

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

DANIEL EVERS BRUNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001244

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
14-GS-43-0293

DANIEL E. BRUNSON,)

DEFENDANT.)

July 21, 2014
Sumter, South Carolina

BEFORE :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE

APPEARANCES:

BRONWYN S. MCELVEEN, ESQ.
Assistant Solicitor

TIMOTHY W. MURPHY, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 MS. MCELVEEN: Your Honor, this is the
2 State of South Carolina versus Daniel Evers Brunson,
3 indictment 2014-GS-43-0293. Mr. Brunson is charged
4 and pleading — charged with, was charged with
5 kidnapping, assault and battery first degree, and
6 criminal sexual conduct first degree. In exchange
7 for his plea the State is dismissing the criminal
8 sexual conduct in the first degree. He's pleading
9 guilty to kidnapping and assault and battery in the
10 first degree. He is present with his attorney Tim
11 Murphy, and the victim, Miss Crystal Miller, is also
12 present.

13 THE CLERK: Mr. Brunson, raise your right
14 hand please. State your name.

15 THE DEFENDANT: Daniel Brunson.
16 WHEREUPON,

17 **DANIEL BRUNSON,**
18 having been duly sworn by the Clerk, testified as
19 follows:

20 THE COURT: Mr. Brunson, you want to plead
21 guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you had time to talk to
24 your lawyer?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you satisfied with his
2 representation?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand assault and
5 battery first carries up to ten years imprisonment?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Kidnapping is up to 30
8 imprisonment and it's a non-parolable offense.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Huh?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: It is a most serious offense,
13 and you get another most serious offense you're
14 going to be looking at life without possibility of
15 parole. You understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you under the influence of
18 alcohol or drugs today?

19 THE DEFENDANT: No, sir.

20 THE COURT: You got any mental diseases?

21 THE DEFENDANT: No, sir.

22 THE COURT: By pleading you're giving up
23 your right to remain silent 'cause you're telling me
24 you're guilty. You understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You're also giving up your
2 right to a jury trial and your right to confront
3 witnesses, cross-examine the State's witnesses, to
4 subpoena witnesses to testify on your behalf, to put
5 up any defenses you have to this crime; but when you
6 plead you give all that up. You understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And if you went to trial the
9 State would have the burden of proving you guilty
10 beyond a reasonable doubt by all twelve jurors. Do
11 you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You got any questions you want
14 to me concerning your rights?

15 THE DEFENDANT: No, sir.

16 THE COURT: Is this the kidnapping that
17 the State is seeking registry on?

18 MS. MCELVEEN: Well, Your Honor, he's
19 already on the sex offender registry.

20 THE COURT: Okay.

21 MS. MCELVEEN: So it's a non-issue.

22 THE COURT: Kidnapping is one of the few
23 crimes that it automatically goes once I make a
24 finding that it doesn't so it's not an issue. Is
25 that what you're telling me?

1 MS. MCELVEEN: Yes, sir, he's already got
2 a conviction that requires registry.

3 THE COURT: Okay, tell me about the facts.

4 MS. MCELVEEN: Yes, sir. On December 5th,
5 2013, law enforcement responded to [REDACTED]
6 Apartments at [REDACTED] Street in the City of
7 Sumter on a totally unrelated issue. While they
8 were there officers heard a disturbance coming from
9 apartment [REDACTED]. The officers could hear yelling
10 coming from inside the apartment and had been told
11 by a neighbor that she could hear from inside her
12 own apartment could hear a woman yelling help from
13 inside. Captain Turner could specifically hear the
14 victim yelling, help, he's going to kill me.
15 Officers kicked in the front door and forced entry
16 into the home. They could hear a female hollering
17 from upstairs. They went upstairs and found a
18 closed bedroom door and the door was locked and they
19 forced entry into the bedroom.

20 A male subject later identified as the
21 defendant Mr. Daniel Brunson was found to be on top
22 of a female later determined to be the victim here,
23 Ms. Kristin Miller, the resident of apartment [REDACTED].
24 Mr. Brunson was holding Miller down on the bed and
25 she was hysterical and emotionally distraught.

1 Officers ordered Mr. Brunson to get off of her. He
2 complied and was taken into custody.

3 She had many injuries. Her lips were
4 busted and bleeding. Her face was swollen, and she
5 obviously had been beaten by Mr. Brunson. A black
6 T-shirt that she was wearing was severely torn with
7 a collar almost completely torn free from the rest
8 of the shirt. She had a skinned up area on her
9 right knee. And she was treated; she was
10 transported to Sumter Tuomey emergency room. She
11 told officers that she and Mr. Brunson used to date
12 back in July of 2013; however, when she discovered
13 he was on the sex offender registry she became
14 alarmed and ended the relationship; they could
15 remain friends. And earlier that evening of this
16 incident he had come over to help her clean the
17 house. They had both been drinking. She went
18 outside and was visiting a neighbor. At that time
19 Mr. Brunson evidently had called police with a false
20 anonymous complaint regarding her friend that she
21 was talking to. He was not happy that she was
22 speaking with this friend. When she came back to
23 the house he told her that he — when she — she
24 refused to come back to house and he insisted.
25 Eventually she did come into the house, and at that

1 point Mr. Brunson assaulted her by hitting her in
2 the face with his hand. He was very angry at her
3 defiance. He dragged her upstairs into the bedroom,
4 threw her on to the bed and got op top of her
5 continuing to assault her as she screamed for him to
6 stop. She felt as though he was going to kill her.
7 He did choke her at certain points. He stated
8 things such as, you want to be a ho, I'll show you
9 how to be a ho. As he tried to move her panties
10 said, you're gonna give me some. He continually
11 tried to choke her and said, I'm going to kill you.
12 He told her, you want me to cut you, F-U, I'll kill
13 you. And she stated you're gonna, are you gonna
14 take me away from my kids; and he stated, I'll take
15 away you and me away from your kids, I'll kill us
16 both.

17 He was opening the drawers to look for
18 something as he was threatening to cut her. He said
19 that if she moved and tried to get up he would beat
20 her some more. Officers later discovered a kitchen
21 knife located in a basket on the dresser. It would
22 have been obvious to a lot of people that as you can
23 see Mr. Brunson does have some slight — he has some
24 visual impairment. Officers arrived and
25 photographed the scene. The knife was seized. And

1 the pocket that was in the coat that Ms. Miller was
2 wearing when she was assaulted, the pocket was
3 actually found on the ground. It had been ripped
4 off of her and was lying on the ground. Officers
5 met with Mr. Brunson the next day at Sumter-Lee
6 Regional Detention Center. He was distraught and
7 crying. He stated that there had been a sexual
8 relationship between them. He admitted that he
9 pushed her. He said that she slipped him; he
10 slapped her back. And he made claims that she
11 wanted a bag of cocaine, but he was not aware of the
12 time that we knew about the knife and the fact the
13 shirt pocket was on the ground. He claimed that the
14 shirt was that way when they got it from a friend;
15 he didn't know that the pieces were on the ground
16 right there in front of him.

17 He was charged with these offenses, Your
18 Honor. He does have a criminal record as I stated
19 before. He's got a 19— May 1992, criminal sexual
20 conduct first degree and kidnapping for which he
21 received 30 years confinement. And he has resisting
22 from 2011.

23 THE COURT: Okay.

24 MS. MCELVEEN: We are here again on these
25 charges. I know the victim would like to address

1 the Court when, after the plea is accepted if —
2 we've attempted a plea before and it was
3 unsuccessful so we would like to wait on having her
4 address the Court until later time.

5 THE COURT: Mr. Brunson, are those facts
6 correct, sir?

7 MR. MURPHY: Your Honor, before he answers
8 that, I just, in regard to everything up to the
9 point that the Solicitor started relaying what the
10 victim had told the police I believe Mr. Brunson is
11 in agreement with, and that would satisfy the
12 factual elements for kidnapping and the assault and
13 battery first degree. In regard to the recitation
14 concerning when the assault began and the
15 motivations for the assault and the statements to
16 the victim about sexual activity or killing her
17 kids, things like that, he denies all that. But
18 that aside, I believe he can, he can in his own
19 words say he agrees with those facts up to the point
20 of what the victim said, which I believe what the
21 police officers observed in and of itself satisfy
22 the two crimes so.

23 THE COURT: Okay. Is that right,
24 Mr. Brunson?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you admit assaulting her?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And kidnapping her,
4 restraining her from leaving?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Then I find there's a
7 factual basis. Your plea is freely and voluntarily
8 entered into and you've had advice of competent
9 counsel whom you tell me you're satisfied, I'll
10 accept your plea. Now I'll be glad to hear from the
11 victim or anyone else.

12 MS. MCELVEEN: Your Honor, this is
13 Ms. Miller, and I'm sure she would like to address
14 the Court.

15 THE COURT: Yes, ma'am.

16 THE VICTIM: I'm Kristin Miller and I'm
17 just glad that it's over with. I'm glad he's
18 finishing it, glad he's doing what he has to do
19 'cause it was wrong, and I've been through a lot
20 since it happened.

21 THE COURT: Thank you. Mr. Murphy.

22 MR. MURPHY: Your Honor, very briefly, my
23 client admits, obviously he admits today at what
24 occurred. He admits that he assaulted her, and he
25 admits that he held her down on the bed. The

1 motivation for that I'm advised by my client is that
2 he and the victim were in a kind of odd kind of
3 relationship. They were both drinking. They were
4 both using cocaine during the course of the
5 afternoon. At some point Mr. Brunson discovered
6 that there was money missing from his wallet that he
7 suspected the victim took, a total of 130-dollars,
8 and that was the catalyst for his assaulting her.

9 He denies, he denies anything in regard to
10 the, you know, what he heard earlier concerning some
11 of the statements that he supposedly made, denied
12 ever wanting to kill her or looking for the knife;
13 but he doesn't want to minimize what he did. You
14 know, I would ask the Court to consider that in
15 isolation the assault and battery first is charges
16 of assault and battery first because of the
17 kidnapping and the injuries in and of themselves
18 are, would not rise to the level of assault and
19 battery first. And at the level for restraint
20 obviously was done consistent and in the course of
21 conduct of committing the assault. That's not to
22 minimize the crime, but it's just to put some
23 perspective on exactly what we're talking about here
24 which is fundamentally an assault of a different
25 type of character than what the charges would

1 otherwise indicate. My client and I have discussed
2 the fact that, you know, he doesn't get any passes
3 based on his record, and obviously the fact that he
4 initiated this against the one. We respectfully ask
5 the Court to consider a five year term of
6 imprisonment, and we ask the Court to impose that
7 sentence. Thank you, Your Honor.

8 THE COURT: All right. On the assault,
9 the sentence of the Court is you're committed to the
10 State Department of Corrections for eight years and
11 the kidnapping is the same. They're to run
12 concurrent with each other and credit for time
13 served.

14
15 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
16
17
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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 7th day of August, 2015.

