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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Dorchester County

Honorable Benjamin H. Culbertson, Circuit Court Judge

MICHAEL GLEN EVANS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002536

APPENDIX

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1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF DORCHESTER 2013-GS-18-348
3 2013-GS-18-349
2013-GS-18-350

4 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
5 VS.)
6)
7 MICHAEL GLEN EVANS) APRIL 9, 2014
ST. GEORGE, SC

8
9 B E F O R E:

10 THE HONORABLE MAITÉ MURPHY

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

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Attorney for the State

13 ASH CHISHOLM, ESQUIRE
14 Attorney for the Defendant

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16 Ruth L. Mott, RPR, CRR
Official Court Reporter
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I N D E X

CERTIFICATE OF REPORTER 28

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1 MR. SORENSON: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. SORENSON: Before you, Your Honor, is Michael Glen
4 Evans. We're here on three indictments, 2013-GS-18-348, 349
5 and 350, charging him with one count of criminal sexual
6 conduct, first degree, one count of kidnapping, one count of
7 possession of a weapon during the commission of a violent
8 crime. We're here for purposes of a guilty plea. He is
9 represented by Mr. Chisholm.

10 CLERK OF COURT: Please raise your right hand. State
11 your full name for the record.

12 THE DEFENDANT: Michael Glen Evans.

13 MICHAEL GLEN EVANS,
14 being first duly sworn, was examined and testified as
15 follows:

16 THE COURT: Mr. Chisholm, you represent the defendant,
17 Mr. Evans, in this matter?

18 MR. CHISHOLM: I do, Your Honor.

19 THE COURT: Have you explained to your client the
20 charges contained in the indictments, the possible
21 punishments and his constitutional rights?

22 MR. CHISHOLM: I have.

23 THE COURT: In your opinion does he understand the
24 charges contained in the indictments, the possible
25 punishments and his constitutional rights?

1 MR. CHISHOLM: I believe he does, Your Honor.

2 THE COURT: How does he indicate to you that he wishes
3 to plead?

4 MR. CHISHOLM: Guilty, Your Honor.

5 THE COURT: Do you agree with your client's decision to
6 plead guilty?

7 MR. CHISHOLM: I do.

8 THE COURT: From your investigation of the facts and
9 circumstances of the case, do you feel the State could
10 produce sufficient evidence to convince a jury of your
11 client's guilt beyond a reasonable doubt and if your client
12 were to stand trial his conviction would be probable?

13 MR. CHISHOLM: I do.

14 THE COURT: Mr. Evans, I have certain questions for you
15 to ensure that your plea is freely, knowingly and
16 intelligently made. If at any point you don't understand
17 something, please stop and ask me, okay?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Please make sure you speak out loud so the
20 court reporter can hear what you're saying and take it down.
21 Mr. Evans, how old are you?

22 THE DEFENDANT: 22.

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

24 THE DEFENDANT: Eighth grade.

25 THE COURT: Did you get your GED?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: What type of work do you do?

3 THE DEFENDANT: Done concrete plant, worked there, I
4 broke horses, worked on a farm, and that's about it.

5 THE COURT: Are you married?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Do you have any children?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Have you ever been treated for the abuse of
10 drugs, alcohol or mental illness?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: What type of treatment did you receive?

13 THE DEFENDANT: Drugs and anger management.

14 THE COURT: And when was that treatment?

15 THE DEFENDANT: Anger management, I was like 14. Drug
16 rehab, I was 16, 17.

17 THE COURT: Did you successfully complete the treatment?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Anything about that previous treatment that
20 would prevent you from understanding what you're doing here
21 today?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Within the last 24 hours have you had any
24 medication, drugs or alcohol?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: What have you had?

2 THE DEFENDANT: Medicine.

3 THE COURT: What type of medicine?

4 THE DEFENDANT: For sinuses and heartburn, that's about
5 it.

6 THE COURT: Anything about that medicine that makes you
7 not understand what you're doing here today?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Are you aware of any physical, emotional or
10 nervous condition that would prevent you from understanding
11 what you're doing here today?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: All right, sir. You're pleading guilty to
14 criminal sexual conduct which carries a potential penalty of
15 up to 30 years, you're also pleading guilty to kidnapping
16 which carries a potential penalty of up to 30 years, and
17 you're also plead guilty to possession of a weapon during a
18 violent crime which carries up to five years. Do you
19 understand what each of these charges carries?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you discussed the charges with your
22 attorney and reviewed what's contained in each of these
23 indictments with your attorney?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you understand the language in each of

1 these indictments and the charges against you?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Are there any plea negotiations, Solicitor?

4 MR. SORENSON: No, Your Honor.

5 THE COURT: All right. Solicitor, if you would tell me
6 the facts.

7 MR. SORENSON: Thank you. May it please the Court, Your
8 Honor, this offense occurred back on the afternoon of January
9 9th of last year, 2013, about 1:30 in the afternoon. The
10 victim, Victim , who's seated in the front row on
11 the far right, she was a 17-year-old senior at Summerville
12 High School at that time. She, as a senior, basically got
13 out of school a little bit early every day; and, back in
14 January of last year, was training at that point in time,
15 hoping to run a half marathon, and basically would go out
16 running after school every day. On that afternoon, it was a
17 Wednesday afternoon, she had gone out, parked her car on
18 Berlin G. Myers -- I'm sorry, on Bacons Bridge, I was drawing
19 a blank there, on Bacons Bridge Road, and gotten on --
20 there's a spot where you can get onto the Sawmill Branch bike
21 and running trail, had parked there, had gotten on and had
22 run about five miles that afternoon, had gone down to the
23 YMCA, the Oakbrook YMCA, and was basically almost back at her
24 vehicle. When she passed, there's an entrance to Evergreen
25 Subdivision that is as you approach Bacons Bridge. She

1 observed at that point in time a person standing on a bike
2 kind of right at the entrance, a young white male, jogged
3 past him, ran past him, when he proceeded at that point in
4 time to come up behind her and slap her on the rear end as he
5 went by. He went past her and kind of turned off. There was
6 a kind of a turnoff that would go kind of back towards Bacons
7 Bridge but not direction she was going. She kept going when
8 she noticed -- could tell that he had basically come back
9 behind her on the trail. At that point in time she had
10 turned around and kind of squared off at him and kind of
11 telling him, look, this isn't funny, leave me alone. He
12 proceeded at that point in time to ride his bike into her and
13 knock her down. He then got off of the bike, grabbed her
14 around the neck and drug her -- if I could hand up a couple
15 photographs.

16 THE COURT: Yes, sir.

17 MR. SORENSON: This is one, Your Honor, this first one
18 here kind of shows from the trail kind of into the wooded
19 area, and then this one here shows kind of the wooded area.
20 He then drug her, had her around the throat with a small
21 pocketknife out and drug her into that wooded area. I think
22 we ultimately figured out through law enforcement she was
23 probably about 15 yards into the wooded area. At that point
24 in time she had initially had screamed and attempted to start
25 fighting with him when he had struck her multiple times in

1 the face, told her that he had a knife and if she didn't stop
2 screaming he was going to kill her, got her into the woods.
3 At that point in time -- she was dressed, she had sweatpants
4 on and a black shirt and shoes -- had taken her shoes off,
5 her sweatpants off and her underwear off. She was begging
6 him at that point in time not to rape her. He initially had
7 told her that he was not going to. He proceeded to at that
8 point in time perform oral sex on her and digitally penetrate
9 her and took his finger after that and shoved it in her
10 mouth, which ultimately caused some injury to the upper
11 palate of her mouth, when she was seen later at the hospital.
12 He at that point in time told her that he was going to break
13 that promise and was in fact going to have sex with her. She
14 at that point in time started fighting again. She ultimately
15 got struck in the face and head area multiple times
16 throughout all of this and started screaming again.

17 Fortunately, at that point in time there was a retired
18 gentleman by the name of Robert Teague that was out for his
19 afternoon walk that was coming along in that area, initially
20 just seen a bike out on the trail, which he initially thought
21 was kind of odd. When he ultimately heard, the way he
22 described in his statement, just this horrible scream that he
23 likened to basically sounding like an animal being tortured.
24 He at that point in time just kind of wandered over. He
25 couldn't see because of how dense it was in there but kind of

1 wandered up to the woods area, additionally kind of initially
2 yelled in just kind of, what's going on in there. He
3 observed at that point in time, saw a young white male with
4 his back to him that yelled back that I'm just in here having
5 sex with my girlfriend and could see a young female on the
6 ground, could tell that she was unclothed from the waste
7 down. She at that point in time kind of yelled, help me.
8 The defendant at that time turned and then started walking
9 towards Mr. Teague. He backed up to the trail, didn't quite
10 know at that point in time what to do, didn't know if this
11 person was armed or what was going on and saw at that point
12 in time another jogger coming, a young guy that was jogging
13 in their direction. He ultimately yelled and got that person
14 to come help him. The defendant got on his bicycle and
15 basically took off, going back towards the YMCA on the bike
16 trail.

17 Mr. Teague and this other individual, Mr. Adams, at that
18 point in time went back to the wooded area, attempted to find
19 Victim . She was gone. She had gotten up at that point in
20 time and run through the wooded area and popped out on Bacons
21 Bridge Road, ultimately almost getting struck by a car as she
22 ran, and she at this point in time had picked up her
23 sweatpants and had them kind of wrapped around the front of
24 her. It was a young lady driving on Bacons Bridge Road that
25 observed, you know, what appeared to be a hysterical young

1 female running, with nothing covering her back side, across
2 the street. Victim ultimately got to her car and ended up
3 driving home. She lived a short distance from there. Got
4 in, her dad was home, came in hysterical, they ultimately
5 called law enforcement. Summerville Police Department
6 arrived. They took, if I could hand up a handful of other
7 photos that they took.

8 MR. CHISHOLM: Don, can I see them.

9 MR. SORENSON: Yes, sorry.

10 At that point in time those photographs there were taken
11 at her house by the initial responding officer waiting for an
12 ambulance to come to take her for a sexual assault exam. She
13 had, obviously, an injury to her lip area, some other
14 bruising and scratches on her forehead from where she was
15 struck. She ultimately, when she showed up at MUSC and they
16 did kind of the full exam on her, had numerous scratches and
17 bruises and abrasions on her lower legs, her back and all
18 that she indicated all of those injuries were from basically
19 being on the ground and being assaulted out there in the
20 wooded area. They took, during that sexual assault exam that
21 was performed, not only they note those injuries to -- as I
22 said, there's an injury to her palate consistent with a
23 finger being shoved in her mouth, injury to her left lip
24 where she had been struck, other scratches and just debris,
25 kind of pine straw debris that was in her hair and in her

1 back area. They ultimately, she had told the nurse at that
2 point in time that during the process of the assault she had
3 also been licked and kissed on her left breast area and her
4 neck area, so they took swabs of those two areas, and that's
5 going to become relevant as Mr. Evans is identified.

6 Ultimately, Victim and one of those two witnesses
7 out there, they did two composites which were then released
8 to the media over the next day or so with several calls
9 coming in with one of those calls indicating that the picture
10 appeared to look like Mr. Evans and he in fact hung out at a
11 friend's house, a Mr. Westbury, who at the time was living in
12 that Evergreen subdivision, which is right there where the
13 assault occurred. As a result of that information he was
14 placed in a lineup, and Victim did pick him out of that
15 lineup. That was on January 13th, so four days later.

16 Summerville Police Department detectives then went to Mr.
17 Evans' house. He was living at that time with some relatives
18 in Irongate subdivision in Summerville. He was taken into
19 custody that following day then, January 14th. Ultimately at
20 that time gave a statement admitting to dragging her into the
21 woods, to having a chrome knife which was recovered from his
22 house, and also to digitally penetrating her during the
23 assault. He indicated that he had blacked out and didn't
24 remember a lot of it because of drugs he was using.

25 Additionally, they also got his buccal swabs which were sent

1 to SLED which ended up coming back with a positive match on
2 the DNA match from those swabs taken from her left breast and
3 her neck area. I would say that, in talking then to Mr.
4 Westbury, the friend that lived in Evergreen, he also had
5 given a statement to law enforcement that the defendant had
6 been over at his house earlier that morning, had made some
7 comments about wanting to go out on the trail and look for
8 girls, and that's kind of substantiated by Mr. Teague, the
9 older retired gentleman that interrupted the assault who had
10 also indicated to law enforcement he had seen this same
11 individual that he saw that day out there on the trail
12 multiple times. He goes walking just about every day and had
13 seen him kind of loitering out on that trail prior, on prior
14 occasions also.

15 I think that's basically the facts, Your Honor. I do
16 know at the appropriate time Victim and potentially her mom
17 and/or dad would like to address the Court. I do have some
18 other comments I want to make also, but as far as the facts
19 go, that would be the factual background.

