Quoting UNITED STATES v. HALSEY, 257 F. Supp. 1002, 1005 [S.D.N.Y. 1966]).

Officer knew in the interview that Ms. WOLFE told him that this alleged sexual intercourse was when she was 12 years old, and not 11 years old. Officer's sworn statement in the affidavit was not believed or appropriately accepted by the affiant as true. His misstatement violated FRANK.

Without this false statement the MAGISTRATE would not have founded probable cause to issue this warrant for CRIMINAL SEXUAL CONDUCT in the 2nd DEGREE.

"COUNSEL ERROR"

When he failed to litigate on FOURTH AMENDMENT claim of FRANK VIOLATION that officer sworn testimony that was false to establish probable cause that the applicant had allege committed allege crime of CRIMINAL SEXUAL CONDUCT in the 2nd DEGREE.

Counsel performance prejudice the applicant defense when he failed to move to suppress allege evidences:

1. CELLPHONE
2. ANY STATEMENT MADE BY THE APPLICANT
3. ALLEGED VICTIM MOM STATEMENT
4. ALLEGED VICTIM STATEMENT
5. ANY AND ALL EVIDENCE IN THE CELL PHONE
6. ANY AND ALL EVIDENCE OF THE FALSE STATEMENT IN THE AFFIDAVIT
7. THE DVD AND THE INTERVIEW

Had counsel would have informed the applicant of these facts before this guilty plea, he would not have pled guilty, but insisted on going to trial.

The facts of this case, if counsel would have informed the applicant that he can move to suppress alleged evidence from trial and statement in this illegal arrest and illegal warrant, he would have insisted on standing trial knowing that these alleged evidences would have not been used to convict, and the State case against the applicant would become weak and hard to obtain a guilty verdict.

[2] The applicant guilty plea was not entered knowingly, voluntarily, and intelligently, when counsel was ineffective assistance of counsel. The Plea counsel did not advise applicant with all the facts before this guilty plea, when the applicant could have filed on Pre-Trial Motion to suppress allege evidence like the cell phone and any allege evidence that was obtained in the cell phone because the police officer seized the phone and searched in it, which violated the Fourth Amendment right because they had been performed without an warrant or probable cause or without his consent.

" THE INCIDENT REPORT STATED "

On the above date and time R/O responded to the above location, because the complainant, who is the 14 years old allege. Victim Mother, allegedly found a video on her husband cell phone of her 14 year old daughter performing sexual acts. The mother got mad and threw the phone at the subject and called 911. He deleted the Video prior to R/O arriving on the scene. The complainant gave the phone to R/O.

Counsel error was when he failed to file on pre-trial motion to suppress the cell phone and any alleged evidence that was obtained from the cell phone, because the police officer seized the phone and searched in it and Violated the Fourth Amendment right because they had been performed without an Warrant or probable cause or without his consent.

Counsel should have known that the applicant never gave his consent to his wife or officer to search his phone without first obtaining a Warrant. The applicant cell phone was on the bed and he had reasonable expectation of privacy in the cell phone that was given and was searched by the officer without first obtaining a Warrant. My wife lacked a reasonable expectation of privacy in the [cell phone] because she lacked control or dominion over the property of the applicant when she gave it ^{to} the officer as for evidence.

Counsel performance prejudice the applicant defense when he failed to move with a Motion to Suppress the cellular phone and any alleged evidence that was obtained from the phone that was the fruit of an unconstitutional seize and search.

THE FOURTH AMENDMENT PROVIDES:

The right of the people to be secure in their person, houses, paper, and effect, against unreasonable search and seize, shall not be violated, and no warrant shall issue, but upon probable cause, supported by Oath or affirmation, and to particularly describing the place to be searched, and the person or thing to be seized.

As the text make clear, the ultimate touch stone of the FOURTH AMENDMENT is reasonableness. BRIGHAM CITY v. STUART, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed. 2d 656 (2006) Our cases have determined that when a search is undertaken by law enforcement official to discover evidence of criminal wrongdoing... reasonableness generally require the obtaining of a judicial warrant. (Vernonia SCHOOL DISTRICT 47 v. ACTORS, 515 U.S. 646, 653, 115 S.Ct. 2386, 132 L.Ed. 2d 564 (1996) Such a Warrant ensure that the ~~inference~~ ^{Inference} - ~~inference~~ to support a search are drawn by a Neutral and detach Magistrate instead of being judged by the officer engaged in the often competitive enterprise of figuring out crime. JOHNSON v. UNITED STATES, 333 U.S. 10, 14, 68 S.Ct. 367, 92 L.Ed. 436 (1948) In absence of a warrant, a search is reasonable only if, it fell within a specific exception to the Warrant requirement. KENTUCKY v. KING, 131 S.Ct. 1849, 1856, 1857, 179 L.Ed. 2d 865 (2011) Had counsel would have informed the applicant of the facts before this guilty plea, he would not have pled guilty but insisted in going to trial knowing that the absence of the cell phone and any alleged evidence in it would weaken the STATE case against applicant and make it hard for the STATE to obtain a guilty Verdict.

[3] The applicant guilty plea was not entered knowingly, voluntarily, or intelligently, when counsel was ineffective assistance of Counsel. The plea Counsel did not advise applicant of all the facts before this guilty Plea, when the applicant could have filed on PRE-Trial MOTION to quash defective INDICTMENT for failure to alleged specific acts or essential fact in support of Offense on "[SEXUAL BATTERY]" depriving the applicant of the requisite regarding the charged.

"THE INDICTMENT AS THE FOLLOWING"

That Joseph O'neal Simmons allege did in Barnwell County on or between December 19, 2009 and December 10, 2012, commit the crime of Criminal Sexual Conduct with a Minor in the second degree, in that the defendant allege did commit a sexual battery upon Clarica Wolfe a minor who was fourteen [14] years of age or less, but who was at least eleven [11] years of age at the time of the incident. All in Violation of section 16-3-655 of the code of law of SOUTH CAROLINA [1976], as amended.

The applicant argue that the INDICTMENT fail to allege specific act or essential facts in support of the Offense, on [SEXUAL BATTERY] thereby depriving applicant of the requisite notice regarding the charged that violated due process of the FOURTEENTH AMENDMENT.

"THE LAWS"

An INDICTMENT will be deemed sufficient, if the allegation closely follows the relevant statutory language. see UNITED STATES v. BRANDON, 298 F.3d 307, 310 (4th Cir. 2002) (Quoting UNITED STATES v. Wick, 187 F.3d 426, 427 (4th Cir. 1999) However, the word used in the INDICTMENT must, directly and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense. Id. (Quoting HAMLING v. UNITED STATE, 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed.2d 590 (1974) Simply reciting the general statutory language in the INDICTMENT may nevertheless be insufficient. see BRANDON, 298 F.3d at 310. When the statutory language is used to describe the offense in general terms, it must be accompanied with such a statement of the fact and circumstance as will inform the accused of the specific offense, coming under the general description, with which he is charged. Id. (Quoting Hamling, 418 U.S. at 117-18, 94 S.Ct. 2887. Accordingly the INDICTMENT must also include a statement of the essential fact constituting the offense charged. Id.

Counsel were in error when he failed to litigate on due process violation and move to quash on defective INDICTMENT before this guilty plea, when INDICTMENT fails to inform applicant of essential fact on [SEXUAL BATTERY] that constituting the offense for which he is charged, thereby depriving applicant of the Notice regarding the charged and prepare for his defense.

Counsel performance prejudice applicant defense when the body of INDICTMENT on sexual battery fails to Notice of the essential FACT, on what specific acts, he allege committed in support of the charge. Counsel should have filed this Pre-Trial Motion to quash, it would have been successful. Had counsel informed applicant of the facts, he could have moved to quash the INDICTMENT, he would have insisted on going to trial.



ALAN WILSON
ATTORNEY GENERAL

April 20, 2016

The Honorable Rhonda Dale McElveen
Clerk of Court, Barnwell County
Post Office Box 723
Barnwell SC 29812

FILED FOR RECORD
2016 APR 22 PM 12:38
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

Re: Joseph Oneal Simmons, #362201 v. State of South Carolina
2015-CP-06-00153

Dear Ms. McElveen:

Enclosed please find a copy of the records from the South Carolina Department of Corrections, in the above-captioned case, for filing in your office. This document was intended to accompany the Return of the Respondent.

Sincerely,

Caroline Collins
Legal Assistant for
Julie A. Coleman
Assistant Attorney General

/cc
Enclosure

cc: Lance Boozer, Esquire

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Barnwell
STATE VS.

INDICTMENT/CASE#: 2014GS0600081

Joseph Oneal Simmons

A/W#: 2012A0620300105

AKA: _____

Date of Offense: 12/10/2012

Race: Black Sex: M Age: 29

S.C. Code §: 16-03-0655(B)(1)

DOB: [REDACTED] 1985 SS#: [REDACTED]

CDR Code #: 0396

Address: _____

City, State, Zip: Williston, SC 29853

DL#: _____ SID#: _____

*CDL Yes No CMV Yes No Hazmat Yes No

SENTENCE SHEET

NMT
20 yrs

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0396
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: _____ 74983 _____ Joseph Simmons _____ 13/58
Ringler, Susanna Marie SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____
Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive, weekly/monthly pmts. of \$ _____
I, Rhonda D. McElveen, Clerk of Court for Barnwell County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office.
By: _____ Date: 11-18-14

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk _____
Court Reporter: _____

Presiding Judge _____
Judge Code: 0136
Sentence Date: 7/20/17, 2014

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARIES HISTORY

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

05/13/2015	ALLENDALE	INCARCERATED	ADMINISTRATIVE
05/13/2015	KIRKLAND	INCARCERATED	MEDICAL
01/15/2015	ALLENDALE	INCARCERATED	ADMINISTRATIVE
11/21/2014	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
SR DINING ROOM OPERATOR	05/22/2015	-		2F5
SR DINING ROOM OPERATOR	01/22/2015	05/21/2015	MI ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

NO SCHOOL ASSIGNMENTS

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



Source : SummaryReport.jsp

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South Carolina Department of Corrections

Classification Summary Reports

Date: Thursday, August 6, 2015

Classification Summary Reports

Inmate Number:

Classification Summary Report for SIMMONS, JOSEPH ONEAL :

CLASSIFICATION SUMMARY REPORT DATED 08/06/2015

SCDC#: 00362201

SIMMONS, JOSEPH ONEAL

FBI# 105658TC9

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: ALLENDALE

SECURITY/CUST: 2 MINIMUM IN

CURR INCARC SENT: 10 YRS 0 MOS 0 DAYS

VICTIM WITNESS:

MED CLASS: MED PROB/NO WORK RESTRICT

INST RESTRICT:

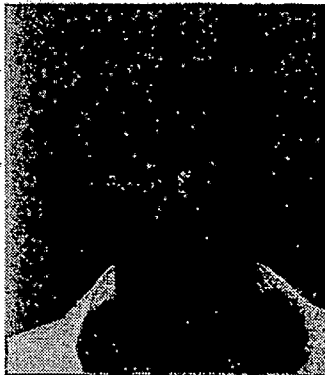
MENTAL CLASS:

