

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

CHRISTOPHER WILLIAM SEABROOK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001901

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
	)	
v.	)	Case No. 13-CP-10-5008 et al
	)	
Christopher William Seabrook,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on March 2, 2015, before The Honorable R. Markley Dennis, Jr. in Courtroom 4D of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Andrew Evans, Assistant Solicitor
 9TH CIRCUIT SOLICITOR'S OFFICE
 Appearing for State of South Carolina

Jason King, Esq.
 CHARLESTON COUNTY PUBLIC DEFENDER
 ... Appearing for Defendant

Deborah Garrison
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1

2

THE COURT: You are Christopher

3

Seabrook?

4

DEFENDANT: Yes, sir.

5

THE COURT: Mr. Seabrook, I've been

6

handed three indictments. You're standing with

7

Jason King. Does he represent you on all of

8

these charges -- sorry, I misspoke. There are

9

several indictments. Does he represent you on

10

all of these charges?

11

DEFENDANT: Yes, sir.

12

THE COURT: Has he explained to you the

13

nature of these charges and the possible

14

punishment?

15

DEFENDANT: Yes, sir.

16

THE COURT: Indictment 2014-4978

17

charges you with the offense of criminal sexual

18

conduct in the first degree. Do you understand

19

that?

20

DEFENDANT: Yes, sir.

21

THE COURT: And you are pleading guilty

22

to assault and battery in the first degree, do

23

you understand that?

24

DEFENDANT: Yes, sir.

25

THE COURT: Your lawyer has explained

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1 the difference in those two?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that for
4 assault and battery in the first degree that I
5 could sentence you up to ten years in jail?

6 DEFENDANT: Yes, sir.

7 THE COURT: What is your plea?

8 DEFENDANT: Guilty, sir.

9 THE COURT: Indictment 13-5008 charges
10 you with the offense of distribution of
11 marijuana. Do you understand that?

12 DEFENDANT: Yes, sir.

13 THE COURT: And for that I could
14 sentence you up to -- well, it's a second
15 offense. Is that ten or is that five still?

16 SOLICITOR EVANS: I believe that they
17 are all zero to ten, Your Honor.

18 JASON KING: That's correct, Your Honor.

19 THE COURT: Okay. Do you realize that
20 I could sentence you to ten years?

21 DEFENDANT: Yes, Your Honor.

22 THE COURT: How do you plead?

23 DEFENDANT: Guilty, sir.

24 THE COURT: Indictment 13-5010 charges
25 you with possession with intent to distribute

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1 marijuana. That's a second offense. I could
2 sentence you to an additional ten years. Do
3 you understand that?

4 DEFENDANT: Yes, Your Honor.

5 THE COURT: How do you plead?

6 DEFENDANT: Guilty, sir.

7 THE COURT: Indictment 14-4190 charges
8 you with possession of crack cocaine third
9 offense. Do you understand that I could
10 sentence you to ten years for that?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: How do you plead?

13 DEFENDANT: Guilty, Your Honor.

14 THE COURT: Are you totally satisfied
15 with your lawyer?

16 DEFENDANT: Yes, sir.

17 THE COURT: Solicitor, is there a
18 recommendation?

19 SOLICITOR EVANS: Your Honor, these are
20 straight up pleas.

21 THE COURT: Is that your understanding,
22 Mr. King?

23 JASON KING: Your Honor, there is a
24 recommendation of concurrent.

25 SOLICITOR EVANS: I apologize, Your

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5

1 Honor. That's correct. That the sentences run
2 concurrent with each other, within the
3 sentencing range, Your Honor.

4 THE COURT: You have discussed this
5 matter with your client?

6 JASON KING: I have.

7 THE COURT: He has been advised of his
8 rights and the consequences of his pleas?

9 JASON KING: Yes, Your Honor.

10 THE COURT: Do you concur with this
11 decision to enter a guilty plea in each case?

12 JASON KING: Yes, Your Honor.

13 THE COURT: Mr. Seabrook, is that true,
14 sir?

15 DEFENDANT: Yes, Your Honor.

16 THE COURT: Then you understand that in
17 each case if I accept your plea that are giving
18 up the right to have a jury trial, the right to
19 confront the witnesses against you and the
20 right to remain silent?

21 DEFENDANT: Yes, Your Honor.

22 THE COURT: Has anybody threatened you
23 in any way or promised you anything to get you
24 to plead guilty?

25 DEFENDANT: No, sir.

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1 THE COURT: If you would, tell me the
2 facts, please, sir.

3 SOLICITOR EVANS: Thank you, Your Honor,
4 may it please the court. These are three
5 separate incidents.

6 The first incident took place on June
7 21st, 2013, at [REDACTED], which is
8 in Charleston County. Members of the North
9 Charleston police department conducted a
10 controlled undercover buy with the defendant,
11 where they exchanged thirty dollars (\$30) in
12 prerecorded currency for approximately five-
13 point-nine (5.9) grams of what tested field
14 presumptive as positive for THC.

15 When the officers moved in to arrest the
16 defendant, he attempted to flee. They observed
17 him throwing a clear plastic bag containing a
18 green leafy substance on the ground. When he
19 was apprehended, another baggie was found in
20 his pocket, another in his shoe. Those three
21 baggies also tested positive for marijuana. The
22 total weight of the baggies, Your Honor, was
23 approximately eleven (11) grams.

24 The second incident took place on May
25 8th, 2014 at [REDACTED], which is also

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1 in Charleston County. The North Charleston
2 police department responded to the barber shop
3 located at that address in reference to a
4 possible threat made by the defendant to
5 another person. They did a consent search of
6 the defendant's person and located a hard white
7 substance in his pocket. The defendant
8 admitted that he "forgot", quote, that he had
9 crack in this pocket. That substance tested
10 positive as approximately point-three-six (.36)
11 grams of cocaine base.

12 Judge, the last incident took place on
13 May 11, 2014, at [REDACTED], which
14 is also in Charleston County. The defendant
15 and a female, K [REDACTED] (phonetic) were in a
16 hotel room at that address. The defendant got
17 upset when someone knocked on the door, who he
18 thought that the victim (sic) had concluded
19 with to steal some personal belongings of his a
20 couple of weeks before this incident. He hit
21 the victim with a closed fist, choked her with
22 a belt and cut her arm with an aluminum can
23 lid.

24 Judge, he was initially charged with CSC
25 1st and kidnaping in that incident, but at his

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1 bond hearing the victim recanted the kidnaping
2 and CSC aspects of that but said that she was
3 physically assaulted. That is the basis for
4 the reduction of the charge.

5 His prior record, Your Honor, beginning
6 in 1993:

7 Attempted burglary,
8 Possession of tools of crime,
9 Burglary 3rd.

10 In 1996:

11 Possession with intent to distribute
12 cocaine.

13 Distribution of drugs and
14 Possession of stolen goods.

15 In 1997:

16 Unlawful carrying of a pistol.
17 Congregating for unlawful purpose.

18 In 1998:

19 Criminal domestic violence.

20 In 1999 there was a probation revocation.

21 In 2001:

22 Possession of cocaine base.

23 Resisting arrest.

24 In 2002:

25 Possession of cocaine, third.

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1 Distribution of cocaine.
2 Possession of cocaine.
3 Another distribution of cocaine.
4 Two possessions with intent to distribute
5 proximity charges.

6 In 2013:
7 Possession with intent to distribute
8 controlled substances. Two of those charges.

9 In '06:
10 DUS
11 In '08:
12 Assault and battery of a high and
13 aggravated nature.

14 Possession of cocaine base.

15 In 2011:
16 Possession of cocaine, third.

17 In 2012:
18 Possession of marijuana.

19 Assault and battery, third.

20 In 2013:
21 Assault and battery, third.

22 THE COURT: Are those facts correct?

23 DEFENDANT: Yes, Your Honor.

24 THE COURT: I'll accept the plea. I'll
25 be happy to hear from you, Mr. King.

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1 JASON KING: Thank you, Your Honor.
2 He's been in for two hundred ninety-five (295)
3 days now. We'd ask that he get credit for
4 that.

5 THE COURT: Okay.

6 JASON KING: He has struck bottom,
7 Judge. Actually his bond was revoked, so he
8 was arrested on the criminal sexual conduct.
9 I was trying to argue against it and he said,
10 'I'm fine.' He had a drug problem and I guess
11 he took it as a chance to dry himself out.
12 He's hoping to get into the DAODIS Program at
13 the jail, but just with the nature of the
14 charges he wasn't allowed. I think once you
15 get high violent charges that it's more
16 difficult to get in. But he's aware of his
17 drug problems. He's be in for a while now, and
18 wants to try to change that.

19 As to the drug charges, Your Honor, it
20 was a fairly small amount of marijuana that we
21 are dealing with, and it was one incident, the
22 distribution and what was -- what was found, I
23 think both were fairly small amounts.

24 As far as the assault and battery, Judge,
25 this was someone that he was seeing at the

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1 time. He has a little different version of
2 exactly what happened that night but he doesn't
3 deny the assault. He said that they were
4 together, that they were smoking crack and
5 marijuana. He believed that she gave him an
6 STD and that -- he admitted at the bond hearing
7 when the victim recanted the CSC 1st and the
8 kidnaping.

9 I think since he's been in jail, Judge,
10 that he's been trying to get some perspective
11 on his life.

12 He has children, Judge. He has a
13 seventeen-year-old and a daughter that is
14 fifteen years old. He knows that he's here --
15 he's seen his son getting involved in drugs,
16 he's seeing the cycle repeating and he said
17 that his father was in drugs and that was one
18 of the reasons he got involved, and he sees his
19 children getting involved in similar things.
20 He understands that they look at him and that
21 he is a role model for them. He brought this
22 up to me downstairs. He wants to try to do
23 whatever he can to change that, to break that
24 cycle if he can.

25 He is willing to do any sort of treatment

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1 that Your Honor might order: drug treatment or
2 anger management. If Your Honor can suspend
3 the sentence, give him any sort of probation,
4 he is willing to do that and address some of
5 these issues, Judge.

6 I believe that he also would like to
7 address Your Honor.

8 THE COURT: Certainly.

9 DEFENDANT: Your Honor, I'm been
10 getting high since I was sixteen years old. I
11 am trying to stay clean. When my daughter was
12 born in 2000, I got clean. If you look at my
13 record from 2000 on, I just have minor
14 incidents because I -- I backslide.

15 You know, right now my -- my mother
16 passed away in October. I ain't never really
17 got to show her anything really positive in
18 life. I did everything the way that my father
19 did.

20 Now, every day I'm looking at the news.
21 Every day I'm calling home and I'm seeing that
22 my son and his friends, they're dying, killing
23 one another, going to jail. These are children
24 that my son and my daughter are around every
25 day. It's only a matter of time before they

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1 get involved in the same thing that I got
2 involved in.

3 I ask you, I beg you, please let me go to
4 my family so that I can stop this -- I can't do
5 this anymore. I am thirty-eight years old. I
6 have a seventeen-year-old son out there and now
7 he's smoking weed. You know, -- "you know
8 better, you do better." He doesn't know any
9 better. All he sees is what I do.

10 And my daughter, her friends are getting
11 pregnant day by day. She doesn't see any
12 difference than what her mother did and what I
13 did. I need to go out there.

14 I want to start a mentoring program at my
15 church. I want to do different things now.
16 This is the first time in my life that -- I
17 mean, the young lady, K[REDACTED] she didn't lie on
18 me. I did hit her. I accept that, that
19 accountability. I did hit her. What she said
20 I did, I didn't do. But just by her doing
21 that, that was God's plan. That put me in a
22 position where the first time in my life my
23 whole life was in jeopardy. Thirty years of my
24 life was at stake. That would be thirty years
25 without my son, thirty years without my

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1 daughter. They wouldn't be able to see their
2 father, to see me make a change for the better.
3 I just want to go out there and make a change
4 and show them that they don't have to fall
5 victim to the way that we live. We can come
6 out of the situation that we're in.

7 I didn't have a chance to do it with my
8 parents, but I want my children to see me do
9 better.

10 I don't know what to tell you -- (pause)
11 -- it's a hard sell because I done been through
12 this so many times, I'm tired. Honestly, I'm
13 tired. Please give me a chance to get out
14 there and get my children away from the things
15 that I've been doing. I know that if something
16 happens to one of them that I am responsible
17 because I lead by example. I wasn't thinking
18 like a father. I was thinking with the mind of
19 an addict. I'm tired of being an addict. I
20 need to be a father. I need to be -- I need to
21 go back to my family and do the things that I
22 need to do to raise my children and be
23 productive in society.

24 Right now, I know what I was doing wasn't
25 right. I accept what I've done. I accept what

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1 I've done. I just ask you for this one chance,
2 sir.

3 THE COURT: Yes, sir. Appreciate it.
4 I think you're sincere. I think you've
5 probably been sincere a number of times,
6 because you've had a number of opportunities,
7 haven't you?

8 DEFENDANT: Yes, sir.

9 THE COURT: What is the longest you've
10 ever served an active sentence?

11 DEFENDANT: My longest active sentence
12 that I ever served was on this right here. To
13 spend a whole year in jail.

14 THE COURT: That may have been the
15 problem.

16 DEFENDANT: No. I've never had ---

17 THE COURT: Well, you're about to have.

18 DEFENDANT: I never had it where I was
19 facing thirty years of my life in jail. I've
20 had time to think.

21 THE COURT: And that is whose fault?

22 DEFENDANT: That's my fault.

23 THE COURT: Correct.

24 DEFENDANT: I accept that.

25 THE COURT: You and I know that all the

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1 things that we do in life, there are
2 consequences.

3 DEFENDANT: Yes, sir, and I accept
4 those.

5 THE COURT: Your children, the best
6 thing you can -- the best thing that we can do
7 for your children is to have them understand
8 the consequences.

9 DEFENDANT: Yes, sir.

10 THE COURT: That is what we are going
11 to try to do. We are going to start setting
12 the example today. The sentence of the court
13 on 14-4978 -- and the problem that we have, to
14 be candid with you, Mr. Seabrook, I wish we
15 could give -- I wish every sentence imposed
16 straight across the board was an eighty-five
17 percent sentence. I really do. It would help
18 me in imposing the sentence, how much
19 punishment to mete out. If somebody can
20 explain to me, I've yet to understand how an
21 assault and battery, first degree, is non-
22 violent but trafficking, which means that I had
23 too much drugs, is violent. I don't understand
24 that. I don't understand that one is one and
25 the other one is violent. But that's the way

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1 they choose to classify it. You and I both
2 know what that means. That means you're going
3 to serve maybe twenty-five to thirty percent of
4 any sentence imposed.

5 DEFENDANT: I understand that.

6 THE COURT: So I think that this is
7 the best punishment that I can give for you
8 considering your record, considering the
9 consistent violations that you've had. I think
10 you've earned this. Maybe your children will
11 understand 'you better stop now, because if you
12 don't you're going to be right where you are.'

13 The sentence of the court on each charge
14 -- 14-4978 and 14-4190, 13-5010 and 13-0058 is
15 nine (9) years and you're given credit for two
16 hundred ninety-five (295) days time service.
17 The sentences are concurrent. Good luck, sir.

18 (HEARING CONCLUDED)

19

20

21

22

23

24

25

State of South Carolina v Christopher William Seabrook

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STATE OF SOUTH CAROLINA)

)

CERTIFICATE

COUNTY OF CHARLESTON)

)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on March 2, 2015 before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Charleston, South Carolina
August 31, 2015

State of South Carolina

In the Court of Appeals

Christopher William Seabrook

Appellant,

v

The State of South Carolina

Respondant,

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MAR 11 2015

SC Court of Appeals

APPEAL FROM A SENTENCE IMPOSED BY THE COURT OF GENERAL SESSIONS

1. On the date of June 22, 2013 Appellant was arrested in the state of South Carolina, County of Charleston and charged with Possession With the intent to distribute a Controlled substance, Distribution of a Controlled Substance and Possession of A Controlled Substance within half-Mile of A School.
2. Appellant was assigned Jason T. King, Assistant public defender for Charleston County as Counsel on these charges
3. Appellant made bond June 26, 2013 and was rearrested May 8, 2014 for possession of Cocaine base. Appellant again made bail May 9, 2014 but was again arrested May 12, 2014 and charged with criminal Sexual conduct (1st Degree) and Kidnapping. Jason T. King represented Appellant on all Counts.
4. Appellant remained incarcerated in the Charleston County Detention Center until May 2, 2015 when Appellant accepted A plea deal and was sentenced to nine (9) years
5. Appellant now Appeals and claims his plea of guilty was involuntary due to his Sixth Admmendment Constitutional right to effective assistance of Counsel being violated in that :
 - (a) Assigned Counsel refused to provide appallant with a copy of his discovery on all drug charges, thus, refusing to inform appellant of evidence against him.

(b) Assigned Counsel refused to provide appellant with requested materials to include, but not limited to:

(I) bond hearing transcripts

(II) preliminary hearing transcripts

(III) copy of true bill indictments

(c) Assigned Counsel refused to contact any witnesses who could provide favorable testimony as well as produce evidence on appellants' behalf. Due to assigned Counsel's refusal to contact witnesses in a timely manner, evidence that could have been obtained, could no longer be obtained due to passage of time.

(d) Assigned Counsel encouraged Appellant to accept plea agreement and coached appellant on how to respond to judges questions about guilt even though Counsel had video bond recording in which victim admitted to lying about incident and requesting that charges be dropped because Appellant did not commit the offenses

(e) Assigned Counsel refused to file any requested motions on appellants behalf, to include, but not limited to:

(I) speedy trial

(II) Motion to dismiss

(f) June, 2013 Appellant contacted Assigned Counsel via Jail Kiosk informing him that his address changed from 4509 Ventura Drive to 1831 Dayton Street. Bench warrants were served on Appellant. May 14, 2014 and May 28, 2014 for failure to appear on cases 2013-GS-10-05-010 and 2013-GS-10-05-008. According to warrants, appellants new address. As a result appellants scheduled court appearance date was sent to the wrong address causing Appellate to miss court and be issued bench warrant

(g) Assigned Counsel has consistently refused to maintain contact with Appellant. He has never (not even once) responded to Appellants phone calls, fax, request or phone calls, fax and request from my family, friends and witnesses. Appellant has attempted multiple times to contact Counsel to no avail

- (h) Assigned Counsel supplied appellant with plea information that was erroneous. Counsel advised appellant to plead guilty to concurrent plea agreement and appellant would be pleading to Assault and battery 1st degree and drug charges would be concurrent, thus Appellant would have to only do the sentence for Assault and battery. Appellant was under the impression that the Criminal Sexual Conduct 1st degree would be dismissed, not that the assault and battery was to be plead as a lesser included offense of the Criminal Sexual Conduct. If Appellant was advised properly, Appellant would have demanded jury trial on all charges.
- (i) Assigned Counsel also informed Appellant that all the charges had to be plead on at once per plea agreement and Appellant could not plead to Assault without pleading to All Charges. Appellant was forced to plead guilty on all counts.
6. Appellant has contacted D. Ashley Pennington, Circuit public defender on several occasions to complain about the poor performance of Assigned Counsel, but got no response. Appellant also states that he is uneducated in law and legal procedure, however, when he got no response from D. Ashley Pennington he attempted to file his own motions with the Charleston County Clerk of Court. When Pro Se motions were filed but never ruled on, Appellant wrote the Supreme Court of South Carolina to complain. The Clerk of the supreme court responded by telling the appellant that as long as he was being represented by counsel, all pro se motions will be ignored save a motion to relieve counsel. Appellant filed a motion to relieve counsel February 12, 2015 but it was not ruled on by March 2, 2015 when Appellant plead guilty. Since Appellant's motion to relieve counsel was not ruled on, Appellant felt as if he had no choice except accept plea or go to trial and be convicted because his counsel refuse to defend him.
7. The Sixth Amendment provides, in pertinent part: "In all criminal prosecutions, The accused shall enjoy the right... to be informed of the nature and cause of

the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." 675 F.2d 1126, 1128 (CA10 1982)

"It has long been recognized that the right to counsel is the right to the effective assistance of counsel." *M'Nabb v. Richardson*, 397 U.S. 759, 771 n.14 (1970)

"If no actual 'Assistance' 'for' the accused's 'defence' is provided, then the constitutional guarantee has been violated." *United States v. Cronin* 466 U.S. 648, 664

Whether a man is innocent cannot be determined from a trial in which, as here, denial of counsel has made it impossible to conclude, with any satisfactory degree of certainty, that the defendant's case was adequately presented." *Betts v. Brady* 316 U.S. 455, 476 (1942)

8. Appellant pled guilty to Assault and battery 1st Degree as a lesser-included offense of Criminal Sexual Conduct 1st Degree. Appellant claims that the trial court did not have subject matter jurisdiction to accept Appellant's guilty plea because Assault and Battery 1st degree is not a lesser included offense of Criminal Sexual Conduct 1st degree.

