

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

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S.C. SUPREME COURT

—————  
Certiorari to Oconee County

Honorable Jocelyn J. Newman, Circuit Court Judge

—————  
GREGORY FITZGERALD YOUNG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001653

—————  
APPENDIX  
—————

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Appellate Defender

ALAN WILSON  
Attorney General

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ATTORNEYS FOR RESPONDENT

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1 State of South Carolina.  
 2 County of Oconee In the Court of General Sessions

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 4 State of South Carolina, )  
 5 ) 2015-GS-37-00088  
 6 -vs- ) January 15, 2015  
 7 Gregory F. Young, )  
 8 Defendant. )  
 9 ) Transcript of Record

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B E F O R E:

The Honorable Eugene C. Griffith, Jr., Judge

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

Lindsey Simmons, Esquire  
 Tenth Circuit Solicitor's Office  
 Attorney for the State

Suzanne E. Earle, Esquire  
 Tenth Circuit Public Defender's Office  
 Attorney for Defendant

Diane L. Marcengill, RPR, CRR  
 Circuit Court Reporter

1 (WHEREUPON, court convened with all parties  
2 present and the following proceedings were had  
3 commencing at 3:21 p.m.)

4 MS. SIMMONS: Your Honor, this is Gregory  
5 Fitzgerald Young. He's here on 2015-GS-37-88, which is  
6 a waiver of presentment to the grand jury. It's a  
7 direct presentment. Judge, he was originally charged  
8 with criminal sexual conduct with a minor in the first  
9 degree and I direct-indicted lewd acts. We're  
10 recommending 20 years. So in order to get us to a  
11 range where I could give him 20 years, I did the direct  
12 on CSC second, just a regular CSC with an aggravated  
13 coercion due to the victim's age.

14 Judge, the victim's mom is here and she's on the  
15 way up, but she does not wish to be heard.

16 THE COURT: All right. Your name is Gregory  
17 Fitzgerald Young?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. I have an indictment that  
20 has not been presented to the Oconee County Grand Jury  
21 for criminal sexual conduct in the second degree. It  
22 alleges that you, while in Oconee County, being over  
23 16, between the dates of November 1st of '13 and  
24 December 1st of '13 did commit the offense of criminal  
25 sexual conduct, second degree with a minor by having

1 aggravated coercion to accomplish sexual battery in  
2 violation of the provision of 16-3-650, I believe it's  
3 subpart (b).

4 It's my understanding that you wish to waive  
5 presentment to the Oconee County Grand Jury and plead  
6 guilty on that indictment; is that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right.

9 Ms. Earle, you represent Mr. Young on this matter?

10 MS. EARLE: Yes, your Honor. I have been  
11 appointed --

12 THE COURT: You have been appointed on the CSC  
13 first.

14 MS. EARLE: I have been appointed to represent him  
15 on four charges. This is a negotiated end to those  
16 four charges.

17 THE COURT: So, now, the waiver, the fifth case,  
18 two CSC first, two lewd acts, and this is the one he's  
19 pleading to.

20 MS. EARLE: That's correct.

21 THE COURT: Is that your understanding, Mr. Young,  
22 one charge, all the rest of them go away?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: So you're pleading to one CSC second,  
25 and the CSC first, two counts, lewd acts, two counts,

1 will be dismissed.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay.

4 All right. Ms. Earle, you're familiar with the  
5 facts, examined the discovery provided by the State,  
6 conducted your own investigation. Do you have a belief  
7 if your client went to trial, more probably than not a  
8 jury would find him guilty?

9 MS. EARLE: Yes, your Honor.

10 THE COURT: And all things considered, you believe  
11 this plea is in your client's best interest?

12 MS. EARLE: Yes, your Honor, I do.

13 THE COURT: Mr. Young, we'll have the clerk place  
14 you under oath.

15 (The defendant was sworn.)

16 THE COURT: Mr. Young, in the last 24 hours, have  
17 you taken any alcohol, drugs, medications?

18 THE DEFENDANT: Not yet -- no. I ain't took my  
19 medication yet.

20 THE COURT: Do you take it on a regular basis, on  
21 a daily basis?

22 THE DEFENDANT: In the morning and at 3 o'clock,  
23 and I take another one at night.

24 THE COURT: It's prescribed by the county?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Doctor, nurse?

2 THE DEFENDANT: Yes, sir. Dr. Booker.

3 THE COURT: Does it affect you okay? You know  
4 what's going on?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: It's not causing you to not understand  
7 what my questions are to you or not understand why  
8 you're here?

9 THE DEFENDANT: No, sir.

10 THE COURT: You do understand why you're here?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, we were talking earlier about  
13 your lawyer, about a potential trial starting in, I  
14 don't know, 11, 12 days. 26th of January. Not quite  
15 two weeks from now, a little shorter than that.

16 You have the right to plead not guilty to all  
17 these charges and have a jury trial commencing Monday a  
18 week. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, during that trial the State would  
21 bear the burden of proving your guilt. The State would  
22 have to call its witnesses first, present its evidence  
23 to the jury first. You don't have anything to prove or  
24 disprove. You could sit at the counsel table, not say  
25 a word. Ms. Earle would cross-examine the State's

1 witnesses. She would challenge the introduction of  
2 State's evidence. She could present defenses you may  
3 have available to you on these charges. Do you  
4 understand?

5 THE DEFENDANT: I think so, sir.

6 THE COURT: All right. Now, if you want to plead  
7 guilty, you give up your right to have that jury trial,  
8 and you give up the right to see, hear, or confront the  
9 ones accusing you of committing these charges. Do you  
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Now, you also, during a  
13 trial, you must give up your right to remain silent.  
14 During the trial, you didn't testify. It's your  
15 decision. I'm going to sit here and remain silent.  
16 You could make that decision. During that trial, that  
17 would be your call, not the State's. The State  
18 couldn't call you as a witness, and the State would not  
19 be allowed to even comment on your exercising your  
20 right to remain silent in front of the jury. They  
21 could say nothing about it and not use it against you  
22 in any way. You just be quiet.