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: Y

DNA: C

AGE: 30



RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: BBA.0040 X

PROJ MAXOUT DATE: 05/14/2023

PROJ PAROLE DATE: -

EWC JOB: SR DINING ROOM OPERATOR

ASSIGNMENT: CAFETERIA

EWC LEVEL: 2F5 EEC LEVEL:-

EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE		START	SENTENCE		
			DYS	COUNTY		V/NV	CAT	INDICT
CRIM SEX COND.W/MINOR(ZN)	10	0	0	BARNWELL	11/15/2014	V	4	14GS0600081

9:02:13 Thursday, August 06, 2015

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 08/06/15
OMCOMITA RELEASE DATE SCREEN C056427

SCDC# > 362201 LOC: ALLENDALE
SIMMONS, JOSEPH ONEAL SCDC CLASSIFICATION...: VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: Y
SEXUAL PREDATOR...: PENDING
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:

CURRENT SENTENCE: 010-00-000 CONSECUTIVE SENTENCE ...: N
010-00-000 CURRENT SENT START DATE: 11/15/2014

PROJECTED COMPLETION DATES
MAXOUT DATE: 05/14/2023 CURRENT EWC ..: 2 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000093 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ..: 000261 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

2016 APR 22 PM 12:38

FILED FOR RECORD

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT
2015-CP-02-00153

2 COUNTY OF AIKEN

3
4 JOSEPH O'NEIL SIMMONS,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9
10 Post-Conviction Relief Hearing

11 Heard on Wednesday, September 21, 2016

12 Aiken, South Carolina

13
14 BEFORE:

15 THE HONORABLE ROBERT E. HOOD

16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
19 Lance S. Boozer, Esq.

20 Counsel on Behalf of the Respondent,
21 State of SC:
22 Julie A. Coleman, Esq.

23
24 Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
25 Aiken, SC 29803-5232

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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

1 ON WEDNESDAY, SEPTEMBER 21, 2016 AT 10:10 A.M.:

2 MS. COLEMAN: Joseph Simmons.

3 THE COURT: Where is Mr. Simmons? Come on
4 over. Where did you come in from, the county, this
5 morning?

6 THE APPLICANT: Yes.

7 THE COURT: Where were you last week?

8 THE APPLICANT: Allendale.

9 THE COURT: All right. Ms. Coleman, are you
10 ready?

11 MS. COLEMAN: Yes, Your Honor. May it please
12 the Court.

13 This is Joseph O'Neil Simmons versus the
14 State of South Carolina, Docket Number
15 2015-CP-06-153.

16 The Applicant is presently confined in the
17 South Carolina Department of Corrections pursuant
18 to orders of commitment of the Barnwell County
19 Clerk of Court. Applicant was true-bill indicted
20 during the February 2014 Term of the Barnwell
21 County Grand Jury for criminal sexual conduct with
22 a minor third degree.

23 Applicant was represented by Glenn Walters,
24 Senior, Esquire. On November 17th, 2014, the
25 Applicant pled guilty as indicted without

1 negotiations or recommendations before the
2 Honorable Doyet A. Early the Third. Judge Early
3 sentenced Applicant to a 10-year term of
4 imprisonment.

5 Applicant did not appeal his conviction or
6 sentence. Applicant filed a timely application for
7 post-conviction relief on July 20th, 2015, alleging
8 that he was being held in custody unlawfully based
9 on an allegation of ineffective assistance of
10 counsel.

11 The State filed its return and motion for a
12 more definite statement on July 30, 2015, noting
13 that Applicant's handwriting was illegible and his
14 application could not be read.

15 Applicant filed an amended application on
16 April 12, 2016, which I believe should be in your
17 packet, listing the following allegations:
18 Involuntary plea; plea counsel did not advise
19 Applicant with all the facts before this guilty
20 plea; and ineffective assistance of counsel; failed
21 to move to suppress evidence under the Fourth
22 Amendment; and failed to move to quash the
23 indictment.

24 He's present today and represented in this
25 matter by Mr. Lance Boozer.

SUZANNA RINGLER - DIRECT BY COLEMAN

1 THE COURT: All right. Mr. Boozer, are you
2 ready to proceed?

3 MR. BOOZER: I am, Your Honor.

4 THE COURT: Okay.

5 MS. COLEMAN: And, Your Honor, this is
6 actually a case where we do not have the transcript
7 from the guilty plea.

8 THE COURT: Okay.

9 MS. COLEMAN: So we're going to reconstruct,
10 if that's all right with you. We would start with
11 a reconstruction of the guilty plea.

12 THE COURT: Okay. I've never done that, so
13 what do we need to do?

14 MS. COLEMAN: I'll start by calling the
15 solicitor in this case, Ms. Suzie Ringler, and then
16 I'll call plea counsel as well and then we can move
17 forward with the hearing.

18 THE COURT: Sounds good.

19 MS. COLEMAN: State calls Suzie Ringler to
20 the stand.

21 SUZANNA RINGLER, having been duly sworn, was
22 examined and testified as follows:

23 THE COURT: You have no objection to this
24 procedure; is that correct, Mr. Boozer?

25 MR. BOOZER: Your Honor, I don't. We'll

SUZANNA RINGLER - DIRECT BY COLEMAN

1 certainly see what counsel has to say as far as
2 their memory and then some objections at that
3 point.

4 THE COURT: Okay. Great.

5 MR. BOOZER: As of now, no.

6 THE COURT: Thank you.

7 DIRECT EXAMINATION

8 BY MS. COLEMAN:

9 Q. Good morning, Ms. Ringler. How are you?

10 A. Good morning. And it's Suzanna Ringler,
11 R-I-N-G-L-E-R.

12 Q. Where are you currently employed?

13 A. Aiken County DSS.

14 Q. And how long have you been employed there?

15 A. A little over a year.

16 Q. Okay. Were you employed as an assistant
17 solicitor in the Second Circuit on November 17th of
18 2014?

19 A. Yes.

20 Q. Okay. Do you recall the matter of South
21 Carolina versus Joseph O'Neil Simmons?

22 A. I do.

23 Q. Did you prosecute that case?

24 A. I did.

25 Q. Do you recall what Mr. Simmons was charged

SUZANNA RINGLER - DIRECT BY COLEMAN

1 with prior to his plea?

2 A. Criminal sexual conduct with a minor second
3 degree. That's ages 11 to 14.

4 Q. Do you remember which judge took the guilty
5 plea?

6 A. It would be Judge Early.

7 Q. Have you ever appeared before Judge Early on
8 other occasions?

9 A. Yes. I worked at the Attorney General's
10 Office for about three years. I would appear in
11 front of him when I had Aiken County cases. I came
12 to the solicitor's office in '09. So between Aiken
13 and Barnwell, he was our resident judge, I appeared
14 in front of him many, many times. So...

15 Q. How many guilty pleas would you say you've
16 done with Judge Early?

17 A. Probably hundreds.

18 Q. Do you recall if the Applicant was sworn
19 before he gave testimony at the guilty plea?

20 A. He was.

21 Q. Do you recall whether Judge Early reviewed
22 the charges with the Applicant on the record that
23 day?

24 A. I don't have a specific recollection of that,
25 but he would have and if he hadn't I would have

SUZANNA RINGLER - DIRECT BY COLEMAN

1 spoken up.

2 Q. Okay. Did the judge review the maximum
3 sentence the Applicant was facing?

4 A. Yes. Per Judge Early's sort of standard
5 policy, he asks that the sentence range be written
6 on the top right corner of the sentencing sheet.
7 So that would have been in place prior to the
8 Defendant's having it. I fill out the top portion,
9 write the sentence range. So he would have had
10 that when his attorney would have gone over the
11 sentencing sheet with him to sign him up prior to
12 the plea.

13 Q. And do you have a copy of the sentencing
14 sheet in front of you?

15 A. I do not.

16 Q. Would you like one?

17 A. Yes, please.

18 MS. COLEMAN: May I approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 (Document handed to witness.)

21 BY MS. COLEMAN:

22 Q. You can use that to refresh your
23 recollection.

24 A. So, yes, in this case on the top right corner
25 of the sentencing sheet it states NMT, so not more

SUZANNA RINGLER - DIRECT BY COLEMAN

1 than, 20 years. So the sentencing range is written
2 on the top right corner.

3 Q. Did you present the facts of this case on the
4 record that day?

5 A. Yes. I do recall this was one that was on
6 the trial list for that week. So he -- you know,
7 Monday morning, basically the cases that decide to
8 go ahead and plead guilty we go ahead and handle
9 those guilty pleas. So we went ahead and did this
10 one on the Monday because it was on the trial list
11 that week.

12 And, so, I would have gone through -- it was
13 without recommendation. It was just a straight-up
14 plea is kind of how we refer to it. So I would
15 have gone over the facts, the allegations in the
16 indictment and then do some additional facts to
17 give the Court an idea of what the allegations
18 were.

19 Q. Do you recall what those facts were today?

20 A. I do. This was one where the minor child
21 stated that the abuse started when she was about 12
22 years old. The Defendant was her stepfather at the
23 time. And so it was ongoing abuse up until -- at
24 some point he started recording the abuse and the
25 mother of the minor child actually found his cell

SUZANNA RINGLER - DIRECT BY COLEMAN

1 phone. I think she was concerned that he was
2 cheating on her or had suspicions. So she looked
3 at the cell phone, saw a video of the abuse,
4 recognized her child and confronted him about it.

5 So that's how it came about. And so that was
6 when the abuse ended at that point.

7 Q. Okay. Do you recall whether the Applicant
8 agreed with the facts as you presented them?

9 A. Yes. I mean, for the plea to have gone
10 forward he would have had to have agreed.

11 Q. And did the Applicant admit that he was in
12 fact guilty?

13 A. Again, for the plea to have gone forward he
14 would have had to have admitted and pled guilty.

15 Q. In order for the plea to have gone forward,
16 did the Applicant -- did the Applicant testify that
17 he wished to waive his right to a jury trial, his
18 right to remain silent, and his right to confront
19 accusers?

20 A. Yes. And typically in that situation where,
21 you know, it is set for a trial that week, the
22 judge will even -- Judge Early will even say, "We
23 have a jury coming tomorrow ready to go forward."
24 So he'll point that out that he certainly has that
25 right and we were ready to go forward. So...

SUZANNA RINGLER - DIRECT BY COLEMAN

1 Q. Did the Applicant testify that he was not
2 under the influence of drugs or alcohol that day?

3 A. Yes.

4 Q. Did the Applicant testify that he did not
5 suffer from any kind of mental disability that
6 affected his decision to plead guilty?

7 A. Yes.

8 Q. Did the judge ask the Applicant if he was
9 threatened or coerced in any way to plead guilty?

10 A. Yes.

11 Q. And did he testify that he was not?

12 A. Correct.

13 Q. Did the judge ask the Applicant if he was
14 promised anything in exchange for his plea?

15 A. Yes. And in this case there was no
16 recommendation so it would have been as charged.

17 Q. Did the Applicant testify that he was
18 satisfied with his counsel?

19 A. Yes. And Judge Early will ask, you know, "do
20 you need additional time," if we need to stand
21 down. But in this case I don't recall that we had
22 to stand down. We went forward and he didn't
23 have -- he didn't ask for any additional time.