S/Frances B. Ray

FRANCES B. RAY, RPR

RECORDED

2015 MAY 11 PM 2:36

STATE OF SOUTH CAROLINA

County of SumterJAMES C. CAMPBELL
Clerk of the Court of Common Pleas
SUMTER COUNTY, S.C.

2015-CP-43-1130

Daniel Evans Branson
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.APPLICATION FOR
POST-CONVICTION REVIEW
CERTIFIED TRUE COPY
OF ORIGINAL FILE
Barbara Shaffer
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

- Place of detention Evans Correctional Institution, 610 Hwy 1,
West, Bennettsville, SC, 29516
- Name and location of Court which imposed sentence Sumter County, Criminal
Sessions, 2nd Judicial Circuit
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2014-GS-43-04913
(b) _____
(c) _____
- The date upon which sentence was imposed and the terms of the sentence:
(a) 7-21-14 and 8 years
(b) _____
(c) _____

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5. 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 _____

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

NA. ill advise of counsel

7. If you answered "yes" to (6), list

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) ill advise of counsel

(b) _____

(c) _____

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

(a) fail to investigate serial history

(b) investigative assistance

(c) Subject matter Jurisdiction

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

(a) Hack counsel invest. He would discover Applicant Blind

(b) failure to investigate applicant and victim soc/hist.

(c) indictment multiplicity

(D) DOUBLE JEOPARDY

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) ill advise of counsel
- (b) _____
- (c) _____

16. 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? _____
- (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? _____

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Timothy Ward Murphy, Sumter SC
29150, Public Defenders Office, 215 North
- ii. Harmon St room #151
- iii. 107 N. Main St, Sumter, SC 29150

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

- i. guilty Plea
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

New trial

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

N/A

STATE OF SOUTH CAROLINA

VERIFICATION

County of Sumpter

I, Daniel Bronson, 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.

Daniel BronsonSWORN to and subscribed before me this 8thday of May, 192015Susan H. Frye
Notary Public

(L.S.)

My Commission Expires
March 5, 2018

My Commission Expires: _____

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

I, Daniel Bronson #192642, 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 therefor.

Daniel Bronson
Applicant

SWORN or affirmed to and subscribed before me this

8th day of May, 192015Susan H. Frye
Notary PublicMy Commission Expires
March 5, 2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Daniel Evers Brunson, #192542,	)	2015-CP-43-1130
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 11, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the April 2014 term of the Sumter County Grand Jury for criminal sexual conduct-first degree, kidnapping, and assault and battery-first degree (2014-GS-43-0293). Tim Murphy, Esquire represented Applicant. On July 21, 2014, Applicant pled guilty as indicted before the Honorable R. Ferrell Cothran, Jr. Judge Cothran sentenced Applicant without recommendations or negotiations to an eight year term of imprisonment for kidnapping and an eight year term of imprisonment for assault and battery-first degree running concurrent. Applicant did not appeal his guilty plea or sentence.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. Failing to investigate social history.
 - b. Had counsel investigated he would have discovered Applicant was blind.
2. Subject Matter Jurisdiction
 - a. Indictment multiplicity
3. Double Jeopardy.

Any claims not *specifically* enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

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

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Respondent submits that the Applicant's allegation that the court lacked subject matter jurisdiction is without merit. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). A review of the record clearly indicates that there is no basis upon which to conclude that the court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 321 S.C. 75, 472 S.E.2d 38 (Ct. App. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. Respondent moves for summary dismissal pursuant to South Carolina Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law.

V.

The Applicant contends that he was subjected to double jeopardy. This issue is not one that can be raised in a post-conviction relief proceeding. PCR is not a substitute for a direct appeal. Claims that could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Sellers v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973) (double jeopardy).

Nevertheless, Respondent submits that Applicant's allegation of a double jeopardy violation is without merit.

The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently granted mistrial. When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing judge from prescribing greater punishment than the legislature intended. Missouri v. Hunter, 459 U.S. 359 (1983); State v. Wilson, 311 S.C. 382, 429 S.E.2d 453 (1993). Accordingly, Respondent moves for a summary dismissal of the double jeopardy allegation because it is a direct appeal issue and because no constitutional violations occurred in this case.

VI.

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

[Signature block on following page]

VII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 23, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

DANIEL EVERS BRUNSON, #192642,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

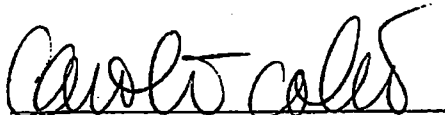
2015-CP-43-1130

AFFIDAVIT OF SERVICE BY MAIL

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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Fulton Casey Dale Cornwell, Esquire
448 Deerwood Street, Unit 9A
Columbia, South Carolina 29205

DATED this 23rd day of July, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

IN THE CIVIL COURT

COUNTY OF SUMTER

DANIEL EVERS BRUNSON,

Applicant,

- VS -

STATE OF SOUTH CAROLINA,

Respondent.

TRANSCRIPT OF RECORD

15-CP-43-01130

March 27, 2017
Sumter South Carolina

B E F O R E:

HONORABLE D. CRAIG BROWN, Judge.

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

LANCE S. BOOZER, Esquire
Attorney for the Applicant

JULIE A. COLEMAN, Asst. Attorney General
Attorney for the State

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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1 (The following proceedings are reported on
2 March 27, 2107.)

3 THE COURT: Call your case, please, ma'am.

4 MS. COLEMAN: May it please the Court. This
5 is Daniel Brunson versus the State of South Carolina,
6 Docket Number 2015-CP-43-1130. The applicant is
7 presently confined in the South Carolina Department of
8 Corrections pursuant to orders of commitment of the
9 Sumter County Clerk of Court.

10 The applicant was true bill indicted at the
11 April 2014 term of the Sumter County Grand Jury for
12 criminal sexual conduct first degree, kidnapping, and
13 assault and battery first degree.

14 Timothy Murphy, Esquire, represented the
15 applicant. On July 21, 2014, applicant pled guilty as
16 indicted to kidnapping and assault and battery. The
17 criminal sexual conduct charge was dismissed.

18 He pled before the Honorable R. Ferrell
19 Cothran Jr., and Judge Cothran sentenced applicant
20 without recommendations or negotiations to an eight-year
21 term of imprisonment for kidnapping and an eight-year
22 term for assault and battery first degree running
23 concurrently. The applicant did not appeal his guilty
24 plea or sentence.

25 Applicant filed an timely application for post

1 conviction relief on May 11, 2015, alleging that he was
2 being held in custody unlawfully based on the following
3 allegations: Ineffective assistance of counsel, subject
4 matter jurisdiction, and double jeopardy.

5 The State filed its return July 23, 2015; and
6 he is present today and represented by Mr. Lance Boozer.

7 THE COURT: Mr. Boozer.

8 MR. BOOZER: Thank you, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, sir.

11 MR. BOOZER: Judge, just as a preliminary
12 matter, a while back we were before the Court --
13 certainly not Your Honor -- and we were granted funding
14 to retrieve and order a copy of a transcript that was
15 taken June 4, 2014, before Judge Nettles.

16 I have since received that transcript. I
17 provided a copy to the State; and at this time, Your
18 Honor, I like to go ahead and just mark this as
19 Exhibit 1 so it's part of the record. We will be
20 referencing it.

21 THE COURT: Mr. Coleman, do you have any
22 objection?

23 MS. COLEMAN: No objection, Your Honor.

24 THE COURT: Without objection. Let the court
25 reporter mark it.

1 (Applicant's Exhibit Number 1 is received into
2 evidence.)

3 MR. BOOZER: Your Honor, I would just ask the
4 Court to take notice -- this is one of the issues my
5 client has -- he is vision impaired. So I just ask that
6 Your Honor certainly take notice of that as we go
7 through this and allow me a little leeway in
8 examination.

9 THE COURT: Very well.

10 MR. BOOZER: We will go ahead and call
11 Mr. Brunson to the stand.

12 (The witness comes forward.)

13 DANIEL BRUNSON, being
14 first duly sworn, testifies as follows:

15 CLERK: Can you speak your name and also spell
16 your last name for the record.

17 THE WITNESS: Daniel Brunson, B-R-U-N-S-O-N.

18 THE COURT: Mr. Boozer.

19 MR. BOOZER: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. BOOZER:

22 Q Mr. Brunson, how are you doing today?

23 A Partly cloudy but fair, sir.

24 Q Now, if you could while you are testifying, just
25 speak clearly and slowly because Madame Court

1 Reporter has to take down everything that you are
2 saying. Okay?

3 A Yes, sir.

4 Q All right. Now, Mr. Brunson do you know why you
5 are here today?

6 A Yes, sir.

7 Q And why is that?

8 A To go for my PCR, I guess, and let the courts know
9 how I been wronged.

10 Q And that's right. You filed what is called an
11 application for post conviction relief? That's
12 what you filed to get here today?

13 A Yes, sir.

14 Q And what are you currently incarcerated for?

15 A Kidnapping and first degree assault and battery.

16 Q And what type of sentence did you receive?

17 A An eight-year sentence for kidnapping and an
18 eight-year sentence for first degree assault and
19 battery.

20 Q And what were you originally charged with?

21 A I was charged with kidnapping -- at first I was
22 charged with kidnapping and second degree assault
23 and battery. Then the next day, on the 6th, I was
24 charged with criminal sexual conduct first degree
25 also.

DANIEL BRUNSON -- DIRECT -- MR. BOOZER

7

1 Q And that's one of the charges that was dropped as a
2 result of your plea?

3 A From my understanding, Mr. Boozer, yes.

4 Q Okay.

5 A But they said that -- Mr. Campbell said that I had
6 not been charged with it, nor was it a negotiated
7 plea.

8 Q Let's do talk about this first. What is your
9 max-out date?

10 A Within the Department of Corrections from what I
11 just found out, they were saying it was 2020; and
12 that's eight years for eight years.

13 Q And you and I certainly have discussed what it is
14 that this Court can do for you; right?

15 A Yes, sir.

16 Q And you understand that the only thing that this
17 Court can do for you is basically to grant you a
18 new trial and charge you over from day one on the
19 original charges. Do you understand that?

20 A Yes, sir.

21 Q And do you understand that there is some risk in
22 doing that in that you go back to and face the
23 charges all over. There is a possibility you could
24 go to trial and be found not guilty, but there is
25 also a possibility you could be found guilty and

1 get more time than either what you got as a result
2 of the plea or more time than what you have left to
3 serve. Do you understand that?

4 A Yes, sir.

5 Q And is that a risk that you are comfortable taking
6 and that you want to continue to move forward with
7 your PCR application?

8 A Yes, sir.

9 Q Now, here in court today you are obviously walking
10 with what appears to be a cane and you have some
11 dark sunglasses on. Do you suffer from a
12 disability?

13 A Yes, sir, I suffered from this disability from
14 birth. My father was in the Vietnam War. He got
15 hit with shrapnel and determined it was Agent
16 Orange. This was a birth defect from his exposure
17 to herbicides.