23 Now, if you wanted to testify, it would be your  
24 decision and you could testify during your part of the  
25 case. Do you understand that?

1 THE DEFENDANT: I think -- yes. Yes, sir.

2 THE COURT: Now, understanding these rights I've  
3 explained to you to defend yourself at trial, do you  
4 wish to waive those rights in order to enter this one  
5 plea?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, you also initialed right here,  
8 that little box. This indictment has not been heard by  
9 the Oconee County Grand Jury, and you can skip that  
10 step in the criminal procedure steps in order to plead  
11 guilty today to this one charge so that the other four  
12 charges go away if I accept the plea on this one  
13 charge. Do you wish to waive presentment to the Oconee  
14 County Grand Jury?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Are you waiving  
17 presentment freely and voluntarily?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Let me hear a summary of  
20 the facts, please.

21 MS. SIMMONS: Your Honor, the victim in this case  
22 was nine years old at the time of the crime. The  
23 defendant is a family friend, has been a friend of her  
24 mother's for years and years. They grew up together.  
25 He was baby-sitting her on a regular basis while her

1 mom was at work. And between November 1st and  
2 December 1st of 2013 he digitally penetrated her  
3 vagina. Judge, it was charged as CSC first. In order  
4 to recommend 20 years, I changed it to CSC second. The  
5 basis of aggravating coercion would be the fact that he  
6 told her it's their secret, not to tell, and there is a  
7 drastic disparity between the ages of the parties.

8 THE COURT: You heard the summary of the facts  
9 provided by the prosecutor of what she's saying they  
10 could prove at trial. Is that what you're pleading  
11 guilty to?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. It's my understanding the  
14 State is recommending you be sentenced to no more than  
15 20 years, and that the other four charges -- two lewd  
16 acts, two CSC firsts which carry more time, that those  
17 charges will be dismissed if this plea is accepted. Is  
18 that your understanding of the promises made to you to  
19 get you to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Were any other promises made to you to  
22 get you to plead guilty other than that negotiation?

23 THE DEFENDANT: No, sir.

24 THE COURT: Anyone threaten you or coerce you to  
25 get you to plead guilty?

1 THE DEFENDANT: No, sir.

2 THE COURT: Now, this offense, this CSC second, is  
3 classified as a violent offense, meaning you will be  
4 sentenced and housed at the Department of Corrections  
5 with other violent offenders, and you will not be  
6 entitled to all the programs available to the  
7 nonviolent offenders. Do you understand that?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. I'll explain it to you.  
10 As a violent offender, the sentence carries  
11 20 years or more, any sentence you get whether it's one  
12 year, 10 years, 30 years -- it potentially goes more  
13 than 20 and this one can -- if it's a violent offense,  
14 then you have to do 85 percent of whatever sentence the  
15 court imposes. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And you're not eligible for parole.  
18 You're eligible for a program called community  
19 supervision. So that's two differences in being  
20 classified as a violent offender that I can name and I  
21 want you to understand. 85 percent of the sentence, no  
22 parole, but you are eligible for community supervision.  
23 There may be others in the Department of Corrections,  
24 but those are the two main ones you need to be aware  
25 of. Do you understand that?

1 THE DEFENDANT: I think so, sir, yeah.

2 THE COURT: Also you will have a most serious  
3 conviction on your record. And by that, that's a big  
4 strike in the scheme of two strikes you're out or three  
5 strikes you're out.

6 A most serious conviction is considered a big  
7 strike, meaning if you get a second big strike  
8 conviction in the future, the State could ask for a  
9 sentence of life without the possibility of parole. So  
10 this will be a strike, a large strike, on your record.

11 Now, if you never commit another criminal offense,  
12 it never comes into play. But it can be used against  
13 you later if a future most serious offense you're  
14 accused of. Do you understand that?

15 THE DEFENDANT: You mean like if I get charged  
16 with this again?

17 THE COURT: Anything most serious again. I mean  
18 bank robbery, murder, burglary first, this charge  
19 again.

20 THE DEFENDANT: I understand.

21 THE COURT: So if you get another one of those,  
22 life without parole is a possible sentence because of  
23 your prior record on this one.

24 THE DEFENDANT: Okay.

25 THE COURT: Understanding this will be a most

1 serious conviction on your record, do you still want to  
2 plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Understanding you will be classified  
5 as a violent offender, do you still want to plead  
6 guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Also advise you that you have a  
9 limited number of days to file a notice of intent to  
10 appeal if you believe something procedurally has been  
11 done wrong by the court in this plea today. Do you  
12 understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, have you had enough  
15 time to speak with Ms. Earle about your plea on this  
16 charge today?

17 THE DEFENDANT: The time we talked so far.

18 THE COURT: But y'all were getting ready for trial  
19 for Monday a week, were you not?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. And this plea involves the  
22 same facts, same victim as to what you were standing  
23 trial for?

24 THE DEFENDANT: Okay.

25 THE COURT: Is that right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: It wasn't somebody different, was it?

3 THE DEFENDANT: No.

4 THE COURT: Okay. So the facts behind what the  
5 State is accusing you of is the same facts. It's some  
6 misconduct with this young minor. You're being accused  
7 of doing that. That's what you told me you admitted to  
8 the solicitor summarized. So it's not some different  
9 event, is it?

10 THE DEFENDANT: No, sir.

11 THE COURT: So you know the victim -- who was 11?

12 MS. SIMMONS: Nine.

13 THE COURT: Nine.

14 Same victim is what you were preparing to go to  
15 defend yourself at trial, pleading today on the CSC  
16 second degree. Y'all have been talking about that  
17 trial, haven't you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. So you understand that if you  
20 plead today on this, the trial goes away, those four  
21 charges go away.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: They're dismissed because you're  
24 pleading on this one?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: But same victim, same facts.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You have understood that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you understood your conversations  
6 with Ms. Earle?

