

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Frank R. Addy, Circuit Court Judge

KEITH ADGER SMYTH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000894

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

} IN THE COURT OF GENERAL SESSIONS

The State,
-vs-
Keith Adger Smyth,
Defendant.

} TRANSCRIPT OF RECORD
} 2011-GS-42-965-968;1251
}
} February 9 and April 21, 2015
} Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

ANTHONY C. LEIBERT, ESQUIRE
Attorney for the State

TIMOTHY M. RAY, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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1 (Proceedings February 9, 2015)

2 (Forensic Evaluation dated September 4, 2009, marked
3 State's Exhibit No. 1; copy of order August 29th of 2010
4 marked State's Exhibit No. 2; copy of order dated December
5 17th of 2010 marked State's Exhibit No. 3; forensic
6 evaluation dated June 13, 2012, marked State's Exhibit No.
7 4; copy of order dated October 23, 2012, marked State's
8 Exhibit No. 5; forensic evaluation marked State's Exhibit
9 No. 6; federal lawsuit marked State's Exhibit No. 7; federal
10 lawsuit motions marked State's Exhibit No. 8; federal
11 lawsuit request to dismiss marked State's Exhibit No. 9;
12 letter from defendant to D.S.S. marked State's Exhibit No.
13 10.)

14 THE COURT: All right. This is in the matter of State
15 vs. Keith Adger Smyth. This is a competency hearing.

16 MR. LEIBERT: Yes, sir, Your Honor. And we have some
17 exhibits that we've stipulated to. May I enter those?

18 THE COURT: Sure.

19 MR. LEIBERT: And I believe you have the five
20 indictments.

21 THE COURT: Sure. You've got ten exhibits?

22 MR. LEIBERT: Yes, sir. So far it's ten that we've
23 agreed to.

24 State's 1, your Honor, is the forensic evaluation
25 report from the department of mental health dated

1 September 3rd of 2009.

2 State's Exhibit 2 is the order from the Honorable
3 James F. Fraley, Jr. dated August 29th of 2010.

4 And Exhibit 3 is order dated December 17th of 2010
5 from the Honorable Alex Kinlaw, Jr. That's where there was
6 an actual Blair hearing done in the family court as ordered
7 by the Court.

8 Exhibit 4, Your Honor, is a joint D.M.H.D.D.S.N.
9 forensic evaluation in June of 2012. He was found
10 incompetent to stand trial at that one.

11 State's Exhibit 5 is the order for ongoing pretrial at
12 the hospital for 60 days.

13 Then there was a joint D.M.H.D.D.S.N. forensic
14 evaluation from meetings June and October of 2013 dated
15 December 18th of 2013 wherein he was found competent to
16 stand trial.

17 May I hand these up, Your Honor?

18 THE COURT: Okay.

19 MR. LEIBERT: Seven through ten are exhibits that
20 we'll be showing witnesses.

21 State's Exhibit 7 is an action that Mr. Smyth brought
22 in federal court as a pro se defendant versus Neal Urch.

23 State's Exhibit 8 is several pro se motions that
24 Mr. Smyth filed in regard to the case with Neal Urch.

25 State's Exhibit 9 is a handwritten request by

Dr. Tora Brawley
Direct examination by Mr. Ray

1 Mr. Smyth to have all six lawsuits that he filed pro se
2 dismissed, which include Neal Urch, Sheriff Wright,
3 Governor Haley, William Church, someone named, by the name
4 of Beonco at the jail, and News Channel Seven.

5 And, finally, State's Exhibit 10 is a letter that
6 Mr. Smyth wrote to D.S.S. filing a complaint against one of
7 the child victim's parents. And the purpose of that is to
8 have witness testimony as to the handwritings.

9 THE COURT: All right.

10 MR. LEIBERT: Thank you, Your Honor.

11 I believe Mr. Ray is going to proceed with his
12 witness.

13 MR. RAY: Your Honor, additionally we've agreed to
14 stipulate that the expert witnesses we both have are the
15 experts.

16 MR. LEIBERT: Yes, sir.

17 THE COURT: Okay.

18 MR. RAY: Trying to streamline things.

19 Your Honor, as our first witness we would call Dr.
20 Tora Brawley.

21 DR. TORA BRAWLEY, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. RAY

24 Q Will you please state your full name for the record?

25 A Tora Brawley.

Dr. Tora Brawley
Direct examination by Mr. Ray

1 Q And, Dr. Brawley, what -- what type of doctor are you?

2 A I'm a clinical psychologist with a specialty in the
3 area of neuropsychology.

4 Q And where do you work?

5 A I'm in private practice in Columbia.

6 Q Now, you had opportunity to meet Keith Smyth, didn't
7 you?

8 A Yes, I did.

9 Q How did that come about?

10 A I was contacted by your office. There had been a
11 request by Dr. Amanda Salas for additional testing. She
12 had some concerns about his cognition and wanted to have
13 that fully investigated.

14 Q What did you do when you met with Keith?

15 A I do as part of my evaluation, I do an extended
16 clinical interview and then a full battery of
17 neuropsychological tests.

18 Q Tell me -- tell me about the tests that you performed.
19 Are you able to determine if someone's malingering or
20 cooperating?

21 A That's crucial to -- to look at effort. My tests are
22 completely dependent upon effort.

23 These are standardized tests. There's an I.Q., but
24 there are also other cognitive tests. So we look at
25 attention, concentration, language functioning, memory

Dr. Tora Brawley
Direct examination by Mr. Ray

1 functioning. And we also look at effort to make sure that
2 the results I'm getting are valid.

3 Q Do you know approximately how much time you spent
4 doing these tests?

5 A Face to face time, I spent about two and a half to
6 three hours with him.

7 Q And tell me what you found in the case.

8 A First of all, in the clinical interview it was
9 noteworthy to me that he didn't have a whole lot of
10 cognitive complaints.

11 He wasn't like my typical or usual criminal defendant
12 who's complaining of everything left and right. He said,
13 oh, I've got some memory problems here and there. You
14 know, so he wasn't overemphasizing those things.

15 I also noted -- he's what I call conversationally
16 intact. He can chat with you and give you a social history
17 and appear to be relatively adequately functioning.

18 When I start the test though he has trouble attending.
19 He's also very impulsive, very child -- very child like.
20 Wanted to show me things, frequently would ask me what
21 words meant, had a very limited vocabulary, would say that
22 he understood the instructions. I would give him a set of
23 instructions, do you understand. Yes. And then when we'd
24 get into the task, it was clear that he didn't understand.

25 But basically the testing that I gave, he evidenced

Dr. Tora Brawley
Direct examination by Mr. Ray

1 severe impairments pretty much across the board. He had a
2 couple of areas of strength, a couple of smaller scales,
3 especially with visual things.

4 But his overall, his full-scale, I.Q. was at 61, which
5 is at the first percentile. And that means out of a
6 hundred people his same age, if I gave them that same test
7 99 of a hundred would do better than he -- he's the
8 first -- the worst -- the worst that you can -- can get.

9 His verbal comprehension, which is equivalent to the
10 verbal I.Q. in previous versions of the I.Q. test, was 68,
11 which is in the second percentile. And his perceptual
12 reasoning was at a 65, which is in the first percentile.

13 The highest on the index score, and that was his
14 processing speed, which was 71, which is at the third
15 percentile.

16 I also looked at, like I said, memory, attention,
17 concentration. He was severely impaired on verbal memory.
18 And verbal learning was also impaired.

19 I do immediate recall, and then I'll play a dirty
20 trick on them and come back 20 minutes later and ask them
21 for the same information to look and see is it encoding.
22 And he's, like I said, impaired with that.

23 The malingering test that I gave, it's called
24 forced-choice testing. It's the gold standard for our
25 profession. It's a test that's normed on different

Dr. Tora Brawley
Direct examination by Mr. Ray

1 clinical populations, as well as the normal population.
2 It's a test that looks -- looks hard. I say how do you
3 remember 50 things. And that sounds pretty hard. But it's
4 actually recognition tasks. And oftentimes if people are
5 going to malingering, that's frequently where we find the
6 malingering. And he -- he passed that with flying colors.

7 So I feel -- and there are also other things that we
8 look at -- patterns of performance. He -- he wanted to do
9 really well. He was not doing well on the test at all, and
10 he kept saying this is -- this is really fun, this -- you
11 know, I said how do you think you're doing. I'm -- I'm
12 enjoying this. I think I'm doing well. So he really
13 didn't have much insight into how poorly he was doing.

14 Q The -- the memory test that -- the 50 things he had to
15 memorize -- I know you've talked about that. It was -- it
16 was really interesting.

17 Could you explain that? I know you touched on it.
18 Could you explain just a little bit more how -- how you
19 performed that test?

20 A You show them 50 -- 50 things, 50 pictures, and tell
21 them they're going to have to remember all. And you come
22 back and show them two, one that was in the group and one
23 that wasn't.

24 So it's really not a pure memory test. It's more of a
25 recognition test. And the norm showed that after the

Dr. Tora Brawley
Direct examination by Mr. Ray

1 second trial everybody, including dementia patients, should
2 be getting 45 out of 50. And even if you flip a coin
3 you're going to get 18 out of 34 correct.

4 So you need to be getting at least 45 out of 50, and
5 he got 50 out of 50 on both trial 2 and on the retention
6 trial, which is when I come back a little bit later.
7 That's oftentimes where we -- it's very good at detecting
8 malingering. And he -- he performed very well on that.

9 Q Is there -- is there anything else that you think is
10 significant that you found from the testing that you
11 haven't told us already?

12 A One of the areas of functioning that I look at is
13 frontal lobe functioning, your ability to inhibit, your
14 ability to use good judgment, to stop and say, gosh, I
15 really shouldn't do that, or if I do that then this is
16 going to happen. And his frontal lobe testing was very
17 impaired. He really couldn't profit from feedback.

18 There's one test where they have to try to guess a
19 pattern. And you tell them each time they're either right
20 or wrong. So if you're saying wrong, then most people
21 would say, okay, that strategy's not working, let me switch
22 to something else.

23 He was not able to do that. He just gets stuck. Even
24 when he's on the wrong path he couldn't profit from my
25 feedback. That mental flexibility was significantly

Dr. Tora Brawley
Cross-examination by Mr. Leibert

1 impaired.

2 Q Thank you, Dr. Brawley.

3 MR. RAY: No more questions, Your Honor.

4 MR. LEIBERT: Your Honor, may I stand at the lectern?
5 I'm afraid I'll lose my balance.

6 CROSS-EXAMINATION

7 BY MR. LEIBERT

8 Q Hello. I believe you saw Mr. Smyth at the jail on
9 February 14th or February 4th of last year, or
10 December 4th of last year, is that correct?

11 A Close. December 2nd.

12 Q December 2nd. And how long were you with him?

13 A I was there two and a half to three hours for face to
14 face. And then, you know, I take the test results with me,
15 and at least that much time to score and interpret and
16 write the report.

17 Q Now, when you talk about frontal lobe problems, did
18 you do any like CAT scans or x-rays or you just --

19 A I'm not a medical doctor. I am a neuropsychologist.

20 Q Okay. Explain how -- how you can check the frontal
21 lobe and say there's deficiencies.

22 A Because there are different tests that are shown to
23 tap into frontal lobe testing through years and years of
24 research. It's like there are tests that assess I.Q. and
25 intellectual functioning.

Dr. Tora Brawley
Cross-examination by Mr. Leibert

1 So those tests are things like for fluency. The tests
2 that I talked about before for, a short categories test --
3 your judgment that's assessed on I.Q., comprehension, those
4 types of things tap into frontal lobe testing, frontal lobe
5 functioning.

6 Q You have a list, about 11, different tests that you
7 did. How much time would you spend on each of these tests?
8 Are these very quick tests?

9 A It -- it varies from test to test. The I.Q. test
10 takes over an hour to go in total. That time depends on
11 the patient, because with a lot of those you take them to
12 fail. You know, you -- you -- you stop after they failed
13 three items, you know, when you've hit -- hit their --
14 their ceiling. So that just completely depends on the
15 patient.

16 Q Now, in terms of his ability to write, how did you say
17 he did on that?

18 A I didn't assess writing. I don't do academic. I
19 don't do achievement. I'm here just to look at the areas
20 of neuropsychological testing.

21 Q And tell me again what that specifically means.

22 A It's assessment of brain behavior relationships where
23 an M.R.I. or CAT scan, as you mentioned, give you a picture
24 of the brain, my tests tell you how the different areas of
25 the brain are working, how much they're functioning, and

Dr. Amanda Salas
Direct examination by Mr. Ray

- 1 quantify the ability in those areas.
- 2 Q Now, the I.Q. tests that are about an hour, how
- 3 many -- would that have been a complete I.Q. test?
- 4 A Yes, sir.
- 5 Q Is that the five -- you said a hundred questions.
- 6 A Excuse me?
- 7 Q How many questions was there?
- 8 A The I.Q. test is several different subtests.
- 9 Q Okay.
- 10 A Some of it's question-and-answer; some of it's putting
- 11 blocks together; some of it's looking at puzzles. It's
- 12 very varied.
- 13 Q You did not do a competency evaluation.
- 14 A No. I did not.
- 15 Q Thank you.
- 16 MR. RAY: Nothing else.
- 17 THE COURT: Thank you. You may step down.
- 18 MR. RAY: Your Honor, next I would call Dr. Amanda
- 19 Salas.
- 20 DR. AMANDA SALAS, having been
- 21 first duly sworn, testified as follows:
- 22 DIRECT EXAMINATION BY MR. RAY
- 23 Q Dr. Salas, please state your full name for the record.
- 24 A Amanda Salas, M.D. Salas is S-A-L-A-S.
- 25 Q And what type of doctor are you?

Dr. Amanda Salas
Direct examination by Mr. Ray

1 A I'm a psychiatrist.

2 Q And where do you work?

3 A I work in a variety of places. I'm board certified in
4 general psychiatry, adult psychiatry and child adolescent
5 psychiatry, as well as forensic psychiatrist.

6 And currently I hold -- my primary job is through Self
7 Regional Healthcare System. I'm the medical director at
8 their acute adult unit and their geri-psy unit.

9 I also have a private practice that I operate in
10 Beaufort, South Carolina, as well as I perform forensic
11 evaluations through that private practice.

12 And I also work at various hospitals throughout the
13 state through 11-10's [sic] assignment.

14 Q And you had opportunity to speak with Keith Smyth, is
15 that correct?

16 A Yes. I conducted evaluation of him.

17 Q Tell me about that evaluation.

18 A I was contacted by your office to evaluate his
19 competency, and prior to evaluating Mr. Smyth I had
20 received materials to review that included the previous
21 evaluations that were done by the state for competency, as
22 well as discovery related to his case, as well as to
23 grievances that he has written himself. Some of them are
24 written; some of them were typed. There was material
25 pertaining to clinical evaluations of identified victims in

Dr. Amanda Salas
Direct examination by Mr. Ray

1 his case.

2 When I first met with him, which was on August 20th of
3 2014, I met with him for approximately two hours for a
4 clinical evaluation, and it became very clear to me that
5 even though he could maintain a conversation superficially
6 he had a lot of specific deficits in his ability to think
7 or to navigate confrontation of challenging of thoughts or
8 why things would be done one way or another.

9 He was totally off topic and not understanding what we
10 were trying to accomplish. He had grievances that he
11 wanted to list pertaining to being on a different floor in
12 the jail, pertaining to not being able to meet with you,
13 his attorney.

14 He had grievances pertaining to specific correctional
15 officers in the jail. Some of them he perceived as good;
16 some of them he perceived as bad. But he was very basic
17 and concrete in his thinking. And it took a lot of effort
18 to redirect him into gathering information about his
19 ability to understand the nature of the fact that he's been
20 charged with crimes -- he's got four charges against him --
21 and to identify the different roles that people in the
22 court hold.

23 There were times where I noticed that he appeared to
24 be looking to my facial expressions for feedback as to
25 whether he was answering the questions quite right or quite

Dr. Amanda Salas
Direct examination by Mr. Ray

1 wrong. And he would tend to second guess himself. And if
2 he thought that I was pleased with a response, then he
3 would stick with that response.

4 His factual knowledge of the Court system, it is fair
5 at best. It is something that you could certainly sit down
6 and teach him. But because he can't learn and remember
7 with accuracy, which you run into, is a problem where
8 you're constantly having to teach him, which is kind of
9 what you see in the three years of bringing us to this
10 point today.

11 From the time he's charged he's had three years to get
12 to the point where he still needs props. He still needs to
13 be able to read someone's facial expression and figure out
14 if his answers are right or wrong.

15 So looking at the factual knowledge base, although I
16 think that you could get him to give you the right answers,
17 it's going to be challenging for him to sustain and hold
18 onto that information that he can actually work with that
19 information in a meaningful way.

20 As far as -- an example of that would be, is that
21 there's -- one of his grievances that he actually writes to
22 the solicitor's office about how he thinks that he needs to
23 have a bond hearing and if they're not going to bring him
24 for a bond hearing in a prompt fashion, then he needs to
25 have the charges dropped and he needs to be able to go

Dr. Amanda Salas
Direct examination by Mr. Ray

1 home.

2 And so he doesn't even have an understanding,
3 practically speaking, that perhaps the solicitor's office
4 is not the friend that he would need to have in order to
5 make his defense appropriate, so that he's not
6 self-protective in those regards.

7 He's also not able to rationally work with someone.
8 And I'm not talking about rational in terms of being
9 psychotic, because he's not psychotic.

10 But for Keith his level of thinking, processing,
11 understanding is so basic it is something that he -- he
12 cannot fathom how to bring new material, process new
13 material, challenge that new material without having a
14 bunch of props and someone standing over the top of him and
15 kind of redirect, constantly stay on this task.

16 What happens is because of his intellectual
17 deficiency, which is formally known as mental retardation,
18 because of that intellectual deficiency he perseverates.
19 So he can pick up on one idea or one thought, and then
20 he'll stick with it. And you can see this as well as some
21 of his grievances where he stands at a KIOSK and he writes
22 a complaint, and within ten minutes he's writing the same
23 complaint. And I find it hard to believe that the
24 Spartanburg correctional officers are responding to him
25 within ten minutes timeframe.

Dr. Amanda Salas
Direct examination by Mr. Ray

1 But he is so persistent he latches onto a task, and
2 for him it begins to escalate. And it has absolutely
3 nothing to do with anything that would be favorable for
4 him. And he doesn't have insight or awareness to recognize
5 how he's sabotaging himself. And he's making it more
6 difficult for himself.

7 And I think the same is true, is that he has been
8 bringing these same type of grievances when he's had an
9 opportunity to meet with his attorney to discuss his case.

10 Mr. Smyth is more focused on things that are
11 irrelevant and not pertaining to his case material. But it
12 takes a lot of effort to actually get him to that point of
13 understanding that he's on a different path than what he
14 needs to be in working with the contact that he does have
15 with his attorney.

16 Q Now, at one point you requested that Dr. Brawley
17 evaluate Keith. Can you tell me what led to your request
18 for that?

19 A Yes. In my clinical interview with Mr. Smyth it was
20 apparent to me that even though he superficially was
21 conversant that he had some significant deficits in his
22 ability to process, to recall, to learn.

23 He had problems with his attention. He was easily
24 distracted. His concentration was impaired. He had prior
25 to me meeting with him diagnoses already identified that he

Dr. Amanda Salas
Direct examination by Mr. Ray

1 has intellectual disability, as well as A.D.H.D.