20 THE COURT: Yes, sir. Thank you, Solicitor.

21 Mr. Evans, do you agree with the facts as stated by the
22 state?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And are you in fact guilty of those charges?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Do you understand that by pleading guilty
2 you're waiving certain constitutional rights, you're waiving
3 your right to have a trial by jury where the State would have
4 the burden of proving your guilt beyond a reasonable doubt.
5 You're also waiving the right to challenge the State's
6 evidence as well as cross-examine their witnesses and present
7 any defenses that you may have. You're also waiving the
8 right to remain silent during that trial where the judge
9 would instruct the jury that they could not hold that against
10 you. You're also waiving the right to challenge any
11 potentially incriminating statements that you may have made.
12 Do you understand that you're waiving each of those rights?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And, counsel, have you discussed with your
15 client the collateral consequences such as the sex offender
16 registry with your client?

17 MR. CHISHOLM: I have, Your Honor.

18 THE COURT: And in your opinion does he understand that?

19 MR. CHISHOLM: He does.

20 THE COURT: Is that correct, Mr. Evans?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Mr. Evans, you've been represented by Mr.
23 Chisholm in this matter. Have you been satisfied with how
24 he's advised and represented you in this case?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Have you talked to him for as often and for
2 as long as you feel is necessary for him to properly
3 represent you?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Have you understood your talks with your
6 attorney?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you need any more time to talk with him?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Are you completely satisfied with his
11 services?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Are there any complaints that you have
14 against your attorney?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Has anyone promised you anything or held out
17 any hope of a reward to get you to plead guilty?

18 THE DEFENDANT: At first, yes, ma'am.

19 THE COURT: What type of a reward?

20 THE DEFENDANT: The detective said something about a YOA
21 sentence.

22 THE COURT: There are no plea negotiations, you
23 understand that?

24 THE DEFENDANT: Yes, ma'am, I understand.

25 THE COURT: So basically you understand that the State's

1 not making any recommendation about any kind of sentence.
2 It's entirely up to me. I could give you 30 years on the
3 CSC, 30 years on the kidnapping and five years on the
4 possession of a weapon during the commission of a violent
5 crime. Do you understand that?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: So you understand that there are no deals?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And you still wish to go forward?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: So there's no promises out there that you
12 are aware of as to any kind of negotiated sentence or any
13 kind of plea agreement; is that correct?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. Has anyone mistreated you in any
16 way, anyone connected with law enforcement, the solicitor's
17 office, anyone at the detention center mistreated you in any
18 way?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Has anyone threatened or coerced you to get
21 you to plead guilty?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Have you had enough time to make up your
24 mind as to whether or not you want to plead guilty?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Are you pleading guilty of your own free
2 will?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Have you understood all of my questions?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Is there anything that you'd like to ask me
7 about what we've just been over?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Has anyone suggested to you how to answer my
10 questions?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Has each and every answer that you have
13 given me been the absolute truth?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: I do find that there's a substantial factual
16 basis for the plea, the defendant's decision to plead guilty
17 is freely, knowingly and intelligently made with the advice
18 of counsel with whom he says he's satisfied.

19 Mr. Chisholm?

20 MR. CHISHOLM: Thank you Your Honor, may it please the
21 Court.

22 THE COURT: Yes, sir.

23 MR. CHISHOLM: As Mr. Evans said, he's 22 now. I
24 believe he was 20 at the time of the incident, if I'm not
25 mistaken. He has an eighth grade education. In school he

1 was in resource classes. He has, you know, various work
2 experiences, as he said, breaking horses, concrete plant.
3 And if I could, I'd like to give you just a little bit of his
4 background, possibly explain partially how he wound up here
5 today. He tells me, basically, from meeting with him and his
6 family -- if I could, I'd like to go ahead and point out that
7 he has his mother, a brother, an uncle, an aunt and both
8 grandmothers are seated in the back of the courtroom. I've
9 had a chance to meet with them, had a chance to meet with
10 him, of course, and the consensus is he grew up in an abusive
11 household. I think he witnessed abuse between his father and
12 his mother. He was in and out of foster care, kind of
13 shuffled around back and forth. And even though he's only a
14 young guy, he's 22, he's seen a lot of bad things. He was
15 evaluated by Dr. Donna Schwartz-Watts, and basically what she
16 found, she found he was competent, obviously, but he was
17 diagnosed post-traumatic stress disorder from when he
18 witnessed basically a friend die from a drive-by shooting
19 when he was 15 years old. He was also diagnosed as
20 borderline intellectual functioning, which kind of goes hand
21 in hand with being in the resource classes. And I think,
22 basically from speaking with his family, I mean, that's left
23 him pretty damaged from when he was in his early teens. And
24 from speaking with them, I mean, he's gotten in trouble,
25 obviously, over the years. Mostly property crimes. I think

1 he stole a hunting dog at one point, marijuana charges,
2 things of that nature; but, you know, certainly no history of
3 anything like this.

4 As for this incident itself, obviously there's no good
5 explanation for what happened. I mean, it's inexcusable. He
6 understands that. He's expressed remorse to me since I met
7 with him. I'm inclined to believe what he's said all along.
8 When he met with the police, he gave a confession, said this
9 is what happened, and he did say that he was doing drugs that
10 day. He believes they might have been mixed with something
11 else that kind of led him to black out in a sense. I believe
12 he doesn't remember everything that happened, but he
13 certainly believes enough to know that this is what happened,
14 and he's been consistent with that throughout.

15 Since incarceration he's basically done everything he
16 can to try to be productive, given the circumstances. He's
17 got his bronze work keys, he's included in Bible study,
18 studying for his GED, and as I said, being as productive as
19 he possibly can. He's here to accept responsibility for what
20 he's done. It's obviously a tragic situation. Obviously he
21 and I both hate what's happened here. There's no excuse for
22 it, and I think he's here pleading under difficult
23 circumstances, and he understands there's no offer, and he
24 understands he's looking at a significant prison sentence.
25 There's no illusion on his part as to where he stands here

1 today, but he is hopeful that by way of pleading he can
2 hopefully save the victim any further pain and hopefully
3 avoid putting her family and his family through anything else
4 other than what he's already done. All that said, Your
5 Honor, hopefully this will bring everyone some closure. I
6 would ask you to consider a sentence in the 15 to 20-year
7 range, Your Honor, and I believe Mr. Evans would like to
8 address you briefly.

9 THE COURT: Mr. Evans.

10 THE DEFENDANT: Yes, ma'am. I want to say sorry to the
11 victim and the victim's family for the troubles that I have
12 put them through. I want to say sorry for my family, you
13 know, because I've been down the wrong road, but ain't no
14 excuse, you know. I'm a grown man. And I ask for your
15 mercy. And I was on drugs at the time. I've been clean now
16 for two years. Not by choice, but I've been clean. I've
17 given my life to God. Did Bible studies, actually mail --
18 through mail Bible college. I've got certificates. I just
19 give my life to God, and I prepare to leave it in his hands
20 and I just ask for your mercy.

21 THE COURT: Thank you Mr. Evans. Anything further, Mr.
22 Chisholm?

23 MR. CHISHOLM: Nothing further, Your Honor.

24 THE COURT: Solicitor?

25 MR. SORENSON: May it please the Court, Your Honor, this

1 is Victim .

2 Victim : Hi, Your Honor. My name's Victim , and I am
3 the victim in this tragedy. One in four women in the United
4 States undergoes this before the end of college, and I have
5 undergone nightmares, suicidal thoughts, depression. My
6 family has gone through a lot of stress, and it has changed a
7 lot in our dynamic. I'm a much angrier person than I used to
8 be. In this situation I think that we need to send a message
9 that the community is not okay with this and give him a
10 consecutive sentence of all of his counts.

11 THE COURT: Would you like to say anything further?

12 Victim No, thank you.

13 THE COURT: Anybody else from your family wish to speak?

14 MR. SORENSON: This is Victim 's mom and dad. Jennifer
15 Sawyer.

16 MRS. SAWYER: I'm Jennifer Sawyer, Victim 's mother. I
17 have no words to fully convey the fear, anger and anxiety our
18 whole family has experienced through the activities of Mr.
19 Evans. Our daughter will never fully feel safe, will always
20 be mistrustful and may perpetually struggle with depression
21 and anxiety. She is strong and has made amazing strides, but
22 she should never have been put into a position to have to
23 fight daily for normalcy. The feelings of inadequacy and
24 impotence her father and I have as her failed protectors
25 cannot be measured. Our other daughter is still being

1 treated for an anxiety disorder as a result of this. Our
2 safety as citizens in public should be something we can take
3 for granted, but none of us will ever be able to do that
4 again. Our daughter was simply exercising at lunch hour on a
5 public running trail, and this man purposely and actively
6 hunted, and my daughter was his random prey. It could have
7 been anyone's daughter, anyone's sister or mother. Our
8 community was not safe from him. Her father and I ask that
9 he serve his sentences consecutively. Please punish him to
10 the fullest extent of the law to protect our daughter and all
11 of the daughters of this community from his actions for a
12 long time to come. Thank you.

13 THE COURT: Thank you, ma'am, for being here.

14 MR. SAWYER: The first time we were in Court during our
15 impact statements I stated that I did not hate Michael Evans.
16 I wanted to hate Michael Evans, but I did not hate him. I of
17 course hated the choices that he made, but my relationship
18 with God has me have a desire to look deeper, and I'm glad
19 that he has a relationship with God as well; but I think it's
20 very important to point out for the reasons that my wife has
21 already stated that his youth, past abuse, being in the
22 foster care system has occurred with other individuals who
23 have made better choices in their lives. He took an
24 opportunity, premeditatedly, and went and hunted for anybody
25 that happened to fall within his range. He's asking for

1 leniency after putting off the opportunity to take
2 responsibility for his decisions for 14 months. He says he
3 wants to alleviate the family and the victim of additional
4 pain, but he has taken it all the way up until the week prior
5 to trial to take that responsibility on for his actions. His
6 attorney had mentioned that he has been remorseful. He has
7 been honest in his responses. His moral failings then can be
8 absolutely affecting his answers now, can be absolutely
9 affecting his attitude now, and it doesn't guarantee, no
10 matter how much he means it at this particular date, it
11 doesn't guarantee that the community has any hope for safety
12 anytime during the time that he may be set free outside of
13 his consecutive sentencing, so I also echo the feelings of my
14 daughter and my wife that his sentences be considered as
15 consecutive. I thank you for the opportunity to speak before
16 you.

17 THE COURT: Thank you, sir.

18 MS. SAWYER: May I say one more thing?

19 THE COURT: Absolutely.

20 MS. SAWYER: I want to say something to the family of
21 Michael. I am sorry that you also had to undergo all of
22 this, and I hope in some way you all can find some peace in
23 this. That's all I want to say.

24 THE COURT: Does he have a prior record, Solicitor?

25 MR. SORENSON: His only prior record were a couple

1 magistrate level offenses I believe Mr. Chisholm alluded to,
2 a petit larceny and I think a simple possession of marijuana.

3 If I could, just a couple of kind of closing comments,
4 Your Honor. This is kind of an unusual situation I've dealt
5 with as far as victims go. Usually in sexual assaults we're
6 trying to find those ways to try to avoid putting a victim
7 through a trial if we need to. When I told her last week it
8 looked like Mr. Evans was going to plea this week, she
9 actually got upset with me because she was afraid that it was
10 basically going to rob her of her ability to get up here and
11 have her say-so, felt that was almost his way of taking that
12 away from that her. So in that regard, I mean, she is -- I
13 don't think I've ever had a sexual assault victim that I've
14 felt any more confident in their ability to testify if need
15 be.

16 In looking at these facts, Your Honor, as horrific and
17 terrifying as they ultimately were, obviously they could have
18 been a lot worse, and I say that only, not to lessen what
19 happened to Victim , but they could have been a lot worse, and
20 I submit to you back on that day what he wanted to happen was
21 a lot worse than ultimately what ended up happening.
22 Thankfully, based on her bravery, her willingness at that
23 point in time to draw a line and fight back, and also Mr.
24 Teague coming along, it didn't -- you know, she wasn't
25 further hurt, she wasn't further assaulted. And ultimately,

1 just as Mr. and Mrs. Sawyer and Victim echoed, I'm going to
2 ask Your Honor -- and typically I don't do this, but in this
3 case I feel it is appropriate. A lot of times you have
4 sexual assaults where they're charged with kidnapping also
5 and the kidnapping is basically just the sexual assault, it's
6 basically the same offense. This is a situation where I
7 submit to you they are two separate offenses. The kidnapping
8 is dragging her at knifepoint 15, 20, 30 yards off of a
9 public trail in broad daylight into a wooded area at
10 knifepoint. The sexual assault is obviously what he did
11 after that, and I think it is appropriate in this case, Your
12 Honor, that he is sentenced separately for those two charges,
13 and we would respectfully ask you, Your Honor, to sentence
14 him to the maximum penalty that you're allowed to under the
15 law.