18 Q And that specific disability is what?

19 A Macular degenerative myopia, retinal "detachment,"
20 glaucoma, stigmatism, and sunlight sensitivity and
21 fluorescent light sensitivity, migraine cluster
22 headaches, numerous things that wasn't even told to
23 the Court upon my first appearance in court.

24 Q Do you have any vision?

25 A I can tell just illumination out of my left eye.

DANIEL BRUNSON -- DIRECT -- MR. BOOZER

9

1 That's it, illumination. I cannot tell you what
2 anything looks like. I cannot read. I been
3 getting SSI disability since I was a child. I have
4 never worked a gainful employed job ever in my
5 life.

6 Q Now, in your application -- let's talk about your
7 PCR application.

8 A Yes, sir.

9 MR. BOOZER: And, Your Honor, I neglected to
10 do this at the beginning. We did this at the previous
11 hearing, but we are going to orally amend his
12 application, which the Attorney General's Office is on
13 notice of and they have consented to.

14 MS. COLEMAN: Yes, no objection.

15 MR. BOOZER: It just is failing to review
16 defenses with the applicant, failing to discuss evidence
17 and review trial strategy in addition to his other
18 allegations.

19 BY MR. BOOZER:

20 Q Mr. Brunson?

21 A Yes, sir.

22 Q I will walk you through your application. I know
23 you have certainly a difficult time seeing. You
24 have alleged that your lawyer was ineffective to
25 investigate your social history. Is that one of

1 your allegations?

2 A Yes, sir.

3 Q Have you explained that to the Court in your
4 explanation of your disability or is there
5 something further you want to explain with regard
6 to that?

7 A As far as my disability, it was not even brought up
8 as any type of defense the first time when I came
9 to court, nor was it even investigated at all,
10 though I did alert my lawyer, Mr. Murphy, at the
11 time that there was an incident report by a
12 sheriff's deputy named Jordan two months previous
13 to the incident that happened on December the 5th.

14 I was threatened by the victim, Ms. Miller;
15 and she said that she was going to do this. She
16 broke in my fence, which is down the street from
17 this courthouse, on [REDACTED]. She
18 threatened me.

19 She said I had a key to her apartment. I
20 didn't even know I had the key. But the officer
21 came out and made an incident report and said if
22 anything like this was to have happened, to make
23 sure that someone knew of this report.

24 I did inform my lawyer at the time when I was
25 in the county jail, and nothing was never done

DANIEL BRUNSON -- DIRECT -- MR. BOOZER

11

1 about it. Now I have brought that report, and I
2 placed it in your hands; and I don't know if you've
3 gotten all that yet. But at the same time, I feel
4 like that would have a detrimental impact on me
5 even being charged with anything.

6 Q And are you referring to a September --

7 A Yes, sir.

8 Q -- incident date?

9 A Yes, sir. It happened at [REDACTED] Street,
10 right down the street from [REDACTED] Apartments,
11 which is [REDACTED] Street.

12 Q And the incident report you provided me with, which
13 is dated September 12, 2013, and lists you as a
14 victim?

15 A Yes, sir.

16 Q And states in part that you wanted this statement
17 documented because the subject threatened to tell
18 law enforcement --

19 A Yes, sir.

20 Q -- that you committed another act?

21 A Yes, sir. She threatened me, saying that if I
22 didn't give her any money that day, she said, "I
23 know exactly what to do for you, MF-er." It was
24 her and daughter, Ashanti Miller, that came to my
25 house and broke into my hurricane fence and through

1 the privacy fence that is down there on the brick
2 yard, which the brick yard is called East Calhoun.
3 That's the property of the late Reverend Donnie Eli
4 Collins.

5 Q And let me stop you there. Is that something you
6 wanted your lawyer to investigate?

7 A Yes, sir.

8 Q And the alleged -- the person that you were
9 complaining against in this incident report, was
10 that the alleged victim in the case that you pled
11 guilty to?

12 A Yes, sir.

13 MR. BOOZER: Your Honor, I do have a copy of
14 the incident report. I have shown this to counsel for
15 the State, and she does not have an objection. I will
16 go ahead and move to mark this as Applicant's Exhibit 2.

17 MS. COLEMAN: Without objection.

18 THE COURT: All right.

19 (Applicant's Exhibit Number 2 is received into
20 evidence.)

21 BY MR. BOOZER:

22 Q Why do you feel it was important for Mr. Murphy to
23 investigate that incident report?

24 A Because, sir, the total investigation was concluded
25 by the State. Had Mr. Murphy did an internal

1 investigation, as his office was allowed, being
2 that he's a lawyer and he has investigators at his
3 disposal, I feel like the outcome of my case would
4 not have been with me going to prison because of
5 this victim telling untruths.

6 Also, I just feel that on the 4th of June, I
7 was being pressured. The only reason I got in
8 touch with him was to tell him that I would accept
9 the guilty plea was to be before a judge so I
10 could --

11 Q We will get to that in a moment. Let's stay on
12 task with your allegations, and we will move to the
13 June 4th plea.

14 A Yes, sir.

15 Q Or the June 4th transcript which is a part of the
16 record. You have got an allegation that you feel
17 like your lawyer was ineffective and that your
18 indictment was defective?

19 A Yes, sir.

20 Q Is that one of your allegations?

21 A Yes, sir.

22 Q Why do you -- tell the judge what you mean by that.

23 A When I say that, I mean that when we were at the
24 preliminary hearing and I was in the county jail,
25 we went before Judge Gibson. I also informed

1 Mr. Murphy at the time that he was a part of my
2 family.

3 Judge Gibson was over prelim. He is in my
4 family, a little distant from me, but still in my
5 family. So I felt like he shouldn't have had
6 anything to do with the case.

7 But while we were in there in the preliminary
8 hearing, my lawyer, Mr. Murphy, either moved to
9 Mr. Gibson to throw out the kidnapping and the
10 criminal sexual conduct because they were worded
11 the same.

12 But Mr. Gibson, Judge Gibson, said, "Well, I
13 don't want to go into this. I am just going to
14 bound it over, and we will let the other judge
15 handle that." That was it.

16 I just feel like: How is it that those two
17 charges could be worded the same? But at the same
18 time, there was no physical evidence, as far as
19 fingerprints for the door because they say I locked
20 the door locked the door or anything like that.

21 Evidently there was something wrong or
22 something that he saw that did not make sense to
23 him, but yet no investigation was done by his
24 office. It was only done solely by the State, and
25 that's the only thing that he relied on was the

1 State's investigation.

2 Q Now, you have also got a claim that you feel you
3 were subjected to double jeopardy. Is that one of
4 your PCR claims?

5 A Yes.

6 Q Explain what you mean by that.

7 A Because of the fact that I was charged with second
8 degree misdemeanor assault and battery, which is a
9 misdemeanor. But yet when I came to court, I found
10 out now that I am charged with first degree assault
11 when there was no weapon involved in the case at
12 all.

13 The point that I was making as far as with the
14 kidnapping, he said that the door was locked or
15 whatever. Yes, I did admit to my attorney what
16 happened, that I did strike Ms. Miller, that she
17 did steal money. I was being truthful, but I
18 didn't do anything else even though she screamed
19 criminal sexual conduct. It was unfounded.

20 Q Let me ask you this: How many times do you think
21 you met with Mr. Murphy prior to your plea?

22 A A total of three times without the visit -- without
23 the court appearances.

24 Q Did y'all review any defenses to these charges?

25 A When he first came, he asked me what happened. I

1 said, "Sir, I am going to tell you the truth," and
2 I told him the truth. He said, "Well, is there
3 anything else?" I said, "Well, I been having some
4 people write some stuff down for me."

5 He said, "You don't need to be talking to
6 people." I said, "I had to get something written
7 down," and I gave him a bunch of stuff on some
8 paper: Names, addresses to different apartments,
9 so forth and so on that I felt like could be in my
10 defense.

11 None of these people were ever notified or
12 talked to by Mr. Murphy, not at all. My little
13 brother, he went -- after he got out on bond, he
14 went and checked with people, and my story always
15 checked out.

16 It was like, "Well, did Mr. Murphy talk to you
17 or talk to..." He didn't talk to anyone. It was
18 just solely on the State's -- he relied solely on
19 the State's investigation.

20 I just feel like if you're a lawyer and you're
21 representing a client, then you should give all to
22 that client that needs your help, not even to the
23 point to where he looked at my handicap. It was
24 never even mentioned in the courtroom, never.

25 Also, my life is an open book. Previously

1 early on, in early years, I had been in some things
2 like this before; but I had a codefendant and I got
3 mixed up in some things like this. I had to
4 register and all of that.

5 Mr. Cleveland Pickney and Mr. Anthony Dennis,
6 also Ms. Cindy Pearson, so many others, can tell
7 you that my life is an open book, especially when I
8 was going to Lakewood, Crestwood, and all of those,
9 letting everyone know. When I let my victim know
10 this, my past, she utilized that against me.

11 Q Did you have that discussion with Mr. Murphy?

12 A Yes, sir, I did.

13 Q Okay. Was one of your defenses or whatnot, was it
14 that you were basically attacking the credibility
15 of the victim?

16 A Yes, sir, because --

17 Q Let me stop you there. Did you have any discussion
18 with Mr. Murphy about your ability or his ability
19 to cross examine her in a trial setting to
20 discredit her?

21 A He told me that he could in a trial setting, yeah,
22 trip her up on a lot of things in the aspect of the
23 criminal sexual conduct. Then he said something
24 about the kidnapping. But initially when we first
25 discussed the case, I explained to him what

1 happened.

2 He said, "Well, it seems like this is just a
3 case of like CDV probably just gone bad. She stole
4 some money. Let me look into it, Mr. Brunson, and
5 you might just be looking at some probation."

6 "Okay, Mr. Murphy. Thank you."

7 Then weeks later there was no mention of it.
8 "Well, I didn't tell you this and I didn't tell you
9 that. Don't worry about getting a bond. You are
10 not going to get one," this, that and the other. I
11 was like wow. Then I did go and get a bond. I was
12 like wow, you know.

13 Q As part of your case we obtained, per your request,
14 a transcript that we were able to locate from a
15 June 4, 2014, hearing before Judge Nettles. Do you
16 recall that hearing?

17 A Yes, sir.

18 Q And you and I -- I have read this transcript to
19 you --

20 A Yes, sir.

21 Q -- during our meetings.

22 MR. BOOZER: Your Honor, I would beg the
23 Court's leeway as I examine Mr. Brunson during this
24 portion.

25 THE COURT: All right.

1 BY MR. BOOZER:

2 Q I am looking, Mr. Brunson. I've got the transcript
3 June 4, 2014. I am specifically looking at page 3,
4 and it appears that this initially began as what
5 was a guilty plea. Do you recall that?

6 A Yes, sir.

7 Q And then something happened, where you on page 3,
8 you asked the Court if you can then speak. Do you
9 recall that?

10 A Yes, sir, the first time I was allowed to speak in
11 the courtroom that day. That's when I made it
12 known to Judge Nettles that I needed to speak for
13 the court record, and I want it to be recorded.