7 THE DEFENDANT: Yes, sir. She explained it to me  
8 downstairs a while ago.

9 THE COURT: Do you need any more time with her  
10 before I go forward?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you satisfied with the advice  
13 she's getting you, the resolution she's reached, all  
14 things considered?

15 THE DEFENDANT: I tried to understand what she was  
16 talking about, sir.

17 THE COURT: Now, it would be my observation if  
18 you're not going to trial on CSC first, you're avoiding  
19 some upward exposure a lot more jail time you're  
20 avoiding by taking this sentence. Do you understand  
21 that?

22 THE DEFENDANT: Say that again.

23 THE COURT: A CSC first carries a lot more jail  
24 time than a CSC second. And you're not pleading on a  
25 first.

1 (Off-record discussion between Ms. Earle and the  
2 defendant.)

3 THE DEFENDANT: Okay. Yes, sir.

4 THE COURT: Okay. 25 to life is more. I mean,  
5 the minimum is more than the 20 you're getting here.  
6 Life is life.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: This is 20 years at 85 percent. This  
9 is less than what you potentially could be sentenced if  
10 you went to trial in a week if you were convicted.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So she's explained all that to you.  
13 You're avoiding that 25 years to life twice because you  
14 had two charges on that.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Are you pleading guilty because  
17 you are, in fact, guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you're entering this plea freely  
20 and voluntarily?

21 THE DEFENDANT: Yes.

22 THE COURT: Any complaints against the Tenth  
23 Circuit Solicitor's Office or Oconee County Sheriff's  
24 Department?

25 THE DEFENDANT: No, sir.

1           THE COURT: Regarding indictment 15-GS-37  
2 indictment number 88, I find that Gregory Fitzgerald  
3 Young made a free, knowing, intelligent waiver of  
4 presentment to the Oconee County Grand Jury.  
5 Additionally, he's made a free, knowing and intelligent  
6 plea of guilt to the offense of criminal sexual conduct  
7 second degree. He's entered this waiver and plea with  
8 an attorney of whom he states he's understood his  
9 conversation. The State has also provided more than  
10 ample facts to support this plea, and the court would  
11 accept this plea as freely and voluntarily having been  
12 given.

13           All right. Ms. Earle.

14           MS. EARLE: May it please the Court, your Honor.  
15 As Mr. Young told you, he was in special education  
16 classes his entire life. He is actually from Anderson.  
17 He does not live in Oconee County. He was friends with  
18 the victim and the victim's mother.

19           This has been a very difficult case for both of  
20 us, I think. I believe this is the best resolution,  
21 and I would just ask you to take into consideration  
22 that he has -- does have difficulty understanding what  
23 he's charged with, what the consequences may be. And  
24 even though he, I think, got a certificate of  
25 attendance for 12 years of school, he does not have the

1 educational equivalent of a high school degree.

2 THE DEFENDANT: I also was diagnosed with OD.  
3 That's I got a sleeping disorder problem, and my  
4 doctor, Christy Heel, says also affected my memory as  
5 well.

6 THE COURT: Okay.

7 THE DEFENDANT: I do sleep -- supposed to be  
8 sleeping on a CPAP machine because my heart stops at  
9 night. But I wasn't allowed to use it because the guys  
10 in cells be popping a plug to smoke cigarettes and  
11 stuff so I wasn't allowed to use my machine at the  
12 jail.

13 THE COURT: Okay. Now --

14 THE DEFENDANT: I had to be under watch all the  
15 time because my heart stops.

16 THE COURT: Anything else you want to tell me?

17 THE DEFENDANT: Just my medical history.

18 THE COURT: You feel pretty good today? You know  
19 what you pled to?

20 THE DEFENDANT: Yes, sir. She explained it to me.

21 THE COURT: Okay. I want to make sure you  
22 understand that. So you understand you're pleading  
23 guilty to a criminal sexual conduct second degree?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: But the other four charges, CSC first,

1 two counts, lewd act, two counts, are dismissed if I  
2 accept this plea?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: That's what you want to do?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. I accept the plea.

7 Sentence consistent with the recommendation of  
8 20 years. Gets credit for 309 days he's done to today.

9 Good luck, Mr. Young. Good luck to you. And I  
10 hope when you get to the Department of Corrections  
11 maybe they can get you in a little more stable place  
12 where you can get your medication regulated and you can  
13 use the machine.

14 THE DEFENDANT: Yes, sir. Thank you.

15 MS. SIMMONS: Your Honor, just to be sure that I  
16 did include this occurred in Oconee County at the  
17 victim's residence.

18 THE COURT: You did.

19 MS. SIMMONS: Thank you.

20 MS. EARLE: Thank you, your Honor.

21 (WHEREUPON, proceedings concluded at 3:37 p.m.)

22 \*\*\*END OF REQUESTED TRANSCRIPT OF RECORD\*\*\*

23

24

25



STATE OF SOUTH CAROLINA

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

GREGORY F. YOUNG, #362732 Plaintiff(s)

CIVIL ACTION COVERSHEET

15 -CP- 37 - 028

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

(Please Print)

Submitted By: GREGORY F. YOUNG, PRO SE  
Address: PERRY CORRECTIONAL INST  
4305 HAKLAWN RD  
PELZER, SC 29669-9363

SC Bar #: \_\_\_\_\_  
Telephone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_  
Other: \_\_\_\_\_  
E-mail: \_\_\_\_\_