16 THE COURT: Anything further from anyone?

17 MR. CHISHOLM: If I could just bring up one thing, as
18 far as delaying the case, things of that nature, I would
19 point out for the record that Mr. Evans had another attorney
20 within the public defender's office that left at the end of
21 December. I just got his case at the beginning of the year,
22 and the discovery process has been ongoing up until really
23 this week or last week. So as far as -- I would just say
24 that Mr. Evans hasn't been unnecessarily delaying the
25 proceeding. I just wanted to clear that up for the record.

1 THE COURT: Thank you.

2 Victim , I'd like to tell you, first and foremost, I
3 think that certainly I don't ever want you to think of
4 yourself as a victim but a survivor, a very strong survivor,
5 and I think that's very important for you to consider as you
6 carry forward, being here today and being willing to testify
7 and certainly have your day in Court because you're entitled
8 to that, and I think that will carry you through, through
9 some of those difficult times that I'm sure you've had and
10 will continue to have, but you can share your experience with
11 others to hopefully help others maybe in that same situation.
12 As far as your parents go, you can't always have your kids in
13 a bubble, and that's the difficult aspect of things.

14 But, you know, Mr. Evans, for a young lady to just be
15 jogging where she should be exercising in a public place, it
16 truly is not acceptable behavior whatsoever. As your
17 attorney has pointed out, it's inexcusable to do this to
18 anyone. And despite the fact that you've had a difficult
19 upbringing, just as her dad said, you know, difficult
20 upbringings don't always bring about bad results or bad
21 decisions. You have to make your own way in this world
22 despite difficult upbringings.

23 On Indictment 2013-GS-18-0348 for criminal sexual
24 conduct in the first degree you're hereby commit to the State
25 Department of Corrections for a period of 30 years.

1 Indictment 2013-GS-18-0349, charge of kidnapping, you're
2 hereby committed to the State Department of Corrections for a
3 period of 10 years, and that's consecutive to Indictment No.
4 2013-GS-18-0348. Indictment No. 2013-GS-18-0350, possession
5 of a weapon during a violent crime, you're hereby committed
6 to the State Department of Corrections for a period of 5
7 years, and that by statute is consecutive to the principal
8 offense. Good luck to you.

9 (State's Exhibits 1-6 marked for identification.)

10 --- END OF TRANSCRIPT OF RECORD ---
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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4
5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 9th of April, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 May 27, 2015

16
17 *Ruth L. Mott*

18 Official Court Reporter
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF Darchester

IN THE COURT OF COMMON PLEAS

Plaintiff(s)

PH 3: 52

CIVIL ACTION COVERSHEET

vs.

-CP-

Michael Glen Evans SCDC# 359479

2015-CP-18-

269

Defendant(s)

(Please Print)

Submitted By: Michael Glen EvansAddress: BACT
4460 Broad River Rd
Columbia SC 29210

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| ☐ 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 -CP- _____ | ☐ 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) |

- | | | | |
|--|---|--|---|
| ☒ Inmate Petitions | ☐ Administrative Law/Relief | ☐ Judgments/Settlements | ☐ Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript of Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement | ☐ Worker's Comp (960) |
| | | ☐ Payment Rights Application (760) | ☐ Zoning Board (970) |
| | | ☐ Confession of Judgment (770) | ☐ Public Service Commission (990) |
| | | ☐ Petition for Workers | ☐ Employment Security Commission (991) |
| | | ☐ Compensation Settlement | |
| | | ☐ Approval (780) | |
| | | ☐ Other (799) | ☐ Other (999) |
- Special/Complex /Other
- | | |
|--|---|
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Foreign Subpoenas (650) |
| ☐ Other (699) | ☐ Motion to Quash Subpoena |
| | ☐ in Out-of-County Action |
| ☐ Sexual Predator (510) | (660) |

Submitting Party Signature: Michael EvansDate: 1/22/15

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA

County of Dorchester

2015 JAN 30 PM 3:52

IN THE COURT OF COMMON PLEAS

Michael Glen Evans SCOC# 359579

Full name and prison number (if any) of Applicant

2015-CP-18- 269

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 Broad River Correct. Inst.
2. Name and location of Court which imposed sentence Dorchester County, St. George Magistrates Court
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) 2013A-1820500022 CSC^{1st}
 - (b) 213 A1820500023 kidnapping

- (c) 2013a1820500024 Poss. Wpn. During Viol. Crime
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) CSC^{1st} 30 years 4/9/14
- (b) Kidnapping 10 years 4/9/14
- (c) Poss. Wpn. During Viol. crime 5 years 4/9/14
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) my public defender told me I couldn't when plead guilty
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

no

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

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) no
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Ash Chisholm First Judicial Circuit Public Defenders
107 W. 6th N. Street, Suite 100 Summerville, SC 29483
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Ash Chisholm Bond hearing, Plea arraignment,
sentencing
- ii. _____
- iii. _____

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

I believe I got too much time. This is my 1st major crime
and I will never be able to be in my sons life.

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

no

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

CERTIFIED COPY
 2015 FEB 17 AM 11:07
 Notary Public
 Dorchester County

I, Michael Evans SC DC # 359479, 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.

Michael Evans 359479

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

[Signature] (L.S.)
 Notary Public

My Commission Expires: NOV. 14 2024

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

RECORDED
2015 JAN 30 PM 3:53
CLERK OF COURT
WORCHESTER COUNTY

I, Michael Evans SCD # 359479, 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.

Michael Evans SCD # 359479
Applicant

SWORN or affirmed to and subscribed before me this
9th day of February, 2015.

[Signature]
Notary Public

My Commission Expires: Nov. 14 2024

CERTIFIED COPY
2015 FEB 17 AM 11:00
CLERK OF COURT
WORCHESTER COUNTY

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

I believe I got to much time. This is my 1st major crime
and I will never be able to be in my sons life.

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

no

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

CLERK OF COURT
DORCHESTER COUNTY

Cheryl Hickson

2015 MAR 20 AM 10:01

CEIFIED COPY

I, Michael Evans SCDC# 359479, 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.

Michael Evans 359479

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

Arthur J. [Signature] (L.S.)
 Notary Public

My Commission Expires: NOV. 14 2024

2015
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Michael Evans S.C.D.C. # 359479, 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.

Michael Evans S.C.D.C. # 359479
Applicant

SWORN or affirmed to and subscribed before me this
9th day of February, 2015.

[Signature]
Notary Public

My Commission Expires: Nov. 14 2024

CERTIFIED COPY
2015 MAR 20 AM 10:01
[Signature]
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Michael Glen Evans, #359479,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2015-CP-18-0269

**RETURN AND
MOTION TO DISMISS**

Respondent, making its Return to the Application for Post-Conviction Relief filed January 30, 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 Dorchester County Clerk of Court. In March 2013, the Dorchester County Grand Jury indicted Applicant for kidnapping (2013-GS-18-0349), criminal sexual conduct, first degree (2013-GS-18-0348) and firearms provision (2013-GS-18-0350). Ash Chisholm, Esquire, represented Applicant. On April 9, 2014, Applicant pled guilty as indicted. The Honorable Maite Murphy sentenced Applicant to ten (10) years' imprisonment for kidnapping, thirty (30) years' imprisonment for criminal sexual conduct, first degree, and five (5) years' imprisonment for the firearms provision, to be served consecutively. Applicant did not appeal his plea or sentence.

Attached herewith and incorporated herein are the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will

be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, Applicant makes no allegations or claims in support of this application for post-conviction relief. Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An applicant may commence a post-conviction relief action on the following grounds:

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

S.C. Code Ann. § 17-27-20 (1976).

In his application for post-conviction relief, Applicant fails to state concisely the grounds on which the allegation that he is being held in custody unlawfully is based. The allegation section was left blank. Therefore, the Court should summarily dismiss this application for post-conviction relief.

III.

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

IV.

WHEREFORE, Respondent moves to summarily dismiss the application because applicant has failed to state a claim upon which relief can be granted.

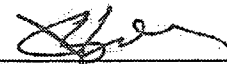
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

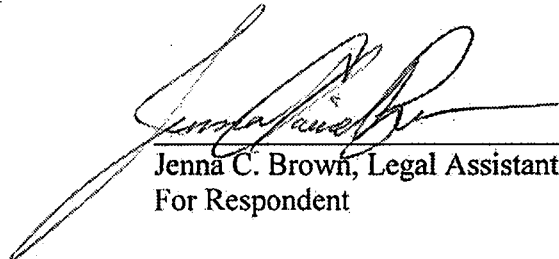
10/2, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
	)	2015-CP-18-0269
	)	
MICHAEL GLEN EVANS, #359479	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Rodney D. Davis, Esquire
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

DATED this 2nd day of October, 2014.


 Jenna C. Brown, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP1800269

Michael Glen Evans

2015 DEC 14

South Carolina State of

GERYL D. JAMES
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/Edgar Dickson
Presiding Judge

2153

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 12-14 -2015, and a copy mailed first class or placed in the appropriate attorney's box on 12-14 -2015, to attorneys of record or to parties (when appearing pro se) as follows:

Michael Glen Evans BRCI Smu #109 #359479 4460 Broad
River Rd Columbia, SC 29210
Rodney Duane Davis 4000 Faber Place Drive Suite 300
Charleston, SC 29405

James Clayton Mitchell III PO Box 11549 Columbia, SC
29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

FILED-RECORDED

2015 DEC 14 PM 4:07

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Michael Glen Evans, #359479,

CLERK OF COURT
DORCHESTER COUNTY

2015-CP-18-04409

269

Applicant,

v.

State of South Carolina,

Respondent.

CONDITIONAL ORDER OF DISMISSAL

This matter comes before this Court by way of an application for post-conviction relief filed January 30, 2015.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. In March 2013, the Dorchester County Grand Jury indicted Applicant for kidnapping (2013-GS-18-0349), criminal sexual conduct, first degree (2013-GS-18-0348) and firearms provision (2013-GS-18-0350). Ash Chisholm, Esquire, represented Applicant. On April 9, 2014, Applicant pled guilty as indicted. The Honorable Maite Murphy sentenced Applicant to ten (10) years' imprisonment for kidnapping, thirty (30) years' imprisonment for criminal sexual conduct, first degree, and five (5) years' imprisonment for the firearms provision, to be served consecutively. Applicant did not appeal his plea or sentence.

Before this Court are the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's PCR application and Respondent's Return and Motion to Dismiss.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Failure to State a Claim

This Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. Sec. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this Application must be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

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

S.C. Code Ann. § 17-27-20 (1976).

In his application for post-conviction relief, Applicant has failed to articulate any allegations. Therefore, this Court summarily dismisses this application for post-conviction relief with prejudice.

III. CONCLUSION

Pursuant to S.C. Code Ann. §17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Dorchester County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
J. Clayton Mitchell, Esquire
PCR Division – 1th Circuit
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 7th day of December, 2015.



EDGAR W. DICKSON
First Judicial Circuit



, South Carolina



ALAN WILSON
ATTORNEY GENERAL

December 10, 2015

RECEIVED

DEC 14 2015

The Honorable Cheryl L. Graham
Clerk of Court, Dorchester
5200 E. Jim Bilton Boulevard
St. George, South Carolina 29477-8020

Cheryl Graham, Clerk of Court
Dorchester County, SC

Re: Michael Glen Evans, #359479 v. State of South Carolina
2015-CP-18-04409

Dear Ms. Graham:

Enclosed please find the signed original **Conditional Order of Dismissal** in the above mentioned case for filing in your office. If you have any questions or concerns, please contact me at (803) 734-3737 or CMitchell@scag.gov.

Sincerely,

J. Clayton Mitchell
Assistant Attorney General

JCM/jcb
Enclosure

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	CASE NO: 2015-CP-18-0269
MICHAEL EVANS,	)	
	)	
Applicant,	)	
	)	
vs.	)	AMENDED APPLICATION FOR
	)	POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

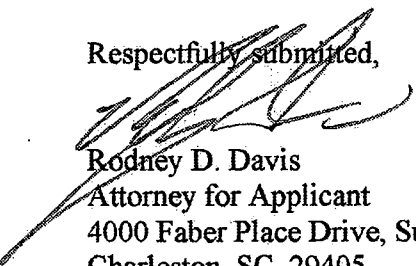
The Applicant, Michael Evans, now having the benefit of appointed counsel, alleges the following:

1. Michael Evans is detained at Broad River Correctional Institution under Inmate Number: 359479.
2. He was convicted and sentenced in Dorchester County for Criminal Sexual Conduct, First Degree (CSC), Kidnapping and Possession of a Weapon During a Violent Crime (Weapon) on April 9, 2014 under Indictment Numbers: 2013-GS-18-0348 - 0350.
3. The Honorable Maite Murphy sentenced the Applicant to ten (10) years for Kidnapping, thirty (30) years for CSC, and five (5) years for Weapon, to be served consecutively.
4. He was represented by Ash Chisolm on these charges (Applicant's attorney).
5. The Applicant's attorney advised the Applicant to plead guilty on the charges.
6. The Applicant did not appeal his conviction or sentence.
7. The Applicant filed an *in forma pauperis* application for post conviction relief on January 30, 2015.
8. The undersigned counsel, Rodney D. Davis, was appointed to represent the Applicant on April 15, 2015.
9. The State filed a Return on or about October 2, 2014.