2 If some of his problems were limited to just A.D.H.D.,
3 then we could remedy those problems. But if they're due to
4 his intellectual deficiency, we would see a different
5 pattern across the board, which is kind of what my -- I was
6 picking up on in my clinical interview.

7 But I needed to quantify how severely impairing they
8 were for him. And I figured that since there was an
9 opportunity for him to be faking some of this that we would
10 be prudent to go forth in looking at whether or not he was
11 giving his full effort when we were measuring this.

12 It was also clear to me at the time when I evaluated
13 him -- I had the documentation and the reports from
14 D.D.S.N., the Department of Mental Health, that indicated
15 that they had concern about him faking symptoms,
16 malingering symptoms, not putting forth his best effort.

17 And I do believe that there are times when Mr. Smyth
18 doesn't give things his best effort. But I needed an
19 understanding of why would this make sense that he would
20 not give his best effort.

21 And so to get the neuropsychological testing you can
22 understand how the neuronal circuitry of the brain is going
23 to interface so that on a basic level are his neurons
24 connecting. So maybe he has brain mass that would be
25 identified on a brain scan. I expect that he would.

Dr. Amanda Salas
Direct examination by Mr. Ray

1 But even if you have mass up there does not mean that
2 you actually have connection between those -- those mass
3 particles. They're like he doesn't necessarily have
4 neuronal connection that allows him a higher order of
5 thinking that you find in the general population.

6 And that's exactly what was quantified in the severity
7 of it, was I found to be more surprising than what I would
8 have expected it to have been from my clinical evaluation,
9 which speaks to the fact that on the surface Mr. Smyth
10 thinks that he's doing a lot better than what he really is
11 doing, and that on the surface you can have someone who is
12 board certified and trained in these things still not
13 understanding just how significant those impairments are.

14 Q Now, after performing your tests and seeing the
15 results of Dr. Brawley's tests you formulated an opinion as
16 to his competency to stand trial, is that correct?

17 A Yes.

18 Q And what's your opinion of that?

19 A It's my opinion to a reasonable degree of medical
20 certainty that he is not competent to stand trial and that
21 this is due to an intellectual deficiency that is not going
22 to be remediable through a restoration period.

23 Q And I guess one last question. Realistically
24 speaking, if he's here and we're in front of a jury and
25 there's a trial going on, what is that -- what is that

Dr. Amanda Salas
Direct examination by Mr. Ray

1 going to mean? What is it going to be like trying to work
2 with him at that point in trial?

3 A It's going to be impossible to work effectively with
4 him.

5 I think that Mr. Smyth could do what he's doing right
6 now, which is to sit there and appear to be cooperating
7 with courtroom rules, not giving outbursts. But his
8 ability to listen and process what's going on is going to
9 be very minimal.

10 When Dr. Brawley tested him, she's testing him in a
11 very quiet and calm environment. And oftentimes there are
12 a lot of distractions going on in the courtroom. And even
13 today I've had to filter out some distractions.

14 And for Mr. Smyth, he's not going to be able to
15 effectively filter out distractions. He's not going to be
16 able to listen and spontaneously process what -- what a
17 witness may be saying. He's not going to be able to
18 effectively assist in challenging new material because he
19 cannot process new material in the amount of time that it
20 takes and the pace that the Court is keeping up with. And
21 so for him because these are due to his intellectual
22 deficiencies it's not going to change.

23 We don't have medications that we can treat him with
24 that will make improvement in those regards. We can't take
25 a congenital disorder, something that has been present

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 since birth, and all of a sudden give him the development
2 in his brain that will allow these neuronal connections to
3 be present. This is something that has been present
4 throughout his education, and it continues today. And
5 that's what's actually impairing him.

6 Q One last thing I forgot to mention earlier.

7 The -- when we look at his testing that's been
8 performed and how he did on that and the other things
9 you've done in your evaluation -- when we looked at his
10 testing that's the best he's going to be, is that correct?

11 A That's the best he's going to be because that is a
12 very calm and quiet environment. From moving out of the
13 calm and quiet environment to one that has distractions,
14 more people, he's only going to deteriorate. And how far
15 you deteriorate from the bottom percentile is kind of
16 difficult to quantify to go much lower.

17 Q Thank you, Doctor.

18 MR. RAY: No more questions, Your Honor.

19 MR. LEIBERT: May it please the Court, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. LEIBERT

22 Q Doctor, did you do a report?

23 A I did a letter to Mr. Ray. That was the report
24 that -- or I don't know that you would call that a report,
25 but that was the request for a neuropsychological

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 evaluation to be done.

2 Q May I see that?

3 A Yes, sir.

4 Q Now, in your instance you saw him at the jail as well.

5 A Yes, I did.

6 Q And I know -- I know they have a medical department
7 there. Were you able to run any type of scans?

8 A I didn't order any scans and I wouldn't order any
9 scans. I think that would be a waste of money, quite
10 honestly.

11 Q It's difficult for anybody that's not a lawyer to keep
12 up in court, isn't it?

13 A I think that it's very difficult for people to process
14 what's going on in court.

15 As you probably noticed today that even I started to
16 stumble over some words as I heard some things that were
17 going on over here. And I was focusing on a conversation
18 and testifying. And it was kind of hard to filter out the
19 distractions that go on.

20 So even if you're asking about is it hard to keep up
21 with the legal material, for someone who is not a lawyer
22 it's going to be a lot more difficult. But to keep up even
23 in terms of your ability to attend and filter out
24 distractions, it's going to be very hard.

25 Q What did your evaluation consist of?

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 A I reviewed all of the materials that I had outlined
2 earlier, as well as I talked with the correctional officers
3 that I had a run-in with in the process of being escorted
4 down to the pod where I conducted the interview with Mr.
5 Smyth.

6 And then I did a clinical interview with Mr. Smyth and
7 requested additional information and got the report results
8 from Dr. Brawley. And after receiving that report is when
9 I formulated by opinion.

10 I did not draw labs; I did not order any CT of the
11 head, no M.R.I. or anything like that.

12 Q Did you speak with Dr. Monica Wright?

13 A No, I did not.

14 Q Isn't it safe to -- well, would it be reasonable to
15 say that in terms of malingering it's better able to
16 determine that in a 60-day hospitalization than it is in a
17 2-hour session?

18 A No. I disagree with that. The issue of malingering
19 is something that shows some changes. So the notion of
20 malingering suggests that someone's lying or deceiving
21 you -- and that's what the medical terminology would be --
22 is malingering. So a person could be lying to you in one
23 moment and not lying to you in the next.

24 So what I'm saying is that I do believe that there are
25 times where Mr. Smyth actually could be faking symptoms.

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 He could be playing dumb, per se, or he could be not
2 performing at his maximal effort. I think that that's not
3 unreasonable.

4 The question is, is what is his maximal effort. And
5 when you test that you need to be testing it when he is
6 giving his maximal effort.

7 And so what Dr. Brawley did is very appropriate, which
8 is test the component of malingering at the time when
9 you're conducting the neurocognitive testing to find out at
10 this moment is this person more or less likely to be faking
11 the severity of their impairment or not. And when she did
12 her testing she found that he was not malingering.

13 MR. LEIBERT: Your Honor, may I get the exhibits?

14 Q Would someone with his limitations -- would it
15 surprise you that he could file his own lawsuit in federal
16 court?

17 A It does not.

18 Q So he has some ability to file lawsuits even.

19 A I think that he has ability to do a lot of things on
20 the surface that he uses a lot of props around him in order
21 to be able to accomplish.

22 He has asked for a whole variety of addresses and has
23 initiated contact with the white House. He's gotten
24 responses from the department of justice. I think that he
25 at one point in the grievance, he actually I think was

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 asking for Governor Haley's contact information. He
2 actually asked for Mayor Haley's contact information.

3 I think that he has the capacity to self-sabotage
4 because he does have the capacity to do things and get
5 things accomplished.

6 But what happens is that he fixates on irrelevant
7 issues, things that don't pertain to what's really going
8 on. And that is what we would call perseveration where in
9 a person's mind who is intellectually disabled they get one
10 idea or one topic stuck in their head. And it takes a lot
11 of momentum to get them to shift onto a more appropriate
12 topic.

13 It doesn't mean that they can't follow through acting
14 on something that represents the level of concern they have
15 for a topic. It means that he has a lot of persistence.
16 And he does have persistence. He's persistent to the point
17 that he frustrates everyone over at the jail who interacts
18 with him on a daily basis.

19 Q And in his case he sued the governor on his own,
20 correct?

21 A I presume that that'd be correct. I think that's
22 something y'all stipulated to.

23 Q Sued the sheriff on his own.

24 A Perhaps if that was a stipulation. I'm not aware of
25 all of the lawsuits that he has requested against other

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 people.

2 Q And News Channel Seven.

3 And then he was able to ask that they all be dismissed
4 in his own handwriting. Have you seen? I show you State's
5 Exhibit 9.

6 A This doesn't even make sense to me. And maybe this is
7 where I would need someone to explain to me legally why
8 this would make sense, that if a defendant or a person has
9 initiated a lawsuit, why do they turn around and dismiss
10 all six lawsuits on no-court date?

11 He says Magistrate Judge Paige Gossett. "I would like
12 to dismiss all six lawsuits on no-court date. I would like
13 to dismiss all six lawsuit of no costs and with no pay. I
14 can't find a lawyer. I would like to dismiss all six
15 lawsuits of to be dismissed." And he goes through, and he
16 cites.

17 Q Did you -- did you discuss that with him?

18 A No. I have not discussed this with him. "I need all
19 six lawsuits dismissed and without costs to the defendants.
20 I need to close all six lawsuits and dismiss them. I can't
21 find a lawyer. I'm dismissing all six cases, please."

22 If this is an example of an effective dismissal, I
23 would -- I don't know. I think that a lot of people would
24 be able to practice law, which I would find insulting if I
25 were someone who were practicing law, because what I see in

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 this as a psychiatrist is perseveration, which is that
2 reiteration, I want to dismiss, I want to dismiss, I want
3 to dismiss. He just needs to say that once, I would
4 imagine.

5 But what I find when you present this to me is that
6 this is an exact example of what would be expected with
7 someone with an intellectual disability, which is the
8 perseveration.

9 Q You've used that word. What does that mean, again?

10 A Inability.

11 Q I think you've done it to me twice.

12 A I read it twice because he had written it twice.

13 Q Okay. Tell me that what that big word means, again.

14 A Perseveration is when somebody gets one thought stuck
15 in their mind and they keep moving on that same thought and
16 they can't get off of that topic. They just reiterate it
17 over and over and over again.

18 An example would be how when I just read that piece of
19 paper that he constantly says I want this dismissed, I want
20 this dismissed, I want this dismissed -- that inability to
21 move on to your next thought is what we call perseveration,
22 and that is something that is indicative of an intellectual
23 deficiency.

24 Q Let me ask you and show you State's Exhibit 10. And
25 this is a letter against parents of one of the victims in

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 one of the indictments.

2 Do you find that unusual with someone with his ability
3 to be able to write a letter to the D.S.S. in Columbia
4 complaining about the family and saying you need to get
5 these kids out of this home? I don't need for you to read
6 it to me.

7 A Okay. Can I read it?

8 Q You can read it.

9 A Okay. Very good. Thank you.

10 And then I might need for you to ask me the question
11 again. I'm sorry.

12 (Pause.)

13 A When -- when I read this I'm not -- I'm not surprised
14 that you have someone who can print legibly, spell some
15 words appropriately.

16 What I am struck by is the fact that he is a defendant
17 who is writing a letter that has no self-protection in it.

18 There's no reason for him to contact D.S.S. He
19 doesn't understand that this letter can be rather
20 detrimental to his case, I would imagine.

21 I'm not -- again, I'm not an attorney, but as the
22 attorney that would be working with him I would find it
23 very difficult to create a defense when you have your
24 defendant out there sending letters not only to D.S.S. but
25 to the solicitor's office pertaining to matters that they

Dr. Amanda Salas
Cross-examination by Mr. Leibert

1 believe are part of their case. I think that that's a
2 cause for concern.

3 Q All right.

4 A And I think to not read this is actually to -- to
5 just -- it's not a simple letter of Mr. -- Mr. Smyth wrote
6 to D.S.S. and asked for the kids in this family to be
7 looked into, taking little kids into the D.S.S. custody.

8 I think you miss the grasp of how severely impaired
9 his cognitive function is when you don't understand that if
10 you had not asked me that question beforehand I'd probably
11 still be sitting here reading and trying to figure out what
12 he was asking for.

13 Q Thank you.

14 MR. LEIBERT: Thank you. No further questions.

15 MR. RAY: No more questions, Your Honor.

16 THE COURT: You may step down.

17 MR. RAY: I don't have any more witnesses, Your Honor.

18 Your Honor, we are in agreement if it's okay with the
19 Court that Dr. Salas would be able to leave, be dismissed.

20 THE COURT: Okay.

21 MR. LEIBERT: Your Honor, I'd call Ms. Nicki Cantrell
22 very briefly, Your Honor.

23

24

25

Nicki Cantrell
Direct examination by Mr. Leibert

- 1 NICKI CANTRELL, having been
2 first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. LEIBERT
4 MR. LEIBERT: May it please the Court.
5 Q Did you interview or -- where are you currently
6 employed? Let me ask you this.
7 A South Carolina Law Enforcement.
8 Q And in 2010 were you with the sheriff's department?
9 A I was.
10 Q And did you investigate this case?
11 A I did.
12 Q Did you have an occasion to interview Mr. Smyth?
13 A I did.
14 Q Was that on December 29th of 2010?
15 A Yes, sir.
16 MR. LEIBERT: May I approach the witness, Your Honor?
17 THE COURT: You may.
18 Q I hand you this document. What is it?
19 A It's a pre-interrogation waiver form.
20 Q And who completed it?
21 A Keith Smyth.
22 Q And with who?
23 A With myself.
24 Q All right. Did he then give you a statement in this
25 matter?

Nicki Cantrell
Cross-examination by Mr. Ray

1 A He did.

2 Q And that was on December 29th of 2010?

3 A Yes, sir.

4 Q Did you on a later occasion go back and interview him
5 after these cases came to light?

6 A I did.

7 Q And tell the Court what happened in that instance.

8 A Are you talking about on February 3rd of 2011?

9 Q Yes. Did you go and interview him on that date?

10 A I did.

11 Q Did you ask him if he wanted to give a statement as he
12 had previously done?

13 A I did.

14 Q And what did he -- what did he say or what did he do?

15 A He began to cuss at me, and he said, quote, unquote,
16 I'm not saying shit to you without my attorney. Fuck you,
17 Bitch. I ended the interview after that point.

18 Q Previously though he had signed a waiver and gave a
19 statement and signed it.

20 A Correct.

21 Q All right. Answer any questions that Mr. Ray may
22 have.

23 CROSS-EXAMINATION

24 BY MR. RAY

25 Q Investigator Cantrell, when you were speaking with

Dr. Monica K. Wright
Direct examination by Mr. Leibert

1 Keith that day you had him there alone, is that correct?

2 A Yes, sir.

3 Q And I guess from -- from hearing the statement it
4 became kind of a hostile situation.

5 A Are you talking about the second time I attempted to
6 interview him, or the first time?

7 Q Well, the second time.

8 A The second time, yes. I spoke to him at the detention
9 center in 2011. But the first time in 2010 I spoke to him
10 at the sheriff's office, and it was not a hostile
11 situation. He was not hostile towards me then.

12 Q Right. But the second time he became much more
13 antagonistic.

14 A Yes. He remembered who I was.

15 Q Thank you.

16 MR. RAY: No more questions, Your Honor.

17 MR. LEIBERT: No questions.

18 THE COURT: Step down.

19 MR. LEIBERT: Call Dr. Monica Wright.

20 DR. MONICA K. WRIGHT, having
21 been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. LEIBERT

23 Q Dr. Wright, did you previously do a competency
24 evaluation on Mr. Keith Smyth?

25 A Yes, sir. I've seen Mr. Smyth on three occasions.

Dr. Monica K. Wright
Direct examination by Mr. Leibert

1 Q And when you did see him on all three occasions, where
2 were you employed those times?

3 A Department of Disabilities and Special Needs.

4 Q Where -- when was the first time you saw him?

5 A June 13th of 2012.

6 Q All right. And give the Court a brief summary of what
7 your evaluation consisted of.

8 A We do a structured interview where we ask the same
9 questions. We ask them background and then we like take
10 information. We assess their understanding of the charges
11 against them, the various courtroom personnel, possible --
12 possible penalties if they're found guilty, and what their
13 options are. And we do the same structured interview
14 format for all of our clients. So it doesn't vary.

15 Q And at that time did you do a report?

16 A Yes, sir.

17 MR. LEIBERT: Your Honor, may I get those?

18 Q And I show you what's State's Exhibit 4. Is that the
19 report that was done from the first evaluation?

20 A Yes, sir.

21 Q All right. And at that time what was your clinical
22 opinion as to his competency to stand trial with a
23 reasonable degree of psychological certainty?

24 A We determined at that time he was not competent to
25 stand trial.

Dr. Monica K. Wright
Direct examination by Mr. Leibert

1 Q All right. Was he then hospitalized for a period of
2 60 days?

3 A He was.

4 Q All right. And then was there another evaluation?

5 A There was actually -- there was another evaluation on
6 June 21st of 2013. However at that time he was
7 uncooperative. So we then reevaluated him on
8 October 31st of 2013.

9 Q And when you say uncooperative, what do you mean?

10 A He was not answering our questions. He was becoming
11 disagreeable. He tended to focus on things other than what
12 we were talking about.

13 Q Then when you saw him again -- I believe October of
14 2013 --

15 A Uh-huh.

16 Q -- how did that evaluation go?

17 A That was better. He was more able to focus and
18 maintain his attention to what we were discussing.

19 Q And were you able to obtain information from the 60
20 days he was hospitalized?

21 A Yes.

22 Q And did that assist you in any way in giving your
23 evaluation?

24 A It did.

25 Q It seems like in your report there's a lot of talk of

Dr. Monica K. Wright
Direct examination by Mr. Leibert

1 malingering.

2 A Yes.

3 Q And please explain and tell the judge how you made
4 those findings.

5 A I actually did not do the testing for that. It was
6 given by the department of mental health. They gave him
7 two measures. One was similar to what was discussed before
8 by Dr. Brawley -- the memory malingering with the 50 items
9 of recommend -- that were used to determine his level of
10 recognition.

11 The other one was an evaluation that was actually
12 written by the doctor who's the head of the department of
13 mental health forensic evaluation services called the
14 inventory of legal knowledge.

15 It's a forced-choice inventory where an individual is
16 given items pertaining to the Court and asked to determine
17 if they're true or false. They're given information as to
18 their accuracy, and then they go from there. And on both
19 of those instruments he performed below chance, indicating
20 that there was some malingering.