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

**DOCKETING INFORMATION (Check all that apply)**

*\*If Action is Judgment/Settlement do not complete*

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

**NATURE OF ACTION (Check One Box Below)**

- |  |   |  |   |
|--|---|--|---|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> Employment (120)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input type="checkbox"/> Other (199)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case #<br/>20____-CP-_____</li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul>   | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assault/Slander/Libel (300)</li> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Other (399)</li> </ul>  | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul>   |
| <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul>  | <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstat Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul> | <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript of Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Commission (990)</li> <li><input type="checkbox"/> Employment Security Commission (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
| <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> </ul>  | <ul style="list-style-type: none"> <li><input type="checkbox"/> Pharmaceuticals (630)</li> <li><input type="checkbox"/> Unfair Trade Practices (640)</li> <li><input type="checkbox"/> Foreign Subpoenas (650)</li> <li><input type="checkbox"/> Motion to Quash Subpoena in Out-of-County Action (660)</li> </ul>  |  |   |

Submitting Party Signature: Gregory Young

Date: 8/5/2015

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

**FOR MANDATED ADR COUNTIES ONLY**

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

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

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

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

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

FORM 5

STATE OF SOUTH CAROLINA )  
 )  
 County of DCONEE )  
 )  
GREGORY F. YOUNG, #362722 )  
 Full name and prison number (if any) of Applicant )  
PLAINTIFF )  
 v. )  
 )  
 State of South Carolina, )  
DEFENDANT )  
 )

IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEF

15CP37. 628

2015 AUG 20 PM 2:31

FILED DCCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT

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 PERRY CORRECTIONAL INST., (P-2-B-112)  
430 OAKLAWN RD, PELZER, SC 29669-9363
2. Name and location of Court which imposed sentence \_\_\_\_\_
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2014-CB-37691 - Criminal sexual conduct - First degree
  - (b) 2014-CB-37692 - Criminal Sexual conduct - First degree

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- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Jan 15, 2015 20 years 145
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty YES
  - (b) after a plea of not guilty N/A
  - (c) after a plea of nolo contendere N/A
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Request Counsel to appeal on behalf
- 8. If you answered "yes" to (7), list:
  - (a) the name of each Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. N/A
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) Counsel Failed to do so
  - (b) \_\_\_\_\_

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

- (a) Ineffective assistance of Counsel
- (b) Due process Violation - failure of Allocution
- (c) Failure to file An Appeal - failure file motion sentence ~~reconsideration~~  
*12-Consideration*

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

- (a) See Attachment facts
- (b) See Attachment facts
- (c) See Attach ment Facts

12. Prior to this application have you filed with respect to this conviction:

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

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

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

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

*N/A*

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

*N/A*

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

*N/A*

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?

*None*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

*N/A*

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

*N/A*

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) This is Petitioner first PRR NO ISSUE  
 (b) have been ready till now  
 (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? N/A  
 (c) your sentencing? yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO appeal, counsel failed to do her job  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
N/A

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. SUZANNE F. EARLE #0001519 SC BAR  
504 FREEDOM DRIVE WALTHALLA, S.C. 29691  
 ii. Daniel Day  
Public Defender offices  
 iii. Walnut St  
Walthalla, SC 29691  
 (b) the proceedings at which each such attorney represented you:  
 i. Sentencing plea hearing - Suzanne F. Earle  
 ii. Bond hearing - Daniel Day  
 iii. \_\_\_\_\_

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

*Defendant would not have plead to sentence, so as Intelligent, Knowing, and Voluntary under counsel advise, Petitioner seek relief as so and sentence vacated.*

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

*NO*

*ISCP 37-028*

STATE OF SOUTH CAROLINA )  
County of \_\_\_\_\_ )

VERIFICATION

I, GREGORY F. YOUNG #362732, 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.

*Gregory Young*

SWORN to and subscribed before me this 27 day of July, 2015.  
Lamaia Cmwel (L.S.)  
Notary Public

My Commission Expires

My Commission Expires: September 25, 2023

2015 AUG 20 PM 2:31

FILED  
BEVERLY H. WHITEFIELD  
CLERK OF COURT

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JUL 27 2015

P.C.I. MAILROOM

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

ISCP 37-628

I, GREGORY F. YOUNG, # 362732, 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.

G Gregory Young  
Applicant

SWORN or affirmed to and subscribed before me this  
5 day of August, 2015.

Tamara Conwell  
Notary Public

My Commission Expires: September 25, 2023

2015 AUG 20 PM 2:31

FILED  
BEVERLY H. WHITFIELD  
CLERK OF COURT

State of South Carolina  
County of Oconee

Gregory F. Young #362792  
Plaintiff,

vs.

State of South Carolina,  
Defendant.

IN THE COURT OF COMMON PLEA

TENTH JUDICIAL CIRCUIT

Indictments # 2014-GS-37692  
2014-GS-37691

: Attach facts

Here comes the Applicant Gregory F. Young #362792 respectfully, the applicant is asserting claims under the Post-Conviction Act. Applicant is exercising his rights under the South Carolina Constitution Article I, Section 14 expecting to be fully heard on each and every issue presented in Application P.C.R. Applicant request that all grounds for relief be granted by vacating the conviction and sentence.

Applicant contend and can show that his conviction and sentence was in violation of the Constitution of the United States and the constitution law of this State. The Applicant is asserting a 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendment violation which sets forth a prime facie violation of my constitutional rights. The fundamental defects alleged are standard that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of fair procedure. It would be a denial of due process to deny the applicant an evidentiary hearing on the Constitutional and Statutory claims.

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P.C.I. MAILROOM

## FINDING OF FACTS

### 1.) Ineffective Assistance of Counsel

Counsel was ineffective for failure to challenge / objective to the total defective indictment. Solicitor Christy Adams false impression that Defendant had a hold for gun charges in Anderson County. Where Defendant bond was denied to hold Defendant and Indictment on sexual misconduct charge that was held by Courts of earlier dates not to have enough evidences to proceed.

2.) Counsel was ineffective for failing to January 20, 2015 plea hearing when having knowledge Defendant education was below average. leaving Defendant at a disadvantage to comprehend what constitutional rights he was losing to such a agreement.

3.) Counsel failure to object to Solicitor Christy Adams involvement of January 20, 2015 hearing. After Mrs. Adams reveal South Carolina Supreme Court Order her to release herself from case. Solicitor Christy Adams stood with Asst. Solicitor Simmons during hearing, after Courts Order her to have no involvement in case.