10. The State submitted a proposed Conditional Order of Dismissal on or about November 16, 2015.
11. The signed Conditional Order of Dismissal by The Honorable Edgar Dickson was filed on December 14, 2015.
12. Applicant's attorney provided ineffective assistance of counsel by advising the Applicant that if he entered a guilty plea to all charges, that he would be sentenced to twenty (20) years in prison.
13. Applicant's attorney provided ineffective assistance of counsel by failing to fully investigate the case prior to the guilty plea.
14. Applicant's attorney provided ineffective assistance of counsel by failing to meet with the Applicant a sufficient amount to adequately advise the Applicant and prepare for a resolution.
15. Applicant's attorney provided ineffective assistance of counsel by failing to fully advise the client of the nature and elements of the charges.
16. Applicant's attorney provided ineffective assistance of counsel by failing to discuss strategy for a trial including potential defenses.
17. Applicant's attorney provided ineffective assistance of counsel by failing to file an appeal of the conviction.

Wherefore, based on this Amended Application, the Applicant requests that a hearing on the merits scheduled.

Respectfully submitted,



Rodney D. Davis
Attorney for Applicant
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowcountryLawOffice.com
(843) 323-4353

May 6, 2016

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2015-CP-18-00269

5 Michael Glen Evans

6 vs.

7 State of South Carolina

8 St. George, South Carolina

9 May 19, 2016

10 Before the Honorable Benjamin Culbertson

11

12 APPEARANCES

13 For the Applicant: Rodney Davis

14 For the State: Clay Mitchell

15

16 Reported by: Elizabeth Harris

17 Official Court Reporter

18 (Transcribed by Michael C. Watkins)

19

20

21

22

23

24

25

1	Michael Evans:	7
2	Ashley Chisholm:	26
3	Arguments:	41
4	Certificate:	49

5

6 NO EXHIBITS

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1 THE COURT: All right. This is 2015-CP-18-269,
2 Michael Glen Evans versus State of South Carolina. The
3 matter is before the Court on an application seeking post
4 conviction relief. Now, as I understand Mr. Evans pled
5 guilty to kidnapping, criminal sexual conduct in the first
6 degree, possession of a weapon during the commission of a
7 violent crime pursuant to indictments on those charges.
8 For the kidnapping he received a ten year sentence,
9 criminal sexual conduct in the first degree a 30 year
10 sentence, and possession of a weapon during the commission
11 of a violent crime a five year sentence, all of those to
12 run consecutively; is that correct?

13 MR. DAVIS: Yes, sir, Your Honor.

14 THE COURT: Please give the court reporter your names
15 and who you represent.

16 MR. MITCHELL: Clay Mitchell for the State.

17 MR. DAVIS: Rodney Davis for Mr. Evans.

18 THE COURT: Now, were there any charges dismissed,
19 nolle prossed or reduced as a result of the guilty plea?

20 MR. DAVIS: No, Your Honor.

21 THE COURT: All right. Mr. Evans, if you would please
22 stand.

23 (The applicant was sworn.)

24 THE COURT: Sir, your name is Michael Glen Evans?

25 THE APPLICANT: Yes, sir.

1 THE COURT: All right. Mr. Evans, you have filed an
2 application seeking post conviction relief from your guilty
3 plea and sentence on the charges of kidnapping, criminal
4 sexual conduct in the first degree and possession of a
5 weapon during the commission of a violent crime, and before
6 we proceed on that application I've got to go over some
7 matters with you to make sure that you understand the
8 procedure we're following, and that you understand the
9 consequences of proceeding with this application for post
10 conviction relief. Now, during the past 72 hours have you
11 taken any medication, consumed any alcohol or drugs or been
12 under any influence that would affect your ability to know
13 why you're here?

14 THE APPLICANT: No, sir.

15 THE COURT: Do you understand why you're here today?

16 THE APPLICANT: Yes, sir.

17 THE COURT: Is there anything about this hearing that
18 you want to ask your lawyer or ask me before we proceed?

19 THE APPLICANT: No, sir.

20 THE COURT: All right. Now, two things can happen if
21 we proceed on this application for post conviction relief.
22 Number one is if I deny your request for post conviction
23 relief then you will simply be returned to the department
24 of corrections or wherever you are currently serving your
25 sentence to complete that sentence, do you understand that?

1 THE APPLICANT: Yes, sir.

2 THE COURT: All right. Now, if I grant your request
3 for post conviction relief then I will set aside your
4 guilty plea which will vacate your conviction and the
5 sentence -- sentences imposed in this case, and your case
6 will be sent back for further proceedings. The case will
7 start all over, it will begin from the very beginning of
8 the proceedings against you. If any charges against you
9 are reduced, dropped, dismissed or nolle prossed they could
10 be brought back against you and you could be facing the
11 original charges again. Also, if you are convicted of
12 these charges then you would be subject to resentencing.
13 Now, I understand that these sentences ran consecutive and
14 you received the maximum sentence for criminal sexual
15 conduct in the first degree and possession of a weapon
16 during the commission of a violent crime, but you also need
17 to know that if you are convicted of kidnapping, that that
18 could carry up to 30 years in jail, and that that sentence
19 could also run consecutive to the other sentence imposed.
20 So where at this point in time you are basically serving a
21 45 year sentence, even if you prevail in this post
22 conviction relief, if you received the maximum sentences
23 and they ran consecutive you could wind up serving 65 years
24 in prison, do you understand that?

25 THE APPLICANT: Yes, sir.

1 THE COURT: Knowing that do you still wish to proceed
2 with your application for post conviction relief?

3 THE APPLICANT: Yes, sir.

4 THE COURT: All right. Mr. Davis, anything further
5 you want to place on the record in that regard?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: Anything further the State wants placed on
8 the record in that regard?

9 MR. MITCHELL: Yes, Judge. He filed his application
10 and in the application he left the allegation section
11 blank, we filed a motion to dismiss on that. A conditional
12 order of dismissal was filed December 14th of 2015. Since
13 then Mr. Davis has filed an amended application which sets
14 forth allegations that we can go forward on, I just wanted
15 to note that for the record.

16 THE COURT: All right. I don't have that amended
17 application.

18 (Break in proceedings.)

19 THE COURT: All right. Mr. Davis, you can call your
20 first witness.

21 MR. DAVIS: Thank you, Your Honor. We would call Mr.
22 Evans to the stand.

23 THE COURT: All right.

24 The witness, MICHAEL EVANS, was first duly sworn and
25 Testified as follows:

MICHAEL EVANS - DIRECT

1 DIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q Mr. Evans, first of all can you tell the Court how old
4 you are?

5 A Twenty-four.

6 Q And how far did you go in school?

7 A Eighth grade.

8 Q And why did you not finish school?

9 A Started working to help my little brother and my
10 sister have school clothes.

11 Q Doing what kind of work?

12 A Working on the farm.

13 Q Did you ever get your diploma or your GED?

14 A No, sir.

15 Q Are you okay about reading and writing?

16 A Somewhat.

17 Q Okay. You were 22 when you entered this guilty plea;
18 is that right?

19 A Yes, sir.

20 Q I want to talk to you about some complaints you have
21 about your attorney leading up to this guilty plea, okay?

22 A Yes, sir.

23 Q Before the guilty plea, how many times would you say
24 you met with your attorney?

25 A Probably once a month, so four times.

MICHAEL EVANS - DIRECT

1 Q Just for the record your attorney was Mr. Chisholm of
2 the public defenders office?

3 A Yes, sir.

4 Q Prior to the guilty plea, did you have concerns or
5 issues with the way that Mr. Chisholm was handling your
6 case that rose to the level of you trying to have him
7 removed from your case?

8 A Yes, sir.

9 Q Can you tell the Judge a little bit about what those
10 concerns were?

11 A I asked him many times to contact my family so he
12 could discuss the issues with my mother, let her know
13 what's going on with the case and let her be aware of
14 consequences, the charges and all the other concerns and
15 he waited until a week before I went to trial to contact
16 my mother, and that's when she come to me -- he told her
17 he had 20 years lined up and when she come to me crying
18 that's why I took the plea. I was all in for trial up to
19 then.

20 Q Other than the delayed discussions with your family,
21 were there things -- were there other reasons why you tried
22 to have him removed as your attorney?

23 A Yes, sir.

24 Q What were those things?

25 A He had the lady, the mental health lady was supposed

MICHAEL EVANS - DIRECT

1 to come see me two more times but she only come that once,
2 and I asked him many times what was going on with that and
3 he said he didn't know, he would look into it and he never
4 did anything for it.

5 Q Okay. We're going to get to other complaints you have
6 about the actual plea. But again, trying to have him
7 removed as your attorney, were there any other complaints
8 you had when you tried to have him removed as your attorney
9 or did that cover it?

10 A No, sir.

11 Q Do you recall if that happened about a month before
12 you actually entered the plea, that you tried to have him
13 removed in front of a judge?

14 A Yes, sir.

15 Q And was he removed as your attorney?

16 A No, sir.

17 Q Now Mr. Evans, prior to this conviction did you have
18 any other prior criminal convictions?

19 A No, sir.

20 Q You ever been in general sessions court before?

21 A No, sir.

22 Q Big criminal court?

23 A No, sir.

24 Q In these approximately four meetings with your
25 attorney, did he ever explain to you the charges you were

MICHAEL EVANS - DIRECT

1 facing; the criminal sexual conduct first, the kidnapping,
2 the possession of a weapon during a violent crime, did he
3 explain to you what those charges were?

4 A No, sir.

5 Q Did he ever talk to you about what the elements or
6 what the State would have to prove for a jury to convict
7 you of each of those three charges?

8 A He did for the CSC but not the others, which he just
9 told me DNA for one.

10 Q And there at the end, I'm sorry, you said he just said
11 DNA for the one?

12 A Yes, sir, for the criminal sexual conduct. He said
13 that's all they would need.

14 Q So in that discussion, were you talking about the
15 evidence that he had received from the police that they
16 were going to try to use against you, is that what he was
17 talking about?

18 A He told me they had DNA but he didn't show me or
19 exactly explain the paperwork that was sitting in front of
20 us.

21 Q But it was his advice to you that since there was DNA
22 in that case, that was enough for the State to convict you
23 and you would not win this if you went to trial? Was that
24 his advice to you?

25 A Yes, sir.

MICHAEL EVANS - DIRECT

1 Q As far as the evidence, in addition to DNA evidence,
2 did he send you a copy of any paperwork as far as what the
3 police had provided to him? Did he send that to you, mail
4 it to you or hand deliver it to you?

5 A My lawyer before him did that when he was on.

6 Q Did Mr. Chisholm come and review that paperwork with
7 you?

8 A Somewhat.

9 Q And that would have been during one of the four
10 meetings you had with him, correct?

11 A Yes, sir.

12 Q You just mentioned that the DNA was referenced to you
13 by Mr. Chisholm but he did not go over it thoroughly with
14 you; is that correct?

15 A Yes, sir.

16 Q Are there other items that you felt you needed more
17 time to review with Mr. Chisholm?

18 A Yes, sir.

19 Q What items would those have been?

20 A They said they had pictures of the victim but they
21 didn't have them until the day that I was sentenced and
22 come see me before court and showed them to me and said,
23 "These are the pictures I was telling you about." But he
24 didn't explain to me how those would be any evidence.

25 Q So the DNA was reviewed briefly, the pictures were

MICHAEL EVANS - DIRECT

- 1 shown to you the day of the guilty plea. Is there any
2 other evidence that you needed more time to review with Mr.
3 Chisholm?
- 4 A Beside -- yes, sir.
- 5 Q And what was that?
- 6 A The mental health counselor, her final statement.
- 7 Q What was reviewed with you about that issue?
- 8 A About the mental health?
- 9 Q Correct.
- 10 A He just said that she would come see me some more but
11 I ain't ever seen her again.
- 12 Q Did you ever see a report that the doctor prepared?
- 13 A No, sir.
- 14 Q Do you remember the doctor's name?
- 15 A No, sir.
- 16 Q A female doctor?
- 17 A Yes, ma'am -- yes, sir.
- 18 Q Okay. In these four discussions with Mr. Chisholm,
19 did they focus on having a trial on these charges or
20 pleading guilty to these charges?
- 21 A Pleading guilty.
- 22 Q Was there ever discussions with Mr. Chisholm about the
23 term lesser-included offenses? Did he ever talk about that
24 subject with you?
- 25 A No, sir.