14 Q Let's go through that a little bit. On page 4,
15 beginning at line 7, you say, "Your Honor, I been
16 trying to get in touch. My case hasn't been fully
17 yet investigated to the point to where I feel, you
18 know, that I understand what I am doing because,
19 Your Honor, sir, I respect Mr. Murphy, but I
20 understand he represents a lot of clients. A lot
21 of the things I had told him from the very
22 beginning has not even been looked into."

23 So you've got some complaints against
24 Mr. Murphy at this point?

25 A Yes, sir. Also, I had somebody write Mr. Howell.

1 I think he was in the Public Defender's Office at
2 the time, explaining that I was not happy with
3 Mr. Murphy's handling of my case. I never received
4 a letter back from him.

5 I understood finally that at the time in
6 Sumter County, there were only, I think, like five
7 public defenders; but there was so many cases that
8 they had to handle individually.

9 That really didn't leave a lot of room for a
10 case really to be investigated to the point to
11 whereas it would be satisfactory to the individual
12 that was charged to go forward with the case. If
13 you look at it, I only sat in the county six months
14 before I even went to court.

15 Q Let's get back to this transcript.

16 A Yes, sir.

17 Q You also state on page 5: "If I plea to this case
18 right now, Your Honor, I feel like I am doing so
19 and I am being -- I'm not going to be done right
20 because of the fact that I know that if I plea
21 right now, I am pleading. I'm saying that I'm
22 guilty to everything that was written on these
23 warrants, and everything that's written on these
24 warrants, I'm not solely the truth [sic]. And if
25 it were the truth," you eventually get to it, and

1 you say you would admit to if it were the truth?

2 A Yes, sir.

3 Q So you are contesting what is in those allegations
4 that were against you?

5 A Yes, sir. For the most part, yes, sir. For the
6 assault and battery, no. For the assault and
7 battery second degree, no. I did strike Ms. Miller
8 several times. I did do that. Did I kidnap her?
9 No, sir. Did I criminally sexually assault her?
10 No, sir.

11 Q Let's skip over to page 7. The Court asked you:
12 "You have indicated to me that you don't want
13 Mr. Murphy to represent you?" And you say, "No,
14 sir." But eventually after all this, Mr. Murphy is
15 still your attorney. He is not relieved; is that
16 correct?

17 A Exactly.

18 Q What was your relationship like with Mr. Murphy?

19 A I had people writing him. I called the office
20 trying to give him different information that's
21 coming to my head to get to defend me with. It
22 didn't seem like anything was going to happen, but
23 it was happening.

24 They used to tell me, because a lot of guys
25 that were back there in the lockup pod in the

1 county jail where I was being housed for the whole
2 time, I was in Sumter-Lee Regional Detention Center
3 because of the fact of my blindness.

4 They had him as a lawyer also. Now, they
5 would see him. I was like, "Is Mr. Murphy here?"

6 "Yeah, he's out there now."

7 "Would you tell him that Daniel Brunson would
8 like to speak with him?"

9 I mean, he came out to the county, but I
10 wasn't being seen. I wanted to see him and see
11 what the status was, but yet still, "I'm just
12 advising you what you need to do."

13 I was like, "Well, basically, you are advising
14 me; but at the same time if you will get the
15 investigator from your office to investigate some
16 of the allegations that I'm making, then it could
17 be proven that my victim has not been really
18 forthcoming with the courts, nor the Solicitor's
19 Office."

20 Q Let me ask you this, Mr. Brunson: After this
21 hearing before June Nettles in June, about a month
22 or a month and a half later, you end up actually
23 going in and pleading guilty. Do you recall that?

24 A Yes, sir.

25 Q Tell this Court why it is that you went and pled

1 guilty in July.

2 A Basically because Mr. Murphy sent me this letter,
3 "I have done everything that I could do for. You
4 made these mistakes. You did this. You did that.
5 You did this. You did that. You have to live up
6 to it. I would advise you to do this here and take
7 this time here," and just call it a day basically.

8 I was like, "So I'm not really going to get
9 any type of real defense?" And then he was like,
10 "You will be going to trial in the following
11 weeks."

12 So, I mean, I took that as a threat and it
13 scared me, nor at the time I was not on my Geodon.
14 I was not on my Ambien. Nobody asked me was I on
15 medicines when I came to court, which I was. None
16 of that has been done.

17 I really believe that had the Court been
18 notified of my disabilities, my mental illnesses,
19 and a lot of the history that me and Ms. Miller
20 had -- not as a relationship but as friends with
21 benefits -- had at the time it would have been
22 looked at a whole lot differently.

23 That day in particular at that court hearing
24 with Mr. Nettles, I explained the same to the
25 bailiff, which her name is Ms. Sheriff Gail

1 Calhoun. And she said, "Well, Mr. Brunson, if you
2 don't feel like you're guilty, I would tell the
3 judge."

4 After that hearing I did speak with Mr. Murphy
5 in the visitor -- I think the thing where you talk
6 to your lawyer at. I told Ms. Calhoun, I said,
7 "Would you please stand there?" She said, "I
8 can't." I said, "I am asking you. You have my
9 permission."

10 Now, when Mr. Murphy spoke to me, "What are
11 you doing? You had this here." It's like him and
12 Mr. Nettles were friends. I don't see that. "Why
13 did you do this? You just messed it up."

14 Q How much time -- in between June 4th before Judge
15 Nettles and your plea on July 21st, how much time
16 did you spend with Mr. Murphy?

17 A He came out once because he said he got the motion
18 of discovery. First, he wanted to send it to me.
19 I kept telling him, "I can't read. I need you to
20 go over it. You need to."

21 So when he did come out there to the county,
22 to the Sumter-Lee Regional Detention Center, "Yeah,
23 I'm out here to read this to you." Don't you know
24 I was on B-pod, like I said, the lockup wing the
25 whole time I was in the county jail.

1 It's a room that they take us to, and Officer
2 Haynesworth sat right there and listened to
3 Mr. Murphy read my whole discovery to me. I felt
4 like that was a violation of my due process because
5 that is privileged, being that I had not been tried
6 for anything.

7 Then after that I kept hearing inmates saying,
8 "Brian, why you in jail?" That's a nickname that
9 they call me. "Oh, you out there tree jumping?
10 Oh, you out there beating women? Oh, you out there
11 doing..."

12 "How would you know this here?"

13 "Oh, Haynesworth been out there listening to
14 everything that you said."

15 Q Let me ask you this, Mr. Brunson: After the plea
16 did you have any discussions with Mr. Murphy?

17 A Yes, sir. I told him I wanted to appeal. I told
18 him I wanted reconsideration of the sentencing.
19 None of that had been done. The only reason that
20 the PCR was put in because Mr. Germane McQueen --
21 and I think he's still at Evans -- he sat down and
22 he talked to me. I explained my case.

23 He said, "No." He said, "Let me do an
24 application." I said, "Well, I don't know how."
25 He said, "You have to send for a Rule Number 5." I

1 think it's a post conviction relief packet that
2 must be sent from the Clerk of Court or something.

3 He addressed the envelopes and stuff and
4 listened to what I had to say, and he did the
5 paperwork for me as a favor because I could not do
6 it for myself.

7 Q Okay. And that's how you got into court today?

8 A Yes, sir.

9 Q All right. We covered quite a bit of your case. I
10 think we have covered all your allegations. Are
11 there any allegations that have been alleged in
12 your PCR application that we have not covered for
13 the Court?

14 A Right now the cruel and unusual punishment that I'm
15 receiving by the hands of the Department of
16 Corrections because of my disability and the extra
17 time that they said is mandatory that was given by
18 the judge.

19 I never knew that Mr. Cothran, Judge Cothran,
20 gave me a mandatory sentence or anything because it
21 doesn't show within the sentencing guidelines or in
22 my sentencing sheet, but this is the way that the
23 Department of Corrections is interpreting it.

24 Q And you do have, you told me, a number of
25 complaints you have against the Department of

1 Corrections?

2 A Yes. I have the Department of Justice, they are
3 looking into all of the allegations as we speak.

4 Q Okay. This is not the place for that. This Court
5 can't do anything about that. You understand that
6 there are other remedies that you are following,
7 and my understanding is you are following those
8 remedies but that's not for here; right?

9 A No, sir.

10 Q Okay. Mr. Brunson, that's all the questions I have
11 for you, but please answer any that the State may
12 have of you. Okay?

13 A Yes, sir.

14 THE COURT: Cross examination.

15 MS. COLEMAN: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MS. COLEMAN:

18 Q Good morning, Mr. Brunson.

19 A Good morning.

20 Q Now, you testified today that obviously you have
21 some vision impairment issues; is that correct?

22 A I've been this way since birth, ma'am.

23 Q Yes. And you stated that you cannot read?

24 A Yes, ma'am.

25 Q Could you read at the time that Mr. Murphy

1 represented you?

2 A No, ma'am.

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

5 THE COURT: Yes.

6 MS. COLEMAN: Thank you.

7 BY MS. COLEMAN:

8 Q I'm going to hand you something or I can hold it
9 for you if that's easier. Can you see this at all?
10 I will hold it.

11 A No, ma'am.

12 Q So you don't recognize this document at all?

13 A I don't see the document. I know I am holding the
14 document.

15 Q Thank you. I will take this back. Do you recall
16 at the guilty plea waiving your constitutional
17 rights, like your right to a jury trial and your
18 right to remain silent?

19 A At the June 4th hearing or at the 23rd hearing?

20 Q Really at the 23rd, the one where you actually went
21 through -- July 21, 2014 -- where you actually
22 plead in front of Judge Cothran.

23 A Yes.

24 Q So you do recall. And did you understand at the
25 time that when you pled guilty, you were waiving

1 your right to challenge any underlying evidence in
2 the case?

3 A That I did not understand because of the fact that
4 at the time I was under the impression from my
5 counselor, Mr. Murphy, that had I not gone ahead
6 with this plea, I would get all of these life
7 sentences as he explained to me.

8 Q Do you recall telling Judge Cothran that you were
9 satisfied with your attorney's services at the
10 guilty plea on July 21st?

11 A Yes, I do remember that.

12 Q And were you satisfied with him at the time?

13 A No, ma'am.

14 Q Then why did you tell the judge that you were
15 satisfied?

16 A Because of the fact that he said let him do all the
17 talking. Basically I will come out with five or
18 eight years. But with Mr. Nettles he said that I
19 could have gotten three years.

20 He had it all sewed up, but I came out and I
21 acted the fool, as he said it; but he didn't say it
22 in that word. And that's what messed up me getting
23 the less time and having to go before Judge
24 Cothran.

25 Q Do you recall telling Judge Cothran at the guilty

1 plea that you were not under the influence of
2 alcohol or drugs and you had no mental illnesses?