21 Q All right. In that case -- and that state's
22 Exhibit 6 -- that was a joint evaluation between you and
23 D.M.H.?

24 A They all have been joint evaluations.

25 Q And you signed as the author of that report, is that

Dr. Monica K. Wright
Direct examination by Mr. Leibert

- 1 correct?
- 2 A I did.
- 3 Q On page two of that report it looks like there's an
4 awful lot of items that were reviewed, is that correct?
- 5 A Yes.
- 6 Q So based on the changes you saw during the
7 hospitalization you then determined that he was competent
8 to stand trial?
- 9 A We did.
- 10 Q All right. Now, did you talk to him today?
- 11 A I did.
- 12 Q And what kind of things did you ask him today?
- 13 A I generally asked him the same types of questions that
14 we asked in our structured-interview format.
- 15 Q And what are those?
- 16 A I asked him his charges. He knew what his charges
17 were. He knew who was going to be in the courtroom and
18 what their responsibilities were and what their aims were.
19 And I asked him what were the possible penalties.
- 20 Q And was he able to answer those adequately?
- 21 A He was able to answer those questions without
22 hesitation.
- 23 Q And that was just this morning?
- 24 A That was this morning.
- 25 Q I have sent you some items of -- and we've got them

Dr. Monica K. Wright
Cross-examination by Mr. Ray

1 marked as exhibits of things where he has written. There
2 are certain things like Exhibit 10, letter to D.S.S., and
3 Exhibit 7, filing of a lawsuit.

4 A Uh-huh.

5 Q Have you previously seen those?

6 A I have.

7 Q What significance, if any, does that mean to you in
8 his abilities in terms of legal knowledge?

9 A Well, I think that it shows a significant amount of
10 understanding of legal knowledge.

11 Q Intellectual disability doesn't mean not competent to
12 stand trial, does it?

13 A No.

14 Q All right. Has your opinion changed after meeting
15 with him today?

16 A No.

17 Q Thank you. Answer any questions Mr. Ray may have.

18 CROSS-EXAMINATION

19 BY MR. RAY

20 Q Dr. Wright, actually I believe I met you at one of his
21 evaluations when I went down there.

22 A That's right. The most recent one.

23 Q When you're asking questions about knowledge of the
24 legal system, and, say, what is the judge doing, and you
25 ask what's his job there in the courtroom -- if they get it

Dr. Monica K. Wright
Cross-examination by Mr. Ray

1 wrong, then if I remember correctly, you advise them as to
2 what the correct answer is, is that right?

3 A That's correct.

4 Q And then later you come back and you ask them a
5 question again --

6 A Yes.

7 Q -- to see if they get it right.

8 A Uh-huh.

9 Q And that can happen several times, is that correct?

10 A Sure.

11 Q And so on a -- on a previous occasion you found that
12 he was incompetent, right?

13 A Right.

14 Q And then now today you say that he is competent.

15 A Yes.

16 Q And his -- his disabilities are due to intellectual
17 disabilities and not a mental health, some sort of
18 psychosis or anything like that, is that correct?

19 A That's correct.

20 Q I understand that someone can be intellectually
21 disabled but still competent, but it's -- it's either one
22 or the other, isn't it?

23 I guess what I am asking is how did you cure his
24 intellectual disability that made him incompetent at one
25 point but now he's competent.

Dr. Monica K. Wright
Cross-examination by Mr. Ray

1 A I don't think anybody's claiming to have cured his
2 intellectual disability. As previously stated, that's
3 really impossible to do.

4 Over a longer observation period, over a 60-day
5 period, Mr. Smyth underwent groups and classes and
6 instruction on competency.

7 There were times when he demonstrated knowledge of his
8 charges and other aspects of competency.

9 There were other times when he did not demonstrate
10 that knowledge or did not answer the same questions that he
11 had answered previously.

12 There were times when he said that he didn't know what
13 words like sex meant. Then there were other times when he
14 could state what his charges were.

15 Q So I guess your opinion of his competency is based on
16 his knowledge, is that correct?

17 A Partially.

18 Q Because what we're talking about is he became
19 competent after you were able to teach him some things
20 about the way the Court system worked, is that right?

21 A Correct.

22 Q What -- what does that have to do with his ability to
23 process information and assist his attorney in a trial?

24 A Well, if you teach someone that information and
25 they're motivated to learn that information -- because the

Dr. Monica K. Wright
Cross-examination by Mr. Ray

- 1 stakes are very high in this particular case -- then I
2 think it has, you know, a wealth of implication.
- 3 Q So how long was this period of inpatient treatment?
- 4 A Sixty days.
- 5 Q So it took 60 days to teach him what the judge's job
6 is and the attorneys' jobs and who all of the different
7 people are in the courtroom, is that correct?
- 8 A And his charges and what his charges carry and what a
9 plea bargain is. So there is some not just factual
10 knowledge but application taught as well -- how you want to
11 apply that information.
- 12 Q In that 60-day period were you ever given the
13 opportunity to observe how he would work in a courtroom
14 setting with his attorney?
- 15 A I don't believe they do that.
- 16 Q So --
- 17 A It's a hospital setting. I don't think that they have
18 a simulated courtroom or anything like that.
- 19 Q Thank you.
- 20 MR. RAY: No more questions, Your Honor.
- 21 MR. LEIBERT: Nothing further.
- 22 THE COURT: You may step down.
- 23 THE WITNESS: Thank you.
- 24 MR. LEIBERT: Your Honor, may she be excused to go
25 back to Columbia?

1 MR. RAY: No objection, Your Honor.
2 THE COURT: She may be.
3 (Whereupon, the witness was excused.)
4 MR. LEIBERT: Thank you.
5 Your Honor, may we approach?
6 THE COURT: You may.
7 (Bench conference held off the record.)
8 THE COURT: We will take ten minutes.
9 (Whereupon, a recess was taken.)
10 MR. LEIBERT: May it please the Court, Your Honor.
11 THE COURT: Yes, sir.
12 MR. LEIBERT: We've decided to just call one very
13 brief witness. It will be Ms. Ashley McCann from the
14 Spartanburg County Detention Center, Your Honor.
15 ASHLEY MCCANN, having been
16 first duly sworn, testified as follows:
17 DIRECT EXAMINATION BY MR. LEIBERT
18 MR. LEIBERT: May it please the Court, Your Honor.
19 THE COURT: Yes.
20 Q Please tell us your name.
21 A Ashley McCann.
22 Q You work at the Spartanburg County Detention Center?
23 A I do.
24 Q And what's your position there?
25 A I'm currently a victim's advocate.

Ashley McCann
Direct examination by Mr. Leibert

- 1 Q And how long have you worked there?
- 2 A Starting in 2007. And then I left in 2010 and came
- 3 back in 2011. And I've been there ever since.
- 4 Q Do you have any role with inmates over there? And, if
- 5 so, what is your role with inmates?
- 6 A Yes. Well, prior to me becoming a victim advocate
- 7 December 27th of last year I dealt with inmate grievance
- 8 forms due through the legal group of the KIOSK. And since
- 9 then I have still carried on that responsibility.
- 10 Q So a KIOSK is where they go type things like and send
- 11 you an e-mail?
- 12 A Yes.
- 13 Q And then do you get them -- does each -- does each
- 14 inmate have a pin number?
- 15 A Uh-huh.
- 16 Q Do they also put their date of birth in?
- 17 A I can't remember. They don't -- I don't think they
- 18 have to put their date of birth in. And I can't remember
- 19 if it's listed on there. I think it's just the date that
- 20 it's submitted.
- 21 Q All right. And I'm going to show you 14 pages with 14
- 22 separate inmate requests from Mr. Symth that say KIOSK 9.
- 23 What is KIOSK 9?
- 24 A I believe that's the KIOSK housed in pod 5.
- 25 Q And what is pod 5?

Ashley McCann
Direct examination by Mr. Leibert

- 1 A Maximum security.
- 2 Q All right. I hand you what's been marked State's
- 3 Exhibit 11. Do you recognize these? You can look through
- 4 those. They range from December 16th back to
- 5 September 22nd of last year.
- 6 A Yes.
- 7 Q All right. Are those -- what are those?
- 8 A These are grievance requests.
- 9 Q And who is sending these to you?
- 10 A Keith Smyth.
- 11 Q Now, if he's in solitary confinement does he have to
- 12 type those himself?
- 13 A Yes.
- 14 Q So everything at the top is what he types and under
- 15 statement --
- 16 A Under statement is what he types. When he logs on all
- 17 of his information automatically comes through. He has to
- 18 choose subject-of-grievance which would be the legal
- 19 department. And it would come to me.
- 20 Q All right. Now, for instance, the one dated
- 21 December 10th of 2014 at age 17. It says, "I need three
- 22 addresses -- South Carolina Voters Association, New York
- 23 Family Reunion Program, New York City Domestic Partnership
- 24 Law." Is that what you received from him?
- 25 A Yes.

Ashley McCann
Direct examination by Mr. Leibert

1 Q And under that the -- what is this response? That's
2 you or --

3 A No. This right here is him. It said, "I need you to
4 please come to pod 5 to talk to me. I have papers to let
5 you see."

6 Q All right. And then the same of asking for copies in
7 different things?

8 A Yes. South Carolina.

9 Q U.S. Marshal Service.

10 A Yes.

11 Q That's him requesting --

12 A Yes.

13 Q -- addresses?

14 A Yes.

15 Q And do you provide those?

16 A I do.

17 Q All right. And sex offender registry on
18 November 18th, is that just a sampling of what this is?

19 A Yes.

20 Q And there would be hundreds of them?

21 A Thousands.

22 MR. LEIBERT: Your Honor, I would offer this as
23 State's 11.

24 MR. RAY: No objection, Your Honor.

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

Ashley McCann
Direct examination by Mr. Leibert

1 (KIOSK paperwork marked State's Exhibit No. 11.)

2 MR. LEIBERT: I'm almost done.

3 Q Did you recently just receive a letter from Mr. Smyth?

4 A Yes. I recently received several letters from him.

5 Q All right.

6 MR. LEIBERT: All right. I forgot to get this marked.

7 would you mark this as State's Exhibit 12, please?

8 (Letter from defendant marked State's Exhibit No. 12.)

9 Q And I hand you State's 12. And what is this?

10 A That is a handwritten letter from Keith Smyth.

11 Q All right. And it was to you?

12 A It was addressed to me, yes.

13 Q And when did you receive this?

14 A January 12th of this year.

15 Q All right. And was he upset about something?

16 A I am trying to think which letter. I received several
17 letters. He was upset with me in one letter because I had
18 him suspended from the KIOSK for disrespecting me.

19 Q And then they have to go back to doing it by hand?

20 A And they have to do everything handwritten, yes.

21 Q All right.

22 MR. LEIBERT: I would offer this as State's

23 Exhibit 12, Your Honor.

24 MR. RAY: No objection, Your Honor.

25 Q Thank you Ms. McCann. Please answer any questions

Ashley McCann
Cross-examination by Mr. Ray

1 that Mr. Ray may have.

2 CROSS-EXAMINATION

3 BY MR. RAY

4 Q Ms. McCann, when someone's writing at the KIOSK does
5 it tell you how long it took them to write that before they
6 sent it?

7 A It does not.

8 Q And there's no way to tell how long it took him to
9 write the handwritten letters.

10 A No. It just has the date and time that it was
11 submitted. And as far as handwritten letters, no.

12 Q And more interesting to me -- I remember. We've
13 spoken a couple of times over the phone, I believe, is that
14 right?

15 A Uh-huh.

16 Q I remember one in particular because I was driving
17 back from court in Cherokee, and we spoke for quite a
18 while. He's driving you crazy over there, isn't he?

19 A Yeah.

20 Q I know we spoke one time and talked about how you
21 would go see him and talk to him to explain a situation and
22 then almost as soon as you got back to your computer you're
23 getting another message from him about the thing you just
24 explained to him.

25 A Not exactly what I just explained to him, but it would

Ashley McCann
Cross-examination by Mr. Ray

1 be something else, almost like another reason for me to
2 come back to the housing unit to talk to him.

3 Q And do you deal with the same issues over and over and
4 over with him?

5 A With -- I have the same issues with a few inmates, but
6 I get -- I receive the most grievances from him of all of
7 the 700-plus inmates that we have in our facility.

8 Q And I guess what I'm trying to get at is he fixates on
9 specific topics --

10 A Uh-huh.

11 Q -- doesn't he?

12 A Yes. He knows exactly what he's requesting, specific
13 things that I don't even know. He knows what he wants, and
14 then I have provided him with what it is if he's -- what
15 it's -- what he's specifically asked for though.

16 Q And-but these -- I guess what I'm getting at, he's
17 repetitive about the same topics sometimes.

18 A Not about --

19 Q Not just his requests but just in general with whether
20 it's a complaint about something there or --

21 A It depends on if -- if it's been handled. If you do
22 not respond to him immediately or take care of what he's
23 requesting, he's very demanding. When he wants something
24 done if it's not done in his time, then the requests keep
25 coming in. And then they just become more threatening to

Ashley McCann
Cross-examination by Mr. Ray

1 the director.

2 Q So it escalates.

3 A Yes.

4 Q Quickly.

5 A Yes.

6 Q Thank you.

7 MR. RAY: No more questions, Your Honor.

8 MR. LEIBERT: Nothing further.

9 THE COURT: You may step down.

10 MR. LEIBERT: Your Honor, that's our showing as well.

11 And I believe I've entered 12 exhibits. Can I make sure?

12 (Pause.)

13 THE COURT: All right. I will review the record and
14 issue an order.

15 END OF PROCEEDINGS FEBRUARY 10, 2015

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guilty plea

1 (Proceedings April 21, 2015)

2 MR. LEIBERT: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. LEIBERT: This is the State vs. Keith Adger Smyth.
5 He is represented by Attorney Timothy Ray, Esquire.

6 It is for a plea to the following five indictments:
7 2011-965, C.S.C. with a minor second degree as to the child
8 VICTIM 1 ; 2011-966, C.S.C. with a minor first degree
9 with the child VICTIM 2 ; 2011-967, C.S.C. with a minor
10 first degree with the minor child VICTIM 3 ; 2011-968,
11 C.S.C. with a minor first degree as to VICTIM 4 ; and
12 finally, Your Honor, 2011-1251, C.S.C. with a minor first
13 degree as to the child VICTIM 5 .

14 May I approach with the indictments?

15 THE COURT: Yes, sir.

16 MR. LEIBERT: Your Honor, if I may, I would like to
17 introduce the young men, and they're going right back out.
18 Will that all right?

19 THE COURT: Sure.

20 MR. LEIBERT: When I call your name, please stand.

21 VICTIM 1. Your Honor, this is VICTIM 1. He is 16.

22 VICTIM 2 . Your Honor, he is 13.

23 VICTIM 3 . He is age 12.

24 VICTIM 4 . He's age 14.

25 And VICTIM 5 . is age 12.

Guilty plea

1 And, Your Honor, they're going to leave.

2 THE COURT: Okay.

3 (Whereupon, the victims were excused from the
4 courtroom.)

5 MR. LEIBERT: Thank you.

6 THE COURT: Let the record reflect on February 10th of
7 2015 a Blair hearing was held before the Court to determine
8 the defendant's competency to stand trial.

9 Pursuant to a consideration of the testimony provided
10 at that hearing, as well as the applicable case law and
11 statutory law, I find that the defendant is competent to
12 stand trial.

13 Mr. Ray, has there been any change in your client's
14 mental capacity since the February 10th hearing?

15 MR. RAY: No, sir. His mental capacity is based on
16 intellectual disability and not mental health, and I don't
17 believe that it's changed since then.

18 THE COURT: Okay. Thank you.

19 MR. RAY: Your Honor, if I may also add, we have
20 completed a plea affidavit I'd like to hand up and be made
21 part of the record.

22 THE COURT: Okay. Thank you.

23 (Pre-interrogation waiver form marked Court's Exhibit
24 No. 1; plea waiver form marked Court's Exhibit No. 2.)

25 THE COURT: All right. You are Keith Adger Smith.

Guilty plea

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And Mr. Ray is your lawyer.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And how long has Mr. Ray been representing
5 you on these charges?

6 THE DEFENDANT: If I'm not mistaken, since before
7 February the 8th of 2011.

8 THE COURT: In 2011?

9 THE DEFENDANT: Yeah, February the 8th -- before
10 February the 8th.

11 THE COURT: So several years.

12 THE DEFENDANT: Yeah. I been -- I been before -- on
13 December 29th of 2010 I was not -- I didn't have him at the
14 time. And since I found out he's my lawyer, that's when I
15 came down here on February the 8th when Nicki Cantrell had
16 interrogated me and said some awful stuff. And I had to
17 book in down there.

18 THE COURT: All right. So he's been representing you
19 since 2011.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And since that time have you had plenty of
22 opportunity to talk to him about your cases?

23 THE DEFENDANT: Yes, I have but...

24 THE COURT: Now, I've got five indictments here that
25 you and your lawyer have indicated that you wish to plead

Guilty plea

1 guilty to. Is that true?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Before I can accept your plea of guilty
4 I've got a lot questions to ask you, and the purpose of the
5 questions is for me to determine whether or not your
6 decision to plead guilty is freely and voluntarily made, in
7 other words, that you made the decision on your own and
8 that nobody is making you plead guilty.

9 Now, before I begin with those questions, has Mr. Ray
10 explained to you that you have a right to remain silent?

11 THE DEFENDANT: Yeah. I know.

12 THE COURT: And that of course means that you don't
13 have to say anything. You don't have to make any
14 statement; you don't have to take the witness stand and
15 testify; you don't have to answer any questions; you don't
16 have to say anything that relates to these charges.

17 Do you understand your right to remain silent?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand when --

20 THE DEFENDANT: I do now. I know it since two --
21 2013. I never knew it since I was arrested, and now I do.

22 THE COURT: But you understand it today.

23 THE DEFENDANT: Yes. And at this point what she did,
24 I never knew my rights, but now I do.

25 THE COURT: All right. Well, do you understand that

Guilty plea

1 in order to plead guilty to a criminal charge you have to
2 give up your right to remain silent? Because I have
3 questions that I have to ask you, as I said, in order to
4 determine the voluntariness of your decision. So you do
5 understand that you have a right not to answer my questions
6 if you don't want to.

7 THE DEFENDANT: May I ask you a question?

8 THE COURT: Sure.

9 THE DEFENDANT: Anything you need to ask me, and I'll
10 show you something before you sentence me. All right.

11 THE COURT: I'm going to -- I'm going to provide you
12 an opportunity at the end to tell me anything you want to
13 before I impose any sentence, but before we get there I've
14 got to ask you a lot of questions in order to determine the
15 voluntariness of your decision to plead guilty.

16 Okay. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. So, as I say, you do have a
19 right to -- well, let me ask you this first of all.

20 I have in my hand a plea waiver form and it's --
21 it's -- let's see how many pages. Looks like seven pages.

22 Mr. Ray has that plea form. Have you looked at that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And did you discuss that with Mr. Ray?

25 THE DEFENDANT: Yes, sir.

Guilty plea

1 THE COURT: And did he go over each of those pages
2 with you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And did he go over each of the questions
5 with you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And all of the information contained in
8 it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did y'all go through it line for line?

11 THE DEFENDANT: Yes, sir. He did.

12 THE COURT: And those things that were applicable to
13 you and your cases, did you discuss with him that
14 particular provision?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And did he have you initial it if you
17 understood what it said?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And did you understand everything that was
20 contained in that affidavit?

21 (Pause for the defendant to confer with Mr. Ray.)

22 THE DEFENDANT: Yes.

23 THE COURT: Did you discuss it with Mr. Ray?

24 THE DEFENDANT: Yeah, yeah.

25 THE COURT: All right. Do you have a question about

Guilty plea

1 that?

2 THE DEFENDANT: I just want to know. I know you're
3 doing your job, sir. So it is my freedom. I so want to
4 plead. That's all. You can. It's okay with Jesus on my
5 side. (Inaudible crying)

6 THE COURT REPORTER: I couldn't understand him, Judge.

7 THE COURT: The court reporter -- you're going to have
8 to compose yourself because the court reporter is not going
9 to be able to understand what you're saying.