9. Appellant was indicted of Criminal Sexual Conduct 1st degree. Both the caption of the indictment and the title preceding the text in the body of the indictment states that the offense is "Criminal Sexual Conduct 1st Degree".

"A criminal defendant is entitled to be tried only on indicted offenses" *State v. Jones*, 342 S.C. 248, 251, 536 S.E.2d 396, 397 (Ct. App. 2000). "It is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment" *State v. Cody*, 180 S.C. 417, 423, 186 S.E. 165, 167 (1936)

State v. McFadden 342 S.C. 629, 632, 539 S.E.2d 387, 389 (2000) states: "The test for determining if a crime is a lesser included offense is whether the greater of the two offenses includes all the elements of the lesser offense" Hope v. State 328 S.C. 78, 81, 492 S.E.2d 76, 78 (1997) says "If the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense." Also, Knox v. State 340 S.C. 81 530 S.E.2d. 887 (2000) states "If, under any circumstances, a person can commit the greater offense without being guilty of the purported lesser offense, then the latter is not a lesser-included offense."

Assault and Battery 1st degree includes the element of "Serious bodily injury" which is NOT an element of Criminal Sexual Conduct 1st degree, thus, it is not a lesser included offense

Anderson v. Anderson 299 S.C. 110, 115, 382 S.E.2d. 897, 900 (1989) says "The jurisdiction of a court over the subject matter of a proceeding is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties and should be taken notice of by the court." Carter v. State 329 S.C. 355, 495 S.E.2d 773 (1998) states "It is well settled that subject matter jurisdiction may be raised at any time, including for the first time on appeal in this court." State v. Funderburk 259 S.C. at 261, 191 S.E.2d at 522 states: "The acts of a court with respect to a matter as to which it has no jurisdiction are void."

The state did not have subject matter jurisdiction to offer Assault and Battery 1st Degree as a lesser included offense of Criminal Sexual Conduct 1st degree. Since subject matter jurisdiction cannot be waived, the acts of the court are void. The Appellant requests that the conviction of Assault and battery 1st degree be vacated. And the remaining charges which were part of a plea agreement including this charge, that they also be either vacated or reversed.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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March 19, 2015

Mr. Jason Thomas King, Esquire
O.T. Wallace Bldg.
101 Meeting St., 5Th Floor
Charleston SC 29401

Re: The State v. Christopher William Seabrook
Appellate Case No. 2015-000551

Dear Counsel:

This Court has received a notice of appeal filed by your client, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2014-04-15-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

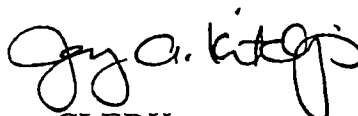
The State, Respondent,

v.

Christopher William Seabrook, Appellant.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,


CLERK

cc: Robert Michael Dudek, Esquire
Andrew Clifton Evans, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire
Christopher William Seabrook, 00291929

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS
 APPEAL FROM CHARLESTON COUNTY
 Court of General Sessions

R. Markley Dennis, Jr., Circuit Court Judge

INDICTMENT NOS.: 2013GS1005008, 2013GS1005010, 2014GS1004190,
 2014GS1004978
 WARRANT NOS.: 2013A1010203475, 2013A1010203477, 2014A1010202396,
 2014A1021000477
 APPELLATE CASE NO.: 2015-000551

THE STATE, ...RESPONDENT;

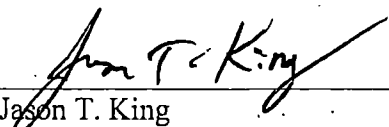
v.

CHRISTOPHER WILLIAM SEABROOK, ...APPELLANT.

EXPLANATION PURSUANT TO APPELLATE COURT RULE SCACR
 203(d)(1)(B)(iv)

Pursuant to Appellate Court Rule SCACR 203(d)(1)(B)(iv), the undersigned attorney can make no showing of any issues that may be reviewed upon appeal.

March 27, 2015


 Jason T. King
 Assistant Public Defender
 O. T. Wallace County Office Building
 101 Meeting Street
 5th Floor
 Charleston, SC 29401
 (843) 958-1850

Other counsel of record are:
 Andrew Evan, Assistant Solicitor
 O.T. Wallace County Office Building
 101 Meeting Street, 4th Floor
 Charleston, SC 29401
 (843) 958-1900

RECEIVED

MAR 31 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS
 APPEAL FROM CHARLESTON COUNTY
 Court of General Sessions
 R. Markley Dennis, Jr., Circuit Court Judge

INDICTMENT NOS.: 2013GS1005008, 2013GS1005010, 2014GS1004190,
 2014GS1004978
 WARRANT NOS.: 2013A1010203475, 2013A1010203477, 2014A1010202396,
 2014A1021000477
 APPELLATE CASE NO.: 2015-000551

THE STATE, ... RESPONDENT,

v.

CHRISTOPHER WILLIAM SEABROOK, ... APPELLANT.

PROOF OF SERVICE

I certify that I have served the Explanation Pursuant to Appellate Court Rule SCACR 203(d)(1)(B)(iv) on Andrew Evans, Assistant Solicitor, by hand delivering a copy of it to the Solicitor's Office for the Ninth Judicial Circuit, located at 101 Meeting Street, Charleston, South Carolina 29401, on March 27, 2015.

March 27, 2015


 Michelle Moore Trimble
 Paralegal to Jason T. King
 Assistant Public Defender
 Ninth Judicial Circuit Public Defender's Office
 O. T. Wallace County Office Building
 101 Meeting Street
 Fifth Floor
 Charleston, SC 29401
 (843) 958-1850

RECEIVED

MAR 31 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
Judge R. Markley Dennis, Circuit Court Judge

Christopher W. Seabrook

Appellant

v.

The State of South Carolina

Respondent

Appellate Case No 2015-000551

Initial Brief

RECEIVED

MAR 31 2015

SC Court of Appeals

State of South Carolina

South Carolina Court of Appeals

State of South Carolina,
Respondent

Appellate Case No 2015-000551

VS.

Christopher William Seabrook,
Appellant.

Initial Explanation

Indictment No. 2013-GS-1005008 Possession of other controlled substance in
Schedule I to V - 1st offense

Appellant was indicted under violation of S.C. code of laws Ann. Section 44-53-370 for being in possession of less than 28 grams of marijuana. Appellant pled guilty to 3rd offense under subsection (d)(3) and was sentenced to nine years. Appellant was sentenced under subsection 44-53-370(d)(3) which stipulates guidelines for cocaine, not marijuana. Under section 44-53-370(d)(4) "A person who violates this subsection with respects to twenty-eight grams or one ounce or less of marijuana or ten grams or less of hashish is guilty of a misdemeanor, and upon conviction.... for a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than than two hundred dollars nor more than one thousand dollars, or both."

Argument/Citations:

Court lacked subject matter jurisdiction to accept appellant's guilty plea for possession of controlled substance under subsection (d)(3) for cocaine. Appellant was not indicted for cocaine and possession of cocaine is not a lesser included offense of possession of marijuana (subsection (d)(4)).

State v. Jones, 342 S.C. 248, 251, 536 S.E.2d 396, 397 (Ct. App. 2000)

"A criminal defendant is entitled to be tried only on indicted offenses."

State v. Cody, 180 S.C. 417, 423, 186 S.E. 165, 167 (1936)

"It is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment."

Carter v. State, 329 S.C. 355 495 S.E.2d 773 (1998)

"A circuit Court has subject matter jurisdiction only if: (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the offense is a lesser-included offense of the crime charged in the indictment."

State v. Roof 298 S.C. 351 380 S.E.2d 828 (1989)

"defendant cannot be convicted of crime for which he is not indicted if it is not lesser included offense to that charge in indictment."

State v. McFadden 342 S.C. 629, 539 S.E.2d 387 (2000)

"The trial Court lacks subject matter jurisdiction to convict the defendant of a crime that is not a lesser included of the offense charged in the indictment"

Browning v. State, 320 S.C. 366, 465 S.E.2d. 358 (1995)

Matters of subject matter jurisdiction may be raised at any time

Indictment No. 2013-GS-1005010 Distribution Marijuana 1st offense

Appellant argues that Circuit Court lacked subject matter jurisdiction to hear plea on distribution of Marijuana 2nd offense where indictment only charged 1st offense. Appellant argues that his plea to 2nd offense deprived him of being on notice. Also increased potential punishment from 5 to 10 years. Furthermore, distribution of Marijuana 2nd has the added element of prior conviction, an element that would not have to be proven under first offense conviction, and not an element mentioned in indictments body or caption.

Citations

Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998)

"An indictment survives legal scrutiny if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon"

State v. Tabory 262 S.C. 136, 202 S.E.2d 854

an indictment passes legal muster if it "charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the statute be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided

State v. McIntire 221 S.C. 504, 71 S.E.2d 410

true test of sufficiency of indictment is whether it contains necessary elements of offense intended to be charged and sufficiently apprises defendant of what he must be prepared to meet

State v. Perry 87 S.C. 535, 70 S.E. 304

An "offense should be so plainly stated in the indictment as to enable the court looking alone to the indictment and the verdict to impose the sentence prescribed by law."

Indictment No. 2014-GS-10-4190 Possession > 1 gram Cocaine base

Appellant argues that Circuit Court lacked subject matter jurisdiction to hear guilty plea on possession of Cocaine base 3rd offense where indictment only charged 1st offense. Appellant argues that the charge of 3rd offense deprived him of being on notice of being charged with a felony where indicted charge (possession of Cocaine base 1st offense) is a misdemeanor and 3rd offense is a felony. Also 3rd offense changes the nature of offense as potential punishment increase from 3 to 10 years. Furthermore, Possession of Cocaine base

3rd offense has the added element of two prior convictions; elements that are not mentioned on indictments caption or body and would have to be proven to support a 3rd offense conviction but not a 1st offense conviction.

Citations

Carter v. State 329 S.C. 355; 495 S.E.2d 773

"An indictment survives legal scrutiny if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon."

State v. Tabory 262 S.C. 136, 202 S.E.2d 854

"an indictment passes legal muster if it 'charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged be easily understood and, if the statute be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided'."

State v. McIntire 221 S.C. 504, 71 S.E.2d 410

true test of sufficiency of indictment is whether it contains necessary elements of offense intended to be charged and sufficiently apprises defendant of what he must prepare to meet

State v. Perry 89 S.C. 535 70 S.E. 304

An "offense should be so plainly stated in the indictment as to enable the court looking alone to the indictment and the verdict to impose the sentence prescribed by law"

S.C. Code Ann. Section 17-19-100 (1996)

"an indictment may be amended at trial only if the amendment does not change the nature of offense charged."

Note: Amendment changed charge from a misdemeanor to felony and increased potential punishment increase from 3 to 10 years

Indictment No. 2014-GS-10-4978 Assault and battery 1st degree

Appellant argues that Circuit Court lacked subject matter jurisdiction to hear his plea on Assault and battery 1st degree as a lesser included offense of Criminal Sexual Conduct first degree. Appellant argues that Assault and battery first degree is not a lesser included offense of Criminal Sexual Conduct first degree.

State v. Cody, 180 S.C. 417, 423; 186 S.E. 165, 167

"It is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment

Carter v. State

A Circuit court has subject matter jurisdiction only if: (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of indictment; or (3) the offense is a lesser included offense of the crime charged in the indictment.

State v. Roof 298 S.C. 351; 380 S.E.2d 828

"defendant cannot be convicted of a crime for which he is not indicted if it is not lesser included offense to that charged in indictment."

State v. McFadden 342 S.C. 629; 539 S.E.2d 389

"The trial court lacks subject matter jurisdiction to convict the defendant of a crime that is not a lesser included offense charged in the indictment."

McFadden at 632; 389 id.

"The test for determining if a crime is a lesser included offense is whether the greater of the two offenses includes all the elements of the lesser offense"

Hope v. State, 328 S.C. 78, 81; 492 S.E.2d. 76, 78

"If the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense"

Knox v. State 340 S.C. 81 530 S.E.2d 887

"If, under any circumstances, a person can commit the greater offense without being guilty of the purported lesser offense, then the latter is not a lesser-included offense."

South Carolina Code Ann. Section 16-3-652 provides:

- (1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:
- (A) The actor uses aggravated force to accomplish sexual battery.
 - (B) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking or any other similar offense or act.

South Carolina Code Ann. Section 16-3-651(c) defines "Aggravated force" as:

the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.

State v. White 361 S.C. 407, 605 S.E.2d 540 n3 states "Assault and battery of a high and aggravated nature (ABHAN) is an unlawful act of violent injury accompanied by circumstances of aggravation. 'Circumstances of aggravation' is an element of ABHAN. Circumstances of aggravation include the use of a deadly weapon, the intent to commit a felony, infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, a difference in gender, the purposeful infliction of shame and disgrace, taking indecent liberties or familiarities with a female, and resistance to lawful authority

South Carolina Code Ann. 16-3-600 provides:

A person is guilty of assault and battery first degree if the person unlawfully:

- (A) Injures another person, and the act
- (I) involves nonconsensual touching of the private parts of a person, either under or above the clothing, with lewd and lascivious intent; or
- (II) occurred during the commission of a robbery, burglary, kidnapping, or theft; or
- (B) offers or attempts to injure another person with the present ability to do so, and the act;

(I) is accomplished by means likely to produce death or great bodily injury; or

(II) occurred during the commission of a robbery, burglary, kidnapping or theft.

Assault and Battery first degree is a lesser included offense of assault and battery of a high and aggravated nature

State v. Primus 349 S.C. 576, 581; 564 S.E.2d 103, 106 (2002).

ABHAN is a lesser included offense of first degree C.S.C.

Though 1st degree Assault and battery is a lesser included offense of Assault and battery of a high and aggravated nature and Assault and battery of a high and aggravated nature is a lesser included offense of Criminal Sexual Conduct first degree, does not automatically make Assault and battery first degree a lesser included offense of Criminal Sexual Conduct first degree.

"Even though two offenses failed the traditional elements test, the South Carolina Supreme Court held that, in order to have a uniform approach to Criminal Sexual Conduct and assault and battery of a high and aggravated nature offenses, Assault and battery of a high and aggravated nature was a lesser-included offense of first-degree Criminal Sexual Conduct." State v. Primus 349 S.C. 576; 564 S.E.2d. 103, (2002 S.C.)

So even though ABHAN is a lesser-included offense of C.S.C., it is because of practical reasons, not because it passed the 'elements' test set by State v. McFadden or State v. Hope. For this reason all 'lesser included offenses' of ABHAN, must be tested independently of ABHAN to see if they are lesser included offenses of CSC first degree.

Under traditional elements test, Assault and battery first contains the elements of 'Injury', also 'lewd and lascivious intent', two elements that do not have to be proven in Criminal Sexual Conduct 1st degree.

1) Injury: To be convicted of Assault and battery first degree it must be proven that "The person unlawfully injures another person" or "offers or attempts to injure another person with the present ability to do so, and the act is accomplished by means likely to produce death or great bodily injury." (emphasis added) C.S.C. 1st degree requires 'Sexual battery' and 'aggravated force'. Aggravated force does not mean injury. The threat of the use of a deadly weapon would be aggravated force under C.S.C. 1st degree (16-3-651(c)) which causes no injury. In fact, many C.S.C. cases have no injury, which is the reason for S.C. Code Ann. Section 16-3-675 which

states "The testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 through 16-3-658

(2) Lewd and lascivious intent -

Criminal Sexual Conduct first degree does not require proof of intent as Assault and battery first degree does

42 C.J.S. Indictments and Informations Section 218 states: "A lesser included offense cannot have a mental state greater than or different from that which is required for the charged offense, nor can it have the same or more serious injury or risk of injury as compared to the charged offense.

(Note also that Assault and battery first degree has a risk of "serious bodily injury" or "most likely to produce death").

All Arguments in appeal are based on the Circuit Courts Subject Matter Jurisdiction to hear appellants guilty plea. Though none of the matters were raised during trial, "Subject matter jurisdiction may be raised at any time, including for the first time on appeal"

Carter v. State 329 S.C. 355; 495 S.E.2d. 773 (1998) "Lack of Subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." Anderson v. Anderson 299 S.C. 110, 115; 382 S.E.2d 897, 900 (1989). Furthermore, "the acts of a court with respect to a matter as to which it has no jurisdiction are void State v. Funderburk, 259 S.C. 256, 261; 191 S.E.2d 520, 522.

Record on Appeal

Christopher W Seabrook 291929

4344 Broad. River Road

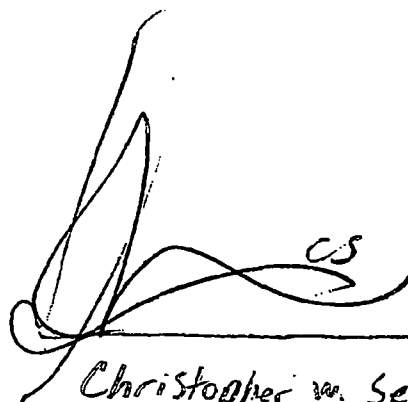
Columbia, SC 29010

Appellate Pro se

The Se

Attorney for respondent
Alan McCrory Wilson, Esquire
Attorney General
Robert Dennis Building Room 519
1000 Assembly Street
Columbia, SC 29201

MAY 30, 2015

A handwritten signature in black ink, appearing to read "CS" or "Senbrook", written over a horizontal line.