3 A Vaguely.

4 MS. COLEMAN: Your Honor, that's on page 4,
5 starting at line 17.

6 BY MS. COLEMAN:

7 Q You testified a moment ago that you were on certain
8 medications that day that no one asked you about?

9 A Yes, I always got medication every morning.

10 Q Did you tell Judge Cothran --

11 A From Ms. York at the Sumter-Lee Regional Detention
12 Center. The only reason I didn't say anything that
13 day because Mr. Murphy said, "Just let me talk. I
14 don't know how I'm going to spill it. But if I can
15 spill the right way, you'll get five to eight
16 years." So, therefore, that's why I didn't talk.
17 Just like on the June 4th hearing, I did not talk
18 until I was actually addressed by Judge Nettles.

19 Q Did you tell your attorney that you were on those
20 medications that day?

21 A My attorney knew everything that I was on, being
22 that he gave -- he said he investigated everything
23 that was going on with me. I always went to Sumter
24 Wateree Mental Health. I have always had a doctor.
25 My psychiatrist's name was Dr. David A. Justice.

1 I'm quite sure I told him that also.

2 So it's not really too farfetched to believe
3 that he should know what I was on there, plus I was
4 getting disability due to the fact of my blindness
5 and my mental disability.

6 Q And do you think those medications you were on
7 affected your ability to plead guilty that day?

8 A Being I really can't say because I been diagnosed
9 with schizophrenia. I have Geodon for something
10 and sleep disorder. I had anger management
11 problems, and I went to Healthy Minds for over,
12 what, a year?

13 Q Did any of those diagnoses -- did any of that or
14 the medication you were on make you unable to
15 understand anything that happened that day?

16 A It made me a little bit unable to really just grasp
17 what was happening to me.

18 Q Now, the State dropped the criminal sexual conduct
19 charge; right?

20 A No, ma'am.

21 Q Did you plead guilty to that?

22 A I have a letter from Mr. James --

23 THE COURT: Hold on a minute, sir. If you
24 will answer the question, I will give you an opportunity
25 to explain afterwards.

1 THE WITNESS: Yes, sir,

2 THE COURT: Restate your question, please.

3 MS. COLEMAN: Thank you.

4 BY MS. COLEMAN:

5 Q Did you plead guilty to criminal sexual conduct on
6 July 21, 2014?

7 A No.

8 Q And you pled to the kidnapping and assault and
9 battery first degree; correct?

10 A I thought I was pleading guilty to kidnapping and
11 criminal sexual -- I mean -- kidnapping and assault
12 and battery second degree. That's what I thought
13 until I got to the Department of Corrections, and
14 they said, "Well, you have a first degree assault
15 and battery." I said, "How?"

16 Q And you told the judge at the guilty plea that you
17 were guilty of kidnapping and assault and battery;
18 correct?

19 A That's what I was advised by Mr. Murphy to do. He
20 said, "Even though it says it in these words on the
21 warrant, they are not necessarily -- it's not
22 necessarily like it's explained."

23 Q But there is no question that you did commit these
24 crimes; correct? You hit the victim and punched
25 her?

1 A I hit the victim. I did strike the victim. Did I
2 kidnap her? No.

3 Q Did you have her pinned down on the bed?

4 A I was sitting beside her on the bed, and we were in
5 a struggle; but we wasn't -- it wasn't no
6 kidnapping in the way that Mr. Murphy said that it
7 was kidnapping, said, "You locked the door."

8 Q And the solicitor stated all these facts on the
9 record at the plea; correct?

10 A Vaguely, yes, ma'am.

11 Q And you agreed with those at the plea; correct?
12 And I believe --

13 A Due to -- the reason why I agreed -- due to my
14 lawyer telling me to be quiet and go ahead and
15 agree and get it on over with.

16 Q He actually kind of corrected those facts on the
17 record, didn't he, at the guilty plea?

18 A Basically he did all of the talking, ma'am.

19 MS. COLEMAN: I am looking at page 10, Your
20 Honor.

21 BY MS. COLEMAN:

22 Q Mr. Murphy kind of corrected the State's facts
23 based on your viewpoint of the incidents; right?
24 Do you remember that?

25 A Yes, ma'am.

1 MS. COLEMAN: Beg the Court's indulgence,
2 please.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 BY MS. COLEMAN:

6 Q You stated that trial counsel read you all of your
7 discovery; correct?

8 A To an extent.

9 Q To an extent?

10 A The parts that -- well, basically what he said that
11 I really needed to understand. I was like, when he
12 was reading them, I was like, "Well, what did you
13 find out from your investigation?" And he admitted
14 to me that he did no investigation. He went solely
15 off the State's investigation.

16 I explained to Mr. Murphy, I said, "Well,
17 Mr. Murphy, I understand that the State is paying
18 you, but you are representing me. So at the end of
19 the day if the State is paying you, you are going
20 to deliver me to the State? I am quite sure that
21 you have investigators in your office that can go
22 and investigate my case separately from what the
23 State has done to give you a more rounded view of
24 the whole total situation," instead of looking at
25 the victim as she's a summer flower when it wasn't

1 that way.

2 I was really, really open about everything
3 from day one, from what happened to why I was
4 called over there to her house and everything; but
5 yet and still nothing was investigated. They said,
6 "Why was I invited over to her house?"

7 Her answer was to help me clean up. "But he
8 can't see. I have to help him do everything." So,
9 I mean, right there that should have opened up a
10 lot of doors and turned on a lot of lights in
11 people heads to see that she manipulated the
12 situation.

13 Basically she wanted money out of the
14 situation, and she used my past against me; and now
15 I'm sitting here in this consequence talking to
16 y'all right now.

17 Q Okay. You testified about a preliminary hearing in
18 front of Judge Gibson?

19 A Yes.

20 Q And a conflict of interest there?

21 A Yes, ma'am.

22 Q Did you tell trial counsel about this conflict of
23 interest?

24 A Yes, ma'am. Yes, ma'am.

25 Q You did?

1 A Yes, ma'am. I told him right there because it was
2 several of us, several inmates at the Sumter-Lee
3 Regional Detention Center, that went up that
4 morning; and it was a day in January of 2014. I
5 think it was like the 30th or the 31st. I'm not
6 sure.

7 But, yes, I did tell him and I said,
8 "Mr. Gibson, he is kin to me through my uncle." My
9 uncle name is Andrew Smiley Myers. Buster Myers is
10 his dad. Bertha Myers is his mother.

11 Judge Gibson is Bertha Myers' sister's son.
12 So that's the conflict of interest right there. He
13 shouldn't have been able to even be on the case,
14 but nothing was said about it.

15 Q Now, you pled guilty to this and you got an
16 eight-year sentence. If you go back to trial on
17 these charges, you will face -- potentially you
18 could face a longer sentence than the one that you
19 received. Do you still want a new trial on these
20 charges?

21 A Yes, ma'am.

22 Q Thank you. No further questions.

23 THE COURT: Mr. Boozer?

24 MR. BOOZER: No redirect, Your Honor.

25 THE COURT: If you all would help him down,

1 please.

2 (Pause.)

3 (The witness leaves the witness stand.)

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

5 MR. BOOZER: No, Your Honor.

6 THE COURT: Ms. Coleman.

7 MS. COLEMAN: The State calls Timothy Murphy.

8 (The witness comes forward.)

9 TIMOTHY MURPHY, being
10 first duly sworn, testifies as follows:

11 CLERK: State your name and spell your last
12 name for the record.

13 THE WITNESS: Timothy Murphy, M-U-R-P-H-Y.

14 DIRECT EXAMINATION

15 BY MS. COLEMAN:

16 Q Good morning, Mr. Murphy. How are you?

17 A Good morning. I am doing well.

18 Q How long have you been practicing law?

19 A Over 30 years. I practiced 20 years in the United
20 States Air Force; and then after my retirement from
21 the Air Force, I have been in private practice and
22 also with the Public Defender's Office for the last
23 ten-plus years.

24 Q Do you recall when you were appointed to this case?

25 A I was appointed -- I appointed myself in January of

1 2014.

2 Q How many times did you meet with the applicant
3 prior to his guilty plea?

4 A I met with him over at Sumter-Lee, I believe, about
5 five times. I also met with him here substantively
6 before his bond hearing, before what I thought was
7 the first plea, and before the second plea. Those
8 are conversations that I had back in the attorney
9 room.

10 Q And you mentioned his bond hearing. Was he given a
11 bond?

12 A Yes, Judge King gave him a bond, a \$20,000 surety
13 bond.

14 Q What was the applicant originally charged with?

15 A As I recall, originally the warrants he was charged
16 with was criminal sexual conduct first degree,
17 kidnapping; and the original warrant may have said
18 assault and battery second degree. I'm not
19 positive. What happened was because of the
20 kidnapping when it was indicted, it became assault
21 and battery first degree based on the kidnapping
22 charge.

23 Q And did you explain this to him?

24 A Multiple times.

25 Q Did he appear to understand that --

TIMOTHY MURPHY -- DIRECT -- MS. COLEMAN

39

1 A Yes.

2 Q -- conversation?

3 A Yes.

4 Q Did you file any Rule 5 or Brady motions?

5 A I filed Rule 5 and received discovery. I also
6 prepared -- I believe I prepared, had we gone to
7 trial, a supplemental discovery. It was either a
8 discovery or subpoenas for the police report that
9 was entered into evidence earlier.

10 Q And did you review the discovery with the
11 applicant?

12 A I took it out to him and read it to him.

13 Q Okay.

14 A I also gave it to him. Mr. Brunson, at the time I
15 represented him, obviously had a visual problem.
16 However, if you gave him something, he would put it
17 very close to his face and at least to me give the
18 indication he could read it. He could read it. He
19 would respond to the things that I gave him. I
20 gave him the discovery also after I read it to him.

21 Q How did you communicate with the applicant?

22 A Well, both orally and also in writing.

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

25 THE COURT: Yes.

1 BY MS. COLEMAN:

2 Q I am handing you a document. Do you recognize
3 this?

4 A Yeah. This is a copy, unsigned, of my May 21,
5 2014, letter to Mr. Brunson. What I would do is I
6 would try to keep my language rather simple, and I
7 would increase the font because I knew he had a
8 sight problem.

9 This would be -- in between meetings I found
10 this an effective way to respond to either a phone
11 call he would leave me -- usually a phone call. So
12 I would respond with this type of letter.

13 Q Thank you.

14 MS. COLEMAN: Your Honor, I have shown a copy
15 of this to opposing counsel. At this time I would move
16 to enter this as Respondent's Exhibit Number 1.

17 THE COURT: Any objection?

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

20 (Pause.)

21 MR. BOOZER: No objection, Your Honor.

22 THE COURT: So admitted.

23 (Respondent, Exhibit Number 1 is received into
24 evidence.)

25 ---

1 BY MS. COLEMAN:

2 Q So did you send multiple letters like this one to
3 the applicant?

4 A Yes, I sent more than -- I think I sent three.

5 Q And was it your understanding that he received
6 these and was able to understand them and read
7 them?

8 A I know he understood them because we had subsequent
9 discussions about them and what was in them.

10 Q And did he ever send you letters in return?

11 A I believe he did. I should have made a copy. I'm
12 sure they are in the file.

13 Q The applicant testified about an incident report
14 that he claimed you failed to investigate. Are you
15 familiar with this report?