10 THE DEFENDANT: I said I would like to -- I want to
11 ask because this is my freedom, and I would like a lesser
12 plea if you can. If you cannot, I understand. I know
13 you're doing your job. I just want -- I just want a lesser
14 plea. But if you cannot do it, I understand. I been
15 before a good minute [sic], because, you know, Jesus on my
16 side, you know. This is not right, what's going on.

17 THE COURT: Well, you understand I don't have any -- I
18 don't have any decision-making about the charges. That's
19 the prosecutor.

20 THE DEFENDANT: I understand.

21 THE COURT: The solicitor makes a decision about the
22 charges. I make the decision about the sentence if you're
23 convicted or if you're found guilty or if you plead guilty
24 unless y'all have come to an agreement. And then if you
25 have come to an agreement and I am satisfied with it, then

Guilty plea

1 I impose whatever y'all have agreed to.

2 Do you need to talk to your lawyer about that
3 agreement?

4 THE DEFENDANT: Yeah. But it's this one, and he
5 said -- the solicitor said -- he won't go no lower than
6 that because of the law, what I'm saying.

7 I'm just -- I am a young man. I'm young. I just want
8 a lesser plea. And if you can't do it, I take this plea,
9 you know.

10 THE COURT: Well, I've got nothing to do with the
11 charge. That's what the solicitor does.

12 In other words, you want the solicitor to agree to a
13 lesser charge, to allow you to plead guilty to a lesser
14 charge?

15 THE DEFENDANT: You know, yes, because everybody makes
16 wrong when they're young. Everybody do -- does -- do
17 things wrong. But I know I did stuff wrong, but I
18 didn't -- I was asking for help and a lesser plea. I just
19 want some treatment, better treatment. I don't want to get
20 killed in prison or nothing for my charges, because I think
21 they're trying to hold on me this -- give me -- I'm saying
22 lesser than on the 15-year plea. I think easier on a
23 15-year plea. But if you can't do it, I'll take it.

24 THE COURT: Well, as I say, Mr. Smyth, I've got
25 nothing to do with the charge.

Guilty plea

1 In other words, you're charged in -- well, four of the
2 charges charge you with criminal sexual conduct with a
3 minor in the first degree where the child is under the age
4 of 11 years at the time of the offense.

5 If convicted of criminal sexual conduct with a minor
6 in the first degree where the child is less than 11 years
7 of age the statute provides for the punishment, and the
8 punishment provided for is not less than 25 years and up to
9 life in prison. So I don't have any choice about that.

10 In other words, if you are convicted of criminal
11 sexual conduct with a minor in the first degree and the
12 child is less than 11 years of age, upon a conviction I
13 have to sentence you to at least 25 years. It could be as
14 much as the rest of your life.

15 THE DEFENDANT: He told me it could be 60.

16 THE COURT: Well, it could be anything from 25 to
17 life.

18 So, you see, I have no choice about that. If you
19 plead guilty to that charge the minimum sentence is 25
20 years, which as I understand it, what y'all -- according to
21 the sentencing sheet that's what y'all have agreed to.
22 You've agreed to the minimum sentence. So I can't go below
23 the minimum sentence based upon the charge. It would have
24 to be a different charge if there was going to be anything
25 less than 25 years. But what y'all are telling me

Guilty plea

1 apparently is that the solicitor doesn't agree to a lesser
2 charge. And he's the one that gets to make the decision on
3 the charge. Do you understand?

4 THE DEFENDANT: Okay. Can I ask you one more
5 question?

6 THE COURT: Sure.

7 THE DEFENDANT: See, and I was asking is there a way I
8 can go to institution and get help during this time?
9 Because I'm asking this man as young too -- of course he
10 might have grandkids or whatever. I'm just asking can I
11 please have to go not to prison but let me go so I have
12 group classes and get help, you know. Prison is not a good
13 thing to go to and I'm not --

14 THE COURT: Well, that's not one of the options in
15 this case.

16 In other words, there might be some treatment
17 available in the Department of Corrections, but an option
18 as far as a sentence goes if you're convicted is not to go
19 somewhere to get treatment other than within the Department
20 of Corrections.

21 Do you still wish to go forward with your guilty plea?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Now, as I was mentioning
24 earlier, you have a right to remain silent. And Mr. Ray
25 has been over that with you. It's also contained in your

Guilty plea

1 plea affidavit. You've reviewed the entire plea affidavit?

2 THE DEFENDANT: Yes, sir. I'm sorry. Yes, sir.

3 THE COURT: And is it all truthful and accurate?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is there anything in this plea affidavit
6 that needs to be changed?

7 THE DEFENDANT: No, sir.

8 THE COURT: Is there anything in it that's not
9 truthful or accurate?

10 THE DEFENDANT: No, sir.

11 THE COURT: And you understood it when Mr. Ray
12 explained it to you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you have initialed your understanding
15 of it in the applicable provisions of it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you signed it and dated it today?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Now, as you know, you have a
20 right to remain silent. And of course that means that
21 nobody can make you answer questions.

22 But, as I told you, in order for me to take your
23 guilty plea I have to ask you questions, and therefore you
24 need to respond to them so that I can determine if your
25 decision to plead guilty is freely and voluntarily made.

Guilty plea

1 So do you understand that you have a right to remain
2 silent and not to answer my questions if you don't want to?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to give that right up and to
5 answer my questions so that you can plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I have before me five indictments. Each
8 of those indictments charge you with a separate and
9 distinct criminal offense.

10 I'm going to go over each of the indictments with you
11 so that I can be certain that you understand what the state
12 claims that you did and that you understand what you're
13 pleading guilty to if you wish to plead guilty to that
14 particular charge.

15 Indictment 2011-1251 charges you with criminal sexual
16 conduct with a minor in the first degree.

17 The indictment alleges that between January the 1st of
18 2010 and December the 29th of 2010 that you did commit the
19 crime of criminal sexual conduct with a minor in that you
20 did commit a sexual battery upon a minor child, that child
21 being...

22 If y'all can't keep these folks quiet, then they're
23 going to have to be removed. That's why y'all are here.

24 (Pause.)

25 THE COURT: The state alleges in this indictment

Guilty plea

1 between January and December of 2010 you committed the
2 crime of criminal sexual conduct with a minor in that you
3 did commit a sexual battery upon a minor child, that child
4 being VICTIM 51, who at the time that the sexual
5 battery was committed was less than 11 years of age.

6 If convicted or if I accept your plea of guilty you
7 can receive a sentence of not less than 25 years in jail
8 and up to life in prison for that offense.

9 Do you understand that charge and the potential
10 punishment?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you still wish to plead guilty to it?

13 THE DEFENDANT: Do you mean if...

14 MR. RAY: I think he's confused, Your Honor, because
15 it's a negotiated plea and we've agreed.

16 THE COURT: I'm going to get to the point. I'm going
17 to get to the part about the negotiations, and I understand
18 that if I don't agree to what y'all have negotiated -- in
19 other words, whatever your agreement is that you and
20 Mr. Ray and the solicitor came up with, if I don't agree
21 with it I'm going to allow you to withdraw and you can have
22 a trial. Do you understand?

23 In other words, if I decide I'm not going to give you
24 the 25, I'm going to -- I think you ought to get more, that
25 won't happen today without a jury making a determination as

Guilty plea

1 to your guilt. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So what I'm saying is if I don't go along
4 with the agreement I'm going to allow you to withdraw, and
5 you can have a trial. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. So the charge that involves
8 the minor child, VICTIM 5, who the state alleges
9 was less than 11 years of age carries 25 to life.

10 Do you wish to plead guilty to it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: The second indictment is 2011-968. That
13 indictment also charges you with criminal sexual conduct
14 with a minor in the first degree.

15 This indictment alleges that the offense occurred
16 between October the 1st of 2010 and December the 14th of
17 2010.

18 They allege between those dates that you did commit
19 the crime of criminal sexual conduct with a minor in that
20 you did commit a sexual battery upon VICTIM 4
21 VICTIM 4 who at the time of the sexual battery was less
22 than 11 years of age.

23 That also carries a potential sentence of 25 -- not
24 less than 25 years in jail and up to life in prison.

25 Do you understand that charge and the potential

Guilty plea

1 punishment?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you still wish to plead guilty to it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: The third indictment is 2011-967. It also
6 charges you with criminal sexual conduct with a minor in
7 the first degree.

8 The state alleges in this indictment between October
9 the 1st of 2010 and December the 14th of 2010 you did
10 commit the crime of criminal sexual conduct with a minor in
11 that you did commit a sexual battery upon a minor child,
12 that child being VICTIM 3 [REDACTED], who was at the time
13 of the sexual battery less than 11 years of age.

14 That's an additional criminal offense that carries an
15 additional punishment of not less than 25 years and up to
16 life in prison.

17 Do you understand that particular charge?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you still wish to plead guilty to it?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: The fourth indictment is Indictment
22 2011-966. It also charges you with criminal sexual conduct
23 with a minor in the first degree, the state alleging
24 between October the 1st of 2010 and December the 14th of
25 2010 that you did commit the crime of criminal sexual

Guilty plea

1 conduct with a minor in that you did commit a sexual
2 battery upon VICTIM2 who was at the time of the
3 sexual battery less than 11 years of age.

4 If convicted you could receive an additional potential
5 sentence of not less than 25 years and up to life.

6 Do you understand that particular charge?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you still wish to plead guilty to it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And the remaining indictment is Indictment
11 2011-965 which charges you with criminal sexual conduct
12 with a minor in the second degree.

13 The state alleges that between October the 1st and
14 December the 14th of 2010 you did commit the crime of
15 criminal sexual conduct with a minor in the second degree
16 in that you did commit a sexual battery upon a minor, being
17 VICTIM1, who was 14 years of age or less at
18 the time of the sexual battery but who was at least 11
19 years of age at the time of the event.

20 Criminal sexual conduct with a minor in the second
21 degree carries a potential sentence of up to 20 years in
22 jail.

23 Do you understand that particular charge and the
24 potential punishment?

25 THE DEFENDANT: Yes, sir.

guilty plea

1 THE COURT: Do you still wish to plead guilty to that
2 indictment?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: As I told you before, I can accept your
5 pleas of guilty. I have to ask you some questions in order
6 to determine the voluntariness of your plea.

7 So if at any time during the course of this process if
8 you don't understand a question, please ask me to repeat or
9 to clarify it or to give you an explanation, because
10 whatever response you give me, I'm going to assume that
11 it's a proper response to the question that I've asked. So
12 be certain that you understand the question before you give
13 me any response. Okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And if at any time during the course of
16 this process you need to stop and talk to Mr. Ray any
17 further, I'll stop and provide you with that opportunity.
18 Okay?

19 THE DEFENDANT: Okay.

20 THE COURT: Do you understand that you have the right
21 to require the state to prove your guilt in court? You've
22 got a right to require the state to bring witnesses into
23 court, to have witnesses take the witness stand to testify
24 under oath in your presence.

25 You've got a right to have that occur before a jury of

guilty plea

1 12 people that you would help select. The jury would make
2 the ultimate decision.

3 In other words, they would consider all of the
4 evidence in the case. From that evidence they would decide
5 the facts as they relate to the allegations made in these
6 indictments.

7 Once they decide the facts, they would apply the law
8 that I will provide them, and the jury would determine
9 whether or not you have been proven guilty of any of these
10 crimes that the state claims that you have committed.

11 During that jury trial you would have a right to
12 testify if you wanted to, but nobody can make you testify,
13 because, as I've already told you, you have a right to
14 remain silent.

15 And so you can have a jury trial and still not take
16 the witness stand and testify. You don't have to answer
17 any questions; you don't have to provide any statement; you
18 don't have to provide any testimony. You could call other
19 witnesses if you wanted to, but you still would not have to
20 testify.

21 Did Mr. Ray go over in detail with you your
22 constitutional rights, in other words, the rights that you
23 have when you're charged with a crime?

24 THE DEFENDANT: I got my bill of rights. I know.

25 THE COURT: So you've read about your constitutional

Guilty plea

1 rights?

2 THE DEFENDANT: I started doing it about a couple of
3 years ago.

4 THE COURT: All right. And so you know, as you
5 indicated to me earlier, that you understand you have the
6 right to remain silent.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you also told me that you wish to give
9 that right up in order to plead guilty. Is that true?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You also have a right, as I've said, to
12 confront and to examine witnesses in court.

13 In other words, you've got a right to put the state to
14 the test of proving your guilt. And so you'd be able to
15 see their witnesses and hear what they have to say.

16 Mr. Ray would be able to ask them questions too in
17 order to examine them in testing their credibility and the
18 reliability of any information that they're providing to
19 the court.

20 Do you understand you have a right to confront and to
21 examine witnesses in court?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that when you plead
24 guilty you give that right up? In other words, there won't
25 be a trial. The witnesses won't come to court and testify.

Guilty plea

1 They won't be examined by the state or by your lawyer. Do
2 you understand you have a right to confront and examine
3 those witnesses?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that that does not occur
6 when you plead guilty?

7 THE DEFENDANT: Yes, sir. What do you mean for --

8 THE COURT: That doesn't happen.

9 THE DEFENDANT: Oh, yes, sir.

10 THE COURT: Do you understand that right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you wish to give that right up in order
13 to enter your pleas of guilty?

14 THE DEFENDANT: Plead guilty.

15 THE COURT: Do you wish to give up your right to
16 confront and examine the witnesses in order to plead
17 guilty?

18 THE DEFENDANT: Can you put it a little more
19 differently, what you're trying to say about the plea I'm
20 taking?

21 THE COURT: Okay. Here's the situation. As I told
22 you, you've got a right to make the state prove that you're
23 guilty.

24 In other words, they've made these allegations that
25 are in these indictments. In other words, they claim that

Guilty plea

1 you did these things in these indictments. But you've got
2 a right to make them prove it in court. And they do that
3 by calling witnesses and putting the witnesses on the
4 witness stand.

5 Did Mr. Ray explain that process to you?

6 THE DEFENDANT: Yeah.

7 THE COURT: Do you understand that if you plead guilty
8 that doesn't -- that doesn't happen? The witnesses don't
9 take the witness stand and testify.

10 Do you want that to occur? Do you want that to
11 happen, or not?

12 MR. RAY: Do you want the witnesses to have to take
13 the stand in a trial, or do you want to give up that and go
14 ahead and plead guilty?

15 THE DEFENDANT: I want to plead guilty.

16 MR. RAY: Say it out loud.

17 THE DEFENDANT: I plead guilty.

18 THE COURT: You want to plead guilty and give up your
19 right to confront and examine the witnesses?

20 MR. RAY: You've got to answer out loud.

21 THE DEFENDANT: Examine the witness? I don't want a
22 trial.

23 THE COURT: You do not want a trial.

24 THE DEFENDANT: No.

25 THE COURT: Okay. And that's the last thing I need to

Guilty plea

1 address with you.

2 You also have a right to have a jury trial. And, as
3 I've stated, you've got a right to have 12 jurors sit over
4 there in that jury box, consider all of the evidence in
5 your cases and decide whether or not you've been proven
6 guilty of these crimes.

7 Before a jury could find you guilty of any of these
8 crimes all 12 have to be in agreement, and all 12 have to
9 be convinced of your guilt beyond a reasonable doubt. Did
10 Mr. Ray explain that to you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you understand it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And it has to be unanimous. All 12 have
15 to be in agreement before they could find you guilty of any
16 crime the state claims you committed.

17 Do you understand your right to have a jury decide
18 whether or not you're guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that when you plead
21 guilty a jury won't make that decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Would you rather have a jury trial or
24 would you rather plead guilty?

25 THE DEFENDANT: Plead guilty.

Guilty plea

1 THE COURT: All right. Now, has anybody promised you
2 anything that caused you to make your decision to plead
3 guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Well, did y'all come to an agreement as to
6 a -- the sentence to be imposed if you were to plead
7 guilty?

8 THE DEFENDANT: Yeah. They told me 25. I'll take it.

9 THE COURT: Okay. So you talked to Mr. Ray, and
10 Mr. Ray talked to the prosecutor, and y'all have come to an
11 agreement as to what the sentence should be if I accept
12 your pleas of guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And explain to me what the agreement was.
15 Did you agree? Well, let me ask you some questions about
16 that. Did you agree to plead guilty to all five of these
17 charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And in return for your agreement to plead
20 guilty to all five of these charges what did the solicitor
21 agree to do for you?

22 THE DEFENDANT: What do you mean?

23 THE COURT: Did he agree to do anything for you?

24 THE DEFENDANT: No.

25 THE COURT: Did he agree to a particular sentence that

guilty plea

1 he was going to recommend that I impose?

2 THE DEFENDANT: No less than 25 years.

3 THE COURT: All right. And do you understand from
4 your discussions with Mr. Ray and from my instructions to
5 you that 25 years is the mandatory minimum sentence for
6 first degree criminal sexual conduct with a minor where the
7 child is less than 11 years of age?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So is that what the solicitor agreed to?
10 The solicitor agreed to -- for the Court to impose the
11 minimum sentence in your case?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Did they agree to do anything else for
14 you?

15 THE DEFENDANT: No.

16 THE COURT: All right. Mr. Ray, was there anything
17 else that you understood was part of the agreement?

18 MR. RAY: No, sir.

19 THE COURT: All right. And other than that agreement
20 have you been promised anything?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anybody threatened you in any way?

23 THE DEFENDANT: Sir?

24 THE COURT: Has anybody threatened you to cause you or
25 to make you plead guilty?

Guilty plea

1 THE DEFENDANT: Oh, no, sir. I'm sorry.

2 THE COURT: Has anybody forced you into pleading
3 guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anybody made you plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: Are you pleading guilty because you made
8 that decision to plead guilty?

9 THE DEFENDANT: Yeah. But I don't want you to give me
10 60.

11 THE COURT: Are you satisfied with your decision to
12 plead guilty?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, you are 21 years of age.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And how far did you go in school?

17 THE DEFENDANT: Ten years.

18 THE COURT: And --

19 THE DEFENDANT: I want to finish.

20 THE COURT: Sir?

21 THE DEFENDANT: I want to finish.

22 THE COURT: All right. And are you able to read and
23 write?

24 THE DEFENDANT: I got trouble spelling, but I get help
25 from a lot of people, yeah.

Guilty plea

1 THE COURT: All right. And you understand fully what
2 you're doing here today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And I've seen the report from the
5 examiners at the Department of Mental Health. And while
6 they say you are competent to stand trial, they also
7 suggest that you have some mental deficiencies. Is that
8 true?

9 THE DEFENDANT: What you mean?

10 THE COURT: Well, you have a condition, a mental
11 condition, that might make you different than some other
12 folks might be considered. Is that true?

13 THE DEFENDANT: Yes.

14 THE COURT: But you understand what you're doing
15 today?

16 THE DEFENDANT: Yeah. I got a lot of help, you know.

17 THE COURT: You have what?

18 THE DEFENDANT: I get a lot of help.

19 THE COURT: You get a lot of help from who?

20 THE DEFENDANT: Other officers who I -- tell me
21 situations about this. And I understand even when he's
22 telling me -- to tell the truth the same as he do.

23 THE COURT: Okay. And Mr. Ray has been helpful to
24 you?

25 THE DEFENDANT: Yes.

Guilty plea

1 THE COURT: And he's explained to you about all of the
2 charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And did you tell him everything you know
5 about the charges?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And, Mr. Ray, did you and the defendant
8 determine whether or not he had any defenses to any of
9 these charges?