### 4.) Due process Violation and failure of Allocation

Courts allow proceeding to proceed after Counsel admitted that she had knowledge of Defendant disability. That is his lack of education below average, and not allowing allocation by defendant that would have revealed his disability.

## FINDING OF FACTS

5) Failure to file An Appeal and filing motion for sentence re-consideration.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want an, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). Also the duty to file a motion for sentence re-consideration.

Rule 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. It is also counsel duty to keep a client reasonably informed about the status of matter. Counsel never disclose the full extent of pursuing Defendant case leaving him lost to what he was truly facing and the Sol. Adams removing of case.

CONCLUSION

In a post-conviction relief action, the Petitioner bears the burden of proving the allegation 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 ground for relief, the Petitioner 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. 688 (1984); Butler, 334 S.E.2d 813. January 20, 2015 Attorney Suzanne E. Earle did so undermined the proper functioning of the adversarial process that plea trial cannot be relied upon as having produced a just result. Counsel Earle failed to produce fundamental evidence of Defendant ability to understand the Criminal proceeding. Defendant education level is below average and comprehending the January 20, 2015 hearing was impossible. Judicial proceeding must make sure a Defendant that makes a plea agreement has Intelligent, Knowing, and Voluntary Made plea agreement. In Defendant case there's no show of fairness once again it would be a judicial miscarriage of justice not to correct these errors.

July 27, 2015

Gregory F. Young #362732  
 Perry Correctional Inst.  
 430 Oak Lawn Rd  
 Pelzer, SC 29669

Beverly H. Whitfield  
 Clerk of Court  
 P.O. Box 678  
 Walhalla, S.C. 29691

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JUL 27 2015

ROBERTSON

TO: Honorable Beverly H. Whitfield

RE: Please send a return copy stamp and filing of PCR Application

Dear Honorable Whitfield,

At this time I request a copy of PCR Application to me after it is clock and stamp, file with your office. I also request that a copy be forward to Attorney General Office. At this time I thank you advance for your assistance.

Sincerely

s/ ~~Gregory Young~~

State of South Carolina  
County of Oconee  
FILED O'CONNOR, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT

Gregory F. Young  
Applicant  
2015 SEP 21 PM 5:08

vs.

State of South Carolina  
Respondent

Motion to Amend  
To Original PCR Application

33

Case No:

2015-CP-37-628

Here comes the Applicant Gregory F. Young  
respectfully requesting to amend his original PCR.

The applicant has asserted claims under the Post-Conviction Procedure Act. Applicant is exercising his right under South Carolina Article I Section 14 expecting to be heard on each and every issue presented in the original and amended Application. Applicant contend and can show that his conviction and sentence was in violation of the Constitution of the United States and the Constitution and law of this state. The Applicant is asserting a 5th, 6th, and 14th amendment violation which sets forth a prime facie violation of my constitutional rights.

1 of 1

G. F. Young  
C. - Atty Gen



## Attachment Facts

### Due Process Violation

Under the South Carolina Constitution and Federal Constitution of the fourteenth Amendment. The spirit of the South Carolina Post-Conviction Relief Act, is to challenge the unconstitutionality of ones Constitutional rights being violated. § 44-23-410. Determination of capacity of persons charged with a crime to stand trial; Duty of a judge, whenever a judge of the Circuit Court or Family Court has reason to believe that a person on trial before him, charged with a commission of a criminal offense or civil contempt, is not fit to stand trial, because the person lack the capacity to understand the proceeding against him. Applicant contends this to be in proceeding of plea hearing, during the latter part Applicant express this to the court. Counsel, Suzanne Earle also acknowledge that Applicant, Gregory F. Young had difficults reading and writing. Applicant falls on the, § 44-20-10 Intellectual disability this would the defendant, Gregory F. Young at great disadvantage. § 44-23-410 also states The Judge shall (1) order examination of the person by two examiners designated by the Department of mental illness. See State v. Locklair, 341 S.C. 352, 535 S.E. 2d 420 (S.C. 2000) and State v. Singelton 322 S.C. 480, 472 S.E. 2d 640 (S.C. App. 1996)

# Attachment Facts

## Ineffective Assistant of Counsel

- 1) Suzanne Earle Esq, Counsel was ineffective for not challenge statements given by Applicant to police, statement was given without counsel, and being that Applicant lacks the ability to understand the question that the police ask. Statements should had been suppress. Intellectual disability base lack of reading and writing capacities.
- 2) Counsel was ineffective for not investigating information given by Applicant, concern victims sexual active. Applicant express to counsel that victim sister had spoken of unbecoming of a child her age, also victim grandfather spoke of misbehavior patterns of the victim, this alone would put victim statement in question of being reliable
- 3) Rule of Professional Conduct requires that a attorney provide competent representation, act with reasonable diligence and promptness in representing clients, abide by a clients decision regarding scope of representation, Keep client reasonably informed.
- 4) Counsel coerce Applicant into taken plea, by informing Applicant he was facing a life-sentence where charge didn't fall under a life-sentence.

Dear Clerk,

Enclosed you will find two (2) copies of my amendments to my PCR application that was filed on August 20, 2015.

Would you please stamp-clock and file the original and forward the extra copy back to me.

I am thanking you in advance for your time and efforts in this urgent matter.

Thanks

**RECEIVED**

AUG 25 2016

Referred to Valenzuela / B  
Answered \_\_\_\_\_

State of South Carolina	)	Court of Common Pleas
	)	
County of Oconee	)	Case No. 15-CP-37-628
	)	
Gregory F. Young, #362732	)	
Plaintiff,	)	AMENDMENTS TO ORIGINAL
	)	PCR APPLICATION
vs.	)	
	)	
State of South Carolina,	)	
Defendants.	)	

The plaintiff in the above action respectfully request to Amend his original PCR application that was filed on August 20, 2015 in the Oconee County Clerk of Court's office.