16 A I'm familiar. What happened was early on in the
17 process, I talked to him about the incident. Like
18 today, he admitted that he had struck the victim.
19 It was a little bit different.

20 He admitted he was on the bed with her. He
21 told me that he had found out she had stolen some
22 money from him. That's what caused the fight and
23 that he started telling me things how she had
24 previously accused him or threatened him, and the
25 focus of all of that was the criminal sexual

1 conduct..

2 He was very adamant that he did not attempt to
3 rape her, which was part of the allegations that
4 she gave in her statement to the police, who
5 witnessed -- who, by the way, witnessed the
6 incident. Two police officers witnessed the
7 incident. In her statement she said he was trying
8 to rape her.

9 So he provided me with some information that I
10 was inclined to follow at that time. But early on
11 in the negotiations, I asked him, I said, "So you
12 admit that you were striking her?" And he said
13 yes.

14 And I said -- then we talked about where he
15 was on the bed, the fact that the door was closed.
16 My recollection is the door was locked, and he had
17 locked it or had closed it and it locked, one of
18 the two. The downstairs door was locked.

19 So we talked about the concept of kidnapping,
20 you know. Then the two police officers who came
21 and who broke into the bedroom during the incident,
22 who I spoke to both of those, witnessed him
23 straddling her and beating her when they broke into
24 the house.

25 Because she was screaming, "Help, help, help."

1 That's where they broke into the house and ran up
2 the stairs to the bedroom. I explained to him what
3 kidnapping was, the legal definition of kidnapping;
4 and we had some discussions.

5 He did not -- he understood those discussions.
6 He understood why he would be criminally liable for
7 kidnapping. That was never really -- after I
8 explained those things to him, he seemed to accept
9 that.

10 The big issue on the table was the criminal
11 sexual conduct, which he was very upset about it
12 and very adamant that he did not commit. So early
13 on in the first or second long conversation I had
14 with him, we talked about, "Well, look, if I can
15 get -- would you plea to assault and battery and
16 the kidnapping if the criminal sexual conduct could
17 be dropped?" And he said yes.

18 So that was the starting point then of me
19 going to the State and beginning negotiations, plea
20 negotiations. Now, at that point then I didn't
21 follow up on the police report too much because
22 they were dropping the criminal sexual conduct.

23 The focus of attacking her credibility from my
24 perspective was primarily, had we gone to trial, to
25 try to attack her on the criminal sexual conduct

1 aspect of the case.

2 Because the kidnapping and the assault and
3 battery, they didn't need to call the victim on
4 those charges. You had two police officers, two
5 sober police officers, who witnessed -- who had to
6 break into a house and witness him straddling her
7 and beating her.

8 Plus, she had the pictures of her face where
9 she had a swollen face from the punches to her
10 face. So that was sufficient to meet those two
11 charges. The focus on the credibility of the
12 victim would have been the CSC. Once the State
13 agreed to drop that, that was pretty much it.

14 Q Would you describe the State's evidence against the
15 applicant on the assault and battery and kidnapping
16 charges as overwhelming?

17 A Yes. I, on multiple occasions, advised Mr. Brunson
18 of my view on that.

19 Q Did you feel a need to interview or investigate any
20 of the witnesses that he claims to have told you
21 about?

22 A I would have had the CSC stayed on the table. But
23 once -- and I was advised by the solicitor that the
24 CSC wasn't coming back.

25 Q Okay.

1 A So even if we had gone to trial, they weren't going
2 to resurrect the CSC. They were going to just
3 proceed with the assault and battery and the
4 kidnapping.

5 Q Was there any discussion with the applicant about
6 him possibly getting probation?

7 A No.

8 Q Did you give him an estimate of what you thought he
9 might be sentenced by pleading guilty?

10 A Yes.

11 Q And what was that?

12 A Five to eight years. I said, "Best case scenario
13 is five to eight years," and we got eight.

14 Q Did the fact that the applicant had a visual
15 impairment factor into a possible mitigation
16 strategy at sentencing?

17 A Well, it was obvious. I mean, I don't recall
18 specifically making it a point. I mean, it was
19 obvious he had a physical impairment. As I recall,
20 I did dispute a lot of what the victim said.

21 She actually came to the final plea and gave a
22 statement, and we disputed much of her rendition of
23 the facts. But the bottom line was that the
24 sentencing strategy was, number one, he was taking
25 responsibility for what he actually did.

1 Number two, that the assault and battery first
2 degree was a technical first degree assault and
3 battery because the injuries were not commensurate
4 with what you'd expect from a typical assault and
5 battery first degree. It was a first degree
6 because of the kidnapping charge.

7 And the kidnapping charge -- again, kidnapping
8 can be -- I know what people think of kidnapping --
9 but kidnapping can be, I guess, kind of technical
10 too. This was a situation where they got into the
11 fight, and he lost his cool because of her conduct
12 towards him.

13 So you have to be careful when a victim's --
14 with victims and badmouthing victims in front of a
15 Court, but I thought I made those points. This was
16 kind of the overall sentencing strategy, to try to
17 mitigate what on paper appeared to be very serious,
18 incredibly serious crimes; and they are serious.

19 Q Did you feel that there was any issue with the
20 indictments in this case?

21 A No.

22 Q Did the Court have proper subject matter
23 jurisdiction over this applicant?

24 A Yes.

25 Q Did you ever feel that there was any issue of

1 double jeopardy?

2 A No.

3 Q Did you review the applicant's constitutional
4 rights before he pled guilty?

5 A Twice.

6 Q Did he ever tell you that he did not understand
7 something?

8 A No.

9 Q Whose decision was it to plead guilty?

10 A Before both hearings he contacted me and indicated
11 he wanted to plead guilty.

12 Q Did he ever ask to you file an appeal after the
13 guilty plea?

14 A No.

15 Q And did you review his right to appeal with him?

16 A Yes, before the plea, as I do with all my clients.

17 Q No further questions. Thank you.

18 THE COURT: Mr. Boozer.

19 MR. BOOZER: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. BOOZER:

22 Q Mr. Murphy, how are you doing?

23 A Good. How are you?

24 Q Doing fine. Thank you. Were you in the courtroom
25 for Mr. Brunson's testimony this morning?

1 A Yes.

2 Q Did you hear him go into quite a bit of detail
3 about the background of his disability?

4 A Yes.

5 Q Were you aware of those details?

6 A He never told me anything about any mental health
7 issues. Based on my observations of him, he
8 understood our conversations. He never exhibited
9 any sort of mental impairment.

10 His responses to me, when I would go over his
11 rights, were appropriate. He clearly understood
12 what I was saying in regard to kidnapping and the
13 difference between first degree and second
14 degree.

15 I will dispute his contention today that he
16 didn't understand he was pleading to assault and
17 battery second degree. We had multiple
18 conversations about why it was a first degree.

19 I recall at least one specific conversation
20 when we were talking about -- I did tell him,
21 "Look, you don't have to concede the victim's
22 version of events."

23 And I talked to him about how this was a
24 technical first degree assault and battery. So he
25 clearly understood that. At least he indicated to

1 me he understood it. So I do dispute that aspect
2 of it.

3 He seemed -- I never picked up anything in
4 regard to mental health. I'm not disputing -- I
5 mean, that may be true, but it didn't come across
6 to me.

7 In regard to his blindness, as I said before,
8 obviously he had visual impairment. He clearly
9 could read when I represented him or he was faking
10 it, one of the two.

11 Because he would sit there across the table
12 from me and look at the documents and then respond
13 to certain things that were in them. So he was not
14 totally blind.

15 Q At the June 4th hearing, I guess, it began as a
16 plea --

17 A Right.

18 Q -- before Judge Nettles. Do you recall that
19 hearing?

20 A Yes, I read the transcript. Yes, I do recall.

21 Q You reviewed the transcript?

22 A Yes, I have.

23 Q You would agree with me that Mr. Brunson did have
24 some complaints and issues that he apparently
25 voiced with the Court that day with regard to your

1. representation?

2 A Yes, he did.

3 Q Was that something you were aware of prior to --

4 A No.

5 Q -- the plea?

6 A It came as a total shock.

7 Q Okay. What discussion did you have with
8 Mr. Brunson after that June appearance?

9 A I told him that I was concerned that they would
10 pull the -- you know, that the CSC might come back,
11 and we would have to go to trial. I told him that,
12 you know, my concern remained the assault and
13 battery first and the kidnapping were -- he was
14 going to get convicted of that. I didn't see the
15 logic in proceeding to trial on the CSC when he
16 would be pleading to that which he was admitting
17 to.

18 I mean, he was admitting basically to the
19 assault. The kidnapping charge, in our
20 conversations, he admitted to the kidnapping
21 charge. He admitted he was straddling her, and two
22 sober police officers were witnesses to that.

23 So I went back to him -- you know, I let him
24 calm down for a couple of days. I went back
25 shortly after the plea, and I said, "Look, you're

1 admitting -- you know, you are admitting to the
2 assault. You are admitting to the kidnapping.
3 They are willing to drop the CSC, and everything
4 you are telling me about her is only really
5 relevant if we proceed with the CSC, which doesn't
6 make sense. Why would you risk that? Because a
7 jury might conclude that she is telling the truth
8 on that." I mean, that was basically it.

9 Then I said, "Well, you know, we will see if
10 the State is still willing to drop the CSC." There
11 never was a deal that involved time because
12 Mr. Brunson has, as I recall, had a pretty bad
13 record.

14 But there was -- you know, they were willing
15 to drop that which he insisted that be dropped from
16 the very beginning. So I went back and explained
17 to him again. Then I started thinking, "Well,
18 okay. I better start preparing for trial."

19 That's when I believe I started -- he had told
20 me about the allegation that she had made before.
21 At that point then I started preparing the
22 subpoenas or the supplemental discovery.

23 I remember having a specific conversation
24 with -- Ms. McElveen, I believe, was the solicitor.
25 "Look, there is a report out there that she made --

1 he made where she threatened him," and she said she
2 would try to look for it. They were getting close.
3 I was being told, "Look, it's going to be on the
4 trial list." So I started preparing for trial.

5 Then he got a hold of me again and said,
6 "Yeah, I will plea." Then I kind of said, "All
7 right. Are you sure this time? Because last time
8 I thought we were, and it didn't work out too
9 well."

10 Q How would you describe your relationship with
11 Mr. Brunson throughout your representation? Was it
12 a good relationship or a bad one?

13 A Professional. I mean, I really was genuinely
14 surprised that he was so upset with me at that
15 first hearing. I thought we had a pretty
16 straightforward, professional relationship. He
17 thanked me numerous times after the CSC was
18 dropped. It was not a contentious relationship at
19 all.

20 Q Did it change at all after that June appearance?

21 A Not on my part.

22 Q How about from his part?

23 A If it did, I mean, not really. I mean, he was
24 obviously focused on the victim lying. I did
25 remind him on a couple of occasions, "Look, they

1 are dropping the CSC. We don't have to concede her
2 version of events," and we didn't.