10 MR. RAY: Yes, sir.

11 THE COURT: And what did you determine?

12 MR. RAY: We determined basically his defense at
13 trial, it would be difficult to create a defense at trial
14 considering the evidence that was going to be used against
15 him. Basically, his competency became an issue, which is
16 why we had the Blair hearing and that determination.

17 THE COURT: So, but he has no legal defense --

18 MR. RAY: No, sir.

19 THE COURT: -- to any of the charges?

20 MR. RAY: No, sir.

21 THE COURT: All right. Mr. Smyth, you got a question
22 for me?

23 THE DEFENDANT: Yes, sir. Can I show you something
24 about the mental health?

25 MR. RAY: At the end.

Guilty plea

1 THE COURT: You can -- you can.

2 THE DEFENDANT: Before you sentence me.

3 THE COURT: You can. Before I sentence you, you can.
4 Are you today taking medication?

5 THE DEFENDANT: Seroquel.

6 THE COURT: And how long have you been taking it?

7 THE DEFENDANT: Almost two -- I have to go look at my
8 paperwork.

9 THE COURT: Well, I mean about how long.

10 THE DEFENDANT: I would say two years. Since I came
11 back from the mental hospital.

12 THE COURT: Okay. And that's prescribed by a
13 physician, a medical doctor?

14 THE DEFENDANT: Mental health down here.

15 THE COURT: Okay. And does that medication help you
16 function and understand what you're doing here today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. I'm going to ask the solicitor to
19 tell me about the facts that relate to the charges. In
20 other words, he's going to tell me what he would offer to
21 prove in court if your cases went to trial.

22 So listen to what he tells me, because when he gets
23 through telling me his version I'm going to ask you if you
24 agree with him or disagree with him. Okay?

25 THE DEFENDANT: What if I disagree? I still got to go

Guilty plea

1 to trial?

2 THE COURT: Well, let's just let him say what he's
3 going to say, and then I'm going to ask you if you agree or
4 disagree. And you tell me if you do or you don't.

5 Okay. All right. Mr. Leibert.

6 MR. LEIBERT: May it please the Court, Your Honor.

7 On December 29th of 2010 he was interviewed by an
8 investigator, and he was Mirandized.

9 He gave some oral statements, and then he gave a very
10 short written statement that Keith wrote in his own hand.
11 And I'd like to publish it.

12 "I am sorry what I did and I will not do that again.
13 If I do that you can send me back to D.J.J. I will stay in
14 the house from now on. I'm sorry I had sex with the four
15 boys. Their names are VICTIM 3, VICTIM 2 and VICTIM 1, and VICTIM 4.
16 I didn't mean to hurt them."

17 Your Honor, may I hand this up? And the Court may
18 want to make it a court exhibit.

19 Prior to giving that statement to the investigator --

20 THE COURT: All right. Well, just a minute. Let me
21 ask him.

22 Mr. Smyth, I have what's been handed up by the
23 solicitor. He says it was a statement that you gave to
24 Investigator Cantrell back on December the 29th of 2010.

25 Has Mr. Ray shown you that statement and you and he

Guilty plea

1 have talked about it?

2 THE DEFENDANT: Yes, sir. But can I tell you
3 something else?

4 THE COURT: Sure.

5 THE DEFENDANT: See, when she -- when I did this she
6 told me to write this and she was not going to let me go to
7 D.J.J., because I told her what happened.

8 This statement of this, when I wrote it she took and
9 she never gave me a copy. I only got my -- this other copy
10 and my paper. I only got the pink paper.

11 I -- I went to want to talk to a lawyer, and she said
12 I don't have no right to talk to a lawyer. And I'm being
13 honest. I could put my hand on the Bible, because I love
14 to read the Bible and I like -- I believe in the Lord. She
15 never gave me a copy of my statement, but she gave me a
16 copy of this. But she didn't tell me --

17 THE COURT: Just a second.

18 When you're referring to this, you're talking about
19 the pre-interrogation waiver form?

20 THE DEFENDANT: Yeah, yeah. She gave me a copy of
21 the -- my right -- sign it. I just started knowing that in
22 2012. You know, I never knew. She never read it. She
23 told me to sign this, sign this out, and I did. Then she
24 told me. She said you write a statement and I will let you
25 go home. And she told me what to say, and she told me to

Guilty plea

1 spell this out. And I copied it. And she never gave me a
2 copy of my statement.

3 THE COURT: All right. Well, let me ask you this.
4 That is a statement in your handwriting, is it not?

5 THE DEFENDANT: Yeah.

6 THE COURT: And is that true or false?

7 THE DEFENDANT: Well, she told me to say what I was
8 going to say in this and --

9 THE COURT: Well, I'm asking you. Is that -- is that
10 true or false?

11 THE DEFENDANT: False to me because I -- you know, she
12 told me to write this.

13 MR. RAY: What he's not asking you --

14 THE COURT: Well, are you admitting to having --
15 having -- committing a sexual battery against these
16 children, or not?

17 THE DEFENDANT: Not all.

18 THE COURT: Not all? Well, now, I read these
19 indictments to you.

20 THE DEFENDANT: Yes.

21 THE COURT: True?

22 THE DEFENDANT: I just want to plead guilty and get
23 this over.

24 THE COURT: I understand. I read these indictments to
25 you, true?

Guilty plea

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I explained to you what the state

3 claims you did. You said you understood it.

4 THE DEFENDANT: Yeah.

5 THE COURT: You said you wanted to plead guilty to it.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Is that not so?

8 THE DEFENDANT: I plead guilty.

9 THE COURT: Okay. But you don't admit that you did

10 those things in the indictment?

11 THE DEFENDANT: But I -- I take the plea. I see --

12 MR. RAY: That's not what he's asking you.

13 THE COURT: Well, you've got to answer my questions.

14 MR. RAY: Remember we talked about whether or not

15 you're admitting that you did this and accepting

16 responsibility for it.

17 THE COURT: All right. These folks here are going to

18 have to be removed. That's the second time I've had to

19 call them down, so they'll be removed from the courtroom.

20 (Pause.)

21 THE DEFENDANT: Your Honor --

22 THE COURT: Sir, no more talking. Do you understand?

23 UNIDENTIFIED PERSON: Yes, sir.

24 THE COURT: Well, then stop talking.

25 (Pause.)

Guilty plea

1 THE DEFENDANT: Judge Cole --

2 THE COURT: Sir?

3 THE DEFENDANT: -- my grandfather -- he just said
4 don't --

5 THE COURT: I just -- I just asked him to leave
6 because I -- see, I can't hear you talking if I can hear
7 him talking. It's like talking in a crowd.

8 I'm not -- I'm not doing anything to him. I just
9 asked them to leave because I can't hear you if I'm -- when
10 he's talking over you, so.

11 THE DEFENDANT: They're my only friends.

12 THE COURT: I understand. There's nothing going to
13 happen to him. He's just not going to be able to talk in
14 the courtroom.

15 Okay. All right. Now, I went through the indictments
16 with you and told you what they allege. Do you admit that
17 or deny that?

18 THE DEFENDANT: I -- I admit that.

19 THE COURT: You admit what's in the indictments?

20 THE DEFENDANT: Yeah. I'm pleading.

21 THE COURT: All right. Now, about that statement, you
22 say that's not -- not true?

23 MR. RAY: The statement says I'm sorry for what I did,
24 I will not do that again. If -- going to send me back to
25 D.J.J. I'm sorry I had sex with the four boys. Is that

Guilty plea

1 true or not? We're not talking about...

2 Your Honor, the issue is he complains that the
3 investigator tricked him into doing this and he understands
4 that --

5 THE DEFENDANT: I'm not going to --

6 MR. RAY: He is going to waive --

7 THE COURT: I'm going to talk to you about that in a
8 minute. I'm just trying to find out right now if those
9 statements --

10 THE DEFENDANT: I don't want to go to trial for the
11 statement. You can sentence me over 60.

12 MR. RAY: What he's asking is is this true, not
13 whether or not she tricked you into writing it, but is it
14 true.

15 THE DEFENDANT: I wrote it.

16 MR. RAY: Well, is it true what it says? "I'm sorry
17 for what I did and I will do that again. If I do that, you
18 can send me back to D.J.J. I'm sorry I had sex with the
19 four boys." Is that true?

20 A I did not have sex with them. But I don't know. What
21 you're trying to say when we do -- I'm saying I did not --
22 I didn't write it on my own because she told me what to
23 say, and I did it.

24 THE COURT: I understand. Right now I'm not -- okay.
25 I'm not asking you --

Guilty plea

1 THE DEFENDANT: I don't want to go to trial. I don't
2 want a jury to be against me and have against me and judge
3 me and say, yeah, he's guilty. That's why I don't want to
4 go.

5 THE COURT: All right. I'm going to get to -- I'm
6 going to get to the part about you saying that she tricked
7 you into giving a statement. But what I'm trying to find
8 out right now is what's in that statement, is it true that
9 you had sex with those children.

10 THE DEFENDANT: No.

11 THE COURT: It's not true.

12 THE DEFENDANT: No.

13 THE COURT: All right. Well, why are you here today
14 pleading guilty to it?

15 THE DEFENDANT: Because I don't want to go to trial
16 because of the statement that I wrote can mess me up. They
17 can use it against me.

18 THE COURT: Well, you -- has Mr. Ray explained to you
19 that in order for that statement to be used in court I have
20 to determine that it was voluntarily made and that you've
21 got a right to have a hearing on that for me to make that
22 determination?

23 THE DEFENDANT: Yeah.

24 THE COURT: If you plead guilty you give up your right
25 to contest the voluntariness of that statement. Do you

Guilty plea

1 understand that?

2 THE DEFENDANT: What's voluntariness?

3 THE COURT: In other words, you can't challenge it.

4 You don't -- it'll be considered against you.

5 THE DEFENDANT: Can I talk to him for a minute?

6 THE COURT: Sure.

7 (Pause for the defendant to confer with Mr. Ray.)

8 THE COURT: Let me just -- what I'm going to do,
9 Mr. Smyth, I'm going to have Mr. Leibert tell me what he
10 contends you did. So you listen to what he says.

11 Forget about this statement for the time being. I'm
12 going to let him -- I'm just going to let him tell me what
13 he claims you did and what he would offer, in other words,
14 what his witnesses would testify to in court. And you
15 listen to what he tells me, and then I'll follow up with
16 some questions.

17 MR. LEIBERT: May it please the Court, Your Honor.

18 He was Mirandized at 12:49 and then wrote the
19 statement at 2:10, and in between times that they had a
20 conversation and he made the following statements.

21 He said he was embarrassed to talk about it. And
22 Agent Cantrell explained that, you know, she does this a
23 lot and no need to be embarrassed.

24 And as to Indictment 965 with 12-year-old VICTIM 1; at the
25 time, he did say that he put his mouth on VICTIM 1 penis

guilty plea

1 several times, in addition to other things.

2 THE COURT: Oral sex?

3 MR. LEIBERT: Yes, sir, Your Honor.

4 THE COURT: All right. Mr. Smyth, did you hear what
5 he told me?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: He claims that with regard to VICTIM 1
8 VICTIM 1 that you performed oral sex on him.

9 Is that true or false?

10 THE DEFENDANT: Well, I don't lie. He -- he asked me
11 to do stuff and I --

12 THE COURT: Well, I'm just saying is it true or false.

13 THE DEFENDANT: Yes. It's true.

14 THE COURT: It's true?

15 THE DEFENDANT: With that one.

16 THE COURT: Sir?

17 THE DEFENDANT: With that one, it is.

18 THE COURT: All right. Listen to what he says next.

19 MR. LEIBERT: As to the 966, that was VICTIM 2
20 who was nine years old at the time. He said to Agent
21 Cantrell that he put his mouth on VICTIM 2's penis more than
22 three times.

23 THE COURT: All right. Mr. Leibert says that you also
24 performed oral sex on VICTIM 2

25 Is that true or false?

Guilty plea

1 THE DEFENDANT: I want to ask you. I'm sorry, sir.

2 THE COURT: Sir?

3 THE DEFENDANT: I want to know if I said false you --
4 I'm going to trial? Because I just want to go ahead and
5 plead and get this over with.

6 THE COURT: Well, is it true or false?

7 MR. RAY: You have to answer his question.

8 THE COURT: Sir?

9 THE DEFENDANT: True.

10 THE COURT: All right.

11 MR. LEIBERT: Indictment 967 as to VICTIM 3, age seven
12 years, nine months, Keith said he put his mouth on VICTIM 3's
13 penis and VICTIM 3 put his mouth on Keith's penis one time.

14 THE COURT: All right. With regard to VICTIM 3
15 VICTIM 3, they claim you and he engaged in oral sex on each
16 other.

17 Is that true or false?

18 THE DEFENDANT: False.

19 THE COURT: That's false?

20 THE DEFENDANT: Yeah.

21 THE COURT: All right.

22 MR. LEIBERT: As to 968, VICTIM 4, age ten, he
23 said he put his mouth on VICTIM 4's penis two or three times.

24 THE COURT: All right. Mr. Leibert says that you
25 performed oral sex on VICTIM 4.

Guilty plea

1 Is that true or false?

2 THE DEFENDANT: That's true.

3 THE COURT: Okay.

4 MR. LEIBERT: As to Indictment 12 or -- 11-1251, that
5 involved seven year and two month old VICTIM 5.

6 When Agent Cantrell went to interview him that came up
7 after the other charges when it was -- I believe when it
8 was in the media and he was already in jail. And Agent
9 Cantrell went to the jail. And at that time, as she
10 testified before Your Honor at the competency hearing -- at
11 that time he said he wasn't going to speak to her without
12 an attorney. She immediately terminated that interview but
13 got a warrant.

14 Can I now go into what the boys would testify to?

15 THE COURT: Well, what about the VICTIM 5?

16 MR. LEIBERT: He -- he did not make any admissions,
17 that he asked for an attorney on VICTIM 5.

18 THE COURT: Well, I'm asking what the claim is.

19 MR. LEIBERT: The claim is that from VICTIM 5
20 VICTIM 5, and it came out during his forensic, that he had
21 to, his words, suck defendant's penis.

22 THE COURT: All right. They claim that you -- you
23 forced VICTIM 5 to perform oral sex on you.

24 Is that true or false?

25 THE DEFENDANT: True.

Guilty plea

1 THE COURT: All right. The only one that you have
2 disagreed with then is Indictment 2011-967 which involved
3 VICTIM 3 .

4 THE DEFENDANT: Excuse me. I'm just going to go ahead
5 and plead to that one true.

6 THE COURT: All right. Well, we'll get there.

7 THE DEFENDANT: I just don't want to go to trial.
8 I'm --

9 THE COURT: I understand. Well, I'm trying to get
10 there.

11 THE DEFENDANT: I don't want you upset.

12 THE COURT: Sir?

13 THE DEFENDANT: I don't want to get you upset.

14 THE COURT: I'm not upset. Are you?

15 THE DEFENDANT: No.

16 THE COURT: Okay. Well, don't be.

17 This -- the charge that you say was false, you've
18 heard what the solicitor claims. He says he has a witness
19 that will testify to that.

20 Did you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you believe that if the witness
23 testified to those facts that a jury would believe it and
24 find you guilty?

25 THE DEFENDANT: Yeah. If they knowed it was my --

Guilty plea

1 they might charge me, yeah.

2 THE COURT: And so based upon that belief you want to
3 plead guilty to it --

4 THE DEFENDANT: Yes. I do.

5 THE COURT: -- to go with the other indictments to
6 which you've admitted?

7 THE DEFENDANT: Yeah.

8 THE COURT: All right. Mr. Leibert.

9 MR. LEIBERT: Your Honor, the boys all had a forensic
10 interview by Dr. Lynn --

11 THE COURT: Listen to what Mr. Leibert's telling us.

12 MR. LEIBERT: Dr. Lynn McMillan. And everything that
13 he's admitted to they have corroborated. There are some
14 other things, but that all would establish a sexual
15 battery. But everything he's admitted to they corroborated
16 with Dr. McMillan.

17 THE COURT: All right. So the five indictments here
18 that you've indicated to me there was oral sex involved
19 between this defendant and those minor children, you have a
20 witness that will testify to those facts in court.

21 MR. LEIBERT: Yes. And in some cases, Your Honor, you
22 know, there's two sets of brothers. They could -- they
23 would be witnesses as to each other as eye witnesses.

24 THE COURT: All right. So you've heard what he told
25 me.

guilty plea

1 In other words, these five children would testify in
2 court that you and they engaged in oral sex.

3 Do you believe that if your cases were presented to a
4 jury that they would find you guilty?

5 THE DEFENDANT: To me, yes, because of my choices.
6 Everybody choiced [sic] me in jail saying I'm guilty of it.
7 Yes. Everybody judged me.

8 THE COURT: Well, do you think a jury would judge you?
9 Do you think a jury would find you guilty?

10 THE DEFENDANT: If they don't like somebody who they
11 try and say I molested kid, yeah, everybody that's in the
12 jail called me a child molester.

13 THE COURT: Okay.

14 THE DEFENDANT: Said that they will find me guilty,
15 yeah.

16 THE COURT: Well, do you believe they'd find you
17 guilty?

18 THE DEFENDANT: Yeah. I been judged for five years,
19 almost four and a half years in the jail.

20 THE COURT: Well, the jury's not in jail. The jury
21 doesn't come from the jail. A jury comes from a different
22 group of people than what's in jail.

23 We have a jury panel. They're citizens chosen
24 randomly by a computer from driver's licenses and voter
25 registration cards. They come to court each week to hear

guilty plea

1 cases.

2 So nobody in the jail's going to serve on the jury.

3 Do you want to have a jury hear the facts in this case
4 and make a determination as to the verdict?

5 THE DEFENDANT: No, because I don't want to get 60
6 years if they do say I'm guilty.

7 THE COURT: Well, do you believe that a jury that you
8 help pick would find you guilty?

9 THE DEFENDANT: What do you mean -- I pick? What do
10 you mean by that?

11 THE COURT: Well, you and Mr. Ray and Mr. Leibert
12 would pick the jury that's going to decide your case if you
13 had a jury trial.

14 Twelve would be selected from a larger number. Once
15 those 12 are selected they'd sit over there in the jury
16 box, and they would consider all of the evidence including
17 any offered by you if you wished to testify or offer any
18 evidence. But the jury would make the ultimate decision as
19 to whether or not you have been proven guilty beyond a
20 reasonable doubt.

21 Do you want to have that jury trial?

22 THE DEFENDANT: No, no, no, no, sir.

23 THE COURT: Do you believe if you did that the jury
24 would find you guilty of these charges?

25 THE DEFENDANT: Yeah. I believe, probably.

Guilty plea

1 THE COURT: okay. what else?

2 MR. LEIBERT: Your Honor, there's more that -- I mean,
3 we've covered it, I believe. I don't think I need to go
4 any farther in that.

5 He has no prior record as a juvenile. You know, he's
6 been in since he was 16. He was charged with assault and
7 battery and went to arbitration. So that's his only prior.

8 THE COURT: Is -- is what you're telling me, is that
9 these children also made additional allegations against the
10 defendant that would constitute sexual battery but these
11 are allegations that he does not admit to and denies?

12 MR. LEIBERT: That is correct.

13 THE COURT: But if the cases went to trial they would
14 make additional allegations in addition to those that
15 you've already presented today.