Christopher W. Senbrook

Pro Se

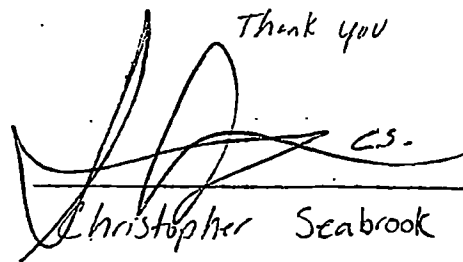
Christopher W. Seabrook
 291929/Kirkland Rd E F-3/112
 4344 Broad River Road
 Columbia, SC 29210

South Carolina Court of Appeals
 Jenny Abbott Kitchings, Clerk
 P.O. Box 11629
 Columbia, SC 29211

RE: Appeal

Please find enclosed a copy of my initial brief on my Appeal, Case number 2015-000551. Due to my status as an inmate in the South Carolina Department of Corrections, Reception and Evaluation stage of intake, I was unable to comply with all of the rules of 267 of SCACR (Example I don't have access to ink, typewriters or staples). Otherwise I have attempted to comply with the rules. Please file enclosed document and send me a copy for my records

Thank you

 CS.
 Christopher Seabrook

MARCH 30 2015

RECEIVED

MAR 31 2015

SC Court of Appeals

The South Carolina Court of Appeals

The State, Respondent,

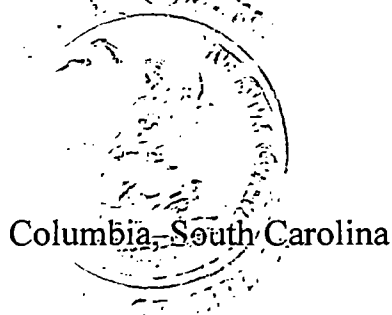
v.

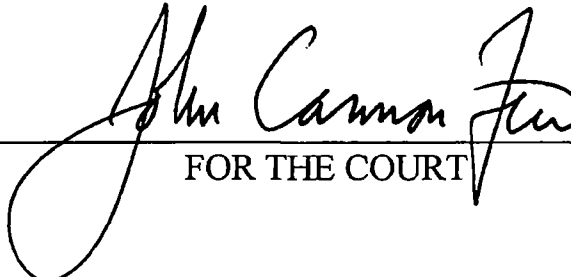
Christopher William Seabrook, Appellant.

Appellate Case No. 2015-000551

ORDER

Appellant has failed to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed, and the remittitur will be sent as required by Rule 221(b), SCACR.




FOR THE COURT

cc:

Christopher William Seabrook, 00291929

Jason Thomas King, Esquire

Robert Michael Dudek, Esquire

Andrew Clifton Evans, Esquire

Alan McCrory Wilson, Esquire

Salley W. Elliott, Esquire

FILED
6/17/15



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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August 06, 2015

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

REMITTITUR

Re: The State v. Christopher William Seabrook
Lower Court Case No. 2013GS1005008, 2013GS1005010,
2014GS1004190, 2014GS1004979
Appellate Case No. 2015-000551

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Christopher William Seabrook, 00291929
Jason Thomas King, Esquire
Robert Michael Dudek, Esquire

Andrew Clifton Evans, Esquire
Alan McCrory Wilson, Esquire
Salley W. Elliott, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF *Charleston**Christopher William Seabrook #291929*

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

2015-CP-10-3975

CIVIL ACTION COVERSHEET

-CP-

FILED
JUL 17 PM 1:56
JULIE J. ARMSTRONG
CLERK OF COURT

(Please Print)

Submitted By: *Christopher William Seabrook (Plaintiff)*

SC Bar #:

Telephone #:

Address: *Allendale C.F.*

Fax #:

P.O. Box 1151

Other:

Fairfax, SC 29827

E-mail:

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 <u> </u> -CP- <u> </u> | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☒ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex/Other | | | ☐ Administrative Law Judge (980) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual Predator (510) | | |

Submitting Party Signature:

*Christopher Seabrook*Date: *July 13, 2015*

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)2015-GP-10-3975
IN THE COURT OF COMMON PLEASChristopher William Seabrook #291929)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Attendale Correctional Inst. S.C.D.C.
P.O. Box 1151, Fairfax SC 29827
2. Name and location of Court which imposed sentence Charleston County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013-GS-100-5008 - Possession of Marijuana, 2013-GS-100-5010 -
Distribution of Marijuana

- (b) 2014-GS-100-4190 Possession of Cocaine Base
- (c) 2014-GS-100-4978 Criminal Sexual Conduct 1st degree
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 2, 2015 9 years each charge to run Concurrent
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. June 17, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

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

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

(A) Counsel's performance fell below the norm, Counsel failed to have all jail time served credited to defendant, Counsel failed to object to defective indictment, Counsel failed to investigate and study case prior to recommending defendant accept plea. Defendant's plea was involuntary due to Counsel supplying client with plea information that was erroneous. Counsel's erroneous advice and deficient performance prejudiced the defendant

(B) Circuit Court lacked subject matter jurisdiction to accept guilty plea for Assault And Battery 1st degree where indictment failed to include necessary elements of offense

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. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Counsel refused.
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Jason Thomas King, Public Defender, 101 Meeting Street, 5th floor
Charleston, South Carolina 29401
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. All
- ii. _____
- iii. _____

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

REVERSE And Vacate Conviction on Indictment 2014-GS-100-4978;

REVERSE And remand remaining Convictions

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

No

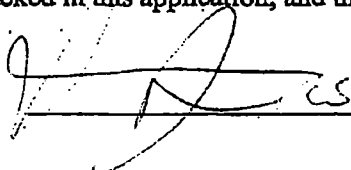
Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Christopher William Seabrook #291929, 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.



SWORN to and subscribed before me this 13th day of July, 2015.

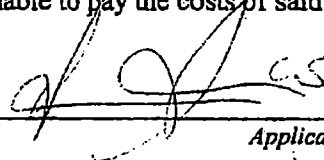
Debbie L. McCorky (L.S.)
Notary Public

My Commission Expires: July 10, 2024

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

I, Christopher William Seabrook #291929, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

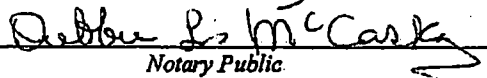
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

13th day of July, 2015.



Notary Public

My Commission Expires: July 10, 2024

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Christopher William Seabrook
Plaintiff,

vs.

STATE OF SOUTH CAROLINA
Defendant.

IN THE COURT OF COMMON PLEAS

Post Conviction Relief

Case No. 2015-CP-10-3975

AMENDMENT TO POST-CONVICTION
RELIEF APPLICATION

FILED
2015 SEP 28 AM 9:
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

1. Plaintiffs Application for Post Conviction Relief should be changed to show the following:

1. Place of detention: Kershaw C.I. S.C.D.C., 4848 Goldmine Hwy,
Kershaw, SC 29067

2. Application for Post-Conviction Relief should be amended to include the following:

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

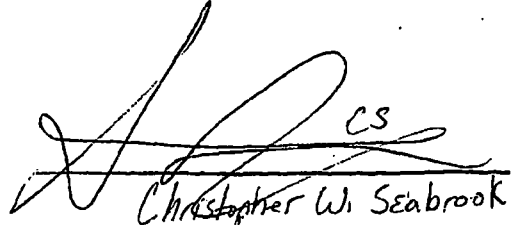
11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(A) Counsel failed to conduct discovery, Counsel failed to develop working relationship with Client, Counsel was deficient in failing to enhance bargaining position through investigation, conduct an independent investigation, identify the aggravating and mitigating circumstances, inform the Client of the evidence against him, file meaningful pretrial motions or advise petitioner of collateral consequences of pleading guilty. Counsel failed to enforce deal made by Client and arresting officer. Counsel allowed defendants prior uncounseled misdemeanor convictions to enhance sentence

(c) Counsel failed to inform client of elements of charged offense or how clients conduct satisfies the elements of charge

Respectfully Submitted,

September 21, 2015


Christopher W. Seabrook
#291929 Kershaw C.I.
4848 Goldmine Hwy
Kershaw, SC 29067

Christopher William Seabrook
 Inmate # 291929 Kershaw
~~Kershaw~~ Correctional Institute
 4848 Goldmine Hwy
 Kershaw, SC 290

The Honorable Julie F. Armstrong
 Clerk of Court Charleston County
 100 Broad Street, Suite 106
 Charleston, SC 29401

Re: Post-Conviction Relief
 Case no. 2015-CP-10-3995

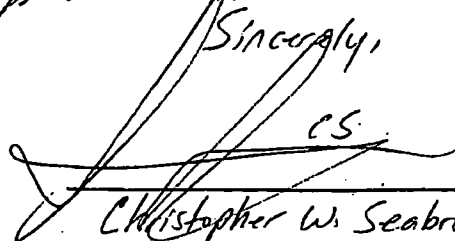
Julie J. Armstrong:

Please find enclosed a motion to amend my post-conviction relief application filed July 17, 2015. Please file and send me a copy of file stamped documents for my records.

Also, due to me being transferred, please note that my address has changed from Allendale C.I., P.O. Box, 1151, Fairfax, SC 29827 to Kershaw C.I., 4848 Goldmine Hwy, Kershaw, SC 29067

Thank you for your time and patience in this matter.

Sincerely,



Christopher W. Seabrook
 Inmate # 291929 Kershaw C.I.
 4848 Goldmine Hwy
 Kershaw, SC 29067

September 21, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Christopher William Seabrook, #291929,	)	2015-CP-10-3975
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed July 17, 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 Charleston County Clerk of Court. The Applicant was indicted at the July 2013 term of the Charleston County Grand Jury for one (1) count of Distribution of Marijuana and Possession with the Intent to distribute (2013-GS-10-5008, 5010). He was further indicted at the July 2014 term of the Charleston County Grand Jury for one (1) count of Possession of Cocaine Base (2014-GS-4190); and the September 2014 term of the Charleston County Grand Jury for one (1) count of Criminal Sexual Conduct, 1st Degree (2014-GS-10- 4978). Jason King, Esquire, represented him. The Applicant pled guilty as indicted to the 2013 indictments and to a lesser included offense of Assault and Battery, 1st Degree. The Honorable R. Markley Dennis sentenced Applicant to imprisonment for nine (9) years for each charge; all to be served concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Seabrook, 2015-UP-551 (Filed on June 17, 2015). The Remittitur was issued on August 6, 2015.

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

II.

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

1. "Counsel rendered Ineffective Assistance;"
2. "Court lacked subject matter jurisdiction to accept guilty plea."

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

III.

Respondent submits that Applicant's allegation of Ineffective Assistance of Counsel is without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

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

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

IV.

The Respondent submits that the Applicant's allegation that the trial 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 trial 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, 472 S.E.2d 38 (S.C. 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. The 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.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

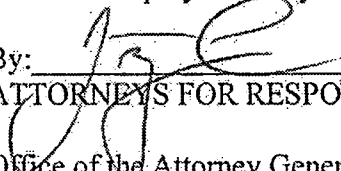
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

February 23, 2016.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
CHRISTOPHER W. SEABROOK, #29129	)	2015-CP-10-3975
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Rodney D. Davis, Esq.
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

DATED this 23rd day of February, 2016.


 Elizabeth McLellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CHRISTOPHER W. SEABROOK
PLAINTIFF,
VS
STATE OF SOUTH CAROLINA
DEFENDANT.

MOTION TO RELIEVE AS COUNSEL

DOCKET NO. 2015-CP-10-3975

JULIE J. ARMSTRONG
CLERK OF COURT

2016 AUG 26 PM 2:51

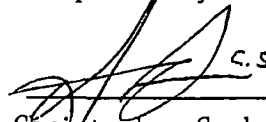
FILED

THE ABOVE NAMED DEFENDANT, filing pro se, would show unto the court;

- 1) That the plaintiff has a post conviction relief action pending in this court
- 2) That September 15, 2016, Rodney D. Davis was appointed by the court as counsel to the plaintiff in the above action.
- 3) That plaintiff's appointed counsel is ineffective and falls below an objective standard of reasonableness.
- 4) That plaintiff's counsels ineffectiveness greatly prejudices the plaintiff
- 5) That the plaintiff believes to be entitled to effective assistance of counsel as provided in the 6th amendment of the United States Constitution, and Article I section 14 of the South Carolina Constitution.

PLAINTIFF THEREBY MOVES to have Rodney D. Davis relieved as counsel and request that plaintiff be allowed to continue pro se.

Respectfully Submitted


Christopher Seabrook
filing pro se

Charleston, South Carolina

Date: 8-24, 2016

STATE OF SOUTH CAROLINA

County of ☒ Charleston ☐ Berkeley

Christopher William Seabrook

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case No. 2015-CP-10-3975

ORDER

2015-CP-10-3975

2015 SEP 16 AM 9:03

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: _____ denied _____ granted _____ under advisement; a formal order will be filed (see below - No.6)
2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby _____ granted _____ denied _____ under advisement, based upon the _____ statute of limitations and/or _____ the successive nature of the application or _____ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or _____ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.
4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; therefore, this case is dismissed _____ with prejudice _____ without prejudice.
5. Other: This matter is confirmed until the Dec. 2016 Charleston County PCR TERM with consent of both parties
6. The court further orders:

The _____ Attorney General _____ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within _____ days.

Both sides are directed to submit proposed orders to the court and to serve the orders on each other within _____ days.

The court does not request proposed orders.

IT IS SO ORDERED.

Date: 9.15.16
Charleston, S.C.

Presiding Judge

Court Reporter: Amanda Haffenden
Attorney for Plaintiff: Rodney Davis
Attorney for Defendant: Rutledge Johnson

Revised 12/10/04

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
3 _____) Case No. 2015-CP-10-3975
4 CHRISTOPHER W. SEABROOK)
5 Applicant,)
6 vs.) Transcript of Record
7 STATE OF SOUTH CAROLINA,)
8 Respondent.) DATE: December 8, 2016
9 _____)

10 B E F O R E:

11 THE HONORABLE G. THOMAS COOPER

12

13

14 A P P E A R A N C E:

15

16 ALICIA OLIVE
17 Attorney for the Applicant

18

19 RODNEY D. DAVIS
20 Attorney for the Respondent

21

22

23 Karen V. Andersen, RMR, CRR
24 Circuit Court Reporter

25

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EXHIBITS

Exhibit	Description	Identification	Evidence
P-1	Sentencing sheet	45	48

1 THE COURT: Ms. Olive, proceed.

2 MS. OLIVE: This is Christopher Seabrook,
3 2015-CP-10-3975. Mr. Seabrook was indicted in 2013 for
4 distribution of marijuana and possession with intent
5 distribute marijuana. He was subsequently indicted in 2014
6 for criminal sexual conduct in the first degree and
7 possession of cocaine base, which is a third or subsequent
8 offense.

9 He pleaded guilty on March 2nd, 2015, to the
10 lesser-included offense of assault and battery first degree
11 and to the other charges as indicted. That was before the
12 Honorable R. Markley Dennis.

13 Pursuant to a recommendation of concurrent
14 sentencing, Judge Dennis sentenced him to nine years on all
15 charges to run concurrently.

16 Mr. Seabrook filed a notice of appeal, which was
17 dismissed by a written order dated June 17th, 2015, by the
18 Court of Appeals. The remittitur was returned on August 6th,
19 2016. He filed his PCR on July 17th, 2015, in which he
20 alleges ineffective assistance of counsel and that the court
21 lacked subject-matter jurisdiction to accept his plea.

22 Mr. Seabrook is present in the courtroom today
23 represented by Mr. Rodney Davis. I will turn it over to
24 Mr. Davis at this time.

25 THE COURT: Mr. Davis.

1 MR. DAVIS: Thank you, Your Honor. May it please
2 the Court. Rodney Davis for Christopher Seabrook. Your
3 Honor, first of all, I'm showing Mr. Seabrook correspondence
4 I have from general counsel for the Department of
5 Corrections. And here, of course, I will appreciate you
6 asking him about risks and benefits of going forward. We are
7 prepared to go forward. I expect he wants to go forward, but
8 general counsel sent this to me just last Friday.

9 Mr. Seabrook is currently housed at Kershaw
10 Correctional Institution; been there since September 19th of
11 2016. His projected release date is February 2nd, 2019. His
12 projected parole eligibility was May of this last year. And
13 then --

14 THE COURT: May 16?

15 MR. DAVIS: Yes, Your Honor. Also indicates on
16 August of this year, so just four months ago, not quite, he
17 had a parole hearing that was denied. Of course, he should
18 be eligible in a year for another parole hearing. So I just
19 put that on the record, so when you go over the advisement
20 with him, Your Honor.

21 THE COURT: All right. Mr. Seabrook?

22 MR. SEABROOK: Yes, sir.

23 THE COURT: Good morning, sir.

24 MR. SEABROOK: Good morning, sir.

25 THE COURT: You want to go forward with this PCR at

1 this time?

2 MR. SEABROOK: Yes, sir.

3 THE COURT: Has your lawyer explained to you the
4 risk of going forward? In the event I see that your
5 allegations are correct, the only thing I can give you is a
6 new trial on all charges. In other words, this is not an
7 appeal. I can't say that the decision of Judge Dennis was
8 wrong or inaccurate. All I can do is send it back and let
9 you be tried on all of your indictments. And I'm not sure
10 exactly the way these things fell out, but you were
11 apparently facing a good bit of time on these indictments.
12 Do you understand that?

13 MR. SEABROOK: Yes, Your Honor.

14 THE COURT: All right.

15 MR. DAVIS: Judge, one thing I can tell you is,
16 obviously, the most -- literally and figuratively, the most
17 serious one would have been he started out with an indictment
18 for criminal sexual conduct first degree That's
19 2014-GS-10-4978. And so that would be up to 30 years, 85
20 percent, also a strike.

21 At sentencing, since it was a smaller offense, there
22 was no registry. Of course, he would be subject to registry
23 and subject to potential sexually violent predator if
24 convicted of that.

25 THE COURT: Yes. Plus, he's got possession with

1 intent to distribute marijuana and distribution and
2 possession with intent distribute. So he's got another
3 probably at least 10 years tacked on to that.

4 In other words, the judge can run them all
5 consecutively. In other words, you are facing a potential of
6 30 or 40 years in jail --

7 MR. SEABROOK: I understand, sir.

8 THE COURT: -- if you are successful.

9 MR. SEABROOK: I understand, sir.

10 THE COURT: And you still wish to go forward with
11 this PCR?

12 MR. SEABROOK: Yes, Your Honor.

13 THE COURT: All right. Thank you very much.

14 MR. DAVIS: Your Honor, if I can have just one
15 moment.

16 Thank you, Your Honor. We would call Mr. Seabrook
17 to the stand.

18 THE COURT: Come around, Mr. Seabrook.

19 CHRISTOPHER W. SEABROOK,
20 having been duly sworn, testifies as follows:

21 THE CLERK: Please state your first and last name,
22 and spell your last loudly and clearly into the microphone.

23 THE WITNESS: Christopher William Seabrook.
24 Seabrook, S-e-a-b-r-o-o-k.

25 DIRECT EXAMINATION

1 BY MR. DAVIS:

2 Q. Mr. Seabrook, let's get a little background from you
3 first. Where were you born, sir?

4 A. Charleston, South Carolina, sir.

5 Q. Born and raised here?

6 A. Yes, sir.

7 Q. And how far did you go in school?

8 A. I actually have a GED, sir.

9 Q. So how far did you go in school?

10 A. Oh, 8th grade.

11 Q. And did you obtain a GED while you've been
12 incarcerated?

13 A. Yes, sir.

14 Q. What's your date of birth, sir?

15 A. , 1976.

16 Q. And what kind of work were you doing before you were
17 incarcerated?

18 A. I was fixing computers, sir.

19 Q. Do you have children?

20 A. Yes, sir.

21 Q. How many?

22 A. I have four children.

23 Q. You're currently serving a sentence in the
24 Department of Corrections for a guilty plea on four different
25 charges; is that right?