3 I mean, you know, he also never seemed upset
4 with me when I would say, "Look, your best case
5 scenario, we are looking at five to eight years."
6 I never got any flack on that. He seemed satisfied
7 with that as a reasonable result for these
8 offenses.

9 MR. BOOZER: Beg the Court's indulgence, Your
10 Honor.

11 (Pause.)

12 BY MR. BOOZER:

13 Q Do you recall any specific discussions where he had
14 given you any information regarding sort of his
15 mental history?

16 A No. I don't recall that at all, no.

17 Q Would that be something important to know in
18 representing a client?

19 A If a client tells me he is schizophrenic, I think
20 that is something I would remember, number one. I
21 would have used it in my approach to the case
22 because I want to make sure the guy is on
23 medicines.

24 I would want to bring that up to the judge in
25 sentencing. That's something I would have

1 remembered, and I have no recollection of him at
2 all ever discussing any sort of mental health
3 issues with me.

4 Q Thank you, Mr. Murphy.

5 MR. BOOZER: That's all the questions I have,
6 Your Honor.

7 THE COURT: Ms. Coleman?

8 MS. COLEMAN: Nothing further from this
9 witness.

10 THE COURT: Sir, you may step down.

11 THE WITNESS: Thank you, Your Honor.

12 (The witness leaves the witness stand.)

13 MS. COLEMAN: The State has no further
14 witnesses.

15 THE COURT: Anything by way of argument by
16 either side? Mr. Boozer?

17 MR. BOOZER: Your Honor, I would just let
18 these allegations rest on the testimony that has been
19 presented. Certainly Mr. Brunson believes that he was
20 not there -- or did not feel like he was getting
21 representation he needed.

22 Obviously, he did have a plea that he backed
23 out of and chose to voice his complaints against his
24 attorney. I think his position is that he should go
25 back and be allowed to have his trial. He certainly is

1 taking a risk in going back, and he is obviously ready
2 to do that, Judge.

3 THE COURT: Ms. Coleman.

4 MS. COLEMAN: Your Honor, I think it's clear
5 from the testimony presented today and from the record
6 of the guilty plea that the applicant knew what he was
7 doing. He knew he was waiving his rights. He chose
8 voluntarily to plead guilty. There's no question of his
9 guilt of these crimes.

10 Trial counsel indicated that the evidence was
11 overwhelming against him. So we'd ask that you make a
12 finding of overwhelming evidence. It's clear that trial
13 counsel did everything that he could to represent
14 Mr. Brunson, and I don't think there were any
15 deficiencies or prejudice in this case. So please deny
16 the application.

17 THE COURT: I will take it under advisement
18 and let you all know. Thank you.

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Sumter County, South Carolina, on the 27th day of March, 2017.

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

July 12, 2017

s/L. Coconut Pantsari

Court Reporter

BY MR. BOOZER: [6] 5/20 9/18 12/20 18/25 47/20 53/11 BY MS. COLEMAN: [9] 27/16 28/6 30/5 32/3 33/20 34/4 37/14 39/25 40/25 CLERK: [2] 5/14 37/10 MR. BOOZER: [17] 4/7 4/10 5/2 5/9 5/18 9/8 9/14 12/12 18/21 36/23 37/4 40/17 40/20 47/18 53/8 54/4 54/16 MS. COLEMAN: [17] 3/3 4/22 9/13 12/16 27/14 28/2 28/5 30/3 32/2 33/18 33/25 37/6 39/22 40/13 54/7 54/12 55/3 THE COURT: [27] 3/2 4/6 4/9 4/20 4/23 5/8 5/17 12/17 18/24 27/13 28/4 31/22 32/1 34/2 36/22 36/24 37/3 37/5 39/24 40/16 40/21 47/17 54/6 54/9 54/14 55/2 55/16 THE WITNESS: [4] 5/16 31/25 37/12 54/10 \$ \$20,000 [1] 38/12 - -vs [1] 1/7 0 01130 [1] 1/7 1 10 [1] 33/19 11 [1] 4/1 1130 [1] 3/6 12 [2] 11/13 56/14 14 [1] 2/15 15-CP-43-01130 [1] 1/7 17 [1] 30/5 2 20 [1] 37/19 2013 [1] 11/13 2014 [10] 3/11 3/15 4/15 18/15 19/3 28/21 32/6 36/4 38/1 40/5 2015 [2] 4/1 4/5 2015-CP-43-1130 [1] 3/6 2017 [3] 1/11 56/9 56/14 2020 [1] 7/11 21 [4] 3/15 28/21 32/6 40/4 2107 [1] 3/2 21st [2] 24/15 29/10 23 [1] 4/5 23rd [2] 28/19 28/20 27 [2] 1/11 3/2 27th [1] 56/9 3 30 [1] 37/19 30th [1] 36/5 31st [1] 36/5 4 4th [7] 13/6 13/13 13/15 24/14 28/19 30/17 49/15 5 5/21/14 [1] 2/15 525 [1] 11/11 585 [2] 10/17 11/9 5th [1] 10/13	6 6th [1] 6/23 A ability [3] 17/18 17/18 31/7 able [3] 18/14 36/13 41/6 about [31] 7/8 9/6 11/1 17/18 17/24 18/9 22/21 27/5 30/8 35/2 35/17 35/22 36/14 38/4 41/9 41/13 41/17 42/14 42/19 43/11 43/14 44/21 45/5 48/3 48/6 48/18 48/20 48/23 51/4 51/20 52/22 accept [2] 13/8 43/8 accurate [1] 56/5 accused [1] 41/24 across [2] 49/5 49/11 act [1] 11/20 acted [1] 29/21 actually [7] 22/22 28/20 28/21 30/18 33/16 45/21 45/25 adamant [2] 42/2 43/12 addition [1] 9/17 addressed [2] 26/3 30/18 addresses [1] 16/8 admit [3] 15/15 21/1 42/12 admitted [6] 34/13 40/22 41/18 41/20 50/20 50/21 admitting [5] 50/16 50/18 51/1 51/1 51/2 advise [1] 23/6 advised [3] 32/19 44/17 44/23 advisement [1] 55/17 advising [2] 22/12 22/13 affected [1] 31/7 after [14] 16/13 21/14 22/20 24/4 25/7 25/15 37/20 39/20 43/7 47/12 50/8 50/25 52/17 52/20 afterwards [1] 31/25 again [3] 46/7 51/17 52/5 against [9] 12/9 17/10 19/23 21/4 26/25 35/14 44/14 54/23 55/11 Agent [1] 8/15 ago [1] 30/7 agree [2] 33/15 49/23 agreed [3] 33/11 33/13 44/13 ahead [5] 4/18 5/10 12/16 29/5 33/14 Air [2] 37/20 37/21 alcohol [1] 30/2 alert [1] 10/10 all [35] 6/4 7/23 10/9 11/3 12/18 15/12 16/12 16/21 17/4 17/8 18/25 21/14 26/9 26/10 27/3 27/10 28/9 28/12 29/6 29/16 29/20 33/8 33/18 34/6 36/25 41/25 47/16 52/6 52/19 52/20 53/16 54/2 54/5 55/18 56/6 allegation [2] 13/16 51/20 allegations [12] 4/3 9/18 10/1 13/12 13/20 21/3 22/16 26/10 26/11 27/3 42/3 54/18 alleged [4] 9/24 12/8 12/10 26/11 alleging [1] 4/1 allow [1] 5/7 allowed [3] 13/1 19/10 54/25 also [19] 5/15 6/25 7/25 13/6 13/25 15/2 16/25 17/6 19/25 20/17 22/4 31/1 37/22 38/5 39/5	39/14 39/20 39/22 53/3 always [4] 16/14 30/9 30/23 30/24 am [16] 14/13 15/10 16/1 19/2 19/3 19/18 20/18 20/19 20/21 24/8 28/13 33/19 34/20 37/17 40/2 56/10 Ambien [1] 23/14 amend [1] 9/11 Andrew [1] 36/9 anger [1] 31/10 another [1] 11/20 answer [3] 27/11 31/24 35/7 Anthony [1] 17/5 any [28] 4/21 8/24 10/8 11/22 15/24 17/17 23/9 25/16 26/11 27/11 29/1 31/13 31/13 37/4 39/4 40/17 44/19 45/5 46/19 46/25 48/6 48/9 53/6 53/13 53/14 54/2 55/14 56/11 anyone [1] 16/17 anything [16] 9/2 10/22 11/5 14/6 14/20 15/18 16/3 21/22 25/6 26/20 27/5 30/12 31/15 48/6 49/3 54/15 apartment [1] 10/19 apartments [2] 11/10 16/8 apparently [1] 49/24 appeal [5] 3/23 25/17 47/12 47/15 56/7 appear [1] 38/25 appearance [3] 8/23 50/8 52/20 appearances [1] 15/23 appeared [1] 46/17 appears [2] 8/10 19/4 applicant [21] 1/6 1/19 3/6 3/10 3/15 3/15 3/19 3/23 3/25 9/16 38/2 38/14 39/11 39/21 41/3 41/13 44/15 45/5 45/14 46/23 55/6 applicant's [5] 2/17 5/1 12/16 12/19 47/3 application [10] 3/25 6/11 8/7 9/6 9/7 9/12 9/22 25/24 26/12 55/16 appointed [3] 37/24 37/25 37/25 approach [3] 28/3 39/23 53/21 appropriate [1] 48/11 April [1] 3/11 April 2014 [1] 3/11 are [36] 3/1 5/22 5/24 6/1 6/5 6/14 8/5 8/9 9/11 11/6 18/9 21/3 22/13 24/10 26/10 27/2 27/6 27/6 27/7 32/21 34/18 34/19 37/16 38/8 41/12 41/14 46/18 47/22 47/23 51/1 51/2 51/3 51/4 52/7 53/1 53/5 argument [1] 54/15 Ashanti [1] 11/24 ask [7] 5/3 5/5 15/20 22/20 25/15 47/12 55/11 asked [6] 15/25 19/8 21/11 23/14 30/8 42/11 asking [1] 24/8 aspect [3] 17/22 44/1 49/1 assault [29] 3/13 3/16 3/22 6/15 6/18 6/22 15/8 15/10 21/6 21/6 21/9 32/8 32/11 32/14 32/17 38/18 38/20 43/15 44/2 44/15 45/3 46/1 46/2 46/4 48/16 48/24 50/12 50/19 51/2 assistance [1] 4/3 Asst [1] 1/20
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supplemental [2] 39/7 51/22		
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STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

RECORDED THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2017 MAY -4 PM 2:07

Daniel Evers Brunson, #192542,

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2015-CP-43-1130

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on May 11, 2015. Respondent made its Return on July 23, 2015. An evidentiary hearing was convened on March 27, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Timothy Murphy, Esquire ("Plea Counsel") also testified. The Court had before it a copy of the guilty plea transcript, the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted at the April 2014 term of the Sumter County Grand Jury for criminal sexual conduct-first degree, kidnapping, and assault and battery-first degree (2014-GS-43-0293). Tim Murphy, Esquire represented Applicant. On July 21, 2014,

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Applicant pled guilty as indicted to kidnapping and assault and battery before the Honorable R. Ferrell Cothran, Jr. The criminal sexual conduct charge was dismissed. Judge Cothran sentenced Applicant without recommendations or negotiations to an eight year term of imprisonment for kidnapping and an eight year term of imprisonment for assault and battery-first degree running concurrent. Applicant did not appeal his guilty plea or sentence.