MICHAEL EVANS - DIRECT

1 Q Did he ever talk about lewd act, the crime of lewd
2 act?

3 A No, sir.

4 Q Did he ever talk to you about criminal sexual conduct
5 in the second degree or third degree?

6 A No, sir.

7 Q Did he talk to you about my plan or any way that it
8 might be possible for you to avoid a conviction of criminal
9 sexual conduct in the first degree?

10 A No, sir.

11 Q Did he ever talk to you about any possible way that
12 you could avoid a conviction for kidnapping?

13 A No, sir.

14 Q Did he ever talk to you about any possible way you
15 could avoid a conviction for possession of a weapon during
16 the commission of a violent crime?

17 A No, sir.

18 Q During your four meetings with Mr. Chisholm, was there
19 ever a discussion about how he might attempt to block your
20 statement that was given to police?

21 A No, sir.

22 Q And let me just back up. You gave a statement to the
23 police after arrest, correct?

24 A Yes, sir.

25 Q It's a written statement, correct?

MICHAEL EVANS - DIRECT

1 A Yes, sir.

2 Q In that statement you apologize and you basically
3 admitted to what you were accused of in the statement,
4 correct?

5 A Yes, sir.

6 Q So again, was there any discussion by Mr. Chisholm
7 about how he might try to block a jury from hearing that
8 harmful statement?

9 A No, sir.

10 Q There was also a reference in your statement about the
11 fact that you had smoked weed but there may have been some
12 other drug in the marijuana that you smoked?

13 A Yes, sir.

14 Q Did he ever discuss with you how he might possibly use
15 that to your benefit in front of a jury?

16 A No, sir.

17 Q During these meetings with your attorney was there any
18 discussions about how he might attempt to suppress the
19 victim's identification of you as the person who committed
20 this?

21 A No, sir.

22 Q You were aware there was an identification?

23 A No, sir.

24 Q He never talked to you about the fact that you were
25 picked out?

MICHAEL EVANS - DIRECT

- 1 A No, sir.
- 2 Q Were there ever discussions about the fact that
- 3 kidnapping and criminal sexual conduct were called
- 4 no-parole offenses, did y'all discuss that?
- 5 A No, sir.
- 6 Q Or the fact that they are 85 percent offenses, did you
- 7 discuss that?
- 8 A Yes, sir.
- 9 Q Did you have discussions that the possession of a
- 10 weapon during a violent crime offense carried a flat five
- 11 years?
- 12 A No, sir.
- 13 Q Were there discussions about the criminal sexual
- 14 conduct and the first degree kidnapping being violent
- 15 crimes?
- 16 A Yes, sir.
- 17 Q Was there any discussion about the fact that a
- 18 conviction for criminal sexual conduct in the first degree
- 19 might at the end of a sentence trigger the Sexually Violent
- 20 Predator Act?
- 21 A No, sir.
- 22 Q Do you know what the Sexually Violent Predator Act is?
- 23 A No, sir.
- 24 Q Prior to our discussions, yours and mine --
- 25 A Uh-huh.

MICHAEL EVANS - DIRECT

1 Q -- had you ever heard that term before?

2 A No, sir.

3 Q You've already testified that these four meetings
4 primarily focused on guilty plea, not trial; is that right?

5 A Yes, sir.

6 Q Did you feel that Mr. Chisholm had any strategy if you
7 had wished to have a trial?

8 A No, sir.

9 Q Other than him advising you to plead guilty, did he
10 make any promises to you about what would happen if you
11 pled guilty?

12 A He didn't promise me, he promised my family.

13 Q What was that?

14 A Twenty.

15 Q Meaning a 20 year sentence?

16 A Twenty year sentence, yes, sir.

17 Q Was that in your mind when you made the decision to
18 plead guilty?

19 A Yes, sir.

20 Q If Mr. Chisholm had not indicated a 20 year sentence
21 on a guilty plea and you were facing zero to 30 on the
22 criminal sexual conduct first, zero to 30 on the
23 kidnapping, and a flat five years on the possession of a
24 weapon during the commission of a violent crime, would you
25 have pled guilty or would you have asked for a jury trial?

MICHAEL EVANS - DIRECT

1 A Asked for a jury trial.

2 Q If Mr. Chisholm had explained to you fully what the
3 State had to prove to convict you of criminal sexual
4 conduct in the first degree, the elements, and had you
5 understood that better, would you have pled guilty or would
6 you have asked for a jury trial?

7 A I don't understand the question.

8 Q If he would have explained to you more than just,
9 "They've got your DNA and that's enough to convict you on
10 the CSC first," because that have your testimony, right?

11 A Yes, sir.

12 Q If he would have explained to you that they had to
13 prove several elements beyond that before you could be
14 convicted in front of a jury, had you understood that prior
15 to your decision to plead guilty, would you have pled
16 guilty or would you have asked for a jury trial?

17 A Jury trial.

18 Q If he would have explained to you the different things
19 that the State would have to prove to convict you of
20 kidnapping beyond a reasonable doubt to all 12 jurors,
21 would you have pled guilty or asked for a jury trial?

22 A Jury trial.

23 Q And finally, as to the weapons charge, would that
24 along with the other charges, had you known more about the
25 charges would you have pled guilty or asked for a jury

MICHAEL EVANS - DIRECT

1 trial?

2 A Jury trial.

3 Q If Mr. Chisholm had talked to you about the
4 possibility that after hearing the evidence the jury could
5 possibly find you guilty of a smaller crime instead of CSC
6 or kidnapping or possession of a weapon, would you have
7 pled guilty or wanted the jury to hear your case as a
8 trial?

9 A Jury trial.

10 Q If Mr. Chisholm had talked to you about the
11 possibility of having a judge block your statement to
12 police and prevented a jury from hearing that statement at
13 a trial, would you have pled guilty or would you have asked
14 for a jury trial?

15 A Jury trial.

16 Q If Mr. Chisholm had talked to you about the
17 possibility of having a judge block the identification of
18 you as the person who committed the crime at a jury trial
19 and not allowing a jury to hear that, would you have pled
20 guilty or asked for a jury trial?

21 A Jury trial.

22 Q Now that we have discussed, you and I, during this PCR
23 process the potential effects of a conviction on a CSC,
24 criminal sexual conduct, and how that might trigger a
25 sexually violent predator hearing at the end of your

MICHAEL EVANS - DIRECT

1 sentence, now that we've talked about that, if you knew
2 that you potentially could have been kept in prison longer
3 than your actual sentence, the 45 years, would you have
4 pled guilty or asked for a jury trial?

5 A Jury trial.

6 MR. DAVIS: Your Honor, if I could have just a moment.

7 THE COURT: All right.

8 (Break in proceedings.)

9 MR. DAVIS: Thank you, Your Honor, thank you, Mr.
10 Evans. That's all of the questions I have, the attorney
11 general may have some questions for you.

12 THE COURT: All right. Cross examination?

13 CROSS EXAMINATION

14 BY MR. MITCHELL:

15 Q Goods morning, Mr. Evans.

16 A Good afternoon.

17 Q All right, let's see here. So CSC first, kidnapping
18 and possession of a weapon during the commission of a
19 violent crime, that's the charges you pled guilty to?

20 A Yes, sir.

21 Q Now, it is your testimony today that Mr. Chisholm did
22 not review those charges with you?

23 A No, sir.

24 Q So he didn't review what the State would have to prove
25 to show kidnapping?

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- 1 A No, sir.
- 2 Q Nor criminal sexual conduct?
- 3 A He told me that was DNA.
- 4 Q Okay. So he didn't talk about the elements of what --
- 5 like the actual law, he never reviewed that with you?
- 6 A No, sir.
- 7 Q What about the penalties, he reviewed those with you?
- 8 A As in -- I don't understand.
- 9 Q Like the amount of time you were facing.
- 10 A He told me 30 and 30 and five, but he didn't --
- 11 Q So he told you the maximum that you could face on each
- 12 charge, right?
- 13 A Yes, sir.
- 14 Q Okay. So your testimony today is that if he had
- 15 reviewed certain things with you, you would have taken the
- 16 case to trial; is that right?
- 17 A Yes, sir.
- 18 Q Okay. Now, when you pled you pled in front of Judge
- 19 Murphy, right?
- 20 A Yes, sir.
- 21 Q And Judge Murphy reviewed this with you; is that
- 22 correct?
- 23 A I don't recall.
- 24 Q Okay. Now, you had kind of a conversation with her
- 25 where she asked you questions and you would answer them,

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- 1 right?
- 2 A Uh-huh.
- 3 Q And in that she went over the different rights that
- 4 you were waiving by pleading guilty; is that correct?
- 5 A Yes, sir.
- 6 Q Now, that includes the elements of the crime, right?
- 7 A I don't know the law so I have no idea.
- 8 Q But did she review that with you at the guilty plea?
- 9 A I don't recall.
- 10 Q Did she review that the State would have the burden of
- 11 proof to prove that you were guilty?
- 12 A No, sir.
- 13 Q She didn't review that with you? She didn't review
- 14 that you would have an opportunity to challenge the
- 15 evidence that the State had if you went to trial?
- 16 A Yes.
- 17 Q She did do that? Okay. Now Mr. Chisholm did not,
- 18 right?
- 19 A No, sir.
- 20 Q Okay. So he never talked about keeping your statement
- 21 out; is that right?
- 22 A No, sir.
- 23 Q No discussions on that. No discussion on keeping the
- 24 DNA out?
- 25 A No, sir.

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1 Q Okay. No discussion on keeping the victim's statement
2 out?

3 A No, sir.

4 Q And that's -- the evidence consisted of a DNA match
5 that was done from the victim; is that right?

6 A Yes, sir.

7 Q You understood that?

8 A Yes, sir.

9 Q Okay. And you also essentially gave a confession.

10 A Yes, sir.

11 Q And the solicitor at this guilty plea went through and
12 stated what they would prove at trial, or what they would
13 hope to prove at trial if the case went to trial; is that
14 right?

15 A I don't recall.

16 Q Do you recall whether he went through and stated the
17 events as he thought they happened, he kind of told the
18 Judge what happened, or what he thought would happen? Did
19 he do that? Do you remember that?

20 A No, sir.

21 Q Okay. Now, Judge Murphy asked you if you agreed with
22 how the solicitor characterized those facts and you agreed
23 to that, right?

24 A I don't recall.

25 Q But you did plead guilty, right?

MICHAEL EVANS - CROSS

- 1 A Yes, sir.
- 2 Q And you knew what you were doing there, right?
- 3 A I was told 20, so that's --
- 4 Q So your testimony is that you were promised 20 years
- 5 and that you were going to get 20 years? Now, Judge Murphy
- 6 goes through here a couple of times and says there's no
- 7 negotiations, there's no plea agreement, right?
- 8 A I don't recall.
- 9 Q You don't recall that? Now, you had -- you said
- 10 something about some kind of YOA sentence and she
- 11 immediately corrected you and said, "Hold on now, you can
- 12 get 30 on the CSC charge." Is that what happened?
- 13 A I don't remember.
- 14 Q Okay. Now, it was your position that you were on
- 15 drugs at the time; is that right?
- 16 A Yes, sir.
- 17 Q And that maybe something was laced -- maybe marijuana
- 18 was laced with something else?
- 19 A Yes, sir.
- 20 Q Did you tell Mr. Chisholm that?
- 21 A Yes, sir.
- 22 Q You did? Okay. Now, you met with Dr. Schwartz-Watts
- 23 (sic); is that right?
- 24 A I don't remember her name.
- 25 Q Okay. But it was a lady doctor, mental health doctor?

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- 1 A Yes, sir.
- 2 Q And she evaluated you, right?
- 3 A Yes, sir.
- 4 Q And she found you competent; is that correct?
- 5 A I don't remember.
- 6 Q Okay. But you said you --
- 7 A I never seen her results.
- 8 Q I thought you said you found those results out at the
- 9 plea.
- 10 A No, sir.
- 11 Q So Mr. Chisholm did not review that with you at all?
- 12 A No, sir.
- 13 Q So you're not challenging your guilt here, are you?
- 14 A No.
- 15 Q You're just challenging Mr. Chisholm's advice to you,
- 16 right?
- 17 MR. DAVIS: Your Honor, I'm going to object.
- 18 Obviously this is PCR, the guilt or innocence is obviously
- 19 not the issue, it's a collateral attack and so I would
- 20 argue that is irrelevant at this point.
- 21 THE COURT: Sustained.
- 22 Q You talked about having a previous attorney earlier.
- 23 Who was that?
- 24 A I don't remember his name.
- 25 Q Okay. And you received discovery or some of the

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1 State's evidence from him?