1 A. Yes, sir.

2 Q. And who was your attorney that represented you when
3 you received the sentence on these four charges?

4 A. Mr. Jason King.

5 Q. Were these charges pursuant to a trial or a guilty
6 plea?

7 A. A guilty plea, sir.

8 Q. And were they all handled at one time?

9 A. Yes, sir.

10 Q. They were, in fact, separate incidents, though,
11 right?

12 A. Yes, sir.

13 Q. I believe the oldest incident was two drug charges
14 from June of -- an incident date of June of 2013; do you
15 recall that?

16 A. Yes, sir.

17 Q. Two charges of distribution or possession with
18 intent distribute marijuana, correct?

19 A. Yes, sir.

20 Q. There was a separate drug charge from April of 2014;
21 is that correct?

22 A. Yes, sir.

23 Q. That was possession of crack cocaine?

24 A. Yes, sir.

25 Q. And then, finally, there was a charge from May of

1 2014 as well; is that right?

2 A. Yes, sir.

3 Q. What were you arrested for? What were you
4 originally charged with from that incident?

5 A. My original charge was criminal sexual conduct in
6 the first degree.

7 Q. Judge Cooper has a transcript of the plea, but I
8 want to deal with these individually just a little bit. As
9 to all three of them, do you have complaints about entering
10 into the plea for all of them?

11 A. Yes, sir.

12 Q. Okay. And are those complaints directed at your
13 attorney's performance?

14 A. Yes, sir.

15 Q. In general, as to all of these three incidents, how
16 many times would you say you met with Mr. King?

17 A. You mean to actually discuss the cases? Once.

18 Q. Were there any other meetings with Mr. King?

19 A. There was a meeting where he came and showed me a
20 video of my arrest.

21 Q. During the meeting when he showed you the video OF
22 your arrest -- for which incident?

23 A. For the drug charges, sir.

24 Q. Well, we've got two sets.

25 A. I apologize. The marijuana charges.

1 Q. We've got to talk separately so she can take
2 everything down.

3 A. Yes. I apologize.

4 Q. The video of the arrest for the --

5 A. Marijuana charges, sir.

6 Q. During that meeting, were there any discussions
7 about that case other than seeing the video?

8 A. I attempted to; however, he said he had seven
9 pending jury trials and he really didn't have time to discuss
10 the case.

11 Q. Did he make any comment at that time as to his
12 opinion on whether the two marijuana charges should be a
13 trial or a guilty plea?

14 A. No, sir.

15 Q. Let me be specific about this, Mr. Seabrook. Do you
16 recall any meetings, any discussions about the crack cocaine
17 charge?

18 A. We've never discussed the crack cocaine charges,
19 sir.

20 Q. Other than the date when you saw the video of the
21 arrest, has there been any other discussions about the
22 marijuana charges?

23 A. There has never really been a discussion about the
24 marijuana charges, sir.

25 Q. Moving on to the last one, criminal sexual conduct

1 in the first degree, you are aware, of the three incidents,
2 this is the most serious case?

3 A. Yes, sir.

4 Q. Let me back up for a second, just to be clear. Did
5 Mr. King ever talk to you about the range of punishment for
6 the possession of crack cocaine?

7 A. At the plea.

8 Q. So that's a yes?

9 A. Yes, sir, at the plea.

10 Q. As to the marijuana charges, was the range of
11 punishment on each one of those discussed?

12 A. At the plea.

13 Q. And then, finally, on criminal sexual conduct, was
14 the range of punishment discussed?

15 A. At the plea, sir.

16 Q. Did it seem to you that Mr. King was focused on one
17 of these sets of charges to the extent of the others?

18 A. Honestly, I could not say he was focused on any of
19 the charges. I had actually one meeting with him at a bond
20 revocation and we actually got into an argument for his lack
21 of diligence on the case. And he said, well, I'm going to
22 get you a plea. And I guess that was in November. And
23 January he said, I got you a plea.

24 Q. Was he obtaining this plea at your request?

25 A. After I found out that I couldn't, like, get off the

1 case, get him off the case, I just gave up, sir. So it was
2 at my request later on.

3 Q. Let's talk about that for a second. What attempts
4 did you make to try to have Mr. King relieved from your case?

5 A. I sent several kiosk requests to, I think, Lorelle
6 Proctor, Ashley Pennington. I wrote the Department of
7 Indigent Defense. I wrote every place I knew how to get him
8 off my case. And I actually filed -- I filed a motion to
9 relieve him as counsel.

10 Q. Let's back up for a second just so Judge Cooper will
11 understand. When you say you used the kiosk, you are talking
12 about a system at the Charleston County jail to be able to
13 get and send messages?

14 A. Yes, sir.

15 Q. And when you mentioned that you sent a message to
16 Ashley Pennington, who was your understanding that Ashley
17 Pennington was at that time?

18 A. Just to my understanding, I thought Ashley
19 Pennington was the person who was actually assigned public
20 defender. I don't know too much about the system, sir.

21 Q. Do you think he was Jason's boss?

22 A. Yes, in a way, sir.

23 Q. And when you say you sent a message to Lorelle
24 Proctor, who did you think she was in relation to Mr. King?

25 A. Well, I thought that was also a management,

1 assistant management type of deal, sir.

2 Q. Your response to all of that activity about trying
3 to have Mr. King relieved, was there ever a court hearing on
4 that matter?

5 A. No, sir. Although I wrote the Supreme Court, and
6 they wrote me back and they forwarded a letter to Mr. King
7 about the complaints I had with him. And they told me that
8 since I was represented by counsel, that there was no such
9 thing as what they call, I guess, hybrid representation. And
10 they said that I would have to file a motion to relieve him
11 as counsel. I think -- I can't remember something vs.
12 Washington, Strickland v. Washington, or something of that
13 sort, Anders v. California, something like that. I attempted
14 to file the motion and it was never ruled on.

15 Q. Instead of talking about any type of plea on these
16 charges, was there ever any discussion between you and
17 Mr. King about a trial on the crack cocaine charge?

18 A. We never discussed the drug charges, period. We
19 never discussed them. We only discussed criminal sexual
20 conduct.

21 Q. Okay. So I'm going to combine them together. Both
22 crack cocaine and the two marijuana charges, were there any
23 discussions of any defenses at trial?

24 A. No, sir. And I would like to add, I never even
25 received a copy of the Rule 5, of which I requested from him

1 several times, sir.

2 Q. And we are talking about the three drug charges,
3 right?

4 A. Yes, sir. I never received a Rule 5. I wrote him
5 several times asking about my charges in general. I have
6 never received a response from him.

7 Q. Given the discussions or lack of discussions, had
8 you asked for a trial on any of the three drug charges, do
9 you feel that Mr. King was prepared to give you a trial?

10 A. No, sir. And to be honest, that's why I took the
11 plea. I begged him to plead, because I know it was stupid,
12 but I read this 365-day rule that Judge Toal had put in,
13 *State v. Langford*, and I was like, well, it takes a year to
14 go to trial and it was almost my -- my year was almost up.
15 And he had done nothing on the case. Therefore, I got
16 scared. And I was like, if I go to trial, I'm going to get
17 convicted because he didn't do anything on the cases.

18 Q. Let's stay with that thought. Other than showing
19 you a video, piece of evidence that was video on the two
20 marijuana charges, what investigation are you aware of that
21 Mr. King did on either/or any of the drug charges?

22 A. None, sir.

23 Q. You've testified he didn't provide you a copy of the
24 discovery on any of the drug charges. Did he ever review
25 anything other than videos on the drug charges?

1 A. I don't even know, sir. He never discussed them;
2 never discussed them with me.

3 Q. Let's focus on the marijuana charges for just a
4 second.

5 A. Yes, sir.

6 Q. Prior to this plea on all the charges and when you
7 ultimately pled to second offense, two second offense
8 marijuana charges, was there some time prior an option to
9 plead to something lower on the marijuana charges?

10 A. From my understanding, that I was supposed to plead
11 to possession of marijuana, first offense, and distribution
12 of marijuana, first offense.

13 Q. Why didn't that happen?

14 A. Apparently, and I actually did checking, there was a
15 court date, and I was not informed of the court date.
16 Because I had wrote to Mr. King on the jail kiosk system
17 informing him prior to my release that my address had changed
18 and that my correspondence should be forwarded to my new
19 address. However, due to me being released, the jail, Ms.
20 Singleton, I think that's her name, she never forwarded the
21 request to him to change my address.

22 Q. Let me get something that may be very obvious on the
23 record. Your address on the crack cocaine, you bonded out on
24 that charge, correct?

25 A. Yes.

1 Q. You were arrested on the two marijuana charges and
2 you bonded out on that?

3 A. Yes.

4 Q. And you were arrested on the criminal sexual conduct
5 and you remained in until the guilty plea?

6 A. Yes, sir.

7 Q. So it was between release on the two marijuana
8 charges and before arrest on the criminal sexual conduct that
9 there was a missed court date?

10 A. Actually, the court date that they said I missed was
11 before the possession of crack cocaine charge.

12 Q. And how is it you found out about that court date?

13 A. I didn't find out about the court date until I
14 caught the -- two days after I caught the criminal sexual
15 conduct charge and they brought me into court on the
16 revocation of bond, and they served me a bench warrant
17 stating that I had missed court.

18 Q. So it was when you received the bench warrant
19 paperwork, that's the first you knew about a prior court
20 date?

21 A. Yes, sir. And my bondsman didn't know about a court
22 date either. I was actually working for my bondsman at the
23 time. I was doing her computers.

24 Q. So to be clear, other than what was pled to on March
25 2nd, 2015, did Mr. King ever relay to you another offer?

1 A. No, sir.

2 Q. Mr. Seabrook, have you ever been the part of a
3 criminal trial?

4 A. No, sir. Oh, excuse me, sir.

5 Q. Just a second. Mr. Seabrook, we are going to start
6 to move over and talk about the criminal sexual conduct here
7 in a second.

8 Your Honor, forgive me on this.

9 But, Mr. Seabrook, there was another charge along
10 with that as well. You originally were arrested on another
11 charge as well, correct?

12 A. Yes.

13 Q. What was the other charge?

14 A. It was kidnapping.

15 Q. And just to be clear, we went over this at the
16 beginning, but kidnapping carries in South Carolina up to 30
17 years, 0 to 30. Do you understand that?

18 A. Yes, sir.

19 Q. It's also a 85 percent offense. Do you understand
20 that?

21 A. Yes, sir.

22 Q. And just to be clear, I'll ask you now, but you've
23 been asked at the beginning, knowing that that charge could
24 come back if we are successful today, do you still wish to go
25 forward on this hearing?

1 A. Yes, sir.

2 Q. All right. So now let's shift gears and talk about
3 that case.

4 A. Yes, sir.

5 Q. What, if any, information was provided to you by
6 Mr. King pertaining to the accusations of the accuser?

7 A. Actually, sir, at the bond hearing, the victim
8 recanted her statement and admitted to lying. And I
9 requested that Mr. King receive the video at my bond
10 revocation hearing. Two days later, Mr. King didn't speak to
11 me before the hearing, however, in the middle of the hearing,
12 he whispered in my ear, he said, I got the video you asked
13 for. And that was it.

14 Q. Were you ever able to watch that video?

15 A. No, sir. I started to believe that he didn't have
16 the video. I started to seriously doubt that he had the
17 video, because I asked him several times to view the video.
18 And the one time that he came with his laptop to show me the
19 arrest from my drug charges, I was like, sir, let me see the
20 video of the bond hearing. And he said, oh, I forgot that
21 video. And I began to have serious doubts as to whether he
22 actually obtained it.

23 Q. Let's back up just for a second. Judge Cooper is
24 not a local judge. When you go for your original bond
25 hearing, you're at the Charleston County jail, correct?

1 A. Yes, sir.

2 Q. You are brought into a small room with a camera,
3 correct?

4 A. Yes, sir.

5 Q. You are the only person in that room?

6 A. Yes, sir.

7 Q. Maybe a guard or two?

8 A. No, just by yourself now.

9 Q. You are able to see into a courtroom through a video
10 screen; is that right?

11 A. Yes, sir. I can only see the judge.

12 Q. You can see the judge in the other courtroom?

13 A. Yes, sir.

14 Q. You know it's being recorded?

15 A. Yes, sir.

16 Q. You have to sign a release on that, correct?

17 A. Yes, sir.

18 Q. Were you able to see anyone other than the judge?

19 A. No, sir.

20 Q. Were you able to hear anyone other than the judge?

21 A. Yes, sir.

22 Q. And it's that hearing in which you heard the accuser
23 recant the testimony?

24 A. Yes, sir. The accuser recanted the testimony. And
25 Katie from PAR, People Against Rape, she was there. And she

1 said she understood that the young lady had lied. And she
2 said that -- she actually requested that the charges be
3 dismissed. And the bonds lady -- I mean, the judge setting
4 the bond said that she could not dismiss the charge.
5 However, in light of the fact that she told the truth, she
6 gave low bond.

7 Q. What was your bond on the kidnapping?

8 A. 25,000 apiece, sir.

9 Q. Mr. King responded to you about the video and
10 indicated that he had obtained that video we were just
11 talking about, correct?

12 A. He told me. He never put it in writing, but he told
13 me during the hearing.

14 Q. You never saw that video?

15 A. I never saw the video, sir.

16 Q. Was it ever indicated to you that Mr. King or his
17 staff had spoken with anyone from PAR, People Against Rape?

18 A. No, sir.

19 Q. Was there any indication to you that they had spoken
20 with the accuser in this case?

21 A. No, sir.

22 Q. Can you tell the judge what your relationship is to
23 the accuser?

24 A. That's my child's mother and my on-and-off
25 girlfriend. We were staying together.

1 Q. Where was the crimes of kidnapping and criminal
2 sexual conduct alleged to have occurred?

3 A. In a hotel we were staying in, sir.

4 Q. Was there any indication from Mr. King that he or
5 any of his staff spoke with the hotel staff?

6 A. No, sir.

7 Q. Or obtained any videos in the hotel?

8 A. No, sir.

9 Q. Let me see if I got your testimony correctly. You
10 met with him one time to see the video of your marijuana
11 arrest, right?

12 A. Yes, sir.

13 Q. You certainly met with him on the date of your plea,
14 Mr. King, correct?

15 A. Yes, sir.

16 Q. And there was one other meeting generally to discuss
17 the case; is that your testimony?

18 A. Yes, sir.

19 Q. So would it have been the final meeting before the
20 plea when you actually discussed the sentence sheets?

21 A. The plea -- before I walked to the courtroom, yes,
22 sir, we discussed it. We discussed the sentencing sheets.

23 Q. Is that when he discussed the range of punishment
24 with you?

25 A. Yes, sir. I was to understand that I would not get

1 any more than what I would get for the assault.

2 Q. Let me back up for a second on that. When he's
3 meeting with you, was that here at the courthouse, Charleston
4 County Courthouse?

5 A. Yes, sir.

6 Q. Down at the basement lockup or one of the rooms
7 outside of the courtrooms?

8 A. One of the rooms downstairs in the basement, I
9 guess.

10 Q. During that conversation, what was -- was his advice
11 to you to reject the offer and go to trial, or to take the
12 offer?

13 A. Actually, there wasn't really any advice. He put it
14 in my face, he said, here, sign these. And I asked him, I
15 said, you know, on the drug charges, I'm looking at the bench
16 warrants and the bench warrants say first offense and
17 possession of marijuana. I said, but these say second
18 offense. I said, I need to see the indictments to see what I
19 was indicted for. And he threw his hands up and said, are we
20 going to go through with this or not? And I signed the
21 paperwork. And I went here and signed the paperwork. So we
22 never really got deep into the -- he never said -- all he
23 said, are you going to sign it or not? And that was it.

24 Q. You understood you were coming to court that day to
25 plead guilty to all these charges?

1 A. Yes, sir, I understood. Yes, sir.

2 Q. You were not coming to court to come to trial?

3 A. Yes, I understood that, yes, sir.

4 Q. At any time, perhaps during that discussion, did
5 Mr. King ever talk to you about the Grand Jury process
6 in Charleston County?

7 A. No, sir. He would not even show me the indictments.

8 Q. Was there any comment ever from Mr. King about an
9 expected outcome on the trial, either guilty or not guilty,
10 or an expected outcome on the sentence if you went to trial?

11 A. No, sir. He did, however, say the judge is not
12 going to be worried about the drug charges; the judge is only
13 concerned about the assault charge.

14 Q. And is that why you believed you would get no more
15 than you would get on the assault for everything?

16 A. Yes, sir.

17 Q. As to any of the charges, certainly the drug
18 charges, was there any discussion about chain of custody of
19 evidence?

20 A. No, sir.

21 Q. Any discussion about how evidence might be blocked,
22 attempt to be blocked if it went to trial?

23 A. No, sir.

24 THE COURT: If what?

25 MR. DAVIS: How it might be blocked if it went to

1 trial.

2 BY MR. DAVIS:

3 Q. Was there any discussion about the accuser's
4 statements in the kidnapping and criminal sexual conduct
5 case?

6 A. The only thing he said, he told me that -- because I
7 told him I had spoke to the victim several times on the
8 phone. And they had recorded telephone conversations with me
9 and her talking. And she said she would not show up for
10 trial. And he told me I could get convicted without her
11 showing up for trial.

12 Q. In the meeting, preparing for the potential guilty
13 plea, what, if any, discussions did Mr. King have with you
14 about questions from the judge or answers that you needed to
15 give the judge?

16 A. He told me that the judge is going to ask me if his
17 performance was good, and I was to tell him yes. He said, if
18 the judge was to ask me if I was promised anything, I was to
19 say no. He asked me -- basically, he asked me -- he told me
20 what the judge was most likely to ask me and told me how to
21 answer.

22 Q. And just to be clear, the only charge dismissed,
23 completely dismissed at this plea to multiple charges, was
24 the kidnapping, correct?

25 A. Yes, sir.

1 Q. Now, you understood you were arrested for criminal
2 sexual conduct first and kidnapping out of the same incident,
3 correct?

4 A. Yes, sir.

5 Q. Did you ever see the indictment on the criminal
6 sexual conduct?

7 A. No, sir. I've never seen an indictment -- oh, no,
8 sir. No, sir. It wasn't in the Rule 5.

9 Q. Let's just clarify something there. Okay? Because
10 you've testified previously that Mr. King did not provide you
11 Rule 5 on the drug charges. What, if anything, did he
12 provide you on the kidnapping and CSC charge?

13 A. He provided me with the Rule 5 on the kidnapping and
14 CSC charges. He did that, sir.

15 Q. That would have all been paperwork, correct?

16 A. Yes, sir, 110 pages.

17 Q. No video recordings?

18 A. No video recordings.

19 Q. No audio recordings?

20 A. No audio recordings. There was two DVDs in the Rule
21 5 that the police obtained, which were phone calls from me to
22 her in the county jail and also phone calls on my phone
23 between me and her that they got that I never seen or heard
24 from.

25 Q. Ultimately, when you go to plea court, you do not

1 plead to criminal sexual conduct in the first degree,
2 correct?

3 A. Correct.

4 Q. Please tell Judge Cooper how it is -- your
5 understanding how it is that it got from criminal sexual
6 conduct in the first degree to assault and battery in the
7 first degree.