II. ALLEGATIONS

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

1. Ineffective Assistance of Counsel
 - a. Failing to investigate social history.
 - b. Had counsel investigated he would have discovered Applicant was blind.
2. Subject Matter Jurisdiction
 - a. Indictment multiplicity.
3. Double Jeopardy.

At the evidentiary hearing, Applicant orally amended his allegations to include the following:

1. Ineffective Assistance of Counsel
 - a. Failure to review defenses, evidence or trial strategy with Applicant.
2. Involuntary Guilty Plea

III. APPLICABLE LAW

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

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

Before the evidentiary hearing, Applicant introduced as an exhibit a transcript from a hearing on June 4, 2014, at which Applicant began to plead guilty but instead moved to have Plea Counsel relieved. Applicant's exhibit was considered as part of the record before this Court.

Applicant testified that he had been blind his entire life as a birth defect from his father's battle wounds from the Vietnam War. He testified that he can see some illumination out of his left eye, but he cannot see or read anything, and he has never been able to read. He stated that his disability was never investigated or brought up to the plea court in his defense. Applicant stated

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that Plea Counsel failed to investigate an incident report that should have been used in his defense, and if it had been investigated, he would not have gone to prison because in the report, the Victim was telling untruths.

Applicant stated that he had a preliminary hearing before Judge Gibson, who is related to him, which was a conflict of interest. He stated that he told Plea Counsel about this conflict of interest, but Judge Gibson still heard his case at the hearing. Applicant stated that his indictments were invalid. He stated that the indictments for kidnapping and criminal sexual conduct were worded the same way, and he believed that having both charges was a violation of the Double Jeopardy clause of the constitution.

Applicant testified that he did strike the Victim and he stole her money. He stated that Plea Counsel never spoke to any of the witnesses that he told him to investigate, and he relied solely on the State's investigation. He stated that Plea Counsel had mentioned to him a possibility that he would get a probationary sentence instead of prison time. He stated that Plea Counsel told him that he would not get a bond. He stated that he told Plea Counsel that he could not read, and Plea Counsel read all the discovery material to him in front of the Sheriff at the jail, which was a violation of his due process rights. Applicant stated that he asked Plea Counsel to file an appeal, but he did not.

After his testimony, Plea Counsel took the stand. Plea Counsel testified that the State's evidence against Applicant was overwhelming. He stated that law enforcement officers came to the scene of crime for another reason, but heard screams for help and burst into the apartment, breaking down a locked bedroom door and finding Applicant straddling the female Victim and beating her face. He stated that Applicant was adamant that he did not attempt to rape the Victim, he only stole her money and physically beat her while restraining her to the bed. He

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stated that the State dropped the criminal sexual conduct charge and Applicant only pled to kidnapping and assault and battery.

Plea Counsel testified that there was never any discussion between them about probation; he told Applicant that he would probably get a five to eight year sentence at best. He stated that Applicant gave him several witnesses to investigate, and he would have investigated them if the State had not dropped the criminal sexual conduct charge, because they were only relevant to that charge. Plea Counsel testified that he went over all the discovery with Applicant, including the incident report that law enforcement produced after they witnessed the crime. He stated that he read all of the material to him, and Applicant reviewed it himself, because he could read at the time he represented him. Plea Counsel testified that he communicated with Applicant through letters that he wrote in very large print so that Applicant could see it, and he knew that Applicant could read and understand the letters because he would hand him a document, Applicant would look at it, and Applicant would respond to substance within the document.

Plea Counsel testified that it was Applicant's decision to plead guilty; Applicant initiated a request for a guilty plea. He stated that Applicant never asked him to file an appeal. Plea Counsel stated that there was no issue with the indictments in this case, and he did not feel that there was a double jeopardy issue in this case. He testified that Applicant was granted bond. He stated that Applicant never told him that he was related to Judge Gibson and he was never aware of a conflict of interest. He stated that if he had known, he would have asked the Judge to recuse himself.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to

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observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony to be not credible. In contrast, this Court finds Plea Counsel's testimony to be very credible. These findings are applied to the specific findings below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted an allegation of ineffective assistance of counsel. This Court finds this claim to be meritless and it should be denied and dismissed with prejudice. This Court finds that Plea Counsel's representation did not fall below the standards of professional norms in any manner. He communicated properly with Applicant and reviewed all discovery materials with him. Based on this testimony and the record before the court, this Court finds that Plea Counsel's representation was not ineffective in any regard.

Applicant alleges that Plea Counsel was ineffective for failing to investigate his social history with the Victim and failure to discover that Applicant is blind. This allegation is meritless. Plea Counsel credibly testified that he investigated this case and reviewed all discovery material, including the police incident report, with Applicant multiple times. He stated that he would have investigated the witnesses Applicant asked him to, but they were not necessary because they were only relevant to the criminal sexual conduct charge that the State dropped before the guilty plea. Plea Counsel testified that he knew very well that Applicant was blind at the time of his representation, and this was evidenced by the letters that he sent to Applicant with very large font and the fact that he read the discovery materials aloud to him.

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Based on this testimony, this Court finds that Plea Counsel thoroughly investigated Applicant's case and was not ineffective in this regard.

Applicant further alleges that Plea Counsel was ineffective for failing to review defenses, evidence or trial strategy with Applicant. The testimony presented clearly shows that Plea Counsel thoroughly reviewed all the evidence and discovery with Applicant, both in writing and by reading it aloud to him. As Plea Counsel credibly testified, the evidence against Applicant was *overwhelming*, and included a report from two law enforcement officers that were present to witness Applicant straddling and beating the Victim. Plea Counsel testified that he was preparing the case for trial, but there were likely not many defenses to pursue in this situation. Furthermore, Applicant chose to plead guilty, so any failure to discuss Plea Counsel's trial strategy had no bearing on the final outcome of his case.

It is clear that Plea Counsel went above and beyond the standards of representation in this case, and he did everything he could to represent Applicant in the face of overwhelming evidence against him. Plea Counsel was not deficient in any regard, and there was no prejudice to Applicant from any of Plea Counsel's actions or inactions. Therefore, this allegation is denied and dismissed with prejudice.

INVOLUNTARY GUILTY PLEA

Applicant argues his plea was not given freely and voluntarily. This Court finds otherwise and concludes that Applicant's plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be

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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).

This Court finds that the record reflects that Applicant was fully advised of the rights he was giving up by pleading guilty. Applicant presented no credible evidence as to why he should be able to depart from his statements at the plea hearing. This Court finds very credible Plea Counsel's testimony that he advised Applicant of all facts and risks of pleading guilty.

The record reflects Applicant fully admitted his guilt to the plea court. "A guilty plea constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights." Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 129 (2014) (citing State v. Rice, 401 S.C. 330, 331-32, 737 S.E.2d 485, 485-86 (2013); Hyman v. State, 397 S.C. 35, 44, 723 S.E.2d 375, 379 (2012)). Notably the South Carolina Supreme Court has held "[a] guilty plea represents a break in the chain of events which has preceded it in the criminal process." Id. (citations omitted). "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. (citing Rice, 401 S.C. at 332, 737 S.E.2d at 486). Therefore, this Court finds the plea

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judge correctly found Applicant's plea was freely, voluntary, and intelligently made. Accordingly, this allegation must be denied and dismissed with prejudice.

SUBJECT MATTER JURISDICTION

Applicant alleges the court did not have subject matter jurisdiction over his charges. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, "[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide.

A review of the record clearly indicates that there is no basis upon which to conclude that the court lacked subject matter jurisdiction. Further, Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 321 S.C. 75, 472 S.E.2d 38 (Cl. App. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The indictments in this case are facially valid because they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, and the name of the accused. Therefore, this allegation is denied and dismissed with prejudice.

DOUBLE JEOPARDY

Applicant contends that he was subjected to double jeopardy. This issue is not one that can be raised in a post-conviction relief proceeding. PCR is not a substitute for a direct appeal. Claims that could or should have been raised in a direct appeal cannot be asserted for the first time in a post-conviction relief proceeding. See Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); Sellars v. Boone, 261 S.C. 462, 200 S.E.2d 686 (1973) (double jeopardy). Nevertheless, Applicant's allegation of a double jeopardy violation is without merit.

The Double Jeopardy Clauses of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense and second prosecutions for the same offense after an acquittal, a conviction, or an improvidently granted mistrial. When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing judge from prescribing greater punishment than the legislature intended. Missouri v. Hunter, 459 U.S. 359 (1983); State v. Wilson, 311 S.C. 382, 429 S.E.2d 453 (1993). Accordingly, this allegation is dismissed because it is a direct appeal issue and because no constitutional violations occurred in this case.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VII. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of April, 2017.


D. CRAIG BROWN
Presiding Judge
Third Judicial Circuit

Florence, South Carolina

WITNESSES

John Litaker

Sumter Police Dept.

DOCKET NO. 2014-GS-43-0293

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

APRIL

TERM

2014

THE STATE

vs.

DANIEL EVERS BRUNSON

ARREST WARRANT NUMBER

2013A4310201252

2013A4310201253

2013A4310201254

ACTION OF GRAND JURY

*True Bill**Michael J. Anderson*

Foreperson of Grand Jury

Date:

4-10-14

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

Kidnapping / Kidnapping
Assault & Battery 1st degree
Criminal Sexual Conduct 1st degree*Ernest A. Finney III*

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Kidnapping / Kidnapping
Assault & Battery 1st degree
Criminal Sexual Conduct 1st degree

At a Court of General Sessions, convened on April 10, 2014 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONEKIDNAPPING

That Daniel Evers Brunson did in Sumter County on or about December 5, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Crystal Miller, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT TWOASSAULT & BATTERY 1ST DEGREE

That Daniel Evers Brunson did in Sumter on or about December 5, 2013, unlawfully injure or attempt to injure another person, and the act involves nonconsensual touching of the private parts of an adult, either under or above clothing, with lewd and lascivious intent and/or the act occurred during the commission of a robbery, burglary, kidnapping, or theft, in violation Section 16-3-600(C)(1) of the code of Laws of South Carolina (1976), as amended.

COUNT THREECRIMINAL SEXUAL CONDUCT, FIRST DEGREE

That Daniel Evers Brunson did in Sumter on or about December 5, 2013, engage in sexual battery and/or attempt to engage in a sexual battery with Crystal Miller, while the victim was also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act, and/or the defendant did use aggravated force, in violation of Section 16-03-0652, S. C. Code of Laws, 1976, as amended.

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

Solicitor

Edward A. Fin III