16 MR. LEIBERT: Yes, sir, Your Honor.

17 THE COURT: All right. Do you understand that,
18 Mr. Smyth?

19 THE DEFENDANT: what you mean, a sexual battery?

20 THE COURT: sexual battery is sexual intercourse, oral
21 intercourse, anal intercourse, any intrusion, however
22 slight, into the anal or genital openings of a person's
23 body.

24 And Mr. Leibert is saying that the children would
25 testify to other things that he hasn't specifically

Guilty plea

1 mentioned. He's mentioned the oral sex. He says they
2 would testify to other things. But those are things that
3 you don't admit to.

4 So, as I understand it, you're pleading guilty to
5 those facts that you do admit to, which is the oral sex
6 with these children.

7 Is that true or not?

8 THE DEFENDANT: I say true.

9 THE COURT: Sir?

10 MR. RAY: You've got to speak up so he can hear you.

11 THE DEFENDANT: I say true.

12 THE COURT: You say it's true.

13 THE DEFENDANT: Yeah. I just don't want to go to
14 trial because...

15 THE COURT: You don't want to go to trial? Is that
16 what you're saying?

17 THE DEFENDANT: Yeah, because they would judge me.

18 THE COURT: All right. Well, let's be clear.

19 You do not want to have a jury trial?

20 THE DEFENDANT: Uh-uh, no, sir.

21 THE COURT: You do wish to plead guilty.

22 THE DEFENDANT: Yes. I will.

23 THE COURT: You do admit at least in four of these
24 indictments that you did engage in oral sex with these
25 children?

Guilty plea

1 THE DEFENDANT: Yes.

2 THE COURT: And there was one indictment that you did
3 not admit to but you think you would be convicted of it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right.

6 THE DEFENDANT: I just -- please, I don't want to go
7 to trial. I don't want.

8 THE COURT: Do you still wish for me to accept your
9 pleas of guilty as you've indicated?

10 THE DEFENDANT: Yes. I'll take -- I'll take the plea.

11 THE COURT: All right. I'll accept your pleas of
12 guilty. And now I'm going to hear from you and Mr. Ray and
13 anybody else that you want me to hear from if you'd like
14 for me to hear from someone.

15 MR. RAY: Your Honor, Keith has been in jail for four
16 years, 113 days.

17 Prior to that when he was in school he was in
18 self-contained classes, and he was receiving some services
19 through that from D.D.S.N.

20 Your Honor, we've talked about his case extensively.
21 We've talked about this plea and the negotiations of 25
22 years. And, Your Honor, if Your Honor accepts the plea, he
23 understands that that will be the sentence, that will be
24 what he gets.

25 We discussed that if he went to trial Your Honor could

Guilty plea

1 sentence him to 25 years, or 30 or 40 or 50 or 60 or all
2 the way possibly up to life. So he talks about 60 years.
3 We've discussed that it can be anywhere from 25 up.

4 Your Honor, I think he is very embarrassed of the
5 things that happened. He's, as Your Honor heard in the
6 Blair hearing -- he does have intellectual disability and
7 functions on a lower level than most people his age.

8 Your Honor, he -- he played with young children
9 because basically they were -- they were the ones he
10 related to better than other kids his age. He had a few
11 friends his age but mostly played with these younger kids.

12 I think he's -- I think he's very sorry for the things
13 that happened. He's remorseful. Your Honor's heard that
14 he wants treatment. He's repeatedly told me about wanting
15 to get treatment.

16 Your Honor, he's -- he's also told me that he wanted
17 to plead guilty and he didn't want a jury trial, as he's
18 repeated several times today. He doesn't want to go to
19 trial -- he doesn't want to go to trial.

20 And, Your Honor, viewing the evidence against him and
21 through our discussions about what he's told me that
22 happened we decided to or he decided to enter the plea.
23 And then through the negotiated sentence that we have I
24 would respectfully request Your Honor accept the plea and
25 the negotiated sentence.

Guilty plea

1 THE COURT: All right. Mr. Smyth, now is your
2 opportunity to tell me whatever you'd like to tell me.

3 THE DEFENDANT: Can I show something too I brought
4 with me?

5 THE COURT: What is it?

6 MR. LEIBERT: I think it's a letter.

7 THE COURT: Hand that to Mr. Ray first. Hand that to
8 Mr. Ray and let him look at it and see what you're
9 providing me.

10 (Pause.)

11 MR. LEIBERT: No objection, Your Honor.

12 THE COURT: All right. Mr. Smyth, what do you want me
13 to look at?

14 THE DEFENDANT: I've been doing Bible studies with a
15 lot of ministries and I've been -- I've been trying to do
16 right. That's why I'm asking for treatment. I got so much
17 of them I can't bring them with me from so many.

18 MR. RAY: Your Honor, one thing I forgot to mention
19 that would probably benefit Your Honor and other folks in
20 the courtroom.

21 Keith was abused as a young child. It's only
22 something we were able to discover after he was charged in
23 these offenses. So he was without the benefit of getting
24 treatment as he was growing up.

25 I say that for Your Honor to consider the fact that I

Guilty plea

1 don't think it's -- it was just something that he started
2 doing vindictively or that there was something that just he
3 decided to start doing without any cause for that.

4 I believe because of the abuse that he received as he
5 was younger that went without treatment, is what led to his
6 decision to commit these offenses.

7 THE COURT: All right. Mr. Smyth, anything else you
8 want to tell me?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. Mr. Ray, have you -- earlier
11 we were discussing the statement, the written statement,
12 the state contends was given by Mr. Smyth after he was
13 advised of his rights. And he contests the voluntariness
14 of that statement.

15 Have you been over that with him and explained to him
16 that he's got a right to challenge that, the voluntariness
17 of that statement, and if I determine that it was not
18 voluntarily made that the jury wouldn't be able to consider
19 that statement, they wouldn't be able to hear about that
20 statement?

21 MR. RAY: Yes, sir.

22 THE COURT: Did you also explain to him that even if
23 the statement was excluded that the witnesses will still
24 testify, the children would testify, about what occurred on
25 various dates in question?

Guilty plea

1 MR. RAY: Yes, sir.

2 THE COURT: And that the jury could rely upon their
3 testimony even though the testimony of Investigator
4 Cantrell about what the defendant stated might be excluded
5 from their consideration?

6 MR. RAY: Yes, sir, Your Honor.

7 THE COURT: And you think he understands that?

8 MR. RAY: I think so, Your Honor.

9 THE COURT: Okay. And notwithstanding that, do you
10 think his decision to plead guilty is freely and
11 voluntarily made?

12 MR. RAY: I believe it is, Your Honor.

13 THE COURT: Mr. Smyth, you heard what I said to
14 Mr. Ray about the statement.

15 Do you understand even if I -- even if the statement
16 that Ms. Cantrell says you made -- even if that's kept from
17 the jury that the jury would still be able to consider the
18 testimony of each of the children who are alleged to be the
19 victims in these indictments? Do you understand that?

20 THE DEFENDANT: Yeah.

21 THE COURT: And so the jury would still be able to
22 consider their testimony even if your statement was not
23 allowed to be considered by them.

24 Do you understand?

25 THE DEFENDANT: Yes, sir.

Guilty plea

1 THE COURT: And understanding that do you still wish
2 not to have a jury trial and to plead guilty?

3 THE DEFENDANT: I don't want the jury to give me 60
4 years, no.

5 THE COURT: You said no to my question. Does that
6 mean you do want to have a jury trial?

7 THE DEFENDANT: No.

8 MR. RAY: Do you want to have a jury trial or do you
9 want to plead?

10 THE DEFENDANT: I plead guilty.

11 THE COURT: All right. So even notwithstanding the
12 fact that that statement could be excluded, you still do
13 not wish to have a jury trial. Is that true?

14 THE DEFENDANT: I don't want no jury trial, no. I
15 don't want to be judged, and I take the plea.

16 THE COURT: Okay. So you still want me to accept your
17 pleas of guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is there anything else you need to tell me
20 about it?

21 THE DEFENDANT: No, sir.

22 MR. LEIBERT: Your Honor, may I confer with the one
23 parent, please?

24 THE COURT: Sure.

25 (Pause.)

Guilty plea

1 MR. LEIBERT: Thank you, Your Honor.

2 THE COURT: All right. On Indictments 2011-966,
3 Sentence of the Court is you, Keith Adger Smyth, be
4 confined to the South Carolina Department of Corrections
5 for a period of 25 years.

6 That sentence is going to be concurrent with any other
7 sentence imposed today, and the defendant is to be given
8 credit for any time he's entitled to pursuant to 24-13-40.

9 Indictment 2011-967, 968, 1251, as to each a like
10 sentence running concurrent.

11 Indictment 2011-965, sentence is you be confined to
12 the Department of Corrections for a period of 20 years.
13 That sentence is concurrent. Credit for any time he's
14 entitled to.

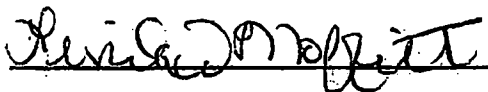
15 END OF REQUESTED TRANSCRIPT OF RECORD
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 10th day of February 2015 and the 21st day of April 2015.

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

September 5, 2015

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Spartanburg)

2015-CP-42-3427

Keith Adger Smyth 363956)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 Spartanburg County Detention Facility
2. Name and location of Court which imposed sentence Spartanburg County Courthouse
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) M-124324, M-124326, M-124327, M-124328

(b) M-124910.

(c) _____

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

(a) Plea of 25 years.

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

No not yet.

8. If you answered Ayes@ to (7), list:

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

i. I have written Letters to some ofii. the Courts, of Appeals ETC.

iii. _____

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

i. About MY Case, of Criminalii. charges.

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. The Supreme Court of SC,ii. South Carolina Court of Appeals

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) N/A.

CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG -7 PM 1:34
M. HOEHLACKLEY

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) Yes i Feel like, that ive been
 (b) sentence unlawful.
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) NOT competent.
 (b) Disabilities.
 (c) Medications, was a sign to me.
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? PCR
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. The Frist Application on PCR.
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 AUG -7 PM 1:34
 M. HOPE BLACKLEY

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No.

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

(a) which grounds have been presented:

i. None

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
2015 AUG -7 PM 1:34
M. HOPE BLACKLEY

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Yes I Feel i've been sentence unlaw-
 (b) ful.
 (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) your sentencing? Yes he helped Me.
 (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 Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Timothy M. Roy
Attorney & Counselor at Law
 ii. 184 N. Daniel Morgan Ave.
Spartanburg, SC 29306
 iii. Phone: 864-542-2800
Fax: 864-585-0068
- (b) the proceedings at which each such attorney represented you:
- i. Timothy M. Roy.
 ii. _____
 iii. _____

CLERK OF COURT
 SPARTANBURG COUNTY
 2016 AUG -7 PM 1:34
 M. HOPE BLACKLEY

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

PCR,

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

None.

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Keith Adger Smyth SCDC# 363756, 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.

Keith A. Smyth

SWORN to and subscribed before me this 3
day of August, 2015.

Tennille S. Montgomery (L.S.)
Notary Public

My Commission Expires: 6/10/2018

CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG -7 PM 1:34
M. HEPE BLACKLEY

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

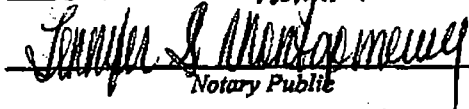
I, Keith Adger Smyth 363756, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.


Applicant

SWORN or affirmed to and subscribed before me this

3 day of August, 2015.


Notary Public

My Commission Expires: 6/12/2018

CLERK OF COURT
SPARTANBURGH COUNTY
2015 AUG - 7 PM 1:34
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

COUNTY OF SpartanburgKeith Adger Smyth Plaintiff(s)

vs.

State of South Carolina Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-42-

(Please Print)

Submitted By:

Address:

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet 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 cover sheet 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)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 <u>-CP-</u> | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Lunatic Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (300) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex/Other | | | ☐ Administrative Law Judge (980) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☒ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Keith Adger Smyth, #363756,	)	Case No.: 2015-CP-42-3427
	)	
Applicant,	)	
	)	RETURN AND MOTION FOR
v.	)	A MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 7, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the February 2011 term of the Spartanburg County Grand Jury for four counts of criminal sexual conduct with a minor, first degree (2011-GS-42-0966, 2011-GS-42-0967, 2011-GS-42-0968, 2011-GS-42-1251), and one count of criminal sexual conduct with a minor, second degree (2011-GS-42-0965). Timothy M. Ray, Esquire, represented Applicant. On April 21, 2015, Applicant pleaded guilty as indicted before the Honorable J. Derham Cole. Pursuant to a negotiated sentence, the Honorable J. Derham Cole sentenced Applicant to imprisonment for concurrent terms of 25 years for each count of criminal sexual conduct with a minor, first degree, and a concurrent term of 20 years for criminal sexual conduct with a minor, second degree.

Attached to the Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea,

and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. "Yes I feel like, that I've been sentence unlawful"
 - a. Not competent
 - b. Disabilities
 - c. Medications was a sign to me

III.

Respondent interprets Applicant's allegations as a claim that he did not plead guilty freely and voluntarily. Respondent submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (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. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). Respondent submits Applicant should not be allowed to depart from the truth of the statements he made during his

guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Respondent submits that Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

IV.

In a PCR action, 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, 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. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assis-

tance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial.” Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

Applicant can satisfy neither 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent requests that this Court convene an evidentiary hearing on the allegation of ineffective assistance of counsel only. As to any other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Respondent's claims are vague and he has failed to set forth any “facts which support each ground” or to explain with specificity, the facts upon which these 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). Respondent respectfully submits that it is incumbent upon Applicant to amend the application and set forth specific allegations and supporting facts so that Respondent may

adequately respond at the hearing. 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.

VII.

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

VIII.

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

[Signature block on following page]

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IX.

WHEREFORE, having made its Return, Respondent requests 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

ALICIA A. OLIVE
Assistant Attorney General

By: *Alicia Olive*
ATTORNEYS FOR RESPONDENT

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

February 18, 2016

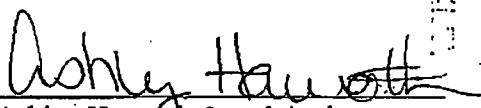
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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2015-CP-42-3427
KEITH ADGAR SMYTH, #363756,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Mr. Rodney Wade Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this 18TH day of February, 2016.


 Ashley Haworth, Legal Assistant
 For Respondent

FILED
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS	
	)	CASE NO: 2015-CP-42-3427	
COUNTY OF SPARTANBURG	)		
	)		
Keith Adger Smyth, SCDC# 363756	)	AMENDMENTS TO	
Applicant,	)	POST CONVICTION	
	)	RELIEF APPLICATIONS	
vs.	)		
	)		
THE STATE OF SOUTH CAROLINA,	)		
Respondent.	)		
_____	)		

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CLERK OF COURT
SOUTH CAROLINA

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

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

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

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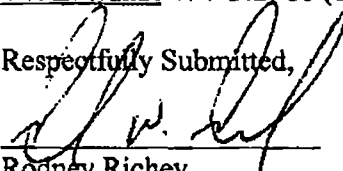
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,


Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

October 13, 2016

2015 OCT 14 PM 4:09
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CLERK OF COURT

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3 COUNTY OF SPARTANBURG) OF THE SEVENTH
4) JUDICIAL CIRCUIT
5)
6 KEITH ADLER SMYTH,)
7)
8 Plaintiff,) TRANSCRIPT OF RECORD
9) 2015-CP-42-03427
10 vs.)
11)
12 THE STATE OF SOUTH CAROLINA,)
13 Defendant.)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

November 8, 2016
Spartanburg, South Carolina

B E F O R E:

HONORABLE FRANK R. ADDY, Judge.

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

RODNEY RICHEY, ESQUIRE
For Plaintiff

ALICIA OLIVE, Assistant Attorney General
For Defendant

Julie A. Ashbrook,
Circuit Court Reporter
Seventh Judicial Circuit

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EXHIBITS

MARKEDENTERED

NO EXHIBITS PROFFERED

1 KEITH ADLER SMYTH VERSUS THE STATE

2 THE COURT: Attorney General would you brief us.

3 MS. OLIVE: May it please the Court, Your Honor.
4 This is Keith Adler Smyth, Case Number 2015-CP-42-3427.
5 Mr. Smyth was indicted in February 2011 for four counts
6 of criminal sexual conduct with a minor first degree and
7 one count of criminal sexual conduct with a minor in the
8 second degree. He was represented on those charges by
9 Timothy Ray.

10 On April 21st, 2015, he pleaded guilty as
11 indicted before Judge Cole pursuant to a -- he was
12 sentenced to concurrent terms of 25 years to each count
13 of criminal sexual conduct with a minor first degree and
14 a concurrent term of 20 years for criminal sexual
15 conduct with a minor second degree.

16 Your Honor, he filed this application for
17 postconviction relief on August 7th, 2015. He is
18 present in the courtroom today, represented by Rodney
19 Richey. I will turn it over to Mr. Richey.

20 THE COURT: Mr. Richey.

21 MR. RICHEY: We're ready to go forward. We call
22 our first witness.

23 THE COURT: All right, go ahead.

24 MR. RICHEY: We call Mr. Smyth.

25 THE COURT: Come up here, please, sir.

1 (Whereupon, witness comes forward.)

2 Raise your right hand as best you can.

3 (Complies.)

4 Swear or affirm the testimony you're about to
5 give is the truth?

6 THE WITNESS: Yes, sir.

7 THE COURT: Mr. Richey.

8 MR. RICHEY: Thank you, Your Honor.

9 KEITH ADLER SMYTH,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q. Would you state your name, please.

14 A. Keith Adler Smyth.

15 Q. And, Mr. Smyth, are you currently at the
16 Department of Corrections?

17 A. Yes, sir.

18 Q. And what are you there for?

19 A. Criminal sexual conduct with a plea, both.

20 Q. Say it again, I'm sorry.

21 A. I'm there for I took a plea.

22 Q. Okay.

23 A. And convict my charges.

24 Q. Okay. And what, what sentence are you serving
25 now? How much?

DIRECT EXAMINATION OF KEITH SMYTH BY MR. RICHEY

1 A. Twenty-five years. They gave me four-and-a-half
2 years credit and 20 years. I'm on 20 years to go on my
3 sentence.

4 Q. Okay. And you were convicted in Spartanburg
5 County?

6 A. Yes, sir.

7 Q. And who represented you on those cases?

8 A. Timothy M. Ray.

9 Q. Okay. In these cases you raised some issues that
10 you were not competent at the time of the trial; is that
11 correct?

12 A. Yes, sir.

13 Q. And you believe that the transcript reflected
14 that you were evaluated; is that correct?

15 A. Yes, sir.

16 Q. Why do you believe that you were not competent to
17 stand trial?

18 A. Well at the time I was -- because at the time I
19 was gone it was maybe -- I mean the solicitor want to
20 say that I would get a life sentence behind bars and
21 stuff. It's like I'm saying I should not be sentenced
22 for something when I was a minor, you know? I did some
23 research on it. I was a juvenile at age of 16.

24 And I just want to go back on this because all
25 this being made and all this paperwork I don't see no

1 statements of them parent's wrote. Timothy Ray had seen
2 my discovery last year around in June.

3 Q. So you are denying that you had contact with
4 these children, correct? Sexual contact with these
5 children, you are denying that, right?

6 A. Yes, sir.

7 Q. Okay. And in this transcript can you tell me why
8 you did not deny all of the allegations? You've got
9 some of them but why not all of them?