2 A Yes, sir.

3 Q Okay. And you didn't receive that from Mr. Chisholm?

4 A No, sir.

5 MR. MITCHELL: No further questions, thank you.

6 THE COURT: All right. Redirect?

7 MR. DAVIS: No, Your Honor. Thank you, Mr. Evans.

8 THE COURT: All right, you may step down. Applicant
9 can call your next witness.

10 MR. DAVIS: We call Ashley Chisholm.

11 THE COURT: All right.

12 The witness, ASHLEY CHISHOLM, was first duly sworn and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DAVIS:

16 Q Mr. Chisholm, how are you doing?

17 A Pretty good, how are you?

18 Q Doing all right, thank you. Let's just clear up the
19 issue, you took over this case for a prior attorney?

20 A Yes, sir. I was looking through my notes and it
21 looks like Mitch Farley, a public defender in the same
22 office as myself at the time, initially represented Mr.
23 Evans. I'm not sure exactly when he was appointed,
24 sometime early 2013. Mr. Farley subsequently left our
25 office to go into private practice and I believe I got the

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1 case some time probably January of 2014, so probably
2 roughly a year later.

3 Q And this plea occurs April 9th of 2014; is that right?

4 A Yes, sir.

5 Q So approximately four months?

6 A Give or take, yes, sir.

7 Q By the time you took over the case Mr. Evans already
8 had a discovery pack sent to him, were you aware of that?

9 A Yes, sir.

10 Q You were aware that Mr. Evans had no prior
11 convictions, correct?

12 A Yes, sir.

13 Q During the brief period; the four months that you
14 represented him, there was a hearing in an attempt to have
15 you relieved as counsel.

16 A That's correct.

17 Q What do you recall the reasoning behind that attempt?

18 A I don't recall exactly what Mr. Evans' specific
19 complaints were, I do remember the date and the Judge. If
20 I had to guess I would imagine it probably was a general
21 complaint about the lack of an offer in this case and
22 things of that nature.

23 Q The State never made an offer in this case?

24 A No, sir.

25 Q You were aware that the police had a statement from

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- 1 Mr. Evans post-arrest.
- 2 A Yes, sir.
- 3 Q It was a harmful statement.
- 4 A Very.
- 5 Q You were aware that there was DNA testing done in this
- 6 case.
- 7 A Yes, sir.
- 8 Q There was a mixture match, is that a fair way to
- 9 represent it?
- 10 A I don't recall specifically. I remember it was
- 11 saliva but I think it was probably a mixture.
- 12 Q And a match meaning to Mr. Evans.
- 13 A Yes, sir.
- 14 Q Do you recall receiving evidence about an initial
- 15 identification of Mr. Evans when photographs were reviewed
- 16 with the victim?
- 17 A Did I discuss the identification with Mr. Evans, is
- 18 that --
- 19 Q First of all you're aware that the victim made an
- 20 identification through photographs.
- 21 A Yes.
- 22 Q But that was -- I believe the indication there was 90
- 23 percent sure when looking at the photographs, do you recall
- 24 that?
- 25 A That's right. I believe that's what she wrote in her

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1 statement.

2 Q Do you recall the victim did attend a preliminary
3 hearing and after that, "I'm 100 percent sure now that I've
4 heard his voice, do you recall that?

5 A That I don't recall because I wouldn't have been on
6 the case at the time of the preliminary hearing.

7 Q Okay. Do you recall being provided that by the
8 solicitor's office?

9 A Not that I recall.

10 Q You've handled enough cases with identification issues
11 to differentiate between a photographic array and show-up?

12 A Sure.

13 Q And the suggestive nature of a situation where one
14 person in custody is identified?

15 A Yes.

16 Q Similar to when there's only one person at a
17 preliminary hearing.

18 A Right.

19 Q As to the issue of the identification, isn't it true
20 that you did not discuss with Mr. Evans about the ability
21 to have a Biggers hearing and attempt to suppress that
22 identification?

23 A No, I discussed that. I discussed his statement, how
24 we could try to keep it out, how we could challenge the
25 DNA and things of that nature. I went through all of

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1 those things with him would be my recollection.

2 Q Isn't it true that during your discussions with Mr.
3 Evans there were not discussions about potential
4 lesser-included offenses, isn't that accurate?

5 A When we were discussing a possibility of going to
6 trial I would have mentioned that he could have been found
7 guilty of a lesser-included offense, or he could have been
8 found guilty of the charges going to trial on, or not
9 guilty altogether.

10 Q Do you remember what specific lesser included offenses
11 you spoke with him about?

12 A The lesser criminal sexual conduct charges
13 specifically, possibly lewd act, I don't remember exactly
14 what the discussion was.

15 Q Is it fair to say during your four months in
16 representing Mr. Evans your advice to him would have been
17 this case should result in a guilty plea not a trial?

18 A I definitely advised him that if we went to trial I
19 thought our chances for success were very low, and it was
20 a difficult situation, the serious nature of the charges,
21 the facts of the case, the fact that we had no offer, no
22 offer was coming. Essentially the way I ultimately put it
23 to him was, you know, "This is a case where we can go to
24 trial and I don't know how much you ultimately will be
25 risking," but my advice to him was to consider a guilty

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1 plea and hope that we get some consideration by him
2 accepting responsibility for the actions and not forcing
3 the victim to testify at a trial, basically throw himself
4 at the mercy of the Court.

5 Q In April of 2014 can you approximate to the Court how
6 many trials you had had -- general sessions trials as a
7 defense attorney as of April of 2014?

8 A Five, six, I guess.

9 Q Is it fair to say as a criminal defense attorney
10 sometimes cases are trials because there's not an offer?

11 A Yes.

12 Q And in this case there was not one.

13 A That's correct.

14 Q You were certainly aware that each of the larger
15 charges carried a potential 30 year sentence on the
16 kidnapping and CSC first?

17 A I was.

18 Q And a flat five years on the weapon during a violent
19 crime.

20 A Yes, sir.

21 Q Have you had cases similar to this without an offer
22 that in criminal defense terms, let's roll the dice and
23 cases like this are the ones for trial?

24 A Right, with and without offers, sure.

25 Q And in this case your advice to Mr. Evans was given

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1 the State's evidence you felt the best course of action was
2 to plead guilty, take responsibility, not have the victim
3 testify and hope for mercy.

4 A If I could elaborate a little bit. Some of the
5 things you asked me about earlier, the major evidence
6 against Mr. Evans was his statement where he essentially
7 provided a confession and said, "These are some items that
8 you can find at the house," such as the knife used in the
9 incident, that kind of thing which would corroborate his
10 statement. The DNA that was found on the victim and her
11 identifying him. The other witnesses in the case I don't
12 believe picked him out of a photo lineup but basically
13 gave composite sketches and descriptions, things of that
14 nature were consistent with him. My advice to him was we
15 can certainly attack each of these but really we are going
16 to have a tough time running the gauntlet and suppressing
17 all of this kind of harmful stuff, and if this kind of
18 thing comes in at trial I think you will be found guilty
19 for that reason. I think -- although not a good solution
20 he was between a rock and a hard place for sure, that I
21 think a better option for him would be to plea.

22 Q Final issue. Have you had an opportunity to review
23 the transcript of the guilty plea prior to the testimony
24 here today?

25 A I do.

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1 Q Do you recall there's a reference in there by the
2 Judge to a review of collateral consequences, do you
3 remember that discussion with you?

4 A I would have to look back through for specifics, but
5 I did read through it earlier.

6 Q I refer you to page 14, approximate line 14.

7 A Yes, sir.

8 Q And in that discussion with the Court she references
9 collateral consequences; is that right?

10 A That's correct.

11 Q That's the term that is used?

12 A Yes, sir.

13 Q Do you recall anywhere during the guilty plea
14 presentation that sexually violent predator, that term was
15 ever referenced?

16 A I do not. I remember discussing that with Mr. Evans
17 but I did notice that, I don't believe it is in the
18 transcript. I also don't believe it's referenced in the
19 transcript that these are serious most violent crimes,
20 things of that nature. The soliloquy about most serious
21 offenses, three strikes, all of that, I don't recall that
22 being in here but these are things that I discussed with
23 him prior to the plea.

24 MR. DAVIS: Your Honor, if I could have just a moment.

25 THE COURT: All right.

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1 (Break in proceedings.)

2 Q One final thing, Mr. Chisholm. Is it accurate that
3 you did get in touch with my client's mother and advised
4 her that you believe the outcome was a guilty plea?

5 A That's correct.

6 MR. DAVIS: Thank you, Mr. Chisholm. Thank you, Your
7 Honor, no other questions.

8 THE COURT: All right. Cross examination?

9 CROSS EXAMINATION

10 BY MR. MITCHELL:

11 Q Good morning, Mr. Chisholm.

12 A Good morning.

13 Q Thanks for being here today. Let's see, where do you
14 work?

15 A I work with the public defenders office.

16 Q How long have you been doing that?

17 A Since 2008, I believe.

18 Q What did you do before you were a public defender?

19 A Prior to law school?

20 Q Was that your first job out of law school?

21 A Yes, sir.

22 Q Okay. Good deal. All right. So these were some
23 serious charges. Did you review these charges with Mr.
24 Evans?

25 A I did.

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1 Q Specifically the elements that the State would have to
2 prove?

3 A Yes, for each charge.

4 Q Okay. Did you go over the possible punishments that
5 those charges carried?

6 A I did.

7 Q Did you go over his constitutional rights, his basic
8 constitutional rights with him?

9 A I did.

10 Q Did you go over that the State would have to prove
11 these certain things and the burden was on them?

12 A I did.

13 Q Did you review discovery with Mr. Evans?

14 A I did.

15 Q What did that discovery contain?

16 A The main evidence against Mr. Evans, is that what you
17 mean?

18 Q Yes.

19 A Basically he had several witnesses, I believe, that
20 contributed to a composite that would match Mr. Evans.

21 The victim in the case ultimately picked him out of a
22 photo lineup as being the person that had attacked her.

23 His DNA, I believe it was saliva, was found on her chest I
24 think towards her collarbone, something along those lines.

25 Mr. Evans when picked out sometime later when he was

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1 picked up by the police, he gives a statement basically
2 admitting to the crime. I'm sure there's some differences
3 in his account and the victim's account, but he admits to,
4 I believe, digital penetration, admits to having a knife
5 and essentially admits that what she's saying happened is
6 what happened.

7 Q You did testify that you discussed with him the avenue
8 of suppressing these pieces of evidence?

9 A Yes.

10 Q You also discussed with him the likelihood of these
11 pieces of evidence being suppressed?

12 A I did. I told him, you know, we could certainly have
13 hearings, try to get this stuff suppressed but you've got
14 pretty high standards you've got to meet there. And the
15 further complication for him is that he's got several
16 different things we would need to suppress to get kind of
17 a clean slate. The photo lineup, the DNA, his admission,
18 any real combination of those things is going to be a
19 significant obstacle at trial.

20 Q What about the photos, he mentioned that in his
21 testimony, what about the photos of the victim?

22 A The photographs?

23 Q Did you review that with him?

24 A I did. And I don't remember the exact date I got
25 that, I might have gotten that -- it could have been the

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1 day of the plea, some of the photos, I think probably the
2 pictures of the scene, things of that nature, that I did
3 get pretty late on, I believe.

4 Q So taking this all into account you thought it was in
5 Mr. Evans' best interest to plead guilty?

6 A I did.

7 Q And you discussed that with him before the plea?

8 A Yes, multiple times.

9 Q And he talked about being promised a 20 year sentence.
10 Did you promise him that he would be sentenced to 20 years?

11 A I did not. I related to him that there was no offer.
12 I probably told him that I would ask the Court to consider
13 a 20 year sentence, which I think ultimately I did, which
14 is what I would have told his mother. I did have a chance
15 to meet with his mother, his brother and uncle and a
16 grandmother, I also talked to his mother on the phone.
17 And that's what I would have told them, is that I can ask
18 for that type of sentence but certainly not that that's
19 what was being offered.

20 Q So there was no offer. Did you attempt to solicit an
21 offer?

22 A I did.

23 Q And how did that go?

24 A I did not get an offer.

25 Q That was just due to the fact that the evidence the

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1 State believed was overwhelming at that point?

2 MR. DAVIS: Objection, Your Honor, calls for
3 speculation.

4 THE COURT: Overruled, I'll allow it.

5 A From speaking with the solicitor I believe it was
6 based on the strength of the evidence and the nature of
7 the case.