24 Q. Was there any mitigation presented at the
25 plea by the Applicant?

SUZANNA RINGLER - DIRECT BY COLEMAN

1 A. I believe so. I believe his attorney did
2 speak on his behalf. I don't recall verbatim what
3 was said, but I do believe he had that opportunity.

4 Q. Did anyone else testify that day, like
5 victims or family, mothers?

6 A. The victim and her mother were present. She
7 did -- the victim did address the Court. I don't
8 recall if she addressed the Court directly or if
9 she told our victim advocate something to say on
10 her behalf, but -- I don't recall exactly, but she
11 was present and did address the Court.

12 Q. Okay. Do you recall anything unusual or out
13 of the ordinary happening at the plea?

14 A. I do not.

15 Q. Based on your experience with Judge Early, in
16 your opinion if the judge had felt that the
17 Applicant did not fully understand what he was
18 pleading to, do you think he still would have
19 accepted the plea?

20 MR. BOOZER: Objection, Your Honor, as to
21 what the judge was thinking or would have done.

22 THE COURT: Okay. You can't say what Judge
23 Early was thinking but you can say -- you can give
24 examples of things you've seen Judge Early do
25 before with your own two eyes but you can't

1 interpret what Judge Early had in his mind during
2 the plea. Make sense?

3 THE WITNESS: Yes, Your Honor.

4 I can certainly say there were times when the
5 defendant appeared to be hesitant or unsure and we
6 would stand down and he would have additional time
7 to speak with his attorney. And there were times
8 when he would not accept pleas because he did not
9 feel comfortable with going forward.

10 THE COURT: You're talking about other
11 cases?

12 THE WITNESS: Other cases, yes, not this one
13 in particular. But I have had other experiences in
14 other pleas where that occurred. I do not recall
15 that occurring in this case.

16 BY MS. COLEMAN:

17 Q. And he did go forward and accept the plea in
18 this case?

19 A. Yes.

20 MS. COLEMAN: No further questions.

21 THE COURT: Mr. Boozer?

22 THE WITNESS: Sorry. That's my first time.

23 MR. BOOZER: No questions.

24 THE COURT: Okay. You can step down,
25 Ms. Ringler.

GLENN WALTERS, SR. - DIRECT BY COLEMAN

1 THE WITNESS: Thank you, Your Honor.

2 MS. COLEMAN: State calls Glenn Walters.

3 GLENN WALTERS, SR., having been duly sworn,
4 was examined and testified as follows.

5 THE COURT: Mr. Boozer, do you want
6 Ms. Ringler to stay? Do you need her to stay?

7 MR. BOOZER: I don't need her, Your Honor.

8 THE COURT: Okay. Do you need her?

9 MS. COLEMAN: No.

10 THE COURT: Thank you very much for being
11 here, Ms. Ringler.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Have a nice day.

14 THE CLERK: Please have a seat in the witness
15 box and state your full name for the Court.

16 THE WITNESS: Yes, ma'am.

17 DIRECT EXAMINATION

18 BY MS. COLEMAN:

19 Q. Good Morning, Mr. Walters. How are you?

20 A. Good morning.

21 Q. Now I have you up here at the moment just for
22 purposes of reconstructing the guilty plea
23 hearing. Then we're going to call you again later
24 for the hearing on the post-conviction relief
25 application.

GLENN WALTERS, SR. - DIRECT BY COLEMAN

1 Do you recall the matter of the State of
2 South Carolina versus Joseph O'Neil Simmons?

3 A. Yes.

4 Q. Were you the attorney in this case?

5 A. Yes.

6 Q. Do you recall a guilty plea proceeding in
7 which Mr. Simmons pled guilty to these charges?

8 A. Yes.

9 Q. Have you had an opportunity to review your
10 file from this case?

11 A. Yes.

12 Q. Did you hear the testimony the solicitor in
13 the case just presented?

14 A. Yes.

15 Q. Would you agree with her recollection of the
16 plea?

17 A. Yes.

18 Q. Is there anything you would like to add or
19 change about her recollection of the events?

20 A. No.

21 Q. Do you recall any specific details as to what
22 was asked and answered that day?

23 A. It was a standard plea, standard procedure.

24 Q. Is there anything else unusual that you
25 recall about this plea?

1 A. No, ma'am.

2 Q. Okay. Did the Applicant voice any complaints
3 or concerns about your representation to the judge
4 at the plea?

5 A. No, ma'am.

6 Q. Did you feel like the Applicant understood
7 what was going on at the plea?

8 A. Yes.

9 Q. If you had felt at the time that he did not
10 understand anything would you have stopped to
11 explain it to him?

12 A. Yes.

13 Q. How many times have you appeared before Judge
14 Early for guilty pleas?

15 A. I don't know the number but on a continuous
16 basis, I think he's in his second or third term as
17 a judge.

18 Q. And, again, this is the same question I asked
19 earlier. Based on your experience with Judge Early
20 in your opinion, if the judge had felt that the
21 Applicant did not fully understand what he was
22 pleading to do you still think he would have
23 accepted the plea?

24 A. No, he would have stopped it.

25 MS. COLEMAN: Okay. Thank you. No further

1 questions.

2 THE COURT: Mr. Boozer?

3 MR. BOOZER: No questions, Your Honor.

4 THE COURT: Thank you, Mr. Walters.

5 THE WITNESS: Yes, sir.

6 MS. COLEMAN: Your Honor, at this time the
7 State moves that you make a finding on the record
8 that the guilty plea transcript has been
9 reconstructed.

10 MR. BOOZER: Your Honor, as far as the
11 testimony has been presented today, we don't have
12 any objection to this being considered in lieu of
13 the missing transcript for the record of the plea.

14 THE COURT: All right. I'll make a finding
15 on the record that the guilty plea transcript has
16 been reconstructed. The prosecutor has testified,
17 the defense attorney has testified; their testimony
18 is not in contradiction with each other, and both
19 of them are very familiar with Judge Early and the
20 way that he runs court and particularly does guilty
21 pleas.

22 And I find that even though we do not have a
23 transcript the record, the guilty plea has been
24 sufficiently reconstructed as to allow us to go
25 forward with this hearing.

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

1 All right. Anything else on that issue,
2 Ms. Coleman?

3 MS. COLEMAN: No, Your Honor. Thank you.

4 THE COURT: Mr. Boozer?

5 MR. BOOZER: Thank you, Your Honor. At this
6 time we would call Mr. Simmons to the stand.

7 THE COURT: Okay. Come on up, Mr. Simmons.

8 JOSEPH O'NEIL SIMMONS, having been duly
9 sworn, was examined and testified as follows:

10 THE CLERK: Please have a seat in the witness
11 box and state your full name for the Court.

12 THE WITNESS: Have a seat?

13 THE COURT: Sure. Make yourself comfortable.

14 THE WITNESS: Yeah. I'm good. State my
15 name, right?

16 THE COURT: Yes, sir.

17 THE APPLICANT: Joseph O'Neil Simmons.

18 DIRECT EXAMINATION

19 BY MR. BOOZER:

20 Q. Mr. Simmons, how are you doing today?

21 A. I'm all right. And you?

22 Q. I'm doing good. If you would, just keep your
23 voice up so everyone can hear you and Madam Court
24 Reporter can take everything down that you're
25 saying. Okay?

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

- 1 A. All right.
- 2 Q. Mr. Simmons, do you know why you're here
3 today?
- 4 A. Yes.
- 5 Q. And why is that?
- 6 A. Because I pled.
- 7 Q. Okay. Correct. But you also -- did you file
8 an application --
- 9 A. Yes.
- 10 Q. -- for post-conviction relief?
- 11 A. Yes, sir. Can you hear me?
- 12 Q. Let me do this for you, too. Let me finish
13 my questions before you give the answer --
- 14 A. Okay.
- 15 Q. -- and I'll wait on you to answer before I
16 start on the next question.
- 17 A. All right. All right.
- 18 Q. So, tell the Court what you're currently
19 incarcerated for.
- 20 A. Criminal sexual conduct with a minor in the
21 second degree.
- 22 Q. Okay. And earlier I think maybe on the
23 record it was stated that you may have been
24 convicted of CSC third; is that not correct?
- 25 A. Yes. They said third instead of second.

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

- 1 Q. Okay. What were you convicted of?
- 2 A. Second degree.
- 3 Q. And what type of sentence did you receive?
- 4 A. 10 year, 85 percent sentence.
- 5 Q. All right. As it stands right now, what's
- 6 your max-out date?
- 7 A. I think it was, like, I haven't checked it in
- 8 a while. It's kind of moved up a little bit so I
- 9 think it was 2023, I think.
- 10 Q. And it could be less than that now?
- 11 A. Maybe.
- 12 Q. Or could be more?
- 13 A. I don't know.
- 14 Q. Okay. And you understand that the only thing
- 15 that this Court can do for you is basically grant
- 16 you a new trial and start you over on the original
- 17 charge of the CSC second?
- 18 A. Yes.
- 19 Q. Okay. And if you're successful you would go
- 20 back and face that charge and of course the
- 21 exposure would be, the max for that crime carries
- 22 20 years. Do you understand that?
- 23 A. Yes, sir.
- 24 Q. And we've talked about that, right?
- 25 A. Yes.

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

1 Q. And it's your desire, even knowing that, to
2 continue to move forward with your PCR today?

3 A. Yes.

4 Q. Okay. Now, when did you plead guilty in the
5 case?

6 A. That was November 17th, 2014.

7 Q. And who was your lawyer?

8 A. Glenn Walters.

9 Q. How did you go about -- how did Mr. Walters
10 come about representing you? Did you hire him or
11 was he appointed to represent you?

12 A. I hired him.

13 Q. Do you recall when you were first arrested on
14 these charges or this charge?

15 A. Yes. December 10th, 2012.

16 Q. When did you first hire Mr. Walters to
17 represent you?

18 A. I can't remember the exact date but it was
19 around, maybe February or a little bit after, like,
20 the end of January sometime.

21 Q. So it was probably the beginning of 2013?

22 A. Yes.

23 Q. Did you bond out?

24 A. Yes.

25 Q. All right. Between the time that you hired

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

1 Mr. Walters and the time of your plea later in
2 2014, do you know how many times you probably met
3 with him or spoke with him?

4 A. I'd say it's not even double digits. About,
5 maybe, maybe nine times, maybe 10. It might be 10.

6 Q. Where would the meetings occur, in his office
7 or where?

8 A. His office.

9 Q. Do you know how long the meetings would
10 average or last?

11 A. Maybe an hour or less.

12 Q. And what would you two talk about during the
13 meetings?

14 A. Nothing.

15 Q. All right. When you say nothing, explain.
16 Do you literally mean y'all talked about nothing?

17 A. As far as anything, I'm talking about, like,
18 no, nothing really dealing with the case. Like,
19 he'll start and then it will go from whether I
20 talked to my wife or not. It was never about him
21 trying to, you know, defend me or anywhere he'll
22 come up with something.