10 A. Well, at the same time when the solicitor want to
11 say I'm gonna get probably 60 to life behind bars, it's
12 like Timothy Ray should have just put it on the stand
13 and tell them that all of this DNA and all of this, it
14 was like an aerosol taser. All these -- it like a gun
15 and it was a BB gun. I just want the Court to see it.
16 If I hold a knife at the throat, they're trying to say,
17 why do they still come to my house?

18 Q. Right.

19 A. Why do they still come to my house? Do I want to
20 come out and play? Do I want to come out? No, I don't
21 molest kids. That's not how I am.

22 Q. Okay. And so this transcript that you're saying
23 that you admitted to some of these allegations because
24 you were afraid that you were going to get a substantial
25 amount of jail time.

DIRECT EXAMINATION OF KEITH SMYTH BY MR. RICHEY

1 A. Yes, sir.

2 Q. And the ones that you said you did not do, you
3 didn't have that threat about those, right? The ones
4 that you said I did not do, you weren't concerned about
5 getting a life sentence on them, correct?

6 A. Yes, sir.

7 Q. Okay. And do you recall going to these doctors
8 to be evaluated?

9 A. (Witness nods head up and down.)

10 Q. You have to answer yes or no.

11 A. Oh, yes, sir.

12 Q. And you do not believe that these doctors
13 evaluated you properly?

14 A. Yes, sir. Because the state of mental health
15 they agreed, they actually agreed with the State.
16 Because the state of mental health, all they did gave me
17 a booklet, tell me what this and that. I've got --
18 Timothy Ray is aware that a book they have gave me is
19 about general sessions procedure what they do. All
20 right?

21 That's back in the room because I can't find that
22 one, but at the same time I still got it. At the same
23 time they did me wrong and gave me that book. Then I've
24 got to be by myself and I'm in violation of mental
25 health of the state of South Carolina of mental health

1 for 60 days that I be left alone. I don't understand
2 the court's procedure until now and I understand what's
3 going on.

4 Q. Okay. So you also -- so you're talking about the
5 State hospital. Did Mr. Ray provided you with two
6 additional doctors?

7 A. Yes, sir, he did.

8 Q. And they advised -- evaluated you?

9 A. Yes, sir.

10 Q. At the time of the guilty plea, were you on your
11 medication?

12 A. Yes, I was on Seroquel.

13 Q. Okay. And did it have any impact on whether you
14 were -- whether you pled guilty or not? Did it affect
15 your decision making?

16 A. Well actually it did because I was getting real
17 tired, but I would then know how to do this because I
18 wanted to get out of the county jail. And I did go
19 ahead and went ahead and plea because how the solicitor
20 was doing me saying I would get 60 to life, yes, sir.

21 Q. Okay. And you went over the evidence with your
22 attorney, correct? You went over the evidence in the
23 case with him?

24 A. What you talking about, my discovery?

25 Q. Yes, with your attorney.

DIRECT EXAMINATION OF KEITH SMYTH BY MR. RICHEY

1 A. Half of it, yes.

2 Q. Okay. And did you understand that half?

3 A. Not a lot.

4 Q. Okay.

5 A. Until today I do.

6 Q. Okay. So since you've been incarcerated you've
7 had an opportunity to look over the entire file, is that
8 what you're saying?

9 A. Yes. Because I do a lot of law work at the SCDC
10 because the county jail don't have no law material.
11 They make me pay for it, it's not free. I just, all I
12 do now is sit down there at SCDC and look over my case
13 and look up things that I can probably be because I
14 should not be here on the age of being at 16 and there's
15 no such thing.

16 Q. Okay. And you discussed with your attorney that
17 you did not hold these children down with any weapons,
18 correct?

19 A. Yeah, he should know that. No.

20 Q. Okay. And your chief complaint is that he didn't
21 investigate your case.

22 A. Not all the way. If he did, he would actually
23 tell them, yeah, they should bring this in court, not
24 the gun, the knife and the aerosol taser they're trying
25 to say goes to a remote airplane that my mom still got

1 and they got the other piece.

2 Q. So your position is he should have all the
3 evidence brought to court and you, you know, for you to
4 have a trial, the BB gun and all that stuff?

5 A. Yes, sir.

6 Q. Tell me other than the life sentence, what did
7 your attorney do to get you to plead guilty other than
8 the life sentence?

9 A. He told me that it would be a better plea besides
10 60 to life.

11 Q. And do you believe right now that you're
12 competent to understand what you're doing?

13 A. Yes, sir.

14 Q. So you understand everything right now?

15 A. Yes, sir.

16 Q. There's not an issue of whether you know why
17 you're here, correct?

18 A. Yeah.

19 Q. You know why you're here, right?

20 A. PCR hearing.

21 Q. And you understand everybody's role in here right
22 now, correct?

23 A. Yes, sir.

24 Q. And you understand what the judge's role is and
25 what the attorney general's role is, correct?

CROSS-EXAMINATION OF KEITH SMYTH BY MS. OLIVE

1 A. Yes, sir.

2 Q. Okay. So you completely understand these
3 proceedings?

4 A. Yes, sir.

5 Q. Okay. I want you to answer any questions the
6 attorney general has for you.

7 THE COURT: Ms. Olive.

8 CROSS-EXAMINATION

9 BY MS. OLIVE:

10 Q. Good morning, Mr. Smyth.

11 A. Good morning.

12 Q. Now you mentioned something about a knife, but
13 there was nothing in the, nothing in the facts as told
14 to the judge that involved a weapon, was there?

15 A. Yes, there was. Do you download document?

16 Q. I have the transcript. But you were only charged
17 with criminal sexual conduct, correct? You weren't
18 charged with any sort of assault.

19 A. Yes. Yes, ma'am.

20 Q. I mean, you weren't charged with assault and
21 battery, other than the criminal sexual conduct.

22 A. Yeah, that's all there.

23 Q. Mr. Smyth, do you understand that -- do you
24 recall your competency hearing?

25 A. Yes, ma'am.

1 Q. Okay. And you recall that your attorney
2 presented two doctors to testify as to your competency?

3 A. Yes, ma'am.

4 Q. And they believed you were not competent to stand
5 trial, correct?

6 A. Yes, ma'am.

7 Q. Okay. And then the State also presented a
8 witness who had -- they presented witnesses who had been
9 witnessing your behavior over 60 days while you were in
10 a facility; is that right?

11 A. Yes, ma'am.

12 Q. Okay. And they testified that you were competent
13 to stand trial?

14 A. Yes, ma'am.

15 Q. Okay. And then after hearing that testimony the
16 judge made the determination that you were competent to
17 stand trial, correct?

18 A. Yes, ma'am.

19 Q. Okay. Now, you understand that you were facing
20 25 years to life on each of these criminal sexual
21 conduct with a minor charges instead of first-degree
22 charges. Do you understand that?

23 A. Yes, ma'am.

24 Q. So actually you were sentenced to the minimum on
25 these charges.

CROSS-EXAMINATION OF KEITH SMYTH BY MS. OLIVE

1 A. Yes, ma'am.

2 Q. And you stated that Mr. -- Mr. Ray reviewed the
3 State's evidence with you.

4 A. Yes, ma'am, half.

5 Q. Okay. But you were aware of the allegations
6 against you when you went into your guilty plea,
7 correct?

8 A. Yes, ma'am, a little bit. Not all the way
9 because at that time I was scared because I didn't want
10 to put myself behind bars and I could have a freedom out
11 there. I've got a mother and a grandfather left out
12 there. And, you know, all this, it should be all put on
13 the stand and I should plead to a different charge
14 besides this.

15 Q. But there wasn't any different charge offered,
16 was there?

17 A. No, ma'am.

18 Q. So it was either to plead guilty or go to trial
19 in the these charges, correct?

20 A. Yes, ma'am.

21 Q. There was never an offer for a lesser included
22 offense, correct?

23 A. Yes, ma'am.

24 Q. And you appreciated that or you understood that
25 the State -- the facts that the State read into the

1 record at your plea regarding these allegations, you
2 understand that those witnesses would have been put
3 forth at a trial to testify to those facts against you,
4 correct?

5 A. Yes, ma'am.

6 Q. And you discussed all of that with your attorney?

7 A. Yeah. Yes, ma'am.

8 Q. And you agree that you are waiving your right to
9 a jury trial, your right to confront any accusers
10 against you and your right to remain silent?

11 A. Yes, ma'am.

12 Q. By pleading guilty you agree that you were
13 waiving those rights?

14 A. Yes, ma'am.

15 Q. And you told a judge at your hearing that the
16 Seroquel that you were taking helped you to function; is
17 that right?

18 A. A little bit, but it makes me real sleepy.

19 Q. Okay. And ultimately you agree that all of these
20 facts were true, did you not?

21 A. Yes, I did.

22 Q. So ultimately you decided to plead guilty to
23 these charges.

24 A. Yes, ma'am.

25 Q. Thank you. That's all the questions I have.

REDIRECT EXAMINATION OF KEITH SMYTH BY MR. RICHEY

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q. You -- so you're asking this Court to vacate all
5 these convictions and give you a new trial?

6 A. Actually I want a lesser plea besides this
7 because due to that at the time of the crime I was on, I
8 was on medicine, Judge. Sentence me when I was 16, I
9 was a juvenile. And there's a lot of people who say
10 that I should not be in prison.

11 Q. Okay. Let me ask you this. You understand that
12 your relief is a new trial, right?

13 A. Yes, sir.

14 Q. And do you want the judge to vacate these charges
15 and give you a new trial?

16 A. I shall want a less plea, that's what I'm trying
17 to do.

18 Q. Okay. If you can't get a lesser plea from these
19 proceedings, would you want the Court to vacate the
20 sentence and give you a new trial? If a lesser plea was
21 not an option, would you request that the Court vacate
22 these convictions and give you a new trial on all your
23 charges if a lesser plea is unavailable?

24 A. Say that last part you said again.

25 Q. If you can't get a lesser plea from these

1 proceedings, remember?

2 A. Uh-huh.

3 Q. And your relief was a new trial, okay?

4 A. Uh-huh.

5 Q. You can't get a lesser plea in this proceeding,
6 do you want a new trial on all your charges?

7 A. No, sir.

8 Q. And you understand that's your relief for this
9 particular hearing?

10 A. Yes, sir.

11 Q. So you're not asking the Court to vacate these
12 sentences and give you a new trial?

13 A. No, I just want a lesser plea, Your Honor.

14 MR. RICHEY: No other questions.

15 THE COURT: All right, sir, you may step down.
16 Thank you.

17 Mr. Richey.

18 MR. RICHEY: No other witnesses.

19 THE COURT: Ms. Olive.

20 MS. OLIVE: Your Honor, at this time the State
21 would, would ask for a summary judgment in this
22 postconviction relief action. Your Honor, not only is
23 it clear from the record that Mr. Smyth had a competency
24 hearing and the judge found him competent to stand trial
25 after hearing multiple witnesses testify as to

REDIRECT EXAMINATION OF KEITH SMYTH BY MR. RICHEY

1 competency, he also just testified that he does not want
2 a new trial. He testified that he wants a lesser plea;
3 however, he also testified that there was, there was no
4 other plea offer that was made, Your Honor. And the
5 relief that he is requesting is not available to him in
6 this postconviction relief action.

7 THE COURT: I would tend to agree, but I think
8 that maybe there was some, some confusion on exactly
9 what was being asked and the answers given, but your
10 point is well taken Ms. Olive. Do you intend to call
11 any witnesses?

12 MS. OLIVE: If Your Honor's inclined to deny my,
13 my motion I will call witnesses.

14 THE COURT: Very good. I'm going to deny it for
15 the time being, so do we have Mr. Ray present or...

16 MS. OLIVE: Yes, Your Honor. The State would
17 call Timothy Ray.

18 (Whereupon, witness comes forward.)

19 THE COURT: All right. Swear or affirm the
20 testimony you're about to give is the truth?

21 THE WITNESS: I do.

22 THE COURT: I didn't have my glasses on, so
23 that's why I didn't see you out there, Mr. Ray. Sorry.

24 THE WITNESS: Yes, sir. Oh, that's okay.

25 THE COURT: Go ahead, please.

1 TIMOTHY RAY,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. OLIVE:

5 Q. Good morning, Mr. Ray.

6 A. Good morning.

7 Q. Were you retained or appointed in this case?

8 A. Retained.

9 Q. Do you recall how many times you met with Mr.
10 Smyth on these charges?

11 A. I don't recall how many but it was numerous and
12 some lengthy.

13 Q. Can you give any further range?

14 A. Oh, gosh, it was, it was over four years so
15 probably uh ---

16 Q. Is there a number -- any particular number of
17 times a year or a month that you had contact with him?

18 A. Not a certain number, but it was pretty often.
19 I'd say there was -- it became, it got to the point
20 where our meetings were repetitive. And so I would say
21 we probably talked 30 times, maybe. Sometimes an
22 hour-and-a-half to two hours, sometimes 15 minutes. It
23 just, it varied.

24 Q. Did you review all the discovery in this case
25 with Mr. Smyth?

DIRECT EXAMINATION OF TIMOTHY RAY BY MS. OLIVE

1 A. I did. He received copies of his discovery
2 multiple times as well. I don't know. Some of it would
3 get lost or somebody would take it from them or
4 something like that, but...

5 Q. Did you discuss with him the State's evidence
6 against him?

7 A. I did.

8 Q. Did you feel he understood that?

9 A. Yes. But I guess I can explain more when he --
10 we talked about the competency. He -- that was, that
11 was the issue of his competency is his understanding,
12 but he did understand the allegations against him.

13 Q. And so you had some concerns about his
14 competency?

15 A. I did.

16 Q. And what did you do to address those concerns?

17 A. What had happened he was -- he had a case as a
18 juvenile where he was found competent and then he was
19 found incompetent, or I think they said borderline
20 competent.

21 So as things were proceeding through the Family
22 Court with that he got a little older and then the new
23 charges came. So the new charges were as an adult and
24 that's when I got involved. He was found -- I'm trying
25 to remember the order. He was found, I believe it was

1 competent and then incompetent -- or starting with the
2 juvenile case, competent, incompetent, and then he was
3 found incompetent, I believe, again. And then we he
4 went to The Department of Mental Health for those, I
5 believe, 60 days. And at the end of that he was found
6 competent.

7 So at that point I had him declared indigent by
8 the court. We requested funds for additional doctors.
9 So then he saw a psychiatrist and psychologist, who then
10 determined that he was incompetent. But the basis of
11 that was that he doesn't process information well and
12 that he can't process it quickly enough in order to
13 assist me at trial, which I think is -- that's why
14 things have to be repeated to him often.

15 Nevertheless, we held a Blair hearing and the
16 State's witness is saying he is competent. Ours said
17 incompetent. Based on that reason, the judge found him
18 competent.

19 Q. And at the Blair hearing did these experts
20 testify regarding his ability or inability to process --
21 excuse me. Let me rephrase. The experts that you
22 presented, did they testify regarding his ability to
23 process this information?

24 A. They did.

25 Q. Okay. And what was their opinion on that?

DIRECT EXAMINATION OF TIMOTHY RAY BY MS. OLIVE

1 A. Their opinion was his inability to process that
2 information efficiency -- efficiently made him
3 incompetent.

4 Q. And, again, that testimony was presented to the
5 judge in the Blair hearing?

6 A. It was.

7 Q. And did the judge ultimately -- and you stated
8 the judge ultimately found him competent to stand trial?

9 A. Correct.

10 Q. Once that determination was made -- well, let me
11 ask you, were there any plea offers made in this case?

12 A. The State was very difficult in trying to work
13 out pleas, a lesser plea in this situation. They felt
14 very competent in their -- confident in their case. And
15 so they absolutely were not going to reduce the charges.
16 So Keith and I had to spend some time talking about what
17 he was gonna do. And he absolutely did not want to go
18 to trial. So in negotiating with the solicitor's
19 office, the best we could get is they would do a
20 negotiated sentence for the minimum sentence for the CSC
21 first.

22 Q. And that's ultimately what occurred?

23 A. It is.

24 Q. And you stated that he absolutely did not want to
25 go to trial?

1 A. He did not. And he, he understood the
2 allegations against him. The situation for his
3 competency was not that he didn't understand and he
4 hadn't been able to help me at that point, it was just
5 that he was not going to be able to process the
6 information efficiently at trial to assist me during the
7 trial. So he understood. He did not want to go to
8 trial. He wanted to accept the plea.

9 Q. Did you advise him, based on your review of the
10 evidence and your discussions with him regarding the
11 evidence, the likelihood that he would be convicted at
12 trial?

13 A. I did. We discussed that. We discussed at trial
14 there would be no certainty as to what the sentence
15 would be, but if he were convicted, as I expected he
16 would be, it would be at least 25 years.

17 Q. Do you feel it was his decision to plead guilty
18 in this case?

19 A. I do.

20 Q. Did you discuss with him his constitutional
21 rights?

22 A. I did.

23 Q. Did you discuss with him what rights he would be
24 waiving by pleading guilty?

25 A. I did.

CROSS-EXAMINATION OF TIMOTHY RAY BY MR. RICHEY

1 Q. If Mr. Smyth had indicated that he wished to go
2 to trial, would you have been prepared to try the case?

3 A. Yes, we were.

4 MS. OLIVE: Thank you. That's all the questions
5 I have.

6 THE COURT: Cross.

7 MR. RICHEY: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. RICHEY:

10 Q. In representing him, his IQ was low or high?

11 A. It was low.

12 Q. Okay. And were you able to discuss all the legal
13 terms where he could understand them?

14 A. I was. It took some time, but we were.

15 Q. And in going over this discovery with him, and
16 you heard his testimony, the issue of this BB gun, a toy
17 gun, as it relates to these crimes, did you consider
18 that?

19 A. These were things that were in the police report.

20 Q. Right.

21 A. The stun gun, the toy gun. The stun gun being a
22 part of the toy. It wasn't really a stun gun. Those
23 things really weren't going to be the issue at trial.
24 There was an allegation that he had threatened a couple
25 of the children if they said anything that he had a

1 knife that he would hurt them. But I don't know -- and
2 the children might have said that at trial, but that
3 really wasn't the --

4 Q. So you --

5 A. -- basis of the charge.

6 Q. -- didn't anticipate any of this coming at the
7 trial saying he had a toy gun or knife or anything?

8 A. No. The only thing that at trial one or two of
9 the children may have said they were threatened with the
10 knife if they ever said anything. I don't think anybody
11 is going to say he held them down with a knife while he
12 did anything to them.

13 Q. And you said he absolutely did not want to go to
14 trial.

15 A. He did not, absolutely.

16 Q. Did you explain to him that if he did not go to
17 trial he would not ever be exonerated, he would be
18 guilty of things?

19 A. I did. And I also explained that the matter of
20 his competency from that competency hearing, if he did
21 not have a trial, then he would not be able to appeal
22 that issue.

23 Q. Okay. Was he on medication at the time?

24 A. He was.

25 Q. And do you believe that medication was prescribed

CROSS-EXAMINATION OF TIMOTHY RAY BY MR. RICHEY

1 to him in the right amount? Do you know?

2 A. I have no idea. I just -- that was the doctor
3 who was doing that. I assumed it was good. He didn't
4 show any, any signs of anything. I guess any
5 mal-effects from that. He seemed -- I really didn't see
6 much of a, much of a difference from the medication.