8 Q Okay. Now, you had concerns with Mr. Evans' mental
9 health. What promoted him to have you evaluated?

10 A I did not have significant issues communicate with
11 him, him understanding what I was telling him, things of
12 that nature. I mean, there was some of that but I think
13 it was mostly from what we've -- from speaking with him
14 and his family about things in his background, education
15 wise, things along those lines.

16 Q Okay. And that was Ms. Donna Schwartz-Watts on the
17 case?

18 A Yes, sir. I believe she evaluated him in March and
19 he was found competent.

20 Q Did you review that finding with Mr. Evans?

21 A I did not send him a copy, but I would have told him
22 that she found him competent. We typically don't give a
23 copy of the actual evaluation to the client.

24 Q As far as the collateral consequences, you testified
25 that you did advise him of the risk of being put up for

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1 review for the sexually violent predator program?

2 A Yes, sir.

3 Q And also that he would be on the sex offender
4 registry?

5 A Yes, sir.

6 MR. MITCHELL: One second, Your Honor, sorry.

7 THE COURT: All right.

8 (Break in proceedings.)

9 MR. MITCHELL: All right. No further questions, thank
10 you, Mr. Chisholm.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q Couple of issues, Mr. Chisholm. As to any collateral
15 consequences or even just the risk of the guilty plea or
16 going to trial, these discussions that you testify you had
17 with Mr. Evans, they were verbal discussions. There was
18 never any written indication that Mr. Evans was made aware
19 and waived any of those issues?

20 A Are you asking if I wrote "basically these are
21 serious charges," things along those lines? I don't know
22 that I wrote him a letter. I did discuss it multiple
23 times with him with myself and other attorneys in the
24 office.

25 Q It's not -- you're still with the public defenders

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1 office for Dorchester County.

2 A I am.

3 Q Is it fair that it's not that office's policy to have
4 an itemized written checklist of those collateral
5 consequences?

6 A That's correct.

7 Q To have the defendant check off?

8 A Right, we don't have an office policy. I have seen
9 those and I've used them when I was working in Orangeburg
10 but it's not an office policy, correct.

11 Q As to the evaluation, you testified you didn't really
12 have difficulty in communicating with Mr. Evans; is that
13 right?

14 A Right.

15 Q Is it fair to say your concerns had to deal with his
16 intellectual functioning as opposed to any mental health
17 issues?

18 A That's fair to say.

19 Q Do you recall the finding in the report -- well, first
20 of all, do you recall that he only went through the eighth
21 grade in school?

22 A Yes.

23 Q You were aware -- strike that, I asked you that in
24 direct. You were aware in Dr. Schwartz-Watts' report that
25 she indicated he had borderline intellectual functioning.

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1 A I do believe I remember that.

2 Q And you referenced that in front of Judge Murphy
3 during the plea, do you recall that?

4 A I believe so.

5 Q But despite that you had no issues communicating with
6 Mr. Evans?

7 A Well, I didn't have any concerns that he didn't
8 understand what I was telling him, or that he didn't
9 understand where we were headed with this case. I think
10 he understood the evidence against him and what the State
11 would have to do, the roles of the Court and everything
12 that are typically concerns for competency, I didn't have
13 any problems as far as that goes.

14 Q The final issue, I believe. Were you aware in the
15 meantime during Mister -- well, first of all, Mr. Evans
16 was -- did not make bond on this charge, correct?

17 A That's correct.

18 Q He remained in jail until the guilty plea.

19 A Correct.

20 Q Do you recall at any point during his stay at the
21 county jail a suicide attempt by Mr. Evans? Were you ever
22 made aware of that?

23 A I don't recall that.

24 MR. DAVIS: Thank you, Mr. Chisholm, thank you, Your
25 Honor. No further questions.

1 THE COURT: All right. You may step down. Applicant
2 can call your next witness.

3 MR. DAVIS: That's the applicant's case, Your Honor,
4 and I would like to present a summary of our --

5 THE COURT: All right. Does the State wish to call
6 any witnesses?

7 MR. MITCHELL: No, Your Honor, we have no witnesses.

8 THE COURT: All right, Mr. Davis, let me hear from
9 you.

10 MR. DAVIS: Thank you very much, Your Honor. Let me
11 start at the end there, Your Honor. This was a 22 year old
12 at the time of the plea, 20 year at the time of incident,
13 Mr. Evans was, with only an education to the eighth grade.
14 No GED, no diploma, no prior record, no dealings with the
15 court prior to this. A finding by Dr. Schwartz-Watts,
16 which Mr. Chisholm was aware of, of borderline intellectual
17 functioning. So I say that, Judge, because certainly your
18 view of this case obviously is whether counsel was
19 effective or not, and if counsel was ineffective would the
20 outcome have been different. And respectfully I would hope
21 you look at those requirements through the prism of Mr.
22 Evans at the time of this choice to plead guilty. You've
23 heard the tract of my argument, I will not rehash all of
24 it, but I will focus on a couple of items, Your Honor.
25 Unless any defendant, and especially Mr. Evans given his

1 situation in April of 2014, understands the nature of the
2 offenses against them, then I will argue that their
3 decision to plead has been influenced by ineffective
4 assistance. You have heard -- you heard the testimony of
5 Mr. Evans about these issues, that if these had been
6 presented, if he fully understood the consequences of his
7 actions because there was no offer in this case then he has
8 a right to a trial and he would have asked for a trial.
9 We've had testimony from Mr. Chisholm that even cases
10 without an offer, solid cases, they still become trials
11 because of that fact, because there is not an offer. Mr.
12 Chisholm was on this case approximately four months, Mr.
13 Evans testified that it was four meetings, my recollection
14 of Mr. Chisholm's testimony was multiple discussions. We
15 can certainly argue that there was insufficient number of
16 meetings and quality of meetings to fully convey the
17 dangers and the consequences of this plea. Mr. Evans now
18 understands more fully the consequences of the plea.
19 Primarily, Your Honor, I would argue that the collateral
20 consequences as to sexually violent predator and registry
21 were not aware at the time. Some other issues Mr. Chisholm
22 did go over, but as to those we would argue they were
23 insufficiently presented for him to make a free and
24 voluntary decision on pleading guilty because his counsel
25 was not effective on that. Judge, just briefly, certainly

1 doing research on that issue, we're aware of the State
2 versus Page case from 2005 that says failing to advise a
3 sexually violent predator in and of itself is not grounds
4 for a PCR. But we would also reference Hamm, H-a-m-m,
5 versus State, a 2013 case, which references a Supreme Court
6 case of Padilla dealing with all matter of collateral
7 consequences that if we do show that collateral
8 consequences were not advised, and the second step of
9 Strickland, that that affected the outcome then -- and it's
10 a South Carolina case -- then we can prevail. And so on
11 this we would argue that we have met the burden as to both
12 of those. That number one, certainly there's conflicting
13 testimony, Mr. Evans says it was not mentioned, Mr.
14 Chisholm says it was, we would argue even if it was given
15 his low education, never been in general sessions court
16 before, no prior record, and borderline intellectual
17 functioning, it was not in four months and a few meetings
18 sufficiently reviewed with him.

19 THE COURT: So what should have been done? What are
20 you saying Mr. Chisholm -- assuming Mr. Chisholm's
21 testimony is correct, what should he have done? Waited a
22 longer time? Discussed more?

23 MR. DAVIS: Discussed more. Met with more,
24 discussed more --

25 THE COURT: How many times more?

1 MR. DAVIS: Well, Judge, until it's understood. And
2 again, he even indicated that when he was in Orangeburg
3 they had a checklist similar to a constitutional waiver of
4 rights before giving a statement that, "Do you understand
5 this? Perhaps explain it back to me?" When Mr. Evans was
6 on the stand, "Do you know what sexually violent predator
7 even means?" He couldn't explain it today. And so I don't
8 have -- there's not, I don't believe, Your Honor, a magic
9 number of times that an adequate, effective attorney must
10 meet with their client, I don't think there's an adequate
11 time frame, meaning we met for an hour. But certainly you
12 have to take each individual client as they are, and in
13 this case a four month period of representation on some
14 very serious charges, which not only have severe
15 punishment, incarceration punishment, they have severe
16 collateral consequences. And what you've heard today, even
17 in the light most favorable to the State, we certainly have
18 the burden, is that it was discussed. I think it's clear
19 from Mr. Chisholm -- or Mr. Evans' testimony we are not
20 only able to hear what he has to say but observe his
21 demeanor and observe his ability to answer questions. He
22 has developmental difficulties, that is a -- it's in the
23 record, Dr. Schwartz-Watts' report, it's clear that's
24 undisputed, he is borderline intellectual functioning. We
25 would argue that given that, 21 or 22, because he was

1 arrested at 20, eighth grade education, borderline
2 intellectual functioning, he understands more now than he
3 did then, but the issue is what did he know at the time to
4 be able to make an informed decision about his guilty plea.
5 He had no offer. As Mr. Chisholm testified, they were
6 praying for the mercy of the Court, and I certainly
7 understand that and there are bases that that's the best
8 you can do. But in this with the significant collateral
9 consequences that come into play we would argue that Mr.
10 Evans' counsel was ineffective in adequately explaining
11 that to Mr. Evans sufficient for him to be able to
12 understand, and even knowing those consequences rationally
13 freely, voluntarily and fully informed plead guilty. He
14 has testified -- I went through the checklist, I won't do
15 it again, you heard the -- if he would have known this he
16 could fight Biggers or fight DNA or fight --

17 THE COURT: Yeah. But there were a number of things
18 that he said he was not advised of that the transcript
19 shows that the Judge clearly advised him of.

20 MR. DAVIS: Again, I'll ask you to take that through
21 the filter of eighth grade education, borderline
22 intellectual functioning, to stand in the courtroom when a
23 Judge is explaining it over a few minute colloquy. The
24 transcript is 27 pages, we all know that even difficult
25 pleas are a matter a minutes, I'm not talking three or

1 four, but minutes, not hours, for him to be presumed to
2 have understood what Judge Murphy was explaining in a
3 matter of minutes versus what his attorney should have
4 explained prior to that -- and again that's the -- PCR is
5 what led up to the decision to plead guilty. Now clearly
6 if they would have turned on a light bulb -- if I have told
7 a client you're facing up to three years and when you go in
8 court the Judge says that's a zero to 15, that should turn
9 on the client's lightbulb, "Wait a second, I need to talk
10 to my attorney," I understand that. Nothing like that
11 occurred in this proceeding. And again, we have to take
12 Mr. Evans as he was at the time. I think it's unlikely
13 that he had the functioning ability to understand when
14 Judge Murphy said -- asked Mr. Chisholm, "Have you talked
15 to him about the collateral consequences? I have, Your
16 Honor," that that meant SVP, registry, strikes, serious,
17 most serious. The Judge uses the term artfully and the
18 attorneys know and the judges know, Mr. Evans doesn't, he
19 still can't explain some of them today in detail. So the
20 issues become prior to being in court his decision to waive
21 his right to a trial, whether -- and again, whether guilty
22 or not, thankfully in this country we have a right to a
23 jury trial and force the State to prove it, and they very
24 well may. It's not disputed, the evidence that the State
25 had in this case. What is disputed is whether his decision

1 to accept the plea straight-up versus put the State to the
2 test, as Judge Hughston likes to say, put the State to the
3 test and have them prove this beyond a reasonable doubt,
4 his decision to waive that right and plead guilty was
5 influenced by the fact that, "They got your DNA, you're
6 going to be convicted. Look, we'll ask for mercy" -- he
7 testifies, "We will ask for mercy and 20 is what we're
8 looking at." Family was involved, he needs to plead guilty
9 looking at 20 versus going to trial and looking at 65 as
10 you have worded it. With his limited functioning and
11 understanding back then and the insufficiency of quantity
12 and quality of meetings with his attorney who was only on
13 the case four months, we argue that meets both hurdles that
14 we must overcome, ineffective assistance and it effected
15 the outcome. He's testified to the second prong, that had
16 he known some of these things back then -- and again I'm
17 using this term of the art, roll the dice, take the
18 chances, see what happens. He does understand -- you ask
19 him today, I've talked to him many times about the risks
20 and benefits of a PCR, but it's his, as any defendant's
21 right, to have the State prove it even if it is an uphill
22 fight. The issue for today's purposes is leading to that
23 decision, was he adequately advised, effectively advised to
24 allow him to make the decision to waive those rights and
25 plead guilty, we would argue that his decision was tainted

1 by ineffective assistance. If he understood even the risks
2 but the potential benefits of fighting certain items of
3 evidence; secondly, the negative aspect of any convictions,
4 whether it be guilty plea or trial, the collateral
5 consequences, if he would have understood those -- I'm
6 going to summarize it, "If they are going to hit me with
7 all of that, why not have a trial?" He wasn't adequately
8 advised of those things to make that choice which he tells
9 you he now would. He understands the risks but he's
10 entitled to have that day in court. We would argue we met
11 both prongs of Strickland, we would ask you to grant Mr.
12 Evans' request for post conviction relief and we would ask
13 you to vacate his convictions on these three charges,
14 remanding him to the Dorchester County Jail and allow the
15 proceedings to begin anew. Thank you, Your Honor.