As of date, the plaintiff was appointed counsel on August 21, 2015 by the Clerk of Court. On August 25, 2015 the Oconee County Clerk of Court issued an Order to vacate appointment of counsel because of a mistake.

Enclosed and attached is a Motion for Appointment of Counsel, Affidavit in Support of plaintiff's Motion for Appointment of Counsel and a Motion for PCR hearing. Also, attached and enclosed are the following amendments:

#### LEGAL CITATION

The applicant allege and can prove that he was denied effective assistance of trial counsel. The applicant submits that the extensive record speaks for itself as to the competency of counsel. Trial counsel for the applicant was not diligent in his representation of the applicant and did not perform well within the range of competence demanded of attorneys in criminal matters and did not perform within the wide range of reasonable professional assistance.

In Strickland v. Washington, 456 U.S. 663, the United States Supreme Court held that a convicted defendant's claim that counsel's assistance was so defective as to require a reversal of a conviction requires that the defendant show, first, that counsel's performance was deficient and, second, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial, 104 S.Ct. 2064. The applicant submits that counsel's performance was deficient

and his performance prejudiced him.

Counsel's performance prejudiced the applicant to the point where there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. The applicant is requesting an evidentiary hearing and a new trial.

Answers to question #10 & #11 on PCR Application.

1) Counsel was ineffective for allowing the state to admit into evidence a statement applicant made while in police custody because the statement was involuntary and induce by a promise of leniency.

Trial counsel was ineffective for failure to challenge and allow the applicant's statement because the officer was in a position of apparent authority, and his comments are tantamount to a promise of leniency.

The test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances. State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980). A statement induced by a promise of leniency is involuntary if so connected with the inducement as to be a consequences of the promise. See, State v. Brown, 268 S.C. 99, 232 S.E.2d 324 (1977). The State bears the burden of proving beyond a reasonable doubt the statement given was voluntary. State v. Goolsby, 263 S.E.2d 31, 101 S.Ct. 616. The State cannot meet its burden of showing the applicant's statement was voluntary and not the product of the officer's promise of leniency. The statement should have been excluded.

Applicant allege that he made self incriminating statements which were induced by the investigating officer's promise of leniency. Applicant asserts that trial counsel was ineffective for failing to inform applicant prior to his guilty plea that his statements may have been made involuntarily and, if so, would be inadmissible at trial. Statements are inadmissible at trial when they are made involuntarily. State v. Franklin, 299, S.C. 133, 382 S.E.2d 911 (1989). A statement is made involuntary when it is induced by a promise of leniency. State v. Peake, 291 S.C. 138, 352 S.E.2d 437 (1987).

Because of trial counsel's deficient performance, he would not have pled guilty, and would have insisted on going to trial to challenge the charge grounded on his allegedly involuntary statements.

### INVOLUNTARY PLEA

The applicant's alleged errors have not been previously litigated or waived in the proceeding resulting in the conviction or in any other proceeding that the petitioner has taken to secure relief from his conviction.

Allegations in applicant's PCR application must be deemed true until those allegations of involuntary plea are controverted by the State. Until allegations contained in verified application for PCR are controverted by the State, they are deemed to be true for purpose of determining whether an evidentiary hearing should be held.

A defendant waives several constitutional rights by pleading guilty, the due process clause requires that the guilty pleas are entered into voluntarily, knowingly and intelligently. See Boykins v. Alabama, 395 U.S. 238 and Pittman v. State, 337 S.C. 507, 524 S.E.2d 623 (1999).

Boykin, requires that a defendant be made aware of:

- 1) The right to a jury trial.
- 2) The privilege against self incrimination.
- 3) The right to confront one's accusers.

Additionally, the South Carolina Supreme Court requires that a defendant entering a guilty plea be made aware of:

- 1) The nature and crucial elements of the offense (See, Henderson v. Morgan), 96 S.Ct 2253 (1976).
- 2) The maximum & any minimum penalty (Pittman v. State), 524 S.E.2d.
- 3) The nature of the constitutional rights being waived. Pittman, supra, Dover v. State, 405 S.E.2d 391 and Hazel v. State, 271 S.E.2d 602 (1980).

Applicant was denied a fair proceeding because of the ineffectiveness of counsel. If it were not for counsel's errors and omissions, the outcome of the proceeding would have been different. A valid waiver must be established under the due

process clause and cannot be presumed from a silent record.

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILURE TO INTERVIEW POTENTIAL WITNESSES ON HIS BEHALF.

3) In this application, applicant asserts ineffective assistance of counsel due to the attorney failing to interview potential witnesses, before advising him to plead guilty. If applicant's case had gone to trial rather than to the guilty plea proceeding, the witnesses could have changed the outcome, or at least changed his decision to plead to the charge. This prejudiced the applicant and the outcome of the case. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052; Cobb v. State, 408 S.E.2d 223.

There is evidence in the record indicating defense attorney failure to conduct adequate investigation. Defense counsel could easily have investigated and discovered the facts and taken proper actions. The record in this case established a reasonable probability that, but for counsel's errors, applicant would not have pled guilty but would have insisted on trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366.

TRIAL COUNSEL FAILED TO REQUEST A MENTAL COMPETENCY HEARING/EVALUATION WHICH DENIED HIM DUE PROCESS OF LAW.

4) The applicant in the referenced case gave his attorney information about his childhood. Mental competency became a issue because of the prior treatment and medication that he was taking. Trial counsel refused to request a mental evaluation which denied him due process and procedural due process of law.

When a criminal defendant's mental capacity is questioned and the trial attorney has reason to believe that the applicant is not fit to stand trial because the person lacks the capacity to understand the proceeding against him or to assist in his own defense, upon request, the judge shall:

1) Order examination of the person by two examiners designated by the Department of Mental Health.

2) Order the person committed for examination and observation to an appropriate facility of Mental Health or Department of Disabilities and special need.