8 A. Well, I actually don't -- I did not understand or
9 knew what lesser-included offense meant. I thought that, you
10 know, they found out that I didn't commit the rape, but I did
11 admit to punching her in the face. And seeing that I
12 admitted to punching her in the face, that they were going to
13 charge and convict me of assault. I did not know that
14 assault and battery first degree was going to be pled to as a
15 lesser-included offense of criminal sexual conduct. I did
16 not know that's how it worked. I just didn't know.

17 Q. So if you went forward on the plea to the drug
18 charges and another charge, first of all, what was your
19 understanding was going to happen to the kidnapping charge?

20 A. It was my understanding that the kidnapping charge
21 was already dismissed prior to this.

22 Q. And when you went forward on this plea to the four
23 charges, what was your understanding was going to happen to
24 the criminal sexual conduct first degree?

25 A. I thought it was dismissed. I thought it was

1 dismissed. I didn't know it was lesser-included offense --
2 what lesser-included offense was.

3 Q. I'm going to be specific about charges, but not
4 going to belabor all the testimony we are going through. But
5 if Mr. King had actually shared discovery with you on any of
6 the three drug charges, would you have pled guilty or would
7 you have asked for a trial?

8 A. I actually would have asked for a trial on the crack
9 cocaine charge. I don't know what my decision would have
10 been on the marijuana charge, because I basically don't know
11 the facts of the case. And I don't know my rights as it
12 comes to, you know, that charge.

13 Q. As to the drug charges, have there been any
14 discussions about how the evidence might have been dealt with
15 at a trial? Would you have pled guilty or requested a trial?

16 A. I would have requested a trial.

17 Q. Did you feel that Mr. King was in a position to give
18 you a trial on the drug charges if you had asked for it?

19 A. No, sir, I do not.

20 Q. As to those three charges, can you tell the judge
21 then what influenced you and caused to you plead guilty to
22 those charges?

23 A. Okay. What happened was, I was told that the
24 solicitor refused to deal with one set of charges without
25 dealing with all the charges. Mr. King told me that

1 solicitors don't like, generally, dealing with one charge and
2 then coming back to deal with the other charge. So if I was
3 to plead guilty to one charge, I had to plead guilty to all
4 the charges. There was no such thing as me pleading and then
5 coming back to face the other charges.

6 Q. You pled to assault and battery first degree,
7 correct?

8 A. Yes, sir.

9 Q. Did you know before you pled what the range of
10 punishment was on that charge?

11 A. Yes, sir.

12 Q. What was that?

13 A. Up to 10 years.

14 MR. DAVIS: Your Honor, if I can have just a moment.

15 BY MR. DAVIS:

16 Q. Go back just for one second to one housekeeping
17 matter. Was there ever an attempt, between the time that you
18 got served with the bench warrant, when Mr. King tried to
19 remove that bench warrant?

20 A. After we had already discussed a plea, he told me
21 that he was going to file for a motion to withdraw the bench
22 warrant.

23 Q. So the day you are meeting with him before coming to
24 court for the plea?

25 A. The meeting before that, the meeting in which we

1 discussed the plea that he told me -- he told me in November,
2 he was like, no, I'm going to get you a plea. And then he
3 came back, I think -- I'm not sure of the exact dates, but
4 I'm pretty sure it was somewhere in February in which he
5 said, yes, I'm getting you a plea, I'm getting you in for a
6 plea in March. And I withdrew the bench warrant. I filed a
7 motion to withdraw the bench warrant.

8 Q. Moving forward to when you were here in the basement
9 of the courthouse; that's where you signed the sentence
10 sheets, correct?

11 A. Yes, sir.

12 Q. What did you think the effect was of actually
13 putting your signature on the sentence sheets?

14 A. I thought the deal was sealed. In all actuality,
15 when I got in front of the judge and the solicitor started
16 talking about me kidnapping and raping the young lady, which
17 was something I didn't do, I wanted to stop the trial -- I
18 mean, I wanted to stop the plea, because that's something I
19 did not do. I punched her in the face. And I thought that's
20 what was going to be discussed. But I already signed the
21 plea agreement. So I'm already bound by the court to, you
22 know, plea. I didn't know that -- I didn't know until later
23 that I could actually have stopped the plea right then.

24 THE COURT: What did you think was -- you said "the
25 deal", what did you think the deal was?

1 MR. SEABROOK: I thought that I was pleading to
2 hitting her in the face. I didn't know until -- because I
3 didn't really get into studying the case until after I was
4 convicted, because we don't have a law library in the county
5 jail.

6 THE COURT: I understand.

7 MR. SEABROOK: And I got into the library and I
8 found out there had to be an arrest and indictment for the
9 charge. And I was like, you know, I wasn't indicted on
10 assault and battery first degree. You know? And when my
11 family looked into a computer and they said I was charged
12 with criminal sexual conduct, but I pled to assault, I didn't
13 know that that was what I was doing. I thought they had
14 dropped the criminal sexual conduct and they brought up a new
15 charge.

16 I mean, I am not -- I didn't know what was going on.
17 You know, people was like, oh, you pled to rape, you pled to
18 a lesser-included offense of rape, and it's on the Internet
19 that you pled to a lesser-included offense of rape.

20 If I knew that criminal sexual conduct was -- I was
21 pleading down to a lesser-included offense of that charge, I
22 would have never pled guilty to it.

23 THE COURT: Well, you just said that you agreed that
24 you did hit her.

25 MR. SEABROOK: Yes, I punched her in the face. I

1 did that.

2 THE COURT: Isn't that what you pled --

3 MR. SEABROOK: That's what I thought I was pleading
4 to, hitting her in the face.

5 THE COURT: That's assault and battery; isn't it?

6 MR. SEABROOK: I'm sorry?

7 THE COURT: That's assault and battery, isn't it?

8 MR. SEABROOK: I don't know. At the time, I didn't
9 know the levels of assault. I didn't know that, you know,
10 first degree, second degree, third degree. I didn't know. I
11 know simple assault. You know, there was simple assault,
12 assault and battery, high and aggravated nature. And then I
13 didn't know that they really changed it, but I've had assault
14 and battery, third before. But I thought, you know, since
15 she was my girlfriend --

16 THE COURT: What happened to her? Something in the
17 file said you fractured her jaw; is that correct?

18 MR. SEABROOK: No. It said that I fractured a bone
19 in her eye.

20 THE COURT: Her eye?

21 MR. SEABROOK: Her eye bone, yes, sir.

22 THE COURT: Well, jaw, eye, it's still a fracture.

23 MR. SEABROOK: Yes, sir. It's a fracture, which I
24 found out later would only be assault and battery, second.

25 THE COURT: Okay. Thank you. Go ahead.

1 BY MR. DAVIS:

2 Q. You were just talking about not knowing the elements
3 of assault and battery first, correct?

4 A. At the time I didn't, sir.

5 Q. You understand at the time, it was a smaller battery
6 charge than criminal sexual conduct?

7 A. I didn't know that either. I just thought --

8 Q. Let me ask it a different way. Maximum punishment
9 for assault and battery first is smaller than criminal sexual
10 conduct?

11 A. Right.

12 Q. You knew that?

13 A. Yes, sir.

14 Q. And, factually, that sounded more like what you
15 admitted doing than criminal sexual conduct?

16 A. Yes, sir.

17 Q. Did Mr. King ever talk to you in preparations for a
18 guilty plea about whether you had the right to withdraw after
19 you signed the sheets or not?

20 A. No, sir. Actually, after I signed the sheets, they
21 called me upstairs. We had no further discussion after I
22 signed the sheets except for what I was to tell the judge.

23 Q. And final thing on what the judge was telling you
24 about. Independent of the drug charges, on the incident with
25 your ex-girlfriend, the mother of your child, one of your

1 children, what did you understand you were pleading to, what
2 charge?

3 A. Assault, assault.

4 Q. And what did you expect to hear factually about that
5 case in the courtroom?

6 A. I was expecting to hear that, yes, I did punch her
7 in the face, because I admitted to on video that I punched
8 her in the face and fractured her eye.

9 Q. But in the courtroom, did the solicitor talk about
10 more than that?

11 A. She started saying I kidnapped her, I held her
12 hostage, I beat her up, and I slashed her up, and I raped
13 her, and stuff like that.

14 Q. You remained silent through that?

15 A. Yes, sir.

16 Q. Mr. King remained silent through that?

17 A. Yes, sir.

18 Q. One final thing, this is totally off the wall what
19 we were talking about, but something you and I spoke about
20 previously I wanted to make clear. One of the things you
21 wanted the judge to understand, I think it was on the crack
22 cocaine charge, that was not an actual possession case. It
23 was not found actually on you; is that correct?

24 A. Right.

25 Q. Did Mr. King talk to you about how the fact that it

1 was not found on you might be dealt with at trial?

2 A. He never discussed it, the drug charges, period.

3 MR. DAVIS: Your Honor, if I can have one more
4 second, that may be all for me. If I could have just a
5 minute.

6 BY MR. DAVIS:

7 Q. Just a follow-up on that. There were two officers
8 who searched you in that case; is it correct?

9 A. Yes, sir.

10 Q. You never had discussions with Mr. King about
11 constitutional violations of search and seizure?

12 A. No, sir.

13 Q. Mr. Brown, I know this is important to you. We are
14 in the middle of your PCR hearing now. But just so that we
15 can deal with this, you've already testified about attempting
16 to have Mr. King released as your attorney, right?

17 A. Yes.

18 Q. I already spoke to you about that?

19 A. Yes, sir.

20 Q. After this plea, did you personally independently
21 make an attempt to undue this guilty plea?

22 A. Yes, sir. Actually, I wrote Mr. King and I asked
23 Mr. King to withdraw the guilty plea. And after I asked him
24 to withdraw, I wrote him and I asked him to withdraw the
25 guilty plea or do an appeal, you know. And then after two

1 days of not hearing from him and having -- calling him on the
2 phone and not hearing from him, I filed a motion to withdraw
3 plea myself.

4 Q. Handwritten?

5 A. Yes, sir, handwritten.

6 Q. Sent to the Clerk of Court here?

7 A. Yes, sir, and I gave solicitor a copy.

8 Q. You actually had an amended one as well, right?

9 A. Yes, sir.

10 Q. You've been following up on that as recently as last
11 week?

12 A. Two weeks ago, sir.

13 Q. Based on communications you had with the clerk's
14 office, do you understand that to be a finished issue or
15 still be pending?

16 A. Well, I don't really know how -- I don't really
17 know. However, it doesn't have a finished date on the Clerk
18 of Court's website.

19 Q. But in our discussions, you know that your case was
20 appealed to the Court of Appeals, correct?

21 A. Yes, sir.

22 Q. You've seen the documents?

23 A. Yes, sir, and I signed the remittitur.

24 Q. And remittitur has been returned back?

25 A. Yes, sir.

1 MR. DAVIS: Mr. Seabrook, thank you. That's all the
2 questions I have. The attorney general may have some
3 questions for you.

4 MS. OLIVE: Thank you. May it please the Court.

5 CROSS-EXAMINATION

6 BY MS. OLIVE:

7 Q. Good morning. I'm going to start back with that
8 motion to withdraw. You said you filed a motion to withdraw
9 your guilty plea?

10 A. Yes, ma'am.

11 Q. Did you serve that on anyone?

12 A. On the solicitor's office. And I actually also --
13 not only did I serve it on them, I asked the Clerk of Court
14 to forward their stamped copy to the solicitor's office
15 also.

16 Q. Okay. But you filed -- did you file your appeal
17 yourself, your notice of appeal?

18 A. Yes, ma'am.

19 Q. And that was after you filed this motion to
20 withdraw?

21 A. Yes, ma'am.

22 Q. Okay. And then your appeal was subsequently
23 dismissed?

24 A. Yes, ma'am.

25 Q. You testified that you met with your attorney only

1 once, but during your testimony, it sounds like you met a lot
2 more than once. So did you really only meet with him one
3 time?

4 A. No, I only met with him once to discuss my case. He
5 came -- he was in the courtroom a week after I got arrested.
6 We didn't discuss anything. All he did was whisper to me and
7 tell me, I have the video.

8 Q. What video?

9 A. The video of my bond hearing that I was requesting
10 him to get.

11 Q. Why did you need that?

12 A. Because she admitted that she lied. And I could
13 have used it as evidence if there was a case or a trial.

14 Q. Okay. That was during your bond hearing. And
15 didn't the solicitor at your guilty plea say that she
16 recanted her statement at the bond hearing?

17 A. I don't remember her saying that. I don't remember
18 her saying that, ma'am.

19 Q. So in all those times that you saw your attorney,
20 you are telling me he only discussed your case with you
21 once?

22 A. One time.

23 Q. What about when he showed you these videos of your
24 arrest?

25 A. At that time, I attempted to speak about my case.

1 He didn't want to. So I had already wrote -- I wrote out
2 like a five- or six-page document, you know, and I submitted
3 it to him. But I attempted to speak to him, but he said he
4 had seven other jury trials. I spoke to him about five
5 minutes about the cases. And he said, I have to go because
6 I'm prepping somebody for a jury trial. So we didn't get to
7 speak.

8 Q. So he didn't just tell you that he didn't have time
9 to talk to you. He was on his way somewhere?

10 A. Right, he had other trials to do. Yes, ma'am. He
11 said he just came to show me the video.

12 Q. And your testimony is you never discussed the video
13 after that?

14 A. No. I kept asking him for it. I requested it. I
15 begged him for it. I sent several requests to him for it.

16 Q. I'm talking about the video of your arrest.

17 A. Uh-huh.

18 Q. I'm not talking about the bond video. I'm talking
19 about the one of your arrest.

20 A. Yes. He never discussed it to this day. He never
21 discussed it, said he forgot to bring it.

22 Q. But you did view it?

23 A. No, ma'am, he wouldn't let me. He said he never
24 brought it.

25 Q. But didn't you testify in your direct examination

1 that you viewed it?

2 A. No, ma'am, I never --

3 Q. You never viewed any videos of anything related to
4 these charges?

5 A. No, ma'am. Oh, yes. Excuse me. There was one time
6 in which he told me, in November, because, you know, I had a
7 preliminary hearing --

8 Q. Who is "she"?

9 A. I mean, he, Mr. King. Excuse me. I apologize.
10 Mr. King told me in November when we were discussing my case,
11 he said that during my preliminary hearing, he played the
12 video for the officer and the solicitor. And the officer
13 said he didn't know anything about it. And the solicitor
14 said, well, he spoke to the victim. However, I asked him for
15 a transcript or something about the preliminary hearing, and
16 he never supplied that to me. So I didn't believe that he
17 actually did that.

18 Q. And what video are we talking about?

19 A. We are talking about the bond hearing video.

20 Q. Okay. So the only discussions you had with your
21 attorney about the possible punishments you were facing on
22 these charges was the day of the plea?

23 A. The day -- yes, ma'am.

24 Q. Did you say anything to the judge at your plea about
25 the fact that you had asked for your attorney to be

1 relieved?

2 A. No, ma'am.

3 Q. In fact, you said you were satisfied with your
4 attorney at your guilty plea hearing?

5 A. Yes, ma'am.

6 Q. You said you begged them to plea; is that right?

7 A. Ma'am?

8 Q. I think you stated during your direct examination
9 that you begged for a plea?

10 A. Yes, ma'am.

11 Q. To plead guilty. Were there ever any -- there was
12 never any other offer besides what you pled to, was there?

13 A. To my understanding, I was supposed to plead to
14 first offense.

15 Q. On all of these drug charges?

16 A. No, on the marijuana charges.

17 Q. Why is that your understanding?

18 A. Because that's what's on my NCIC. That's what's on
19 my indictments.

20 Q. I'm sorry --

21 A. Not my indictments. I apologize. Not my
22 indictments, my bench warrants.

23 Q. But you had a pretty lengthy criminal history, did
24 you not?

25 A. Yes, ma'am.

1 Q. Including prior convictions for possession of crack,
2 correct, possession of crack cocaine, distribution within
3 proximity of a school, possession of crack with intent to
4 distribute, right?

5 A. Yes, ma'am.

6 Q. And you were told that the solicitor was unwilling
7 to make any other offer that did not include all of these
8 charges, that did not include you pleading guilty to all of
9 these charges at once, right?

10 A. Yes, ma'am.

11 Q. You testified that you were provided with a DVD
12 containing the jail calls you had made?

13 A. No, ma'am. I said I was not provided with that.

14 Q. I'm sorry. I must have misheard you. You said you
15 were provided with your discovery on the CSC case. And you
16 said you had two DVD phone calls from the jail?

17 A. I said that the Rule 5 indicated that there were two
18 DVDs that I never received. I never received that. I never
19 got to see.

20 Q. Okay. But those were phone calls that you were on,
21 correct?

22 A. Yes, ma'am, me and the victim.

23 Q. So the victim told you that she was not going to
24 show up at trial?

25 A. Yes. She said that she was not going to show up for

1 trial and that -- I think it was victim witness, they told
2 her that since she lied, that she could be charged with
3 making a false statement. And that's why she wasn't going to
4 show up for trial. Otherwise, she would show up for trial
5 and admitted that she lied. They said if she had -- if she
6 came to court, victim witness told her if she came to court
7 and admitted to lying, they would arrest her and give her up
8 to five years for making a false statement. So she said she
9 was just not going to show up for court.

10 Q. We are just taking your word on that, that that's
11 what she told you, right?

12 A. Yes, ma'am.

13 Q. She didn't decide that she wasn't going to go to
14 trial because you asked her not to?

15 A. I didn't have to ask her not to, ma'am.

16 Q. But you never have denied that you hit her?

17 A. I never denied I hit her.

18 Q. Do you deny that you had sex that night?

19 A. No, ma'am.

20 Q. Do you deny that you restrained her in any way?

21 MR. DAVIS: Objection. Irrelevant to the PCR
22 hearing.

23 THE COURT: Sustained. We can't retry that case.

24 MS. OLIVE: Thank you, Your Honor.

25 THE COURT: Just have to take the record the way we

1 see it.

2 BY MS. OLIVE:

3 Q. So the victim -- if you had gone to trial on the
4 assault and battery charge alone, she could have testified at
5 that trial, right?

6 A. I'm not sure. I'm not understanding.

7 Q. Well, because you said that she was concerned
8 because she had lied, but you said you admitted hitting
9 her?

10 A. Right.

11 Q. So she could have testified to that?

12 A. Yes, she could have testified to me hitting her,
13 striking her.

14 Q. And you said you did know what the range of
15 sentencing was on the assault and battery charge prior to
16 your plea?

17 A. Yes, ma'am.

18 Q. And you said your attorney didn't investigate this,
19 the hotel or staff, et cetera, related to the CSC charge?

20 A. Yes, ma'am.

21 Q. But the victim recanted fairly early on, right, at
22 your bond hearing?

23 A. Yes, ma'am.

24 Q. You said you don't know if you would have gone to
25 trial on the marijuana charges. Is it your testimony today

1 that you would have -- that you want to go to trial on all of
2 these charges?

3 A. Yes, ma'am.

4 Q. Now, at your guilty plea, the solicitor went over
5 the facts in the record -- I mean, excuse me. He talked
6 about each of these incidents, the June 21st, 2013, the April
7 8th, 2014, and then the May 2014, all of the incidents that
8 resulted in these indictments, correct?