16 THE COURT: All right. Thank you. All right, Mr.
17 Mitchell, I don't need to hear anything further, if you
18 would prepare an order that denies the applicant's request
19 for post conviction relief. I do find that he was
20 adequately represented by counsel, he entered his guilty
21 pleas freely, voluntarily, knowingly, fully advised of all
22 of his rights, the consequences of pleading guilty and the
23 potential sentences. All right?

24 (End of the hearing.)

25

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal (as reported by Elizabeth
8 Harris and transcribed by Michael Watkins) in the
9 Court of Common Pleas for Dorchester County, South
10 Carolina, on the 19th day of May, 2016.

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

13

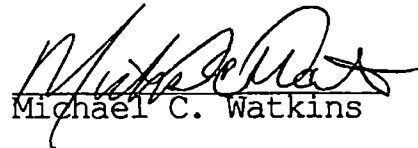
14

April 5, 2017

15

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17



Michael C. Watkins

18

Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Michael Glen Evans, #359479,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2015-CP-18-0269

ORDER OF DISMISSAL

CLERK OF COURT
DORCHESTER COUNTY

2015 NOV 14 AM 11:28

CERTIFIED COPY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 30, 2015. Respondent filed a Return and Motion to Dismiss requesting that the action be dismissed because Applicant failed to complete the allegations section of the application. Rodney D. Davis, Esquire, was appointed by the Dorchester County Clerk of Court to represent Applicant. The Honorable Edgar W. Dickson issued a Conditional Order of Dismissal on December 14, 2015. Applicant then filed an amended application setting forth numerous allegations of ineffective assistance of counsel. An evidentiary hearing was held on May 19, 2016, at the Dorchester County Courthouse. Applicant was present and represented by Counsel Davis. J. Clayton Mitchell, of the South Carolina Attorney General's Office, represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Ashley D. Chisholm, Esquire. This Court had before it the Dorchester County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the guilty plea transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. In March 2013, the Dorchester County Grand Jury indicted Applicant for kidnapping (2013-GS-18-0349), criminal sexual conduct, first degree (2013-GS-18-0348) and for violation of a firearms provision (2013-GS-18-0350). Ashley D. Chisholm, Esquire, represented Applicant. On April 9, 2014, Applicant pleaded guilty as indicted. The Honorable Maite Murphy sentenced Applicant to ten (10) years' imprisonment for kidnapping, thirty (30) years' imprisonment for criminal sexual conduct, first degree, and five (5) years' imprisonment for the firearms provision, to be served consecutively. Applicant did not appeal his plea or sentence.

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

1. Plea not knowingly and voluntarily entered because
 - a. Counsel failed to properly investigate the case and failed to explore possible defenses to the charges;
 - b. Counsel failed to meet with Applicant a sufficient amount of times to explain to him the nature and elements of the charges; and
 - c. Counsel failed to appeal the guilty plea.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the 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, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the guilty plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

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

Applicant has made various allegations to ineffective assistance of counsel and argues that then he would not have pleaded guilty had he been properly advised. This Court addresses these allegations in turn.

Failure to Investigate and Failure to Advice of Defenses

Applicant alleges Counsel was ineffective for failing to investigate the case and to advise him of possible defenses to the charges. Applicant testified that he was evaluated by Dr. Donna Schwartz-Watts and was found competent. Counsel testified that he discussed Applicant's mental health with Applicant and his family. Counsel decided to seek a mental evaluation, and it was determined that Applicant was competent to stand trial. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted).

This Court finds Applicant failed to meet his burden in proving Counsel was ineffective for failing to investigate. Applicant has failed to show that any aspect of the case was overlooked by Counsel. Counsel's credibly testified that he investigated Applicant's competency, reviewed and discussed the State's evidence with Applicant, and met and advised Applicant's family of the strengths and weaknesses of the case. Counsel thoroughly looked into the DNA evidence, which was very incriminating. Applicant's testimony to the contrary is not credible.

Applicant was unable to provide this Court with any evidence to support the allegation, so it rests entirely on speculation. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.").

Applicant also failed to meet his burden in proving that a meritorious defense to the charges existed. Although he was unable to identify a specific defense to the charges, Applicant testified that Counsel did not advise him of the defenses available to him. Applicant did testify that Counsel advised him that the admission of his statement could be challenged through a pre-trial hearing. Counsel testified that he could have challenged all of the State's evidence if the case had gone to trial but explained that it was not likely those challenges would have been successful. Counsel concluded that it was in Applicant's best interests to plead guilty and advised him accordingly. Applicant has failed to present a meritorious defense that should have been asserted. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). These allegations are denied and dismissed.

Understanding of the Plea and Counsel's Diligence

Applicant alleges he did not plead guilty knowingly and voluntarily. Specifically, Applicant argues that Counsel failed to meet with him an adequate amount of times and that he was not advised of the nature and elements of each charge. This Court finds Applicant's guilty plea was entered freely and voluntarily entered. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.

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

Applicant claims Counsel did not meet with him an appropriate amount of times. This contention is without merit. See Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) ("As to Moody's claim that his counsel did not meet with him frequently enough, there is no established 'minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.'" (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988))). Applicant must present the Court with evidence of specific instances of ineffectiveness rather than vaguely assert that Counsel did not spent enough time reviewing the matter with him.

Applicant also makes a general allegation of ineffective assistance of counsel in that Counsel failed to review the facts and circumstances of the case thus rendering his plea involuntary and unintelligent. This Court finds these contentions meritless. This Court finds the record reflects Applicant was fully advised of the State's evidence. The plea court's thorough

colloquy with Applicant demonstrates that he understood the charges, penalties, and the waiver of his rights. The record further reflects Applicant fully admitted his guilt to the plea court. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing that he understood his rights and had reviewed the evidence and did not need more time to discuss matters with Counsel. (Plea Tr. p. 13-17). This Court finds very credible Counsel's testimony regarding his preparation and advice concerning the case, specifically that he reviewed the evidence with Applicant and discussed with him that it would be in his best interests to plead guilty. Considering this all, Counsel acted reasonably and within the professional norms in advising Applicant to plead guilty. Therefore, this Court finds Applicant's plea was freely, voluntary, and intelligently made.

Notice of Appeal

Finally, Applicant alleged in his amended application that Counsel was ineffective in failing to file a notice of appeal. Applicant has failed to carry his burden to prove Counsel was ineffective in failing to file a notice of appeal. Applicant did not argue these grounds during his testimony and did not indicate that he requested Counsel to file either. Accordingly, no evidence was submitted to support these allegations, so they are abandoned. Furthermore, upon a full review of the record, the Court finds that no grounds existed for an appeal, so any appeal would have been futile.

All Other Allegations

As to any and all allegations that were raised in the application 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.

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. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). 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 shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 27 day of October, 2016.


BENJAMIN H. CULBERTSON
Presiding Judge

Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP1800269

Michael Glen Evans

✓ South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Benjamin H. Culbertson

2148

11/14/2016

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 11/14/16, and a copy mailed first class or placed in the appropriate attorney's box on 11/14/16, to attorneys of record or to parties (when appearing pro se) as follows:

Michael Glen Evans #359479
BRCI Smu #109
4460 Broad River Rd
Columbia, SC 29210

Ruston Wesley Neely
PO Box 11549
Columbia, SC 29211

Rodney Duane Davis
4000 Faber Place Drive Suite 300
Charleston, SC 29405

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

Craig Baker

Summerville Police Department

ARREST WARRANT NUMBER

2013A1820500023

Arrested: January 14, 2013

ACTION OF GRAND JURY

TRUE BILL

Donna Pratt

Foreperson of Grand Jury

Date: March 7, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS18-0349

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

March 11, 2013 TERM

THE STATE

vs.

Michael Glen Evans

Indictment for

KIDNAPPING

SC Code: 16-3-910

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2013 MAR - 7 PM 6:23
GHEVYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2013GS18-0349

At a Court of General Sessions, convened on March 11, 2013 the Grand Jurors of
Dorchester County present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about January 9, 2013, the
Defendant, Michael Glen Evans, did unlawfully seize, confine, inveigle, decoy,
kidnap, abduct or carry away the victim, Victim , without authority of law.
This offense in violation of Section 16-03-910, of the South Carolina Code of
Laws, as amended.

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



Russell D. Hilton, Solicitor

WITNESSES

Craig Baker

Summerville Police Department

ARREST WARRANT NUMBER
2013A1820500022

Arrested: January 14, 2013

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: March 7, 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS18-0348

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

March 11, 2013 TERM

THE STATE
vs.

Michael Glen Evans

Indictment for
CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE

SC Code: 16-3-652

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person
and plead guilty to the within indictment
or to _____

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2013 MAR -7 PM 6:23
CHERYL DYKHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2013GS18-0348

At a Court of General Sessions, convened on March 11, 2013 the Grand Jurors of
Dorchester County present upon their oath:

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That in Dorchester County, South Carolina, on or about January 9, 2013, the
Defendant, Michael Glen Evans, did commit a sexual battery upon the victim,
Victim , and the victim did submit to sexual battery under circumstances
of aggravated force described as the use of a knife during the commission of the
sexual battery, and/or the victim was subjected to forcible confinement or
kidnapping. This offense in violation of Section 16-03-652 of the South Carolina
Code of Laws, as amended.

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



Russell D. Hilton, Solicitor

WITNESSES

Craig Baker

Summerville Police Department

ARREST WARRANT NUMBER
2013A1820500024

Arrested: January 14, 2013

ACTION OF GRAND JURY

TRUE BILL

Dave Pratt
Foreperson of Grand Jury
Date: March 7, 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS18-0350

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

March 11, 2013 TERM

THE STATE
vs.

Michael Glen Evans

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: 16-23-490

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2013 MAR -7 PM 6:23
CERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

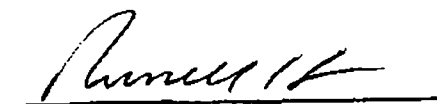
INDICTMENT
2013GS18-0350

At a Court of General Sessions, convened on March 11, 2013 the Grand Jurors of
Dorchester County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT
CRIME**

That in Dorchester County on or about January 9, 2013, the defendant, Michael
Glen Evans did visibly display or have in his possession a knife during the
commission of the violent crime of Criminal Sexual Conduct in the First Degree
and/or Kidnapping. This offense in violation of Section 16-23-490, of the South
Carolina Code of Laws, as amended.

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



Russell D. Hilton, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

117

COUNTY OF Dorchester
STATE VS.
Michael Glen Evans

AKA:

Race: WHITE Sex: M Age: 22DOB: 02 SS#: Address: avenswood CourtCity, State, Zip: Summerville, SC 29485DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

INDICTMENT/CASE#: 2013GS18-0349A/W#: 2013A1820500023Date of Offense: 1/9/2013S.C. Code § : 16-3-910CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

ATTEST 9512 76426
Sorenson, Donald N. SC Bar# Defendant Ash Chute Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 0 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient: *Fine: \$ § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:

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

Clerk of Court/ Deputy Clerk Cheryl GrahamCourt Reporter: Beth Miller

SCCA/217 (03/2011)

Presiding Judge Walter MurphyJudge Code: 2164Sentence Date: 4/9/14

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Dorchester

VS.

Michael Glen Evans

AKA:

Race: WHITE Sex: M Age: 22

DOB: 92 SS#: [REDACTED]

Address: Ravenswood Court

City, State, Zip: Summerville, SC 29485

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

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal Sexual Conduct - First Degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS18-0348

A/W#: 2013A1820500022

Date of Offense: 1/9/2013

S.C. Code § : 16-3-652

CDR Code #: 0160

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS/CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: 9512 76426
Sorenson, Donald N. SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

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

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Cheryl Abraham

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2164Sentence Date: 4/9/14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

119

COUNTY OF Dorchester
STATE VS.
Michael Glen Evans

AKA:

Race: WHITE Sex: M Age: 22DOB: SS#:Address: Ravenswood CourtCity, State, Zip: Summerville, SC 29485DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☐ CONVICTED OF or ☒ PLEADSTO: Poss. Weapon During Violent Crime, If not Also Sentenced to Life without Parole or Deathin violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

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

ATTEST:

Sorenson, Donald N9512
SC Bar#DefendantAttorney for Defendant96426
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2166Sentence Date: 9/9/11