In applicant's case, defense counsel's representation alone should have invoked S.C. Code 344-23-410. Counsel was in a unique position to evaluate applicant's ability to assist him, since that entailed frequent conversation and interaction. Defense counsel's concern about applicant's mental capacity was additionally supported by the uncharacteristic nature of the charge. Applicant had a relatively clean criminal record when he was arrested. The prosecution would have suffered no harm from a mental examination if trial counsel would have requested an examination well before his hearing/trial.

In Medina v. Singletary, 116 S.Ct. 2505, Due Process [also] requires that a hearing be held whenever evidence raises a sufficient doubt about the mental competency of an accuse to stand trial. This procedural competency principle operates as a safeguard to ensure that the substantive competency principle is not violated. Claims involving these principles raise similar but distinct issues, the issue in a substantive claim is whether the defendant was in fact competent to stand trial, but the issue in a procedural competency claim is whether the trial court should have conducted a competency hearing. See, Sheley v. Singletary, 955 F.2d 1434, 1439; United States v. Day, 940 F.2d 973, 982. A denial of either of these rights as in the case at bar should provide the basis for relief. Weisberg v. Minnesota, 29 F.3d at 1276.

Applicant have made a substantive competency claim by allowing he was tried and convicted while mentally incompetent. Due Process prohibited the conviction of a person who is mentally incompetent. Bishop v. U.S., 350 U.S. 961, 76 S.Ct 44, 100 I.Ed 235, Godines v. Moran, 509 U.S. 389, 113 S.Ct. 2680, Pate v. Robinson, 333 U.S. 375, 36 S.Ct. 336, Jeter v. State, 417 S.E.2d 594.

Trial counsel knew that sanity was an issue that should have been fully addressed. Mental alertness and understanding displayed by the applicant in colloquies with the trial court did not justify ignoring applicant's history with his attorney's pronounced irrational behavior while the applicant's demeanor at the plea hearing might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to forego a hearing

on that very issue. Bishop, 350 U.S. 961, 76 S.Ct. 440.

Applicant's constitutional rights were abridged by his failure to receive an adequate hearing on his competence to stand trial. See, Cooper v. Oklahoma, 517 U.S. 348, 116 S.Ct. 1373 (1996) and Drope v. Missouri, 420 U.S. 162, 95 S.Ct. 896.

In Pate v. Robinson, 383 U.S. 375 the court held the failure to observe procedures adequate to protect a defendants right not to be tried and convicted while incompetent to stand trial deprives him of his due process right to a fair trial.

Counsel's performance was deficient and that deficient performance prejudiced his defense.

SUBJECT MATTER JURISDICTION

Trial court lacked subject matter jurisdiction to try and convict Applicant on a void indictment. Generally in a criminal case, the trial court acquires subject matter jurisdiction by way of a valid indictment. State v. Beachum, 342 S.E.2d 507. In other words, a court lacks subject matter jurisdiction to convict and sentence a defendant for an offense for which he was not indicted.

The plaintiff/applicant waived presentment on a CSC second degree with a minor charge and pled guilty. This allege charge was the principle offense that he allegedly committed. Therefore, he cannot waive presentment to a charge that he allegedly committed. Nor did the indictment allege the age of the minor to make it a valid accusation under S.C. Code Ann. §16-3-653.

Trial counsel should have objected to the void indictment which did not set forth subject matter jurisdiction.

Trial court lacks subject matter jurisdiction to convict applicant for an offense when there was no indictment charging him with that offense at the time the hearing was being held. A defendant in a criminal case is entitled to be tried only on the charges set forth in the indictment. S.C. Code Ann. §17-10-10 (1976). The test of sufficiency of an indictment is whether or not it contains the necessary elements of the offense intended to be charged and sufficiency apprises the defendant of what he must be prepared to defend. S.C. Code Ann. §17-10-20. The body of the indictment did not specifically state the essential elements of the crime charged in the body of the indictment, so therefore it was void.

A determination of whether a defendant such as myself was convicted and sentenced for a crime for which I was not indicted involves a question of subject matter jurisdiction and therefore can be raised at anytime, even on appeal. Carter v. State, 495 S.E.2d 773, Beachum, supra.

As a threshold matter, plaintiff's waiver of presentment the day of his guilty plea hearing did not act to confer subject matter jurisdiction on the court. Parties cannot confer subject matter jurisdiction by consent Plante v. State,

Trial counsel should have objected to the void indictment. There is a reasonable probability that had he objected, the outcome of the hearing would have been different. Plaintiff was denied a 5th, 6th and 14th amendment right.

This conviction and sentence should be vacated.

*Gregory Young*

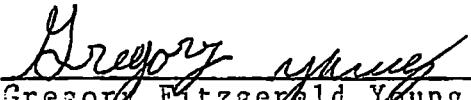
State of South Carolina	)	Court of Common Pleas
	)	
County of Oconee	)	TENTH Judicial Circuit
	)	
Gregory F. Young, #362732	)	Case No. 15-CP-37-623
Plaintiff,	)	
	)	MOTION FOR APPOINTMENT
vs.	)	OF COUNSEL
	)	
State of South Carolina,	)	
Defendants.	)	

Applicant, Gregory F. Young, #362732, hereby respectfully request this Honorable Court to appoint counsel to represent him in this Post-Conviction relief hearing for the following reasons:

- 1) The applicant is unable to afford counsel.
- 2) The issues in this case are complex.
- 3) The applicant does not have an attorney of record in this court of common pleas.
- 4) The applicant has a limited knowledge of the law.

Relief-Request for Appointment of Counsel.

I, Gregory F. Young, #362732, certify and verify under the penalty of perjury that the foregoing is true and correct.  
 28 U.S.C.A. § 1746.