23 Q. Let me ask you something. Did y'all talk
24 about any defenses to the charges?

25 A. Say that again.

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

- 1 Q. Sure. Did you speak with Mr. Walters and
2 discuss any defenses to the charge?
- 3 A. No.
- 4 Q. Did you review any evidence?
- 5 A. The only thing I saw was the interview that
6 she had with -- the alleged victim had with the
7 psychiatrist that she -- that they sent her to.
8 And I only saw that, like, two to three minutes.
- 9 Q. Prior to this actual plea, were there any
10 other plea offers made?
- 11 A. That's the only one.
- 12 Q. All right. Before this plea, were you
13 actually scheduled to go to trial?
- 14 A. No, I don't think so.
- 15 Q. Okay. To your knowledge, were you scheduled
16 to appear at a trial?
- 17 A. Not that I know of.
- 18 Q. Is this a case that you wanted a trial in?
- 19 A. Yes, I really did.
- 20 Q. Why did you want a trial?
- 21 A. Because I didn't do anything. Plain and
22 simple.
- 23 Q. Did you have that discussion that you wanted
24 a trial with Mr. Walters?
- 25 A. Yes, sir.

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

1 Q. Tell us about that.

2 A. When I told him about it, it just seems like
3 he, he thought they -- like, the main thing I
4 should do is just go ahead and plea. He never
5 said, like, I had a chance, you know what I mean.
6 He -- that's about it. Like, he never told me
7 anything good about the case on my behalf. Put it
8 that way.

9 Q. All right. Now, you made a number of
10 allegations.

11 And, Your Honor, just so the record is clear,
12 Mr. Simmons initially filed this PCR application
13 and it was lengthy and illegible.

14 THE COURT: Right. I saw that. And I
15 couldn't read one word of it.

16 MR. BOOZER: Neither could I.

17 THE COURT: Okay.

18 MR. BOOZER: I don't know if Mr. Simmons
19 could either.

20 THE WITNESS: No, I had to rewrite it. It
21 took me a long time.

22 THE COURT: But he rewrote and it's very
23 legible, or somebody rewrote and it was filed and
24 it's completely legible.

25 THE WITNESS: I rewrote it.

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

1 MR. BOOZER: Is that in Your Honor's packet?

2 THE COURT: Yes, sir. I have that.

3 MR. BOOZER: Okay.

4 THE COURT: Thank you.

5 BY MR. BOOZER:

6 Q. Mr. Simmons, if you would, let's go through
7 your allegations. Okay? And let's begin with your
8 first allegation.

9 A. The first one was ineffective assistance of
10 counsel, first.

11 Q. Okay. Now let's discuss that. And I want
12 you to tell the Court -- we're going to go through
13 your allegations. I want you to explain each one
14 of them to the Court if you would. Start with your
15 first one. What's your first allegation?

16 A. That my plea was not entered knowingly,
17 voluntarily, intelligently. That's it.

18 Q. Explain why you feel like your plea was not
19 knowingly and intelligently entered.

20 A. Because he never broke it down to, like,
21 actual facts about it. Like, what would happen, or
22 what -- how can I say it, how much time I would
23 have to do off of the, you know, what they give,
24 you know, in the plea, the 10 years or whatever.

25 And he never broke it down to me.

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1 THE COURT: Okay. Now, listen. I don't know
2 who "he" is when you say --

3 THE WITNESS: Okay.

4 THE COURT: -- "he", so if you mean
5 Mr. Walters just say Mr. Walters. You could be
6 talking about Judge Early.

7 THE WITNESS: All right. All right.

8 THE COURT: And so I want to make sure I
9 understand who you're referring to

10 THE WITNESS: Okay.

11 THE COURT: So when you say "he", help me
12 with that so I know directly who you're referring
13 to. I'm not trying to tell you what to say. I'm
14 just saying --

15 THE WITNESS: No, I understand.

16 THE COURT: -- a little bit of extra
17 information will help me understand and follow you
18 better. Okay?

19 THE WITNESS: Okay.

20 THE COURT: So you're saying Mr. Walters
21 didn't explain to you or as you said "break down",
22 you know, kind of what you were dealing with, what
23 you were facing --

24 THE WITNESS: Yes.

25 THE COURT: -- things like that; is that

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1 correct?

2 THE WITNESS: Yes, sir.

3 THE COURT: Okay. Go ahead, Mr. Boozer.

4 MR. BOOZER: Thank you, Your Honor.

5 Q. Mr. Simmons, as far as that particular
6 allegation that your plea was not voluntarily
7 entered, is there anything else you feel like that
8 made your plea involuntary or unknowingly entered
9 or unintelligently entered?

10 A. Yes.

11 Q. Okay. Tell the Court what that would be.

12 A. Because -- well, you already said that -- he
13 failed to file any pretrial motions.

14 Q. And tell us about that. What did he fail to
15 file?

16 A. He failed to file that -- the -- my cell
17 phone was confiscated without a warrant.

18 Q. Did you have any discussion with him about
19 attempting to challenge that seizure of the
20 phone --

21 A. Yes.

22 Q. -- or suppress -- hang on a second -- or
23 suppress the evidence that was obtained from that
24 phone? Did you all have any discussion about that?

25 A. I brought it up to him but we didn't talk

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1 about it.

2 Q. Did he have any response to that?

3 A. No, sir.

4 Q. Did he explain to you that you could possibly
5 challenge that evidence with, the seizure of that
6 evidence in either a motion setting or a trial
7 setting?

8 A. No, sir.

9 Q. All right. Had he explained that to you,
10 would you have pursued challenging that evidence
11 and gone to a trial or would you have continued to
12 plead guilty?

13 A. No, I would have challenged it and went to
14 trial.

15 Q. Okay. Keep going and talking about your plea
16 and what you feel like Mr. Walters was not doing
17 that made your plea involuntary.

18 A. I'm not -- trying to read the paper. Repeat
19 one more time.

20 Q. Yes, sir. As far as anything else that you
21 feel like Mr. Walters wasn't doing for you that
22 made your plea involuntary, tell the Court if
23 there's anything else under that allegation.

24 A. Well, he didn't tell me I could -- my papers
25 all mixed up. I'm trying to get it in order but...

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1 THE COURT: Wait a minute now.

2 You take whatever time to get your papers in
3 order. You got them right there with you?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. Now listen --

6 MR. BOOZER: May I approach the witness with
7 a copy of his application?

8 THE COURT: You may. Now listen to me,
9 Mr. Simmons. This is your opportunity to be heard.

10 THE WITNESS: Yes.

11 THE COURT: If you need to organize some
12 papers or if you just want to refer to the papers
13 that Mr. Boozer has, that's fine. But I want you
14 to have whatever you need to be able to testify.
15 Okay?

16 THE WITNESS: Yes, sir.

17 THE COURT: Is that fair?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MR. BOOZER:

21 Q. Mr. Simmons -- thank you, Your Honor.

22 Mr. Simmons, just take your time. I've
23 handed you a copy of your PCR application. I think
24 your records have gotten a little bit jumbled up.
25 Just take a moment. Look through it if you need

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1 to. And then we can keep going when you're ready.

2 Okay?

3 THE WITNESS: All right.

4 (Pause.)

5 THE WITNESS: All right. I'm ready.

6 BY MR. BOOZER:

7 Q. Okay. Mr. Simmons, you were discussing with
8 the Court and explaining to the Court why you felt
9 your plea was involuntary. And one of the issues
10 you brought up was that you felt like your lawyer
11 didn't file or tell you about some pretrial motions
12 that could be made. What else do you feel like
13 your lawyer failed to do for you?

14 A. He failed to bring up the affidavit, the
15 warrant.

16 Q. Okay.

17 A. Something he forgot.

18 Q. Explain that to the Court.

19 A. He never brought up that the officer, he had
20 a false statement in his affidavit in order to get
21 the warrant.

22 Q. All right. So it was -- is it your opinion
23 that there was some false statements in a warrant
24 or -- in trying to get the warrant, there was a
25 false statement made?

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1 A. Yes.

2 Q. Okay. Why do you think that there was a
3 false statement made?

4 A. Because what he said, what Officer
5 Patsourakis said in his affidavit, he said that the
6 alleged victim was between the age of 11 and 14
7 when she clearly said in her own written statement
8 she was 12. That's the main reason.

9 Q. All right. When did you learn about that?

10 A. After I was locked up.

11 Q. Okay. Did you ever sit down and review any
12 discovery materials or what would have been called
13 responses to a Rule Five request with Mr. Walters?

14 A. No, sir.

15 Q. Okay. Did you ever have any discussion with
16 Mr. Walters about trying to challenge the warrant?

17 A. No, sir.

18 Q. Did you ever have a preliminary hearing in
19 your case?

20 A. No, sir.

21 Q. All right. Do you understand what that is?

22 A. Yes.

23 Q. All right. Is that something you've come to
24 understand since you've been incarcerated?

25 A. Yes, I didn't know it before.

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1 Q. Did you have any discussions with Mr. Walters
2 about having a preliminary hearing?

3 A. No, sir.

4 Q. All right. Is that something -- knowing what
5 you know now, is that something that you would have
6 wanted to have had?

7 A. Yes.

8 Q. And do you know why is that -- why would you
9 have wanted a preliminary hearing?

10 A. For the simple fact I didn't know anything
11 about the case, like, you know...

12 Q. Okay. Moving forward. What else? What
13 other allegations do you have?

14 A. The indictment.

15 Q. All right. Explain. What about the
16 indictment?

17 A. On the indictment, the first thing is they
18 had different dates. The dates on the indictment
19 were different from the officer's affidavit and the
20 warrant. In the affidavit he said this crime was
21 going on between the year of 2010 and 2012, two
22 years, with the alleged victim. In the indictment
23 it went from 2009 to 2012. So it's three years.

24 So, I mean, which is it? Like, they changing
25 it up from two years to three years.

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1 Q. All right. Did you -- when did you learn
2 about that?

3 A. Once again, when I was locked up.

4 Q. Okay. Did you have any discussion with
5 Mr. Walters about those differing dates?

6 A. No, sir.

7 Q. Had you known that there were dates --
8 discrepancies in dates, would you have wanted
9 somehow to pursue that?

10 A. Yes, sir.

11 Q. And did your lawyer do anything about that?

12 A. No, sir.

13 Q. All right. Had you known that you could
14 potentially make any sort of challenges with regard
15 to discrepancies in dates, would you have entered
16 the plea or would you have gone to trial?

17 A. I would have gone to trial.

18 Q. All right. Continue on with your other
19 allegations, please.

20 A. All right. And also with the indictment they
21 charged me with sexual battery, but I know for a
22 fact in the indictment -- I learned, you know, that
23 in the indictment you have to list the actual facts
24 and acts to support the charge. They never stated
25 anything that I had done in the indictment, not

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1 once.

2 Q. Did you review the actual indictment with
3 Mr. Walters?

4 A. No, sir.

5 Q. When was the first time you ever saw the
6 indictment?

7 A. Once again, locked up.

8 Q. How did you get a copy of it then?

9 A. I had to send my family because, you know,
10 the transcript was stolen. Had to send my family
11 to his office to get all my paper, my whole
12 motions. That's how I got the papers, you know, to
13 look over.