9 A. I believe so, yes, ma'am.

10 Q. And he gave the factual background for those
11 incidents?

12 A. I can't say it was factual, but it was the
13 affidavit.

14 Q. It was what? I'm sorry.

15 A. What was written on the affidavit.

16 Q. Okay. Is it your understanding that that was the
17 evidence that the solicitor's office would have presented at
18 trial, had you gone to trial?

19 A. Yes, ma'am. I never received anything otherwise.

20 Q. And you agreed with those facts after the solicitor
21 stated them, correct?

22 A. Yes, ma'am.

23 Q. So you had an opportunity to say that's not what
24 happened, and you didn't, right?

25 A. Yes, ma'am.

1 Q. And the judge advised you -- he asked you if you
2 understood you were waiving your right to a jury trial to
3 confront your accusers and to remain silent?

4 A. Yes, ma'am.

5 Q. And you stated you understood?

6 A. Yes, ma'am.

7 Q. Ultimately, it was your decision to plead guilty?

8 A. Yes, ma'am.

9 MS. OLIVE: Thank you. That's all the questions I
10 have.

11 THE COURT: Mr. Davis?

12 Mr. DAVIS: May I approach the witness, Your Honor?

13 (Plaintiff's Exh. 1, Sentencing sheet, was marked
14 for identification.)

15 MR. DAVIS: May I approach the witness, Your Honor?

16 THE COURT: Certainly.

17 REDIRECT EXAMINATION

18 BY MR. DAVIS:

19 Q. I'm going to show you what's been marked Plaintiff's
20 Exhibit 1 for identification purposes. So you know, it's a
21 sentence sheet that deals with assault and battery first. I
22 believe it's already in the record, but I have just a few
23 questions for Mr. Seabrook about it.

24 First of all, take a look, see if you recognize that
25 document.

1 A. Yes, sir.

2 Q. Okay. Is your signature on that document about a
3 third of the way down?

4 A. Yes, sir.

5 Q. Now, I want to draw your attention just above your
6 signature to the right. Do you see a place that says,
7 defendant waives presentment to the Grand Jury, and there's a
8 space for defendant's initials? Do you see that?

9 A. Yes, sir.

10 Q. Are your initials there?

11 A. No, sir.

12 Q. Did Mr. King ever talk to you about that line on
13 that sheet?

14 A. No, sir.

15 Q. Okay. Just so the judge can get an accurate
16 picture, when you are down in the basement here of the
17 courthouse, you are in lockup, correct?

18 A. Yes, sir.

19 Q. You are shackled like you are today?

20 A. Yes, sir.

21 Q. Is Mr. King in the same room as you or on the other
22 side of the glass?

23 A. He's on the other side of the glass.

24 Q. Is there physical contact between you?

25 A. No, sir.

1 Q. How does he get that paper to you?

2 A. He slides it through the slot.

3 Q. Slot with a pen to sign?

4 A. Yes, sir. Yes, sir.

5 Q. Was there anything on this document, including where
6 to sign, was there anything that Mr. King pointed out to you?

7 A. No, sir. He just showed me where to sign that and
8 showed me how much jail time I was receiving. Oh, and he
9 also showed me the no-sex-offender registry. Showed me I
10 wasn't getting charged with criminal sexual conduct. On the
11 bottom right-hand corner, says no sex offender registry. He
12 showed me that the CSC -- I wasn't being charged with that
13 charge, with that crime.

14 Q. He had a discussion about the fact that this was not
15 going to be a sex offender registry case?

16 A. Yes, sir.

17 Q. Did Mr. King ever talk to you about assault and
18 battery first being a lesser-included offense of criminal
19 sexual conduct first?

20 A. No, sir. What he basically said was, you are not
21 pleading to criminal sexual conduct. You are pleading to
22 assault because you did admit to punching her in the face.

23 MR. DAVIS: Thank you, Mr. Seabrook.

24 Thank you, Your Honor. No further questions.

25 MS. OLIVE: No further questions.

1 THE COURT: You may come down. Thank you.

2 MR. DAVIS: Your Honor, I'm happy to move that.
3 It's already part of the record, correct?

4 THE COURT: It is part of the record.

5 (Plaintiff's Exh. 1 is moved into evidence.)

6 MR. DAVIS: If I can have a moment with my client.
7 Your Honor, thank you so much. No other
8 presentation by the applicant.

9 THE COURT: All right. Any witnesses on behalf of
10 the State?

11 MS. OLIVE: Yes, Your Honor. The State would call
12 Jason King.

13 JASON KING,

14 THE CLERK: For the record, if you will please state
15 your name, spelling your last name.

16 THE WITNESS: Jason King, K-i-n-g.

17 DIRECT EXAMINATION

18 BY MS. OLIVE:

19 Q. Good morning, Mr. King. Thank you for being here
20 today. Mr. King, how long have you been practicing law?

21 A. Since 2000.

22 Q. And how much of that time has been focused on
23 criminal law?

24 A. Almost all of it, except maybe two or three years.

25 Q. Are you still employed with the public defender's

1 office?

2 A. Yes.

3 Q. And you were appointed to represent Mr. Seabrook by
4 the public defender's office?

5 A. Yes.

6 Q. You heard Mr. Seabrook testify that you only met
7 once to discuss these charges. Do you agree with that?

8 A. No.

9 Q. How many times did you meet with Mr. Seabrook?

10 A. I met with him -- I wasn't able to reach him. I had
11 him originally on the drug charges, the distribution of
12 marijuana and possession with intent distribute. And when
13 this court date came around for that, I wasn't able to reach
14 him. He missed court.

15 And then May 22nd, 2014, I met with him. And he had
16 been arrested on the criminal sexual conduct and kidnapping
17 charges. And he was in jail continuously until his guilty
18 plea then. So I met with him on May 22nd, 2014. I met with
19 him on September 30th, 2014, I believe -- maybe December.
20 But Mr. Seabrook testified I met with him in November, so I
21 think around that time. I met with him January 27th, 2015,
22 and February 26th, 2015. And I met with him in lockup on the
23 day of this plea. So I think six times total.

24 Q. Did you file a motion for discovery in this case?

25 A. I did.

1 Q. Did you review that discovery with Mr. Seabrook?

2 A. I did. I did. And as far as the drug charges go,
3 we didn't spend a lot of times talking about the drug
4 charges, but he never disputed the drug charges. I went
5 over, you know, what evidence they had against him. But we
6 did spend most of our time talking about the CSC first and
7 kidnapping. But it was because, like I said, he never denied
8 the drug charges or really had any issues with those.

9 Q. Did you feel, with respect to the drug charges, that
10 the State could prove its case at trial if he were to be
11 tried on these?

12 A. Yes. If I can explain a little bit. He had a
13 distribution of marijuana second offense, possession with
14 intent distribute marijuana second offense, and two proximity
15 charges related to those. It was a sale of marijuana to an
16 undercover cop. There was a video. And then when they went
17 in to make the arrest, they found more marijuana on him. And
18 that's where the possession with intent to distribute
19 marijuana came from.

20 Q. So sorry to interrupt. You said there was a video
21 of that?

22 A. There was a video. It was a pretty good case. It
23 was an undercover cop. And there was a video of the
24 distribution at least. Possession with intent, you know,
25 might have been an issue there. It wasn't over the

1 presumptive weight amount, but definitely a solid case on the
2 distribution of marijuana. It was -- actually, it was listed
3 as a second offense. Preparing for the PCR, I noticed it may
4 actually be a third offense, which is 5 to 20 years. I think
5 when the solicitor first printed out the rap sheet on the
6 drug charge, there was a marijuana conviction in magistrate
7 court that didn't appear. But it does show up on the rap
8 sheet in the discovery for the CSC and kidnapping printed out
9 later. Might have been a third offense, but the prosecutor
10 went forward with a second offense on these.

11 So that was a pretty solid case. He never disputed
12 that. I went over that with him. And I showed him the video
13 on that, as he testified to. Like I said, he never had an
14 issue with that. He was -- he didn't dispute that charge.
15 There was a possession of cocaine third offense, where the
16 police responded, I think, to a barber shop or someone had
17 called the police saying that Mr. Seabrook was threatening
18 them. The police got there and did a consent search of
19 Mr. Seabrook, and I think found some cocaine or crack cocaine
20 in his jacket pocket. And he gave a statement that he forgot
21 it was in there.

22 He never disputed that charge either. He never
23 disputed that that was the facts. So we didn't spend a whole
24 a lot of time talking about those charges. It was really
25 consumed on mostly with the CSC first and kidnapping.

1 Q. Did you go over all the State's evidence on those
2 drug charges with him?

3 A. Yeah, I went over -- I didn't have a lot of the
4 discovery on the cocaine. I think I had the incident report
5 and the indictment, but I did go over what I had with him.

6 Q. With regards to the criminal sexual conduct charge,
7 did you discuss the State's evidence with him on that?

8 A. Yes. We spent most of our time discussing that
9 particular charge, those two charges, I mean, CSC first and
10 kidnapping.

11 Q. Do you recall at what point -- well, do you recall
12 at what point the kidnapping charge was dismissed?

13 A. It was dismissed the day of the plea, I believe. It
14 was dismissed as part of the plea negotiations, not prior
15 to.

16 Q. Did Mr. Seabrook provide you with his version of
17 what happened with regard to the CSC and the kidnapping
18 charges?

19 A. He did. He said that there wasn't any criminal
20 sexual conduct, but that he did hit her. And when I got the
21 video at the bond hearing, he admitted that as well at the
22 bond hearing. He admitted that he hit her. She was hit
23 pretty hard. There were facial fractures.

24 Q. Did she have any other injuries?

25 A. She did. She had, I think, some bruising and some

1 cuts on her arm as well that were documented in the SANE
2 report.

3 Q. Did you go over with Mr. Seabrook all the elements
4 of these charges as well as any possible defenses to the case
5 charges?

6 A. I did. We spent most of the time talking about the
7 criminal sexual conduct and kidnapping. He told me when I
8 met with him that she had recanted at the bond hearing. So I
9 got the bond video pretty early on on that. And I did have
10 that and I did show that to him. That was a huge part of the
11 case. We had her on video at the bond hearing. What she
12 said was the -- I think she said the criminal sexual conduct
13 or the rape and the kidnapping didn't happen. And I had that
14 on video. However, it is more complicated than that.

15 There was a conversation between Mr. Seabrook and
16 her on the jail phones that were recorded, I believe maybe
17 the night before the bond hearing, where he's not threatening
18 her, but he is very apologetic. I would characterize it as
19 groveling even, telling her how sorry he was. She had
20 recanted on video, but it wasn't that simple. She later, I
21 think, told the police that he did commit the offense, but
22 that -- so I guess he was saying that she had lied at the
23 bond hearing because of that phone call.

24 And when you listen to the phone call, the morning
25 before the bond hearing, it makes things a little more

1 complicated. So she did recant, but it was still a
2 possibility that she had taken the stand and testified that
3 it happened. But he called her the night before on the
4 phone, pleading with her and apologizing to her, that she
5 went in the next morning and said that. So it wasn't clear
6 that she completely -- whether she recanted or not would have
7 been a good defense for us, but it wasn't as simple as that.
8 Put it that way.

9 Q. Were you concerned -- if he had gone to trial, were
10 you concerned about the nature of those calls coming in?

11 A. Yes, definitely, definitely. And he has two
12 proximity charges on his record. So a conviction on a
13 kidnapping or CSC, I believe, would make him life without
14 patrol. So he had two strikes already. If he served life,
15 he would have gotten life without patrol, if he were
16 convicted of either offense.

17 In the phone call before the night before the bond
18 hearing, there was some discussions about the kidnapping. He
19 doesn't deny the kidnapping on the phone. I was worried
20 about that. I think that he doesn't confess to the
21 kidnapping, but she says, you wouldn't let me leave, you
22 wouldn't let me call anybody. And he doesn't deny that on
23 the phone. So it's very close to a confession to the
24 kidnapping on the phone conversation.

25 Q. And did you have discussions with Mr. Seabrook about

1 this, about your concerns over the jail calls?

2 A. Yes.

3 Q. What sort of investigation did you engage in in this
4 case?

5 A. I didn't investigate the drug cases, because they
6 weren't very complicated and he didn't dispute them. There
7 was nothing that he told me he wanted me to investigate.
8 There was nothing I thought I needed to investigate other
9 than watching the buy video and showing that to him. And the
10 other cocaine case is pretty simple. The police responded,
11 did a consent search. He didn't dispute that.

12 The CSC first and kidnapping, I got the video on the
13 bond hearing. I hadn't done a lot of investigation on the
14 CSC first and kidnapping other than that. But if we had gone
15 to trial, I would have done more. There would have been
16 further investigation to do if I had gone to trial, I'm sure.
17 But based on -- and made the offer to the assault and battery
18 first degree. Based on what I knew of the case from reading
19 discovery and talking to him, that's why I advised him to
20 take the offer.

21 Q. What led to the plea offer?

22 A. The solicitor -- well, he had wanted to plead guilty
23 to assault and battery second degree. He wanted to plead
24 guilty to the drug charges. And he wanted the CSC first and
25 kidnapping. He wanted to resolve those as assault and

1 battery second. The solicitor sent a plea offer, kind of a
2 package deal on all the offenses for the distribution of
3 marijuana second, possession with intent to distribute
4 marijuana second, the possession of cocaine third. And those
5 were all 0 to 10. And he made an offer of assault and
6 battery first concurrent, which was 0 to 10 as well.

7 Q. Did you communicate that offer to Mr. Seabrook?

8 A. Yes. After I got the e-mail -- I think I got the
9 e-mail in January. Either January or February, I believe, I
10 went and met with them and discussed the plea offer. But I
11 went and discussed the plea offer before the actual plea date
12 when we were downstairs in the courthouse. And that's when
13 we went over the facts of the criminal sexual conduct first
14 degree. And that was the discussions we had her on video
15 recanting. You know, that's pretty good. And we might have
16 won if we had gone to trial, but it wasn't a guarantee.

17 And it was complicated enough, and included the
18 kidnapping as well to where, you know, if he's looking at 0
19 to 10 on the drug charges anyway and they are throwing this
20 in, and he was -- he was anxious to try to get in court and
21 plead guilty and resolve all of this, so he was in for
22 assault and battery second. When they offered assault and
23 battery first, I told him he should take it. And he told me
24 he wanted to take it.

25 Q. And advising him that you thought he should take it,

1 did you explain to him the pros and cons of going to trial on
2 any or all of these charges?

3 A. I did. I did. We mainly discussed the CSC first
4 and kidnapping, because, again, he never denied that he sold
5 the marijuana. You know, he said he pleaded to the drug
6 charges. That was never an issue for him when I was talking
7 with him.

8 Q. Did you explain the sentencing range on these to
9 Mr. Seabrook?

10 A. I did.

11 Q. And would that have been the date of the plea or
12 would that have been before?

13 A. No. If you give me one second. He sent the plea
14 offer on February 25th. And I met with him at the jail on
15 February 26th to discuss the offer, and discussed it as well
16 downstairs on the day of the plea.

17 Q. Do you feel he had adequate time to consider the
18 plea, I mean, the plea offer?

19 A. Yes, yes.

20 Q. Did you discuss with him his constitutional rights
21 and what rights he would be giving up in order to plead
22 guilty?

23 A. Yes, I did.

24 Q. Did you tell him how to answer the judge at the
25 guilty plea?

1 A. No, I don't tell him what answers to give. I may
2 give him an idea what the judge may ask, but I don't tell him
3 what to say.

4 Q. And whose decision was it for Mr. Seabrook to plead
5 guilty?

6 A. It was ultimately his decision.

7 Q. If he had asked you -- if had asked you to withdraw
8 the plea during the plea, would you have done so?

9 A. Yes. At any point, before the plea or while we were
10 standing up there, right, he did not ask to withdraw from the
11 plea during the plea.

12 Q. If he had requested a jury trial, would you have
13 been prepared to try the case?

14 A. Yes. Yeah, it hadn't been scheduled for a jury
15 trial. I had time to do investigations. Sometimes the
16 investigation is done leading up to trial, a lot of
17 investigation is sometimes done. It's difficult sometimes to
18 do investigation early on with my caseload. But except the
19 video of the bond hearing, things like that I thought that
20 was important, and I don't know how long they keep those
21 videos, so I make sure I always get things like that.

22 As far as CSC first and kidnapping, it took place
23 inside a hotel room. So there's not really -- I don't know
24 that there's any hotel staff or any video or anything that
25 would have made any difference.

1 They were in a hotel room. A man knocked on the
2 door. The police interviewed that man. And the allegations
3 were that he wouldn't let her go to the door and answer the
4 door or make a phone call. And then he got angry because
5 there was a beef between him and this person. And at least
6 the allegations were that's when he ended up hitting her.
7 Mr. Seabrook had a different version of it, but those were
8 the allegations.

9 So he had some information that, you know, whatever
10 information he wanted me to look into, if we had gone to
11 trial, I would have further investigated.

12 Q. And the plea offer that was ultimately made, did you
13 engage in negotiations with the solicitor to obtain that
14 offer?

15 A. Yes.

16 Q. And what were the nature of those negotiations?

17 A. Well, the solicitor knew he had a problem with this
18 case with the CSC first and kidnapping. He pretty much just
19 offered straight up on the drug charges. But -- and I think
20 he believed that Mr. Seabrook actually committed the CSC
21 first and kidnapping, but knew he had a problem with the
22 solicitor -- I mean, with the victim recanting on video.

23 So I think taking all that into consideration, he
24 e-mailed -- I don't know if I had told him Mr. Seabrook was
25 interested in a plea or if he just sent me the offer, but he

1 sent a global plea offer to me. And that is basically as
2 good an offer as I could get out of it.

3 MS. OLIVE: Thank you, Mr. King. That's all the
4 questions I have.

5 THE COURT: Mr. Davis.

6 CROSS-EXAMINATION

7 BY MR. DAVIS:

8 Q. Mr. King, your testimony about whether the marijuana
9 charges were seconds or you heard testimony that perhaps
10 firsts, but then you testified that they may have been third
11 through discovery. At what point in this process did they
12 become potentially third offenses?

13 A. I discovered that recently going through the file.
14 Back then, we were operating as if it was a second offense.

15 Q. So to be clear, that was never discussed with
16 Mr. Seabrook?

17 A. Right. Right. I was just -- that was just
18 something that I noticed, but I didn't notice it back then.
19 Solicitor didn't notice. I mean, if he had noticed, he may
20 not have reduced it to a second. Because he was -- he wasn't
21 making any offer hardly at all on the drug charges, except
22 for the proximities, which he had to dismiss because it was a
23 daycare and not a school. So he had a legal problem with the
24 proximities or I don't know that he would have wanted to
25 dismiss those. But as far as -- I don't know if there was

1 ever an offer for a first offense.

2 And sometimes -- he's talking about his bench
3 warrant paperwork saying first offense. Sometimes arrest
4 warrants will say first offense when it's not really based on
5 someone's record. But I would explain that to him, that it's
6 based on -- you are indicted for the offense itself. You are
7 not indicted for a first, second or third, and that is not a
8 sentencing enhancement.

9 Q. Just for the record, a little while ago -- let me
10 jump to this first. You testified about being concerned
11 about his prior record and how it might lead to notice of
12 life without parole.

13 A. Right.

14 Q. Was that discussed with Mr. Seabrook ever?

15 A. Yeah, I believe so. Because he had two proximities
16 on his record. And CSC first and kidnapping are both
17 strikes. So I'm pretty sure I would have gone over that with
18 him.