7 Q. From this transcript, looking at this, a 15-year
8 plea is kind of what he wanted. Do you recall that?

9 A. I don't recall exactly what he wanted.

10 Q. Okay.

11 A. But he did want a reduction and it, and it just
12 wasn't gonna happen.

13 Q. Okay. And looking at the facts of these cases,
14 do you believe the State could have proved and brought
15 forth the witnesses in these cases?

16 A. Yes, they could have in my opinion.

17 Q. Okay. Did you have any contact with any of these
18 victims or anybody of that nature?

19 A. I hadn't spoken with the children.

20 Q. Okay.

21 A. Just through the information provided through
22 discovery.

23 Q. Okay. And you said that he understood the charge
24 but couldn't process it fast enough?

25 A. He -- he -- the position of our doctors was that

1 at trial what was happening in testimony that's
2 occurring, through the process of the trial, is that it
3 would be too fast for him to process that and then be
4 able to assist me at trial.

5 Q. So there was no evidence that he ever put a knife
6 to the children's throat other than them saying this,
7 correct?

8 A. Correct.

9 Q. Okay. And in processing this information, when
10 you sit down and talk with him did you get to a point
11 where you went through the facts and said these are the
12 facts that they're going to present at trial, do you
13 understand those facts and just give it in small doses
14 where he could understand it?

15 A. He understood it. And he understood the
16 allegations against him. And we had some lengthy
17 conversations. And he would, I mean he would study it
18 to, to get it, which was what he mentioned with the book
19 that he was given from the folks at mental health. If
20 he studied something long enough he gets it, he
21 understands it.

22 MR. RICHEY one moment, Your Honor.

23 THE COURT: Yes, sir.

24 BY MR. RICHEY:

25 Q. Okay. The last thing here. Did you talk to the

REDIRECT EXAMINATION OF MR. RAY BY MS. OLIVE

1 prosecutor and try to get them to plead to a lesser
2 charge?

3 A. Numerous times.

4 Q. What's that?

5 A. Numerous times.

6 MR. RICHEY: Okay, thank you. No other
7 questions.

8 THE COURT: Redirect?

9 MS. OLIVE: Brief redirect, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. OLIVE:

12 Q. Regarding the possibility of getting a lesser
13 charge in your plea negotiations with the solicitor's
14 office, was there ever any discussion about trying
15 Mr. Smyth as a juvenile?

16 A. In the beginning and they just -- that was not
17 going to be a possibility either.

18 Q. Were they willing to try him as a juvenile?

19 A. They were not.

20 MS. OLIVE: Thank you, that's all the questions.

21 MR. RICHEY: Nothing else, Your Honor.

22 THE COURT: Thank you very much. You may step
23 down.

24 THE WITNESS: Thank you.

25 (Whereupon, witness leaves witness stand.)

1 THE COURT: Anything else from the State?

2 MS. OLIVE: Nothing else from the State, Your
3 Honor.

4 THE COURT: Anything in reply?

5 MR. RICHEY: Nothing, Your Honor.

6 THE COURT: Very good. The Court will take the
7 matter under advisement and I'll try to have you all a
8 Form Four order within the coming days, okay?

9 MR. RICHEY: Thank you, Your Honor.

10 MS. OLIVE: Thank you, Your Honor.

11 MR. SMYTH: One more thing, Your Honor. Take a
12 look at this, please.

13 MR. RICHEY: That's the guilt of mentally ill
14 status.

15 THE COURT: Oh, I'm familiar with that, but I'll
16 be happy to review that again. I actually had a case in
17 June at length that dealt with that, so I'll be more
18 than happy to look at that.

19 MR. SMYTH: I appreciate it. It's how I feel
20 because I'm on a lot of meds. I'm on prestiline
21 (phonetic) in SCDCI (sic). I've been doing real well
22 now. You know, I'm trying to do lay back, don't get in
23 no trouble. You know, I'm trying to do right. I want
24 to go back home to my family. I should have had a
25 lesser plea. Every, every case I looked at there

1 charges with lesser plea with parole. I should have a
2 chance back on the streets. I'm not a bad person, Your
3 Honor, I'm not.

4 THE COURT: I understand, Mr. Smyth. I do
5 sympathize with you. And I think you're doing the right
6 thing by just trying to behave, not give the officers at
7 SCDC any trouble and just keep your nose clean, okay?
8 So you just take care of yourself, take the medicine
9 that they give you and don't give them any, don't give
10 them any guff, all right Mr. Smyth?

11 MR. SMYTH: Yes, sir.

12 THE COURT: All right. Take care, sir.

13 MR. RICHEY: Thank you, Your Honor.

14 (Whereupon, court concluded at 11:10 a.m.)

15

16 --- THIS ENDS REQUESTED HEARING ---

17

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1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings and evidence introduced
8 in the hearing and/or trial of the captioned case,
9 relative to appeal, in the Court of Common Pleas for
10 Spartanburg County, South Carolina, on the 8th day of
11 November, 2016.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17

18 s/Julie A. Ashbrook.
19 Julie A. Ashbrook
20 Circuit Court Reporter
21 Seventh Judicial Circuit
22
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	

Keith Adger Smyth, #363756,	)	Case No. 2015-CP-42-3427
	)	

Applicant,	)	
	)	

v.	)	
	)	

ORDER OF DISMISSAL

State of South Carolina,	)	
	)	

Respondent.	)	
	)	

2017 MAR 17 AM 10:57
M. HOPE BLACKLEY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 7, 2015, and Amended Application filed October 14, 2016. Respondent made a Return and Motion for More Definite Statement on February 12, 2016. The Court convened an evidentiary hearing into the matter on November 8, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney Richey, Esquire. Alicia A. Olive, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Timothy Ray, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In February 2011, the Spartanburg County Grand Jury indicted Applicant for four (4) counts of criminal sexual conduct with a minor, first degree (2011-GS-42-0966, 2011-GS-42-0967, 2011-GS-42-0968, 2011-GS-

42-1251), and one count of criminal sexual conduct with a minor, second degree (2011-GS-42-0965). Timothy M. Ray, Esquire ("Counsel") represented Applicant. On April 21, 2015, Applicant pleaded guilty as indicted before the Honorable J. Derham Cole.¹ Pursuant to a negotiated sentence, Judge Cole sentenced Applicant to imprisonment for concurrent terms of twenty-five (25) years for each count of criminal sexual conduct with a minor, first degree, and a concurrent term of twenty (20) years for criminal sexual conduct with a minor, second degree. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

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

1. Unlawful sentence, in that:
 - a. "Not competent";
 - b. "disabilities";
 - c. "Medications [were prescribed] to [Applicant]"

In his Amended Application, Applicant asserts an additional thirty-one (31) claims. This document is incorporated by reference. At the evidentiary hearing, Applicant proceeded on only the allegation of involuntary guilty plea.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

¹ A competency hearing was held prior to the plea on February 10, 2015. (Tr. at 1-51).

2017 MAR 17 AM 10:57
 M. HOFFER
 MCKEY

A. Summary of Testimony

Applicant testified that he was not competent to stand trial and stated that he was innocent. Applicant testified that when he pleaded guilty he was on Seroquel, which made him tired. He testified the State told him he would receive sixty (60) years to life imprisonment. Applicant testified Counsel did not investigate his case. He testified Counsel advised him to accept the plea offer. Applicant testified he did not want a new trial, but wants a lesser sentence.

Counsel testified he was retained to represent Applicant. He testified he represented Applicant over the course of four (4) years and that they met fairly often during that time. Counsel testified he discussed discovery with Applicant and that Applicant had received copies of the discovery multiple times. Counsel testified that competency was an issue from the beginning. Counsel testified that Applicant was initially found incompetent, and after a period of sixty (60) days in the Department of Mental Health, he was tested again and found competent. Counsel testified he was able to have Applicant declared indigent and to obtain funds to hire mental health experts to examine Applicant. He testified a State v. Blair, 275 S.E.2d 536 (1981) hearing was held after which Applicant was found competent.

Counsel testified that he and Applicant had lengthy discussions about the State's evidence and that Applicant understood the allegations against him. Counsel testified he discussed Applicant's rights with him and that it was Applicant's decision to plead guilty. Counsel testified that if Applicant had indicated he wished to proceed to trial, Counsel would have been prepared to try the case. Counsel testified he had discussions with the Solicitor's Office in an effort to obtain a more favorable plea offer, but the State was confident in its case and was not willing to reduce the agreed upon sentence any further. Counsel testified the State was also unwilling to try him as a juvenile.

B. Guilty Plea

Prior to the guilty plea hearing, a competency hearing was held on February 10, 2015. (Tr. at 1-51). Doctors Tora Brawley and Amanda Salas testified at the competency hearing on behalf of Applicant. The State called Dr. Monica Wright with the Department of Disabilities and Special Needs. (Tr. at 34). Dr. Wright testified that Applicant was initially found incompetent to stand trial, but he was re-evaluated after sixty (60) days of hospitalization. (Tr. at 36-37). Dr. Wright testified that she ultimately determined he was competent to stand trial. (Tr. at 39:6-9). Following the competency hearing, the Court ruled that Applicant was competent to stand trial. (Tr. at 53:6-12).

The plea judge reviewed each charge and potential sentence at the plea hearing. (Tr. at 63-68). Applicant acknowledged he understood each charge and the potential penalty for each during the plea colloquy. (Tr. at 63-68). Applicant acknowledged that he signed a waiver-of-rights form and that Counsel went through it with him line by line. (Tr. at 56-57). Applicant stated he understood everything contained in the form. (Tr. at 57). At the plea, Applicant understood that a guilty plea meant he was giving up his constitutional right to remain silent, have a trial by jury, and confront the witnesses against him. (Tr. at 68-75). Applicant denied that anyone had promised him anything or forced him to plead guilty. (Tr. at 75-76).

Applicant informed Judge Cole that Applicant was on the prescription medication Seroquel at the time of his plea. (Tr. at 79:5). Applicant indicated that the medication helped him to function and understand when he was doing. (Tr. at 79:15-17). Counsel informed the plea judge that he knew of no legal defenses available to Applicant. (Tr. at 78). Applicant was given Miranda² warnings after which he gave a written statement confessing to the sexual battery of four (4) of the five (5) minor victims. (Tr. at 80:6-18). The State expressed that if Applicant

were to proceed to trial, it was prepared to call witnesses who would testify to the facts in each of the indictments; in some instances, those witnesses would be eye witnesses. (Tr. at 92). Applicant stated repeatedly during the guilty plea hearing that he did not want to go to trial. (Tr. at 72, 85:10, 86:1-17, 89:3-5, 91:7, 94:21-22). Counsel stated that he and Applicant had discussed Applicant's case extensively and that, after viewing the evidence against Applicant and his discussions with Applicant about what he told Counsel happened, Applicant decided to enter his plea. (Tr. at 97:20-98:22). Counsel acknowledged that he explained to Applicant that he had a right to challenge the voluntariness of the statement at trial, but even if the statement was excluded, the jury would still be able to consider the testimony of each of the victims. (Tr. at 100:15-101:20). Applicant also acknowledged he understood this. (Tr. at 101:20-24).

C. Ineffective Assistance of Counsel

Applicant alleged at the evidentiary hearing that his guilty plea was made without the competent advice of counsel. After reviewing the transcript and considering the allegations raised in the application and at the evidentiary hearing, this Court finds plea counsel was not ineffective.

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was deficient, and (2) there is a reasonable probability that but for counsel's errors, the defendant 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). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in

² Miranda v. Arizona, 384 U.S. 436 (1966).

the Solicitor's Office to try to obtain a more favorable plea offer, but the State was confident in its case and was unwilling to reduce the negotiated sentence any further. Based on the record and the testimony presented at the evidentiary hearing, this Court finds Applicant has made no showing to overcome the presumption that Counsel rendered adequate assistance. Therefore, Applicant has failed to satisfy his burden of proving any deficiency in Counsel's performance.

In addition, Applicant testified at the evidentiary hearing that he does not want a trial; rather, he desires a lesser sentence. However, the sentence that Applicant received was a negotiated sentence and the minimum sentence available on the charges he faced. To prove prejudice resulting from the alleged deficient advice of counsel, Applicant was required to show that, but for the alleged deficiency, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 56 (1984). Here, because Applicant provided no evidence that he would have insisted on going to trial rather than pleading guilty, Applicant has made no showing of prejudice.

Therefore, having reviewed the pleadings, considered the applicable law, and reflected upon the record, the Court finds Applicant has failed to carry his burden. Accordingly, this Court finds Applicant's application for post-conviction relief must be denied and dismissed with prejudice.

C. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.



2017 MAR 17
M. HOPE CLARKE
ART. 10: 57

IV. CONCLUSION

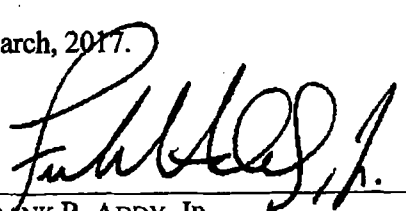
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

IT IS SO ORDERED this 9th day of March, 2017.


FRANK R. ADDY, JR.
Presiding Judge, Seventh Judicial Circuit

2017 MAR 17 AM 10:57
M. HOPE BLACKLEY

Greenwood, South Carolina

WITNESSES	
SENTENCES MADE	SPARTANBURG County Sheriff's Office
REPORT ENDED	
3. CARD PULLED	INDEXED
5. CHECKED WARRANTS	
6. CHECKED SIGNATURE	
7. ASSESSMENT AND FINE CARD MADE	
8. TRAFFIC VIOLATION COPY	
ARREST WARRANT NUMBER	
M124324	
ACTION OF GRAND JURY	
Foreperson of Grand Jury Date: FEB 18 2011	
VERDICT	
Foreperson of Petit Jury Date:	

DOCKET NO.

11-GS-42-0965

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Acting Solicitor

COURT OF GENERAL SESSIONS

FEB 21 2011

TERM

THE STATE
vs.

Keith Adger Smyth

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, SECOND DEGREE

SC Code: 16-03-655 (B)

CDR Code: 0396

Class FEL/C (V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 PM 12:39
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 18 2011

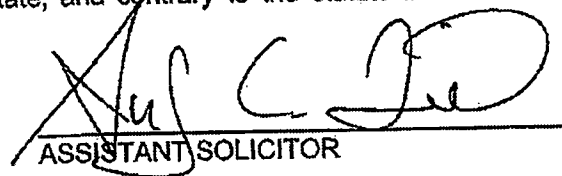
At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That the Defendant, Keith Adger Smyth, did in Spartanburg County, between the dates of October 1, 2010 and December 14, 2010, commit the crime of Criminal Sexual Conduct with a minor in the Second Degree in that the Defendant did commit a sexual battery upon the minor, [REDACTED] 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. Said incident occurred in Spartanburg County, South Carolina, in violation of Section 16-03-655 (B), *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.


ASSISTANT SOLICITOR

WITNESSES

4. SENTENCE MADE

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

COMPUTER

COMPUTER

ARREST WARRANT NUMBER

M124328

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

FEB 19 2011

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

11-GS-42-0968

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Acting Solicitor

COURT OF GENERAL SESSIONS

FEB 21 2011

TERM

THE STATE

vs.

Keith Adger Smyth

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, FIRST DEGREE

SC Code: 16-03-0655 (A) (1)

CDR Code: 0385

Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 PM 12:39
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

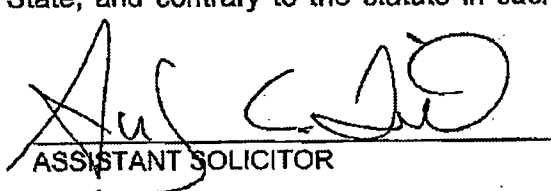
INDICTMENT

At a Court of General Sessions, convened on FEB 18 2011 the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Keith Adger Smyth, did in Spartanburg County, between October 1, 2010 and December 14, 2010, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor [REDACTED] who was under eleven (11) years of age at the time of the said incident, in violation of §16-03-655 (A) (1), *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.


ASSISTANT SOLICITOR

WITNESSES

1. SENTENCE MADE

Spartanburg County Sheriff's Office

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

M124810

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

FEB 18 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

11-GS-42-1251

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Acting Solicitor

COURT OF GENERAL SESSIONS

FEB 21 2011

TERM

THE STATE

vs.

Keith Adger Smyth

Indictment for

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR, FIRST DEGREE**

SC Code: 16-03-0655 (A) (1)

CDR Code: 0385

Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 PM 1:30
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

FEB 18 2011

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Keith Adger Smyth, did in Spartanburg County, between January 1, 2010 and December 29, 2010, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor [REDACTED] who was under eleven (11) years of age at the time of the said incident, in violation of §16-03-655 (A) (1), *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.


ASSISTANT SOLICITOR

WITNESSES	
1. SENTENCE MADE	☒
2. SPARTANBURG COUNTY SHERIFF'S OFFICE	☒
3. CARD PULLED	☒
4. INDEXED	☒
5. CHECKED WARRANTS	☒
6. CHECKED SIGNATURE	☒
7. ASSESSMENT AND FINE CARD MADE	☒
8. TRAFFIC VIOLATION COPY	☒

ARREST WARRANT NUMBER

M124326

ACTION OF GRAND JURY

For person of Grand Jury
Date:

VERDICT

For person of Petit Jury
Date:

DOCKET NO.

11-GS-42-0966

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Acting Solicitor

COURT OF GENERAL SESSIONS

FEB 28 2011

TERM

THE STATE

vs.

Keith Adger Smyth

Indictment for
**CRIMINAL SEXUAL CONDUCT
WITH A MINOR, FIRST DEGREE**

SC Code: 16-03-0655 (A) (1)
CDR Code: 0385
Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 PM 12:39
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

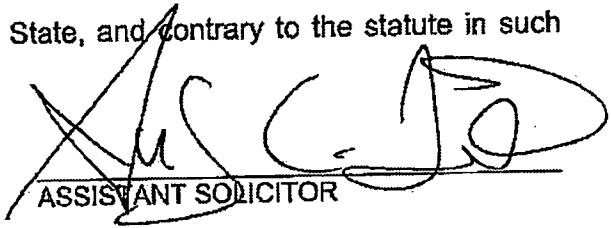
FEB 18 2011

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Keith Adger Smyth, did in Spartanburg County, between October 1, 2010
and December 14, 2010, commit the crime of Criminal Sexual Conduct with a minor, in
that the defendant did commit a sexual battery upon the minor [REDACTED]
who was under eleven (11) years of age at the time of the said incident, in violation of
§16-03-655 (A) (1), 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.


ASSISTANT SOLICITOR

WITNESSES

COMPUTER

Spartanburg County Sheriff's Office

3. CARD PULLED

INDEXED

5. CHECKED WARDEN

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

8. TRAFFIC VIOLATION COPY

COMPUTER

ARREST WARRANT NUMBER

M124327

ACTION OF GRAND JURY

Team B

Foreperson of Grand Jury

Date: FEB 10 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

11-GS-42-0967

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Acting Solicitor

COURT OF GENERAL SESSIONS

FEB 7, 2011

TERM

THE STATE

vs.

Keith Adger Smyth

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, FIRST DEGREE

SC Code: 16-03-0655 (A) (1)

CDR Code: 0385

Class FEL-C(V)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 PM 12:39
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on FEB 18 2011, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Keith Adger Smyth, did in Spartanburg County, between October 1, 2010 and December 14, 2010, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor [REDACTED] who was under eleven (11) years of age at the time of the said incident, in violation of §16-03-655 (A) (1), *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.


ASSISTANT SOLICITOR