14 Q. And when you say motion, would that have been
15 your Rule Five materials?

16 A. I guess that's what it is; I don't know.

17 Q. But you got those from Mr. Walters' office?

18 A. Yes. I had to send somebody to go get them.

19 Q. And regarding that aspect of the indictment,
20 would you feel like -- I guess, your testimony is
21 you didn't feel like it sufficiently stated certain
22 elements?

23 A. Yes.

24 Q. Okay. Did you ever have any discussions with
25 Mr. Walters about challenging the indictment for

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1 that reason?

2 A. No, sir.

3 Q. Had you known that you could potentially make
4 that challenge, would you have?

5 A. Yes.

6 Q. All right. Continue on, please.

7 A. All right. Next is the police report and how
8 they illegally searched and seized my cell phone.
9 First, like, how they got my phone. I never
10 gave them my consent to even get my phone. My wife
11 gave them my phone. I didn't give them permission
12 to even touch it. And then after that they didn't
13 even have a warrant to get the phone. And every
14 time I asked them about the cell phone, the police
15 officer, they made me go stand outside. They
16 wouldn't even give it back to me.

17 Q. Did you have any discussion with Mr. Walters
18 about the circumstances leading up to the seizure
19 of the phone?

20 A. No, sir.

21 Q. Did you express this to him?

22 A. Yes, sir.

23 Q. What was his response?

24 A. Nothing. Like, he didn't bring it up. Like,
25 he never really talked about it. Everything I

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1 talked about, he never gave me any type of feedback
2 with me.

3 Q. Is this claim that you have right now that
4 you're discussing, is it also sort of under the
5 claim that there should have been some pretrial
6 motions or some attempt to limit or toss out
7 certain evidence?

8 A. Yes, sir.

9 Q. Do you feel that your lawyer discussed or
10 pursued those avenues with you?

11 A. No, sir.

12 Q. And is this something that you've since
13 discovered that you could potentially challenge?

14 A. Yes, sir.

15 Q. And had you known about this at the time,
16 would you have pled guilty or proceeded to trial
17 and attempted to challenge this evidence?

18 A. Attempted to challenge it in trial.

19 Q. If you would, keep going with your
20 allegations.

21 THE COURT: I need to take a little break. I
22 got something that's come up. Don't discuss your
23 testimony with anybody. We're going to continue
24 here in just a few minutes but I have a situation
25 that's come up I need to attend to. Everybody just

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1 stand down. You can go back and sit at counsel
2 table but you're not allowed to discuss your
3 testimony with anybody. Okay?

4 THE WITNESS: All right.

5 THE COURT: When we come back in, we'll come
6 right back to that. Okay. Thank you all very
7 much.

8 MR. BOOZER: Thank you.

9 (Brief recess taken from 10:45 until
10 11:01 a.m.)

11 THE COURT: Had a little issue, the break was
12 due to my -- come on back up, Mr. Simmons.

13 I apologize about that break. We had some
14 court staff that needed to attend to a medical
15 issue so I apologize. All right.

16 So, ready to go on, Mr. Boozer?

17 MR. BOOZER: We are, Your Honor.

18 THE COURT: Are you ready, Mr. Simmons?

19 THE WITNESS: Let me get the same page.

20 THE COURT: All right. Get back to where you
21 were.

22 MR. BOOZER: Still under oath.

23 THE COURT: You are still under oath.

24 THE WITNESS: Okay. We talked about cell
25 phone.

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1 THE COURT: You had talked about cell
2 phones. You talked about pretrial motions that
3 hadn't been filed. You talked about your
4 indictment issues. You talked about the arrest
5 warrant issues. You talked about the preliminary
6 hearing. You talked about the discovery. You
7 talked about the warrant affidavit, and about the
8 cell phones and the indictment, date issue. And
9 the indictment, sexual battery issue. You covered
10 all of that.

11 THE WITNESS: All right.

12 BY MR. BOOZER:

13 Q. Let's pick up where we were.

14 As you suggested and just spoke about, we
15 were discussing the cell phone and the seizure of
16 that and making a pretrial motion. Was there
17 anything else with regard to that allegation? I
18 think you began it with the police report.

19 Is there anything else with regard to that
20 allegation we need to cover?

21 A. Police report. Nothing else about the cell
22 phone.

23 Q. Okay. Now what would be your next allegation
24 you have?

25 A. I want to talk about the alleged victim, if

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

1 we can go there.

2 Q. Okay. Let's talk about that.

3 A. Well, her name is Minor

4 THE COURT: Minor ?

5 THE WITNESS: Yes. Minor .

6 BY MR. BOOZER:

7 Q. What's your claim with regard to that?

8 A. When Mr. Walters -- I wanted him to actually,
9 you know, go get some background on her, like, you
10 know, what type of young lady she was because I
11 know he was looking at me as far as, like, I'm the
12 adult, you know, put everything on me. But he
13 never even tried to, you know, bring her up,
14 basically.

15 Q. Why do you think that was important?

16 A. Because, she -- I mean, with her acting --
17 like I said just now, I'm the adult. You know,
18 they put everything on me as far as, you know, you
19 knew better, you know, whatever, which I didn't do
20 anything to her but she was just an out-of-control
21 teen. Plain and simple.

22 Q. Okay. What other allegations do you have?

23 A. About her?

24 Q. Well, if there's something else about her,
25 please tell us. But if not, tell us what your next

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1 one is.

2 A. Allegations. That's about it with her.

3 Like, I just wanted to get that out there.

4 Q. Okay. And what would be your next
5 allegation?

6 A. That's it.

7 Q. And take your time to make sure we're not
8 leaving anything out.

9 A. We went over about everything besides
10 Mr. Walters.

11 Q. Okay. His testimony?

12 A. Going on him, you know what I mean, like, you
13 want to talk about him?

14 Q. Yeah. Let's continue with whatever your
15 allegations are. If they're against Mr. Walters or
16 whatsoever. Whatever you've alleged in your PCR,
17 we need to cover all of this. If you have any
18 other allegations as they pertain to your plea or
19 if they pertain to Mr. Walters' representation of
20 you.

21 A. All right. With the plea, move onto the
22 plea. I know that he came with the plea for 10
23 years. I didn't even know I had a plea date. I
24 had to find out on my own. And that plea date was
25 in August 29th, 2014. I was supposed to have pled.

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1 I didn't find out. He never told me that.

2 Q. All right. So explain that a little bit
3 more. You were supposed to have entered a plea at
4 another date?

5 A. Yes, on that date. On the 29th.

6 Q. What happened then?

7 A. He never told me that. He just kept asking
8 me, like, you know, what are you going to do about
9 the plea. He never told me I had a date to have
10 done that by.

11 Q. What -- tell us what some other allegations
12 you had.

13 A. With the plea. All right. He came with the
14 plea to 10 years. He never explained to me, okay,
15 out of those 10 years, if the judge tell you, you
16 know, it's non-violent you'll do this amount of
17 time. If it's violent you'll do this amount of
18 time. I didn't know any of that.

19 Q. Okay. And what do you know now?

20 A. I know with the 10, 85 I -- this is what I
21 thought. I thought off of that 10 and it was
22 violent, I thought everything was the same. Like,
23 I would do half of the 10. And you can, you know,
24 get a job on, you know, at the institution and work
25 my way down, you know, like, to a lower number.

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1 But I didn't know I had to do eight years and some
2 change off of a 10-year deal, you know, a plea.

3 Q. Do you recall if that was explained to you by
4 the judge at the plea?

5 A. No. He just told me it was non -- I mean, it
6 was violent. A violent 10, 85 percent. He never
7 told he how many years I would have to do off, you
8 know.

9 Q. At the time did you know what that meant?

10 A. No, sir.

11 Q. Had you known that, would you have pled
12 guilty or gone to trial?

13 A. I would have gone to trial.

14 Q. Okay. Continue on with your allegations.

15 A. All right. All right. I want to go back to
16 -- I'm going to PCR, too. I'm going to talk about
17 the PCR. When I sent my family -- I think I
18 already told this. Did I say that when I told them
19 to go pick the --

20 Q. Correct. You discussed them having to go
21 pick up a motion, what you called a motion --

22 A. Yeah.

23 Q. -- which I think you're referring to
24 discovery materials?

25 A. Yes.

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

1 Q. Okay.

2 A. So he told them that I can't go back on a PCR
3 because I pled. And I never understood why until I
4 had time in prison to sit and think about it, you
5 know, do some research. He didn't want me to do it
6 because I had to bring him back up here. I didn't
7 know that. I thought once I was done with him that
8 was it. That's why he didn't want me to go back on
9 PCR or tell my people that.

10 Q. Okay. But as far as things, though, your
11 lawyer did or didn't do with regard to his
12 representation of you prior to the plea, is there
13 anything that we haven't covered?

14 A. That's about it, sir.

15 Q. Have you testified to all of your allegations
16 that are contained in your PCR application? This
17 is your one day to do it. So I want to make sure
18 we've got everything.

19 A. I mean, I talked about trying to get the
20 indictment thrown out. We talked about that?

21 Q. We talked about that. Did you allege
22 anything with regard to statements that were either
23 made by you or by other witnesses?

24 A. Yes. If I would have filed the motion to
25 have any and all alleged statements thrown out.

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

1 Q. Okay. We talked about that. Is there
2 anything else that we have not talked about?

3 A. I mean, the pretrial. I mean, the motion is
4 the main thing as far as, like I say, throwing out
5 stuff like the cell phone, the statement, the
6 alleged evidence in the cell phone, the DVD in the
7 interview. Like, I mean --

8 Q. Let me ask you this. In this case, why did
9 you go in and enter a guilty plea?

10 A. On counsel, Mr. Walters.

11 Q. Explain that.

12 A. That's the only thing he ever told me to do,
13 just plead. I never wanted to plead, ever. The
14 day of court --

15 Q. Okay.

16 A. -- it got even worse. Like, when I met him
17 in the back, the back room, you know, of the
18 courthouse or whatever he talked to me and was
19 telling me -- you know, I was telling him I'm about
20 to go out here and talk about the alleged victim
21 and all. He told me not to even do that. Put
22 everything on me.

23 Q. Would you admit that you went into the plea
24 court that day and admitted your guilt in this case
25 or admitted that you were guilty?

JOSEPH O'NEIL SIMMONS - DIRECT BY BOOZER

- 1 A. Yes.
- 2 Q. Okay. Why did you do that? Why did you
3 answer the questions that were posed to you by the
4 plea court that day in the way that you did?
- 5 A. Mr. Walters.
- 6 Q. When you say Mr. Walters, what are you
7 saying?
- 8 A. He -- that's the only thing he was coaching
9 me back there to do, put everything on me.
- 10 Q. He was coaching for you to say certain
11 answers --
- 12 A. Yes --
- 13 Q. -- to questions?
- 14 A. -- everything.
- 15 Q. At the time did you have any complaints about
16 Mr. Walters? Did you express any complaints to the
17 Court about Mr. Walters?
- 18 A. No, sir.
- 19 Q. Why not?
- 20 A. I figured with the plea there's no need, you
21 know, for me to talk about him because --
- 22 Q. Have you learned -- a lot of these things
23 that you've discussed and alleged today, are these
24 things that you've learned after your plea?
- 25 A. Yes, sir.