19 Q. At no time did the State mention they were
20 considering it, though?

21 A. No, they did not.

22 Q. Never part of the plea negotiations?

23 A. No.

24 Q. In dealing with the criminal sexual conduct case,
25 you mentioned a SANE report. Just for the record, what is a

1 SANE report?

2 A. Sexual assault nurse examiner.

3 Q. And that is something you would have received in the
4 Rule 5 discovery?

5 A. Yes.

6 Q. And one final step on that, just to be clear. In
7 some cases, usually with young children, they may be
8 interviewed forensically and videotaped. Was there any such
9 evidence in this case?

10 A. No.

11 Q. You testified that if Mr. Seabrook had asked you for
12 a trial on the case, you would have done so, correct?

13 A. Yes, yes.

14 Q. You never advised him to go to trial on the cases?

15 A. No, no, I didn't. Now, if they hadn't made an offer
16 assault and battery first, that might have been different. I
17 might have, you know -- if they had gone full force on the
18 CSC first and kidnapping, maybe. But once they offered the
19 assault and battery first, no, I didn't advise him to go to
20 trial at that point.

21 Q. Is it fair to characterize your conversation with
22 the solicitor's office, any conversations you had with them
23 dealing with the weakness of the CSC and kidnapping case,
24 that was a primary thrust of the conversations; is that
25 fair?

1 A. Right, right.

2 Q. Is it fair to say primary conversations with
3 Mr. Seabrook were focused on getting a plea deal, as opposed
4 to trying any of these cases?

5 A. Not necessarily in the beginning. We did talk about
6 trial on the CSC first and the kidnapping, because he said he
7 didn't do it. So I can't remember exactly, but I always try
8 to get a plea offer on the table. So I'm always going to be
9 at least discussing the possibility of a plea. Because he
10 had hit her and broken her, you know, facial fractures on her
11 face. You know, we did talk about possibly pleading to
12 something. But as far as -- he always maintained he didn't
13 commit the CSC and kidnapping. So we talked about possible
14 trial or possible plea, depending on what they offered.

15 But he wasn't going to get away with nothing,
16 because she had facial fractures and he admitted on the bond
17 video that he did that.

18 Q. The discussions about trial never got to the point
19 of actual defenses or actual tactics that you would employ?

20 A. We touched on them maybe, you know, big defense
21 being that we have a video of her recanting. But, no,
22 actually going through all the details, fully fleshing out
23 the trial, I hadn't gotten that far yet. But we had the
24 basic facts we knew. The basic issues I think were there.

25 Q. Now, on the plea offer, it was package offer, all or

1 nothing; that was your understanding, correct?

2 A. Right. Right. I think the solicitor would have
3 tried the beginning one with CSC first and kidnapping if he
4 thought -- if he didn't have the evidentiary problem. So
5 that's why he was -- you know, he wasn't offering anything
6 really on the drug charges except dismissing the proximities,
7 and only that because he had to, because, legally, he had a
8 problem. So he was trying to get the most he could out of
9 the drug offenses and the best he could out of the CSC first
10 and kidnapping, I think, is the way I would see what he was
11 doing.

12 Q. You also testified that if Mr. Seabrook had asked
13 about withdrawing the plea before it was finished, that you
14 would have done so, correct?

15 A. Right, I guess, up until the point that the judge
16 accepts the plea. If he had gotten up there when we did the
17 plea and say, Mr. King, I don't want to do this, or any
18 indication, I would have asked to stand down and talk to him.
19 But he was fully onboard with doing the plea. Just he got
20 nine years out of ten. I think that's what this is all
21 about. He got nine years. And he wasn't happy with the
22 sentence when it was all over.

23 Q. You asked for probation; do you recall?

24 A. I think I did. I think I did. And, you know, I
25 told him, I didn't think -- I told him, I don't know if he

1 would get probation. On the drug charges, maybe. Judge
2 Dennis is a fair plea judge. If he was just pleading to the
3 drug offenses, he might have gotten probation, even with his
4 record. Who knows? But I knew it was going to be a little
5 bit of an issue with the assault and battery first, because,
6 you know, we were acknowledging that he hit her. And I
7 didn't lead him on to think he would necessarily get
8 probation. I thought it was worth a shot, but he knew he
9 could get anywhere within the 10 years.

10 Q. Now, any discussions you had with Mr. Seabrook
11 leading up to the -- focus on actually getting the plea done.
12 All right? Any discussions about that, it's fair that in
13 those discussions, you would have warned him, hey, now, if
14 you want to withdraw at any time during the plea, you tell
15 me. That wouldn't have come up, would it?

16 A. Maybe not, not if -- if he hadn't mentioned it, no.

17 Q. Now, can you give Judge Cooper an idea back at this
18 time, little over a year ago, number-wise, what kind of
19 caseload were you carrying?

20 A. Probably around -- as far as actual defendants,
21 maybe 40 or so in jail and maybe 100 or so out of jail. So
22 it is a heavy caseload.

23 Q. And is it fair to say that you are one of the more
24 experienced public defenders?

25 A. Yes. Especially in 2014, that was the year we lost

1 two senior trial attorneys. And I was trying a lot of cases.
2 So he's right, I think I did try maybe seven jury trials.
3 But when I'm telling him that, I'm telling him that it's the
4 reason I hadn't been to see him. I didn't go see him and
5 spent five minutes with him. When I went to see him, I spent
6 time with him. But there were gaps going to see him.

7 And he was writing letters to Ashley. And then I
8 have to go see him saying, I'm sorry I haven't seen you in a
9 while, I've been in trial a lot. But I didn't go see him for
10 five minutes. I'm going to the jail to meet with him. I at
11 least try to invest a little bit of time when I meet with
12 him.

13 Q. Meetings you would have testified to would have been
14 at the jail, as opposed to video?

15 A. Right.

16 Q. Okay. And having the approximately 140 cases, being
17 a senior public defender at the time of this case, is it fair
18 to say that most of your cases were serious cases?

19 A. Yes.

20 Q. You had seven trials, was that in a year timespan,
21 2015 timespan?

22 A. I think in -- that may have been 2014, but, yeah, it
23 was within one year.

24 Q. The caseload you carried and how you had to deal
25 with those cases, and then the conversations you had with

1 Mr. Seabrook about these cases, is it fair to say those two
2 influences are major factors on why there wasn't a more
3 in-depth investigation?

4 A. That was the reason why -- right. Sometimes I'm
5 investigating -- when the case gets on the trial docket,
6 sometimes I'm investigating those cases that are coming up
7 for trial. So, yeah, that does make it difficult to do a lot
8 of investigation early on. Put it that way.

9 Q. Now, I think you testified when something is
10 obviously at trial, that's when the major investigation kicks
11 in; is that fair?

12 A. Yes. That's when my investigator would go out and
13 try to get everything possibly ready.

14 Q. Only -- at the time, how many investigators were in
15 the public defender's office at the time, let's say 2014 into
16 2015; do you recall?

17 A. I think five.

18 Q. But only one is assigned to you, correct?

19 A. Right, right.

20 Q. And that one investigator is not only assigned to
21 you, but at least a couple other public defenders, shared?

22 A. Yes, I think maybe three or four.

23 Q. Despite all that that we just established, I think
24 you testified that incident reports, video of the marijuana
25 incident and video from the CSC bond hearing, that's

1 basically what you had in your file at the time of the plea;
2 is that fair?

3 A. I had, I think, 110 pages of discovery on the CSC
4 first and kidnapping and the bond hearing. I had a packet of
5 discovery on the distribution of marijuana and the video on
6 that. I think the only thing I didn't -- I only had a little
7 bit of discovery on the cocaine charge. I think I had the
8 incident report and the indictment on that. So I think I
9 had -- that was the only thing I maybe didn't have, every
10 single page of discovery on the cocaine.

11 Like I said, again, I had enough to go over the
12 basic facts with him. He didn't dispute any of the facts. I
13 didn't have anything I think I needed to investigate or --
14 and he never asked for a trial or ever wanted to dispute that
15 charge.

16 MR. DAVIS: Your Honor, if I can have a moment.

17 BY MR. DAVIS:

18 Q. Mr. King, one final issue, in addition to writing to
19 Mr. Pennington, Ms. Proctor -- which you are aware of,
20 Mr. Seabrook writing to them on November; is that correct?

21 A. Yes.

22 Q. You were aware that he had requested you be relieved
23 as his attorney on these charges?

24 A. He may have. And that happens a lot. That happens.
25 A lot of people at the jail send letters in saying, I want

1 another attorney, particularly if there's a period of time
2 when you don't go meet with them.

3 Q. And so to follow up on that, did you ever officially
4 file a written motion to that effect?

5 A. I didn't. I went and talked to him, sorry I haven't
6 been to see you, I've been in trial a lot, I'm here today,
7 let's talk about your case. And they will usually come
8 around. And that's usually to get you to come see them. And
9 then once you go see them and meet with them, then they don't
10 want to -- usually, rarely, insist then to go in front of a
11 judge. But if he insisted in going in front of a judge to
12 have me relieved, I would do that.

13 Q. No hearing was ever scheduled on that issue?

14 A. Right. No.

15 MR. DAVIS: No other questions, Your Honor.

16 THE COURT: Ms. Olive.

17 REDIRECT EXAMINATION

18 BY MS. OLIVE:

19 Q. Are you aware of an actual motion to be relieved
20 being filed?

21 A. Actually, I don't know if there was an actual motion
22 to be filed. He may have. If he filed some pro se stuff,
23 even after the plea, he may have, but I'm not sure. I didn't
24 file the motion because when I went and talked to him, you
25 know -- I think what I tell him is, we can't switch public

1 defenders. That's usually the first thing they want, another
2 public defender. And our policy is, we don't just switch
3 public defenders, because everybody who asks for one, if he
4 wants to go in front of a judge and ask to have me relieved,
5 either try to get appointed an attorney outside our office,
6 that's up to a judge. So that's an option.

7 But like I said, usually when you go meet with them
8 and talk to them, you know, they don't push that issue. It's
9 usually just to get you to come out and meet with them.

10 Q. You explained that to him, that he could go in front
11 of a judge if he wanted to?

12 A. Yes, but I told him he couldn't just get any public
13 defender. We don't just do that.

14 MS. OLIVE: Thank you. That's all the questions I
15 have.

16 THE COURT: You may step down. Thank you. You're
17 free to go.

18 MR. DAVIS: Your Honor, if we could approach on one
19 issue.

20 (Whereupon, a bench conference takes place.)

21 MR. DAVIS: I may want to recall him on one issue.

22 THE COURT: For the record, I need to make a
23 disclosure that several years ago, Ms. Olive, assistant
24 attorney general, was my law clerk. I had very little
25 contact with her other than professional, had no other

1 relationship with her familial or social or religious or
2 anything else, but I need to make that disclosure on the
3 record.

4 MR. DAVIS: I did not have you bring it up at the
5 beginning. We were here earlier this week. And I certainly
6 have no objection to that. We've had other hearings.

7 If I can have a moment to explain that to
8 Mr. Seabrook.

9 Your Honor, we would ask to recall Mr. Seabrook on
10 two issues that came up on direct of Mr. King.

11 THE COURT: All right. Come around.

12 CHRISTOPHER W. SEABROOK,
13 having been previously sworn, testifies as follows:

14 REDIRECT EXAMINATION

15 BY MR. DAVIS:

16 Q. Any time during your discussion with Mr. King, was
17 the possibility of a sentence of life without the possibility
18 of parole ever discussed?

19 A. No, sir.

20 Q. Had you ever heard the term LWOP? Was that ever
21 discussed?

22 A. No, sir.

23 Q. What about strike offenses, did you and Mr. King
24 ever talk about charges that are strikes against you?

25 A. No, sir.

1 Q. Final issue, in relating to your interest in having
2 Mr. King relieved as your attorney, okay, on that issue,
3 y'all discussed that? Did you and Mr. King discuss that?

4 A. After I filed the motion to have him relieved as
5 counsel and I wrote Ashley Pennington and I found -- he came
6 to see me in November, and I was like, you know, you are
7 telling me you are busy, you don't have time to investigate
8 the case, I mean, that's like seven months until the CSC
9 charge, there are people who I need you to contact in
10 relation, actual witnesses who were there, you know. And so
11 he was like, man, I'm busy. And I'm like, I need a public
12 defender who can defend me, who can investigate for me. And
13 he said, well, you are not getting a new public defender, you
14 have to deal with me.

15 At that point, I just feel I will go ahead and plea.
16 And the reason, and the reason I want to plea is because I
17 felt hopeless. I've got a public defender who is not really,
18 you know, investigating the case that I need investigated.
19 And they are telling me that this is my only option. So
20 that's the reason I really accepted the plea and took the
21 plea and begged for the plea, because I felt like if we went
22 to trial, if we went to trial, I would lose trial because he
23 wasn't doing investigating. He wasn't speaking to the
24 witnesses. He wasn't doing anything for me. And then he's
25 telling me, you are stuck with me.

1 That's why I did what I had to do, because if I
2 didn't, if I didn't, then he would take me to trial and I
3 would lose, because he wasn't -- I mean, he did nothing.

4 MR. DAVIS: Thank you, Your Honor. That's the only
5 two issues.

6 Thank you, Mr. Seabrook.

7 THE COURT: Any questions?

8 MS. OLIVE: I have no questions.

9 THE COURT: Okay. You can come on down.

10 MR. DAVIS: Your Honor, if I may make a brief
11 summary.

12 THE COURT: Certainly.

13 MR. DAVIS: Your Honor, as to factual issues and
14 ineffective of counsel, I will rely on the testimony you've
15 heard from both witnesses.

16 There's a technical matter about jurisdiction. You
17 have the sentence sheet on the criminal sexual conduct.

18 THE COURT: I've seen no waiver.

19 MR. DAVIS: There is no waiver. And we would
20 certainly point out that assault and battery first degree is
21 not, even though it's marked on the sentence sheet, it's not
22 a lesser-included of criminal sexual conduct first degree.
23 At the top of the sheet where it lists indictment, arrest
24 warrant, on down to CDR code, the code and the CDR code
25 listed are for CSC, 0160. So it shows his original

1 indictment for the crime CSC first. It's marked that he's
2 pleading rather than being convicted by a trial jury. It's
3 listed, the offense he's pleading to, assault and battery
4 first, and it provides the appropriate code section. But
5 underneath it's marked lesser-included.

6 There's been no testimony that that was reviewed
7 with Mr. Seabrook. It is -- the part to waive Grand Jury is
8 not checked. It's not initialed. There's no testimony that
9 was discussed. So on that matter, obviously, we are just
10 arguing as a matter of law that assault and battery first
11 degree is not a lesser. And the Grand Jury consent was not
12 waived on that. And, therefore, we are asking for relief
13 under that argument for that.

14 So I guess we've got two, one, that you should grant
15 us relief on all the charges because Mr. Seabrook has
16 indicated his attorney is ineffective and he would not have
17 entered a plea to any offenses charged and would request
18 relief from that.

19 If you are not inclined to do that, might be
20 persuaded by the jurisdictional argument on this charge, we
21 would ask that you grant relief certainly as to this charge
22 based on that argument as well.

23 Thank you, Your Honor.

24 THE COURT: Anything further?

25 MS. OLIVE: Your Honor, we would rely on the

1 record.'

2 THE COURT: All right. Thank you very much. All
3 right, Counsel. I'll accept proposed orders within 30 days.
4 Thank you very much. Anything further?

5 MS. OLIVE: That's all, Your Honor.

6 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

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


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

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STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Christopher William Seabrook
 AKA:
 Race: BLACK Sex: M Age: 38
 DOB: SS#:
 Address: Ventura Dr
 City, State, Zip: North Charleston, SC 29418
 DL#: SID#: SC00921990

INDICTMENT/CASE#: 2014GS1004978
 A/W#: 2014A1021000477
 Date of Offense: 5/11/2014
 S.C. Code §: 16-03-0652
 CDR Code #: 0160



SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault / Assault & Battery 1st degree

in violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State. (C. Morris)
 ATTEST: Evans, Andrew 100605 SC Bar# Defendant Attorney for Defendant 68630 PD

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 245 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$3.40
TOTAL	\$133.90

_____ days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: no sex offender registry

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

Clerk of Court/ Deputy Clerk: David Curry
 Court Reporter: Deborah Garrison
 SCCA/217 (03/2011)

Presiding Judge: R. Marshall Deane
 Judge Code: 2060
 Sentence Date: 3/2/15

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AG
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63
SOL
Judge Canoe

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Christopher William Seabrook, #291929,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-3975

ORDER OF DISMISSAL

FILED
2017 AUG 17 PM 1:20
JULIE J. ARBUTHNOT
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed July 17, 2015 by Christopher William Seabrook (Applicant) alleging ineffective assistance of plea counsel and the plea court lacked subject matter jurisdiction. Respondent made its Return on February 23, 2016, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on December 8, 2016, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia A. Olive of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Jason King, Esquire, also testified. The Court had before it a copy of the guilty plea transcript, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the State's return. After reviewing the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional deprivations or other grounds entitling him to relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its September 2013 term of court, the Charleston County Grand Jury indicted Applicant for distribution of marijuana—second offense (2013-GS-10-5008), possession with intent to distribute marijuana—second offense (2013-GS-10-5010). During its July 2014 term of court, the Charleston County Grand Jury indicted Applicant for possession of cocaine base—third offense (2014-GS-10-4190). During its September 2014 term of court, the Charleston County Grand Jury indicted Applicant for first-degree criminal sexual conduct (2012-GS-10-4978).

On March 2, 2015, Applicant appeared before the Honorable R. Markley Dennis, Jr., circuit court judge, in the Charleston County Court of General Sessions and pled guilty as indicted to distribution of marijuana—second offense, possession with intent to distribute marijuana—second offense, and possession of cocaine base—third offense, and to the lesser-included offense of first-degree assault and battery.¹ Pursuant to recommendation from the State for a concurrent sentence of no greater than ten years, Judge Dennis sentenced Applicant to nine years of imprisonment for each offense, with all four sentences to be served concurrently.

Thereafter, Applicant filed a timely notice of appeal. On June 17, 2015, the South Carolina Court of Appeals dismissed Applicant's appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was return to the circuit court on August 6, 2015.

¹ A related kidnapping indictment was dismissed pursuant to Applicant's guilty plea.

FACTUAL HISTORY

These charges arise from three separate incidents. The first incident occurred on June 21, 2013, when undercover officers from the North Charleston Police Department conducted a controlled undercover buy of marijuana from Applicant; this buy was recorded on video. When officers attempted to arrest Applicant, he fled on foot and officers observed him throwing a clear plastic bag containing marijuana on the ground. When Applicant was eventually apprehended, he had several additional bags containing marijuana on his person. (Plea Tr. p. 6).

The second incident occurred on May 8, 2014, when the North Charleston Police Department responded to a barber shop in reference to threats Applicant made to another person. Applicant consented to a search of his person and officers found crack cocaine in Applicant's pocket. Applicant told officers he forgot he had the substance in his pocket. (Plea Tr. p. 6-7).

The third incident occurred on May 11, 2014, when Applicant and his on-and-off-again girlfriend and child's mother were staying at a hotel in Charleston County. Applicant became upset when there was a knock on the hotel room door and he thought the victim and someone else were trying to rob him. He hit the victim in the face, choked her with a belt, and cut her arm. The victim initially told law enforcement Applicant had sexually assaulted her and held her against her will, but she later recanted the sexual assault and kidnapping allegations at a subsequent bond hearing. (Plea Tr. p. 7-8, 10-11; PCR Tr. p. 20).