JOSEPH O'NEIL SIMMONS - CROSS BY COLEMAN

1 Q. Okay. Mr. Simmons, that's all the questions
2 I have but please answer any the State may have for
3 you.

4 A. All right.

CROSS-EXAMINATION

6 BY MS. COLEMAN:

7 Q. Good morning, Mr. Simmons.

8 A. Good morning.

9 Q. You said you met with your attorney nine or
10 10 times before your plea; is that right?

11 A. Yes.

12 Q. Do you recall reviewing discovery with your
13 attorney? Like, the State's evidence against you?

14 A. No, sir -- I mean, no, ma'am. No, ma'am.
15 I'm sorry. I'm sorry.

16 Q. That's fine. Did you discuss any possible
17 defenses with your attorney?

18 A. No, ma'am.

19 Q. Did you give him any leads or witnesses to
20 investigate?

21 A. No, I don't think I gave him no witnesses.

22 Q. You waived your constitutional right to a
23 jury trial and to remain silent and to present
24 witnesses on your behalf at the guilty plea,
25 right? Do you remember doing that?

JOSEPH O'NEIL SIMMONS - CROSS BY COLEMAN

- 1 A. I can't remember.
- 2 Q. Okay. Do you remember telling the plea judge
3 that you were satisfied with your attorney's
4 services?
- 5 A. Yes.
- 6 Q. And you had no complaints against him?
- 7 A. Yes.
- 8 Q. And you told the judge that no one was
9 promising or threatening you to plead guilty,
10 right?
- 11 A. Yes.
- 12 Q. Do you remember telling the plea judge that
13 you wished to plead guilty?
- 14 A. That I wished to plead guilty?
- 15 Q. Yes. That you admitted that you were guilty
16 in this case.
- 17 A. Yes.
- 18 Q. You told the judge that you were indeed
19 guilty of this crime, right?
- 20 A. Yes.
- 21 Q. Do you remember agreeing with the facts that
22 the State presented at the hearing?
- 23 A. I don't remember any facts. I don't know
24 anything about the hearing.
- 25 Q. Okay. If you had gone to trial you would

JOSEPH O'NEIL SIMMONS - CROSS BY COLEMAN

1 have faced up to 20 years in prison; is that right?

2 A. Yes.

3 Q. And you got 10 years for pleading guilty,
4 right?

5 A. Yes.

6 Q. Would you agree that that's better than a
7 20-year sentence?

8 A. No, no years at all would be better than
9 that.

10 Q. Right. Of course. But that is one of the
11 reasons why you might have pled guilty, to get a
12 lesser sentence?

13 A. Yes.

14 Q. One of your allegations is that the officer
15 made a false statement in his affidavit to obtain a
16 warrant and you said that he wrote that the victim
17 was between 11 and 14 years old, right?

18 A. Yes.

19 Q. And you said that the victim was actually 12
20 years old; is that correct?

21 A. In her written statement that's what she
22 said.

23 Q. Okay. Would you agree that 12 years old is
24 between the ages of 11 and 14 years old?

25 A. Yeah. On paper, like, 11, 12, yes.

GLENN WALTERS, SR - DIRECT BY COLEMAN

1 Q. Okay. Do you still want a trial on these
2 charges facing up to 20 years?

3 A. If I would have -- if I can get this
4 overturned and have that chance, I will go to a
5 trial, yes.

6 MS. COLEMAN: Thank you. No further
7 questions.

8 THE COURT: Any redirect?

9 MR. BOOZER: No redirect, Your Honor.

10 THE COURT: Thank you, Mr. Simmons. You may
11 step down. Mr. Boozer, you may call your next
12 witness.

13 MR. BOOZER: No further witnesses on behalf
14 of the Applicant, Judge.

15 MS. COLEMAN: State calls Glenn Walters.

16 THE COURT: Still under oath. Okay,
17 Mr. Walters?

18 THE WITNESS: Yes, sir, Your Honor.

19 THE COURT: Thank you.

20 GLENN WALTERS, SR., testified further under
21 oath as follows:

22 DIRECT EXAMINATION

23 BY MS. COLEMAN:

24 Q. Mr. Walters, how long have you been
25 practicing law?

GLENN WALTERS, SR - DIRECT BY COLEMAN

1 A. I guess probably 25 years, 25, 26 years.

2 Q. Do you recall whether you were appointed or
3 retained in this case?

4 A. I was retained.

5 Q. How many times did you meet with the
6 Applicant prior to his guilty plea?

7 A. I believe his testimony is correct; it's nine
8 or 10 times.

9 Q. Did you file any Rule Five or Brady motions?

10 A. Standard procedure in my office is, one, you
11 file the Rule Five when you receive the
12 information, you provide a copy of the file to the
13 client. Client is then scheduled to come back in
14 and you tear through Rule Five or find out what
15 they agree with, and what they disagree with. And
16 that's the normal procedure.

17 Q. Did you review the discovery with the
18 Applicant?

19 A. As he stated, this particular case there was
20 an interview, I believe, at the ARC Center because
21 this was a sexual abuse case. In addition to that,
22 he also had pictures of the young lady on his
23 phone. We went through that. And of course we
24 went through the statements and the other
25 information inside of the file. So we thoroughly

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1 went through everything.

2 Q. Okay. And can you briefly describe -- well,
3 how would you classify the State's evidence against
4 the Applicant? Would you describe it as
5 overwhelming?

6 A. I would describe it as overwhelming. Number
7 one, the ARC interview was not beneficial to the
8 defendant. Number two, this young lady it appears
9 that she developed early and was very aggressive.
10 And there was also, you know, pictures on his phone
11 of the young lady undressed. And in addition to
12 that, she was very candid about their relationship
13 and what had been going on. So her testimony was
14 very compelling that there was a relationship.
15 Moreover I questioned him I said, well, what are
16 you doing with pictures of this young lady
17 unclothed on your phone.

18 Q. And let's go into that a little bit. One of
19 his allegations is that you were ineffective for
20 failing to investigate the victim's, what he called
21 out-of-control behavior. The victim was 12 years
22 old, wasn't she?

23 A. I believe she was.

24 Q. Okay. Would you -- did you see any legal
25 reason to investigate her behavior?

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1 A. Well, the strategy that was put forward by
2 the defendant in this particular case was -- and I
3 disagreed with it. He was out on bond. There was
4 a restraining order where he could not return to
5 the home. And of course he was married to this
6 child's mother. What he would do is he would -- he
7 was still meeting with the child's mother at
8 various hotels they would stay in and they wouldn't
9 have to return to the home. He still had a
10 relationship with her. He'd meet her at a hotel.

11 He was under the impression that somehow the
12 mother was going to talk to the daughter, that she
13 wasn't going to testify. And of course my position
14 was, I'm not going to be part of attempting to
15 suppress someone's testimony or to attempt to
16 change their testimony with regards to a criminal
17 prosecution.

18 But he was self-assured that by sleeping with
19 the mother at various hotels this issue was under
20 control. And of course I made it clear that this
21 young lady is going to testify. They've got the
22 interview at the ARC Center. And in addition to
23 that, the prosecution's made it clear that she's
24 aggressively going to go after you. And sleeping
25 with the child's mother, your wife, I think this

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1 will be ineffective in attempting to suppress her
2 testimony and plus, I wasn't going to be part of
3 any type of activity to suppress testimony or
4 prevent someone from testifying.

5 Q. Okay. Did you discuss the Applicant's
6 version of the facts in this case?

7 A. Sure.

8 Q. And did he present you with any possible
9 defenses other than attempting to suppress any
10 testimony?

11 A. As far as possible defenses, number one, he
12 admitted he did it. Number two, he had phone
13 pictures of the naked young lady on his phone.
14 Number three, he admitted that he was still
15 sleeping with the mother of the child, and it was
16 under control that the victim was not going to
17 testify. And of course I said I can't be a party
18 to that.

19 And, he was self-assured that everything was
20 going to be okay.

21 And of course when it was time to plead
22 Minor appeared in the courtroom. And Minor
23 was very adamant about what she was going to do.
24 And of course when I was there I talked to my
25 client, talked to him in the back. She was outside

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1 here in the courtroom. And she was very animated.
2 And the message I got was this was not going to be
3 good if he -- if this goes to trial.

4 Q. Did you discuss the elements of the charges
5 with the Applicant?

6 A. Sure. We go through the elements and we went
7 through the evidence.

8 Q. Did you explain parole eligibility to him?

9 A. What we normally tell the client is if it's
10 violent and the percentage that you have to do in
11 jail. And, of course, just like in federal court,
12 we tell them we can't calculate what that will be.
13 We offer the percentage and I think of a violent
14 offense it's 85 percent. And of course with the
15 South Carolina Department of Corrections how they
16 credit people and how they achieve that, we have
17 nothing to do with that.

18 Q. Okay. Do you recall if Judge Early explained
19 his parole eligibility to the Applicant at the
20 guilty plea?

21 A. I'm not sure. I can't remember. I just know
22 if it's a violent offense, I think it's about 85
23 percent.

24 And, at that time Judge Early would do his
25 standard plea. So it wouldn't turn into -- he

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1 normally doesn't get into calculating and telling
2 people what time they're going to get out.
3 Normally he says it's a violent offense and you're
4 pleading to a violent offense.

5 Q. I'm going to go into the evidence a little
6 bit because some of his allegations, and you might
7 have already touched on this but one of his
8 allegations is that there were statements by him
9 and other witnesses that he believes you should
10 have moved to suppress. Did you see any legal
11 reason to suppress any statements that they had
12 against him?

13 A. No. His position all along was, I did it but
14 she's not going to testify.

15 Q. Okay.

16 A. I said, well, we need to consider if you're
17 going to trial, if you're going to plead, but he
18 continued to sleep with the mother at various
19 hotels,

20 Q. The cell phone that he had, you mentioned he
21 had photographs, incriminating photographs on the
22 cell phone. Did you see any legal reason to
23 challenge the cell phone being admitted into
24 evidence?

25 A. What we had here was, is they had obtained

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1 the information on the phone because I believe the
2 mother had seen the video or something of the
3 daughter on his phone and she contacted the
4 police. I think she dialed 9-1-1 or something like
5 that. And even while he was out on bond there was
6 some communication between the victim and the
7 defendant.

8 And I don't know how he obtained pictures or
9 what went on but I suspected that -- I was talking
10 as his lawyer but he had his own agenda on what he
11 was doing.

12 Q. Did you believe that if you had moved to
13 suppress the cell phone as evidence that would have
14 been successful?

15 A. No.

16 Q. Okay. The indictments, the Applicant has
17 alleged that the indictments should have been
18 challenged due to flaws in the dates on the
19 indictments and the facts of the indictments. Did
20 you see any reason to challenge the indictments in
21 this case?

22 A. No. Under the circumstances when the victim
23 appeared and she was animated and said she was
24 going to make it clear what he had done and there
25 was a possibility that he could get 10 years, we

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1 got to move, we got to move now. And there's a
2 possibility that you could get 20 years under the
3 circumstances.

4 And his wife, I'm not sure if she appeared
5 that day but the victim was there and she was, she
6 was ready to put on a show.

7 Q. Okay. Before the guilty plea did you review
8 the Applicant's constitutional rights with him?

9 A. Yes.

10 Q. Did he ever tell you that he did not
11 understand something?

12 A. He never stated that he did not understand.
13 I think he understood everything. He just couldn't
14 believe that the victim was going to actually
15 testify against him.

16 Q. Ultimately whose decision was it to plead
17 guilty?

18 A. It was his decision and all options were put
19 on the table as to what was available to him. He
20 could go to trial or he could plead. And I don't
21 think -- it didn't sink in until that young lady,
22 Minor walked in. And she was not a happy
23 camper.

24 Q. Did you agree with his decision to plead
25 guilty?

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1 A. Yes.

2 Q. And even today, today looking back, do you
3 still agree with his decision to plead guilty?

4 A. Yes. He's a young man. He could have gotten
5 20 years, but he got 10.

6 MS. COLEMAN: Thank you. No further
7 questions.

8 THE COURT: All right. Cross-examination.

9 MR. BOOZER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. BOOZER:

12 Q. Mr. Walters, how are you doing?

13 A. Fine, sir. How are you?

14 Q. I'm doing fine, sir. Thank you.

15 Did you discuss with the Applicant
16 challenging potential pieces of evidence or the
17 processes by which that evidence was obtained such
18 as search warrant, the cell phone and other
19 statements?

20 A. Yes.

21 Q. Do you know what that conversation would have
22 consisted of and whether it's something that he
23 raised or whether it was something you had raised?

24 A. Normally what we do is we give a copy of the
25 Rule Five. When you come in we go through every

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1 sheet that's in the Rule Five in the information.
2 And we discuss the possible motions and things of
3 that nature. In this particular case he made it
4 clear he was still sleeping with the mother of the
5 child and the child wasn't going to testify.

6 Q. But going back to that. Did y'all have any
7 -- did he ever raise or did you all have any
8 specific and particular discussion about trying to
9 actually pursue suppressing the cell phone, whether
10 it was because the search wasn't valid or the mom
11 had given the phone over and she didn't have
12 authority to do that? Did you have any sort of
13 discussion?

14 A. We discussed every aspect of the Rule Five.
15 But what was disappointing was, is when he walked
16 in the office with the phone and he had pictures of
17 the victim on the phone after he was out on bond.

18 Q. Okay. Did you -- and you may have already
19 testified to this, but did you ever discuss with
20 him challenging the officer's statements made in
21 obtaining the search warrant -- or excuse me, the
22 warrant for his arrest?

23 A. I believe the officer's name was
24 Patsourakis. I'm not sure -- I'm not sure.

25 And the objection that was raised by the

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1 defendant was about the age, whether she was 11 or
2 whether she was 12. And that was his main concern
3 as far as whether she was 11 or 12.

4 As he stated with the ARC interview where you
5 had the examiner asking those questions, he really
6 didn't want to watch it. He's right, he only
7 watched a small aspect of it. Normally if there's
8 a DVD you make the client sit down and watch the
9 entire DVD and then ask them questions about it.
10 He didn't want to do that.

11 Q. Did you actually sit down with him and review
12 the actual indictment itself?

13 A. I know that when we were here for the plea we
14 went through all of the paperwork, discussed
15 everything. But his concern wasn't with regards to
16 the paperwork. He wanted to come out of the back
17 and see if Minor was here. And Minor was
18 here. She was primed. She was ready to go.

19 Q. Did you have any discussion with him about
20 the indictment, as he testified, raised or charged
21 what he called sexual battery? Do you recall any
22 discussion about that or --

23 A. Well, as he stated, we met nine or 10 times.
24 Honestly, he wasn't concerned about the paperwork.
25 He just made it clear that Minor is not

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1 coming. She's not going to testify.

2 And he seemed -- he said, I have the
3 situation under control, you know, I'm still
4 sleeping with the mother of the child. I made it
5 clear, we can't be involved in anything that would
6 be trying to suppress someone from coming to Court
7 and testifying. But he claimed it was under
8 control because the mother of the child was
9 continuing to sleep with him while he was out on
10 bond.

11 I said, this is sort of a precarious position
12 to be in. You're accused of sleeping with her
13 daughter and she's continuing to sleep with you,
14 and you're telling me that this is all a house of
15 cards and you can walk away from it.

16 Q. Was there ever a plea that was set up for
17 August 29th to your recollection?

18 A. I can't remember.

19 Q. Did you all discuss actually having a trial?

20 A. We discussed the issue with regards to having
21 a trial and the evidence that would be presented
22 against him, the ARC interview, the allegations
23 that the young lady would make, what she was going
24 to testify to.

25 But I was told it's just not going to

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1 happen. She's going to -- she's not going to
2 testify against me. Those were his words. And my
3 reaction was, you know, you're playing with fire.
4 You're sleeping with her mother and you admitted
5 that you've been sleeping with the daughter. You
6 got things on your phone. I don't think you
7 understand the implications of what is going on
8 here and how serious this is.

9 Q. I think earlier you testified that normally
10 you explained the violent versus non-violent aspect
11 of a sentence with your client. Do you recall
12 specifically explaining that to this particular
13 Applicant?

14 A. I don't. I follow my standard procedure and
15 if I see it's violent, I'll sit down and tell them
16 what percentage that means. And of course
17 sometimes defendants want to know the exact date of
18 what will occur. And my reaction is, we don't
19 know. Of course, you can go to the Department of
20 Corrections and get into an infraction and you can
21 end up staying longer.

22 Q. Following the plea, did his family ever get
23 from you any materials or did you ever give to his
24 family any materials or files from his case?

25 A. I don't remember. He testified that they got

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1 the Rule Five information from my office. Normally
2 what our procedure is if someone's incarcerated and
3 a family member shows up, we'll ask them to have
4 that person that's incarcerated send us a letter
5 stating this person is going to pick up my file.
6 My staff will make a copy of it. We'll ask for
7 their driver's license and we have -- in our office
8 we have a pick-up form where you got to show your
9 driver's license and sign your name if you pick up
10 something. And if you drop something off we ask
11 for your driver's license and get a copy of
12 everything and say this person dropped it off,
13 because we've been burned before where people
14 claimed they did something. And I said, well, just
15 stop it. Just jot down who's coming in and
16 dropping something off or picking something up.
17 And if they made a request and we have the proper
18 information, as he stated, they would have gotten a
19 copy of the file.

20 Q. But that's the office procedure. You're not
21 sure whether that occurred or not?

22 A. No. I'm not sure. If he said they came by
23 and got it, evidently they followed the procedure
24 and picked it up if they picked it up for him.

25 Q. Do you recall or was there ever -- was there

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1 a preliminary hearing held in this case?

2 A. I can't remember. I know this. Normally in
3 a CSC case if you want to embolden the victim to
4 come after you and hurt you, if they show up for
5 the preliminary hearing you can get an idea of
6 what's going to happen at trial. But in this
7 particular case against my advice the defendant had
8 it under control.

9 Q. Do you know if you had that particular
10 discussion with him about having a preliminary
11 hearing?

12 A. We discussed every aspect of the case but he
13 had it under control because he was, he claimed he
14 was still sleeping with the mother.

15 MR. BOOZER: Beg the Court's indulgence, Your
16 Honor.

17 THE COURT: Yes, sir.

18 (Off-the-record discussion.)

19 BY MR. BOOZER:

20 Q. Mr. Walters, in reviewing the video as was
21 testified to earlier, was it your recollection that
22 he didn't want to watch the video or could it have
23 been -- did you ever make a statement to him that
24 you in reviewing the video with him simultaneously
25 you thought she was -- you could already tell she

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1 was lying and maybe it was you that cut off the
2 tape?

3 A. I can't remember but the normal procedure
4 with a DUI or in this case the ARC interview, we
5 pop it in, the client's allowed to review it, ask
6 any questions. And if they object to it or
7 something we sit down and discuss it. But, it was
8 the standard ARC interview where the investigator
9 comes in and they start a conversation. And then
10 there's a discussion about what happened.
11 And, the client's allowed to review it.

12 It also gives you a preview of what to expect
13 at trial if it's going go forward. And it gives
14 you a flavor of what the jury is going to hear.

15 And that's, you know, that's the standard
16 procedure. We don't cut anybody off. If you want
17 to see something you can get it and if you want a
18 copy you file it and get it.

19 Q. But that's speaking, I guess, generalities.
20 That's your office procedure. It could have been
21 different, though, with Mr. Simmons?

22 A. I don't remember, but I certainly wouldn't
23 have cut him off or tried to turn a DVD off if it
24 was playing. When I handle federal cases the
25 defendant can't get a copy of any of the discovery

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1 so I put people in a room and let them watch a TV
2 or something and the paralegal has to sit there and
3 make sure they don't take anything. In this
4 particular case there was no restrictions. We
5 could have burned a copy of the DVD and given it to
6 him.

7 Q. Prior to the plea, did you ever have any
8 discussion with Mr. Simmons about what questions
9 the Court would be asking him to accept the plea?

10 A. Sure. We go through the standard questions
11 about the waiver of your constitutional rights, the
12 questions with regards to the services provided by
13 your attorney, and also the questions with regards
14 to if he had consumed any drugs or alcohol before
15 the plea. And of course the last part was it
16 freely and voluntarily entered into. And last but
17 not least, are you pleading guilty because you are
18 guilty.

19 So we go through the whole spiel and we go
20 forward from there.

21 Q. Did you ever make any suggestions to him as
22 to how he should answer those questions?

23 A. What I do is I normally go through the
24 questions and if you have a question about -- they
25 don't do this everyday and since we do, we tend to

1 rush through it sometimes. So normally what I do
2 is I ask them, do you have any questions about
3 that.

4 And when you start talking to someone about
5 giving up certain rights, you have to explain to
6 them what you're giving up. And then also the
7 judge is going to ask you this question and you can
8 either answer it yes or no.

9 And certainly sometimes they understand and
10 since we do it everyday, sometimes we take for
11 granted that a lay person may not understand
12 certain terminology. So you go through it with
13 them and tell them what the appropriate response
14 will be, if you want to plead guilty.

15 MR. BOOZER: Thank you, Mr. Walters. That's
16 all I have.

17 MS. COLEMAN: Nothing further from the State.

18 THE COURT: Thank you very much.

19 THE WITNESS: Thank you, Your Honor.

20 MS. COLEMAN: The State has no further
21 witnesses.

22 THE COURT: Any objection to Mr. Walters
23 being excused?

24 MS. COLEMAN: No, Your Honor.

25 MR. BOOZER: No, Your Honor.

1 THE COURT: Have a great day, Mr. Walters.

2 THE WITNESS: Yes, sir. Thank you.

3 THE COURT: Anything else from the State?

4 MS. COLEMAN: State rests.

5 THE COURT: Anything else from Mr. Simmons?

6 MR. BOOZER: Nothing further on behalf of the
7 Applicant, Your Honor.

8 THE COURT: I'll let you know a decision in
9 your case probably within the next week or two. I
10 don't normally take long on these things. We'll
11 let you know within the next week or so my
12 decision. Okay, Mr. Simmons?