ALLEGATIONS RAISED

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

1. Ineffective assistance of counsel for: failure to have all jail time served credited to



defendant, failure to object to defective indictment, failure to investigate and study case prior to recommending defendant accept plea.

2. Circuit court lacked subject matter jurisdiction to accept guilty plea for first-degree assault and battery where indictment failed to include necessary elements of offense.

At the evidentiary hearing, Applicant proceeded on these allegations.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. He testified that he only met with plea counsel once to discuss the merits of his case, although he acknowledged he met with plea counsel other times. (PCR Tr. p. 9, 37). He further testified he never discussed any of the drug charges with plea counsel and exclusively discussed the kidnapping and criminal sexual conduct charges with counsel. (PCR Tr. p. 10, 13, 14-15). Applicant testified he never received discovery for any of the drug cases. (PCR Tr. p. 13-14, 25). However, he acknowledged plea counsel showed him the video of the undercover drug buy. (PCR Tr. p. 38-39). He testified plea counsel did review the potential sentences he faced of all of his charges. (PCR Tr. p. 10-11). Applicant also acknowledged he has a lengthy criminal history, including numerous previous drug convictions. (PCR Tr. p. 40-41).

Applicant testified the victim of the criminal sexual conduct and kidnapping charges recanted her prior statements at his bond hearing. (PCR Tr. p. 18-20). Applicant testified he asked plea counsel to obtain a copy of the video from this proceeding and that counsel told him he secured a copy, but Applicant was never shown a copy of the video. (PCR Tr. p. 18-20). He testified the victim was his "on-and-off girlfriend" and the mother of his child, and the incident occurred inside a hotel room where they were staying. (PCR Tr. 21). He testified counsel never

attempted to speak with anyone at the hotel or obtain any video of the incident. (PCR Tr. p. 21). He testified he spoke with the victim several times by phone and knew these calls were recorded. (PCR Tr. p. 24). Applicant testified the victim told him she was not going to show up for his trial. (PCR Tr. p. 41-42). Applicant testified he pled guilty to first-degree assault and battery rather than first-degree criminal sexual conduct. (PCR Tr. p. 25-26). He acknowledged he struck the victim in the face and that he would be convicted of assault based on this conduct. (PCR Tr. p. 26, 29-31, 42-43). Applicant testified he struck the victim with such force he fracture her eye socket. (PCR Tr. 31-33). However, he testified he did not understand he was pleading guilty to assault as a lesser-included of criminal sexual conduct. (PCR Tr. p. 26-27). He denied recalling the solicitor tell the plea court that the victim had recanted during his guilty plea proceeding. (PCR Tr. p. 37).

Applicant testified he was frustrated by plea counsel's lack of diligence to his case and he sent numerous requests to the Public Defender's Office seeking to have counsel relieved. (PCR Tr. p. 11-13). Applicant testified he elected to forgo a trial and plead guilty when he received the State's plea offer because he did not think plea counsel was prepared to try his cases. (PCR Tr. p. 14). He testified counsel did not fully explain the plea to him and merely put the sentencing sheets in front of him and told him to sign the papers. (PCR Tr. p. 21-23, 46047). However, Applicant testified he understood he was pleading guilty to all charges. (PCR Tr. p. 22-23). He also acknowledged the kidnapping charge was dismissed pursuant to his plea agreement with the State. (PCR Tr. p. 24-26). He testified he pled guilty to all charges because the State's plea offer was only if all charges were disposed of simultaneously. (PCR Tr. p. 27-28). Applicant testified



he attempted to withdrawal his guilty pleas after without success. (PCR Tr. p. 34-35). He testified he also filed a pro se notice of appeal that was eventually dismissed. (PCR Tr. p. 35-36).

Plea counsel testified next. He testified he has been practicing law since 2000 and the vast majority of his practice is criminal law. (PCR Tr. p. 48-49). He testified he met with Applicant six times. (PCR Tr. p. 49). He testified he filed discovery motions and reviewed the materials with Applicant. (PCR Tr. p. 49-50). He testified Applicant did not dispute any of the drug charges or the evidence against him, so the vast majority of their discussions focused on the charges he did dispute—kidnapping and criminal sexual conduct. (PCR Tr. p. 50, 55). Plea counsel testified there was a video of the undercover dug buy giving rise to the two marijuana charges and that the evidence against Applicant was “pretty solid.” (PCR Tr. p. 51). He testified he reviewed these videos with Applicant and Applicant did not dispute these charges. (PCR Tr. p. 51). He similarly testified Applicant did not dispute the crack cocaine charges and admitted he gave a statement to law enforcement that he forgot he had crack cocaine in his pocket when he consented to a search. (PCR Tr. p. 51). Trial counsel testified because Applicant did not dispute any of the drug charges, they did not spend a significant portion of time discussing those charges, although they did review all discovery materials and evidence. (PCR Tr. p. 51-52, 55). He testified he would have investigated the drug charges had Applicant disputed them or wanted to go to trial. (PCR Tr. p. 55). He testified he would have had ample time to investigate the cases prior to trial. (PCR Tr. p. 58-59). He testified there were no independent witnesses to interview of videos to obtain from the hotel because the incident occurred inside a hotel room. (PCR Tr. p. 58).



Plea counsel testified he was one of the more senior attorneys at the Public Defender's office when he was representing Applicant and he had a significant caseload. (PCR Tr. p. 65-66). He testified that due to his large caseload, he often does most of his investigation closer to trial date than in advance. (PCR Tr. p. 67). However, he stressed he had reviewed all discovery with Applicant and that Applicant did not dispute the vast majority of the cases. (PCR Tr. p. 68).

Plea counsel testified the kidnapping charge was dismissed the day of the plea and was part of plea negotiations with the State. (PCR Tr. p. 52). Plea counsel testified Applicant denied any sexual assault of victim, but acknowledged he hit her with such force that it caused facial fractures. (PCR Tr. p. 52). Plea counsel testified Applicant informed him the victim recanted at his bond hearing and counsel obtained a copy of this video. (PCR Tr. p. 53). However, he testified there was a recorded phone conversation between Applicant and the victim the evening before the bond hearing where Applicant pleads with her to recant her statement. (PCR Tr. p. 53). Thereafter, the victim told police Applicant did sexually assault her and hold her against her will, but that she recanted her statement due to pressure from Applicant. (PCR Tr. p. 53-54). Plea counsel testified he was worried about these jail phone calls with the victim being introduced if Applicant proceeded to trial and that he discussed this with Applicant. (PCR Tr. p. 54).

Plea counsel testified he advised Applicant to accept the State's plea offer after reviewing all the discovery materials and talking to Applicant. (PCR Tr. p. 55-56). He testified the State offer was for Applicant to plead guilty as indicted to the three drug offenses and to plead to first-degree assault and battery as a lesser-included offense of first-degree criminal sexual conduct for a sentence of up to ten years imprisonment and the dismissal of the kidnapping charge. (PCR Tr. p. 55-56). He testified he timely conveyed the plea offer to Applicant and after discussing the



offer with him, Applicant decided to accept the offer and plead guilty. (PCR Tr. p. 55-58). Plea counsel testified he believed this was the best plea offer Applicant would receive. (PCR Tr. p. 59-60). Plea counsel testified Applicant would have been eligible for life without parole (LWOP) based on his prior record, but that the State had not indicated they would be seeing LWOP. (PCR Tr. p. 61). Plea counsel testified Applicant did not ask him to withdraw the plea and was fully on board with accepting the State's plea offer. (PCR Tr. p. 64). He testified Applicant had a full understanding he could receive up to ten years' imprisonment in exchange for his guilty plea. (PCR Tr. p. 65).

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 hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds trial counsel's testimony credible and finds Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

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

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performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689: "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

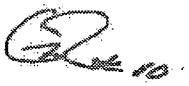
Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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 (1985).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Applicant alleges plea counsel was ineffective for failing to have all jail time served credited, failing to object to a defective indictment, failing to investigate and study case prior to recommending Applicant accept plea. This Court finds Applicant has failed to meet his burden of establishing counsel's deficiency regarding any of these aspects of his representation. The Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

Regarding Applicant's claim plea counsel failed to have all jail time served credited, the sentencing sheets and guilty plea transcript before this Court all clearly indicate Applicant received credit for the two-hundred-ninety-five days he served in pre-trial detention. This Court finds this allegation is without merit and must be denied and dismissed.

Applicant also alleges plea counsel failed to object to a defective indictment. However, Applicant has failed to establish which indictment was defective. This Court has reviewed the indictments and finds they are all facially valid and without defect. Moreover, Applicant clearly indicated to the plea court that he wished to plead guilty to first-degree assault and battery as a



lesser-included offense of first-degree criminal sexual conduct and conceded multiple times that he struck the victim in the face with such force that she suffered from facial fractures. As discussed further below, South Carolina Courts have not expressly ruled that first-degree assault and battery is not a lesser-included offense of first-degree criminal sexual conduct. Therefore, counsel cannot be deemed deficient for advising his client to accept a favorable plea offer from the State to plead to first-degree assault and battery. Applicant has failed to meet his burden of proof regarding this allegation, which must be denied and dismissed with prejudice.

Finally, Applicant alleges plea counsel failed to investigate and study case prior to recommending Applicant accept plea. However, Applicant failed to establish what additional investigation counsel should have undertaken or what the results such an investigation would have yielded. Moreover, plea counsel's credible testimony reveal Applicant readily admitted his guilt in the dug cases and admitted to striking the victim in the face, and because of this, he did not think additional investigation was necessary once Applicant elected to accept the State's plea offer. Therefore, this Court finds Applicant has failed to meet his requisite burden of proof. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding failure to conduct an independent investigation is not per se ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."); See also Strickland, 466 U.S. at 691 ("[W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be

challenged as unreasonable.”) This Court finds plea counsel’s performance was reasonable according to professional standards and his allegations that plea counsel was ineffective must be denied and dismissed with prejudice.

Subject Matter Jurisdiction

Applicant has also alleged the plea court lacked subject matter jurisdiction to accept his guilty plea to first-degree assault and battery because it is not a lesser-included offense of first-degree criminal sexual conduct. This Court finds Applicant has failed to establish he is entitled to relief on this ground.

The circuit court does not have subject matter jurisdiction to convict a defendant of an offense unless there is an indictment which sufficiently states the offense, the defendant waives presentment, or the offense is a lesser included offense of the crime charged in the indictment. State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001). Generally, pursuant to the accepted test for determining whether an offense is a lesser-included offense of another, an offense is considered to be a lesser-included offense of a greater offense if the greater offense includes all the elements of the lesser-included offense. State v. Primus, 349 S.C. 576, 579-580, 564 S.E.2d 103, 105 (2002), overruled on other grounds by State v. Gentry, 563 S.C. 93, 610 S.E.2d 494 (2005). However, “[i]f the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense.” Id. at 580, 564 S.E.2d at 105. Significantly, in determining whether an offense is a lesser-included offense of another, courts in South Carolina typically apply the elements test to make that determination with few exceptions. See id. (“While the Court recognizes the existence of a few anomalies, it generally adheres to the use of the traditional elements test.”).

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Under South Carolina Code Ann. § 16-3-652(1)(a)(b) (Supp.2001), first degree criminal sexual conduct requires a: (1) a sexual battery and (2) aggravated force to accomplish the sexual battery² or forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act. A sexual battery is "statutorily defined to include only certain specific acts, which can be loosely described as involving penetration of some sort." State v. Elliott, 346 S.C. at 606, 552 S.E.2d at 729; S.C. Code Ann. § 16-3-651(h) (1985).

Under S.C. Code Ann. § 16-3-600(C)(1), first-degree assault and battery requires (1) the actor injured another through nonconsensual touching of the private parts with lewd and lascivious intent or during the course of a robbery, burglary, kidnapping, or theft; or (2) the actor offered or attempted to injure another person with the present ability to do so by a means likely to produce death or great bodily injury or during the commission of a robbery, burglary, kidnapping, or theft).

South Carolina courts have not expressly ruled first-degree assault and battery is not a lesser-included offense of first-degree criminal sexual conduct. Rather, our courts have ruled that assault and battery of a high and aggravated nature is a lesser included offense of first degree criminal sexual conduct. See State v. Primus, 349 S.C. 576, 579-80, 564 S.E.2d 103, 105 (2002) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature. Code Ann. § 16-3-600(C)(3).

Therefore, Applicant has failed to establish the trial court lacked subject matter jurisdiction to accept his guilty plea. This Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

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

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record 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 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. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 14 day of August, 2017.



G. THOMAS COOPER, JR.
Presiding Judge
Ninth Judicial Circuit



, South Carolina

JMC20130604779

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013021160

ARREST WARRANT NUMBER

2013A1010203475

DATE OF ARREST

June 22, 2013

ACTION OF GRAND JURY

TRUE BILL

K. E. C. ACTING FOREPERSON

Foreperson of Grand Jury
Date:

SEP 10 2013

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1005008

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

CHRISTOPHER WILLIAM SEABROOK

DOB: 1976

B/M

Indictment for

Distribution of Marijuana

FILED

9/24/2013 10:36:10 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Distribution of Marijuana

That in Charleston County, South Carolina, on or about June 21, 2013, the Defendant, CHRISTOPHER WILLIAM SEABROOK, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Marijuana; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


JENNIFER MCCOY
ASSISTANT SOLICITOR

JMC20130604779

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2013021160

ARREST WARRANT NUMBER

2013A1010203477

DATE OF ARREST

June 22, 2013

ACTION OF GRAND JURY

TRUE BILL

 **ACTING FOREPERSON**

Foreperson of Grand Jury

SEP 10 2013

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS1005010

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2013

THE STATE

vs.

CHRISTOPHER WILLIAM SEABROOK

DOB: 1976

B/M

Indictment for

Possession With Intent to Distribute
Marijuana

FILED

9/24/2013 10:36:10 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 9, 2013 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent to Distribute Marijuana

That in Charleston County, South Carolina, on or about June 21, 2013, the Defendant, CHRISTOPHER WILLIAM SEABROOK, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Marijuana; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


JENNIFER MCCOY
ASSISTANT SOLICITOR

FCH20140504722

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014015550

ARREST WARRANT NUMBER

2014A1010202396

DATE OF ARREST

May 8, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Amber Dobbins* JUL 09 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1004190

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

July Term 2014

THE STATE

vs.

CHRISTOPHER WILLIAM SEABROOK

DOB: 1976

B/M

Indictment for

Possession Of Cocaine Base

FILED

7/23/2014 4:06:43 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

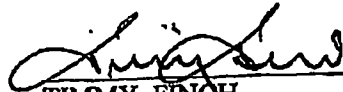
INDICTMENT

At a Court of General Sessions, convened on July 7, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession Of Cocaine Base

That in Charleston County, South Carolina, on or about April 8, 2014, the Defendant, CHRISTOPHER WILLIAM SEABROOK, did possess a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


TIMMY FINCH
ASSISTANT SOLICITOR

FCH20140504806

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014015940

ARREST WARRANT NUMBER

2014A1021000477

DATE OF ARREST

May 12, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

SEP 3 - 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1004978

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2014

THE STATE

vs.

CHRISTOPHER WILLIAM SEABROOK

DOB: 1976

B/M

Indictment for

Criminal Sexual Conduct, 1st Degree

FILED

9/23/2014 2:27:51 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

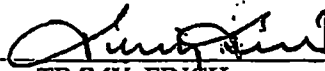
INDICTMENT

At a Court of General Sessions, convened on September 2, 2014 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct, 1st Degree

That in Charleston County, South Carolina, on or about May 11, 2014, the Defendant, CHRISTOPHER WILLIAM SEABROOK, did commit a sexual battery upon the victim, K [REDACTED] without her consent, and with the use of aggravated force, to wit: sexual intercourse; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

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



TIMMY FINCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Christopher William Seabrook

INDICTMENT/CASE#: 2013GS1005008A/W#: 2013A1010203475Date of Offense: 6/21/2013S.C. Code §: 44-53-0370(b)(2)CDR Code #: 0186

AKA: _____
 Race: BLACK Sex: M Age: 38

DOB: 1976 SS#: [REDACTED]Address: Ventura DrCity, State, Zip: North Charleston, SC 29405-7251DL#: [REDACTED] SID#: SC00921990*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: PWID/Dist. of Marijuana or other Sch. I, II, III drug, 2nd Offense

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0187
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. Concurrent
 ATTEST: Andrew Evans SC Bar# [REDACTED] Defendant Jason T. King 68630 MS
Evans, Andrew SC Bar# [REDACTED] Defendant Attorney for Defendant SC Bar# [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 295 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 (Assessments 107.5 %) _____ \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.40 \$ 8.40TOTAL \$ 133.40 \$ 289.40

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk Samuel CurryCourt Reporter: Deborah Garrison

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2000Sentence Date: 3/2/15

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Christopher William Seabrook

AKA:

Race: BLACK Sex: M Age: 38DOB: 1976 SS#: [REDACTED]Address: Ventura DrCity, State, Zip: North Charleston, SC 29405-7251DL#: [REDACTED] SID#: SC00921990*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: PWID/Dist. of Marijuana or other Sch. I, II, III drug, 2nd Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS1005010A/W#: 2013A1010203477Date of Offense: 6/21/2013S.C. Code § 44-53-0370(b)(2)CDR Code #: 0186

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0187☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. GuaranteedATTEST: Evans, Andrew 100005 SC Bar# Defendant James T. King 68630 Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 295 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$150.00

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$5.003% to County (if paid in installments) \$8.40TOTAL \$288.40

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk Amal C...Court Reporter: Deborah Garrison

SCCA/217 (03/2011)

Presiding Judge R. M. ...Judge Code: 2060Sentence Date: 3/2/15

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Christopher William Seabrook

AKA:

Race: BLACK Sex: M Age: 38DOB: 1976 SS#: [REDACTED]Address: Ventura DrCity, State, Zip: North Charleston, SC 29418DL#: [REDACTED] SID#: SC00921990*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Possession of Cocaine Base/Meth, 3rd offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1004190A/W#: 2014A1010202396Date of Offense: 4/8/2014S.C. Code §: 44-53-0375 (A)CDR Code #: 3009

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3016
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. *Concurrent*

ATTEST:

Evans, Andrew100605
SC Bar#DefendantJohn T. King
Attorney for Defendant67630
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 295 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (If paid in installments)		\$ <u>8.40</u>
TOTAL		\$ <u>238.40</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Deborah Garrison

SCCA/217 (03/2011)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.
Presiding Judge Judge Code: 2060Sentence Date: 3/2/2015

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Christopher William Seabrook

AKA:

Race: BLACK Sex: M Age: 38DOB: 1976 SS#: [REDACTED]Address: Ventura DrCity, State, Zip: North Charleston, SC 29418DL#: [REDACTED] SID#: SC00921990*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1004978A/W#: 2014A1021000477Date of Offense: 5/11/2014S.C. Code § : 16-03-0652CDR Code #: 0160

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State. AmartaATTEST: [Signature] 100605 C.S. [Signature] 68630 PD
Evans, Andrew SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 295 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.40</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)PTUP _____
_____ days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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

\$ _____ paid to Public Defender Fund

Other: no sex offender registry☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge: [Signature]
Judge Code: 29.00
Sentence Date: 3/2/15