13 THE APPLICANT: All right.

14 THE COURT: Thank you very much. Is that it
15 for you, Ms. Coleman?

16 (Off-the-record discussion.)

17 END OF CASE: 11:42 P.M.

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STATE OF SOUTH CAROLINA)
 COUNTY OF BARNWELL)
 Joseph O'neal Simmons, #362201,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

2015-CP-06-00153

ORDER OF DISMISSAL

FILED FOR RECORD
 2016 DEC -2 PM 2:34
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 BARNWELL COUNTY, S.C.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 5, 2015. Respondent submitted its Return and Motion for a More Definite Statement on July 23, 2015. An evidentiary hearing into the matter was convened on September 21, 2016, at the Aiken 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

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Barnwell County Clerk of Court. Applicant was true bill indicted during the February 2014 term of the Barnwell County Grand Jury for criminal sexual conduct with minor - second degree (2014-GS-06-000081). Applicant was represented by Glenn Walters, Sr., Esquire. On November 17, 2014, Applicant pled guilty as indicted without negotiations or recommendations before the Honorable Doyet A. Early, III. Judge Early sentenced Applicant to a ten year term of imprisonment. Applicant did not appeal his conviction or sentence.

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Applicant filed a timely application for post-conviction relief on May 5, 2015.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Failed to move to suppress evidence under the Fourth Amendment.
 - b. Failed to move to quash the indictment.
2. Involuntary Guilty Plea
 - a. Plea counsel did not advise Applicant with all the facts before this guilty plea.

III. GUILTY PLEA TRANSCRIPT

Before the evidentiary hearing on September 21, 2016, Respondent informed this Court that the transcript from the guilty plea was no longer in existence and needed to be reconstructed.¹ Respondent presented testimony from Susannah M. Ringler, Esquire, who prosecuted the case, and Glenn Walters Sr., Esquire, who were both present at the plea. After testimony was presented, this Court found that the guilty plea record had been reconstructed.

IV. SUMMARY OF RELEVANT TESTIMONY PRESENTED

At the PCR hearing, Applicant testified on his own behalf. Respondent presented testimony from Plea Counsel Glenn Walters, Sr. (hereinafter "Plea Counsel").

Applicant

Applicant testified that he hired Plea Counsel to represent him sometime in January or February of 2013. He stated that he met with Plea Counsel nine or ten times before his guilty plea at his office because he was out on bond. He stated that he did not recall reviewing discovery, discussing any possible defenses, or giving his attorney any potential leads to

¹ The transcript from Applicant's guilty plea was lost and could not be recovered.

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investigate. Applicant stated that he faced a twenty year sentence if he had gone to trial, but he pled guilty and received a sentence of ten years imprisonment.

Applicant testified that Plea Counsel never tried to defend him. He stated that they spent one hour or less in each meeting and they never discussed his case. He stated that they never discussed defenses or evidence except for the interview of the victim and the psychiatrist. He stated that he told Plea Counsel that he wanted to go to trial because he was innocent. Applicant stated that Plea Counsel never explained to him the time that he faced, which led him to plead guilty involuntarily.

Applicant stated that Plea Counsel failed to file a pretrial motion to suppress his cell phone, which was confiscated without a warrant. He stated that Plea Counsel never explained why he did not move to suppress it, and if he had, Applicant would have challenged this evidence and gone to trial. Applicant testified that Plea Counsel was ineffective for failing to challenge a false statement in the arrest warrant and the officer's affidavit to obtain the warrant—the officer said that the victim was between the ages of eleven and fourteen, but the victim actually admitted that she was twelve years old. However, Applicant agreed that the age of twelve is, in fact, between the ages of eleven and fourteen.

Applicant testified that the indictments were improper because they did not sufficiently state the elements of the crime and because the dates were different from the arrest warrant. He stated that he wanted Plea Counsel to investigate the background of the twelve year old victim to see what kind of person she was, because she was an out-of-control teenager and he got all the blame for the crime because he was an adult.

Applicant stated that Plea Counsel never explained his parole eligibility to him. He stated that if he had known about his parole eligibility he would have gone to trial rather than plead.

Applicant further stated that Plea Counsel told him that he could not file a PCR application. He stated that he never wanted to plead guilty, but Plea Counsel told him he had to.

Plea Counsel

Plea Counsel testified that he had been practicing law for twenty-five years. He stated that he was retained in this case and he met with Applicant about nine or ten times. He testified that his standard procedure is to file Rule 5 and Brady motions and send a copy to his clients, and he did that in this case. Plea Counsel stated that they discussed the elements of the charge and Applicant's version of the facts. He stated that he reviewed the evidence with Applicant, including the pictures of the victim from his cell phone and the interview statement on videotape. He explained that they began to review the videotape, but Applicant did not want to watch it, so they turned it off. He stated that he placed no restrictions on Applicant viewing this video; he could have burned a copy for himself if he had wanted to.

Plea Counsel testified that they did not have any good defenses to pursue because Applicant admitted to him that he committed the crime and he had pictures of the victim on his cell phone. He explained that, before the guilty plea, Applicant told him that he was still sleeping with the mother of the victim, and Applicant's strategy was to have the victim's mother talk the victim out of testifying at trial. Plea Counsel did not agree that this was going to be a successful strategy; he did not want to attempt to change or suppress anyone's testimony. Plea Counsel stated that Applicant was convinced that the victim would not testify against him, but he was incorrect; the victim was very aggressively willing to testify against him at trial.

Plea Counsel described the State's evidence against Applicant as overwhelming. He stated that, ultimately, it was Applicant's decision to plead guilty. Plea Counsel stated that he

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agreed with that decision, and he still believes that it was in Applicant's best interest to plead guilty.

Plea Counsel testified that the arrest warrants and the indictments were never at issue in this case. He stated that he saw no legal reason to challenge the facts or the dates of these documents. Plea Counsel testified that he saw no legal reason to challenge the admission of Applicant's cell phone. He stated that he saw no legal reason to investigate the twelve-year-old victim's "out of control" behavior. He recalled that he did explain parole eligibility to Applicant. Plea Counsel stated that there was no reason to move to suppress Applicant's statement or any other witness statements. He stated that he did not tell Applicant that he could not file a PCR application, and even if he had said that, Applicant clearly did file an application.

V. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty 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).

VI. 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).

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

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleges Plea Counsel was ineffective in his advice 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)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

Applicant has failed to meet his burden in proving Plea Counsel was ineffective in any regard. This Court finds that Plea Counsel properly relayed the State's plea negotiations and went over the discovery with Applicant, as well as fully explained the possible outcomes in sentencing.

Furthermore, this Court finds that Applicant has not shown that he was prejudiced by any of Plea Counsel's actions as he has failed to show that he would not have pled guilty but would have gone to trial but for Plea Counsel's actions. Accordingly this allegation must be dismissed.

Failure to move to suppress evidence

Applicant alleges that Plea Counsel was ineffective for failing to move to suppress the evidence against him. This allegation is meritless and must be denied.

Plea Counsel credibly testified at the evidentiary hearing that he saw no issues with the evidence against him. There was no reason to move to suppress Applicant's cell phone or the photos from it or any of the witnesses' statements. There was no reason to investigate the victim's alleged "out of control" behavior because this could not be used as a defense; the victim was only

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twelve years old. Any motions to suppress this evidence would have been unsuccessful, and thus cannot be prejudicial.

Applicant has failed to prove that Plea Counsel was ineffective in any regard to this allegation and that any failure to object prejudiced him, and this allegation is denied and dismissed with prejudice.

Failure to move to quash the indictment

Applicant has failed to present any probative evidence that any of Plea Counsel's inactions in regard to this allegation were ineffective and prejudicial, and this allegation is denied and dismissed with prejudice.

This Court finds that the indictment in this case was properly executed and fully explained all elements of the charge. The victim was twelve years old when the crime was committed, which falls between the eleven-to-fourteen year age range required of this charge by S.C. Code Ann. § 16-3-655 (1976). This Court finds Applicant was true bill indicted during the February 2014 term of the Barnwell County Grand Jury, and there was no legal reason for the indictment to be quashed. Plea Counsel was not ineffective for failing to move to quash this indictment.

Furthermore, Applicant has failed to prove any prejudice from Plea Counsel's choice not to move to quash the indictment. Even if the indictment had been quashed based on some error, Applicant could have been re-indicted and taken to trial. This Court finds that Plea Counsel's choice not to move to quash would not have changed Applicant's decision to plead guilty, and thus Applicant has failed to prove prejudice.

Because Applicant has failed to meet his burden of proof for both prongs on the Strickland test, this allegation is denied and dismissed with prejudice.

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OVERWHELMING EVIDENCE

Applicant cannot meet his burden to show that he was prejudiced by any alleged deficiencies because there is overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt).

Applicant had explicit photographs of the twelve year old victim on his cell phone that were going to be used against him at trial. There was a videotaped statement of the victim being interviewed by a psychiatrist, and the victim was "very aggressively" willing to testify against him at trial.

Applicant did not dispute the accuracy of the evidence against him. This is clearly overwhelming evidence of Applicant's guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of Plea Counsel could have reasonably changed the outcome of trial, and this Court finds that this application should be denied.

INVOLUNTARY GUILTY PLEA

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty

plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

Applicant claims his plea was given involuntarily because Plea Counsel failed to advise him on parole eligibility and did not fully advise him of the facts before his plea. This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that he advised Applicant of all facts and risks of pleading guilty, including parole eligibility.

The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375,

379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." *Id.* (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Id.* (citing *Rice*, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be 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.

VII. 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

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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 9 day of NOV, 2016.

Robert E. Hood

ROBERT E. HOOD
Presiding Judge
Second Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BARNWELL)

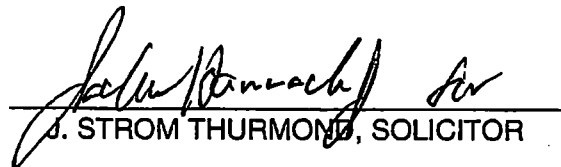
INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT WITH MINOR,
 SECOND DEGREE

§ 16-03-0655(2)

At a Court of General Sessions, convened on February 24, 2014, the Grand Jurors of Barnwell County present upon their oath:

That **JOSEPH ONEAL SIMMONS** did in Barnwell County on or between December 19, 2009 and December 10, 2012, commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree, in that the Defendant did commit a sexual battery upon [REDACTED], a minor who was fourteen (14) years of age or less, but who was at least eleven (11) years of age at the time of the incident. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

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


 J. STROM THURMOND, SOLICITOR

WITNESSES

Williston Police Department

Joey Patsourakos

Law Enforcement Case #: 12-12-3064

SMR

ARREST WARRANT NUMBER

2012A0620300105

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: February 24, 2014

Crystal Baly

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0600081

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2014

**THE STATE
vs.**

JOSEPH ONEAL SIMMONS

CDR #: 0396

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH
MINOR, SECOND DEGREE**

§ 16-03-0655(2)

J. STROM THURMOND, SOLICITOR