  
 Gregory Fitzgerald Young

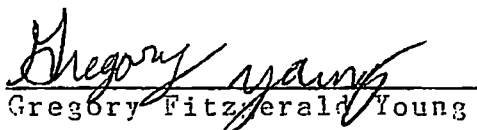
State of South Carolina	)	Court of Common Pleas
	)	
County of Oconee	)	TENTH Judicial Circuit
	)	
Gregory F. Young, #362732	)	Case No. 15-CP-37-628
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT IN SUPPORT
	)	OF APPLICANT'S MOTION
State of South Carolina,	)	FOR THE APPOINTMENT
Defendants.	)	OF COUNSEL

I, Gregory F. Young, #362732, being duly sworn deposes and say:

- 1) I am the applicant in the above entitled case. I make this affidavit in support of my motion for appointment of counsel.
- 2) This is a complex case because it contains several legal claims that have merit.
- 3) The facts in this PCR proceeding along with the legal merit of the applicant's claims support the appointment of counsel to represent the applicant.
- 4) Wherefore, the applicant's motion for the appointment of counsel should be granted.

I, Gregory F. Young, #362732, certify and verify under the penalty of perjury that the foregoing is true and correct.  
28 U.S.C.A. § 1746.

D

  
Gregory Fitzgerald Young

State of South Carolina	)	Court of Common Pleas
County of Oconee	)	TENTH Judicial Circuit
Gregory F. Young, #362732	)	Case No. 15-CP-37-628
Plaintiff,	)	
vs.	)	MOTION FOR POST-CONVICTION
	)	RELIEF HEARING
State of South Carolina,	)	
Defendants.	)	

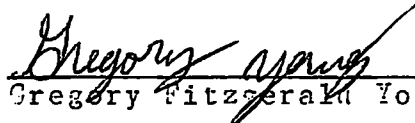
The applicant, Gregory F. Young, #362732, respectfully motion this Honorable Court for a Post-Conviction Relief Hearing to have his timely filed claims adjudicated.

- 1) Applicant was convicted on January 15, 2015, in the Oconee County General Sessions Court on indictment 2015-GS-37-00083.
- 2) Applicant is challenging a meritorious 6th amendment matter.

Wherefore, applicant request for a Post-Conviction hearing in a timely manner.

Applicant request to be present at said hearing.

I, Gregory F. Young, #362732, certify and verify under the penalty of perjury that the foregoing is true and correct 28 U.S.C.A. § 1746.

  
 Gregory Fitzgerald Young

State of South Carolina } Court of Common Pleas  
County of Oconee } C/A. 15-CP-37-628

Gregory Young #362732  
Applicant

vs.

State of South Carolina }  
Respondent

Certificate of Service

The applicant in the above case certifies that he has served the Respondent with a copy of his FR amendments by placing a copy in the Perry mailroom hands for mailing, postage prepaid addressed as follows:

Alan Wilson  
Attorney General  
P.O. Box 11549  
Columbia SC 29211

Beverly Whitfield  
Oconee Co. Clerk of Court  
P.O. Box 678  
Wakulla, SC 29691

I, Gregory Young #362732 certify and verify, under the penalty of perjury that the foregoing is true and correct: 28 U.S.C.A. §1746

RECEIVED

AUG 05 2016

P.C.I. MAILROOM

Gregory Young



ALAN WILSON  
ATTORNEY GENERAL

May 25, 2017

The Honorable Beverly H. Whitfield  
Clerk of Court, Oconee County  
PO Box 678  
Walhalla, SC 29691-0678

**Re: Gregory F. Young, #362732 v. State of South Carolina**  
**2015-CP-37-0628**

Dear Ms. Whitfield:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Lindsay McAllister  
Assistant Attorney General

LAM/dgr  
Enclosure

cc: Rodney Wade Richey, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
	)	
Gregory F. Young,	)	2015-CP-37-0628
S.C.D.C. No. 362732,	)	
	)	
Applicant,	)	<b>RETURN</b>
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

In response to the post-conviction relief (PCR) application filed on August 20, 2015, and the Amendments thereto filed on September 24, 2015, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the June 2014 term of the Oconee County Grand Jury for two counts of Criminal Sexual Conduct (CSC) with a Minor – First Degree (2014-GS-37-0691, -0692). Applicant waived presentment of an indictment for one count of CSC – Second Degree (2015-GS-37-0088) on January 15, 2015. On that same date, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pleaded guilty as indicted to the charge of CSC – Second Degree. Applicant’s charges under the 2014 indictments were dismissed in exchange for his plea. Applicant was represented by Suzanne E. Earle, Esquire. Judge Griffith sentenced Applicant to a term of imprisonment twenty years, as recommended by the State, and required him to register as a Sex Offender. Applicant did not appeal his conviction or sentence.

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

## II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
  - a. Failure to request competency evaluation
  - b. "Not investigating information given by Applicant"
  - c. Various violations of Rules of Professional Conduct
  - d. "Counsel coerce Applicant into taken a plea." (sic)
2. "Due Process Violation – failure of allocution"
3. "Failure to file appeal – failure to file motion sentence reconsideration" (sic)

Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. All amendments should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC.

## III.

Respondent submits counsel rendered effective assistance. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, an applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286

S.C. at 443, 334 S.E.2d at 814.

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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, Applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). 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 there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Respondent submits that 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

## V.

Applicant's second claim fails to set forth with specificity any facts supporting his

allegation that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRPC, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

## VI.

Applicant alleges that plea counsel failed to perfect an appeal on his behalf. Counsel has a constitutionally imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the

defendant seeks an end to judicial proceedings. Id. at 480. To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed. Id. at 484.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Respondent submits that this allegation is without merit and demands strict proof thereof. Nevertheless, the allegation raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### VII.

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

#### VIII.

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

Respectfully submitted,

ALAN WILSON  
Attorney General

ROBERT BOLCHOZ  
Chief Deputy Attorney General

JOHANNA C. VALENZUELA  
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

5/25, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF OCONEE )  
 )  
 )  
 )  
 )  
 GREGORY F. YOUNG, #362732 )  
 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

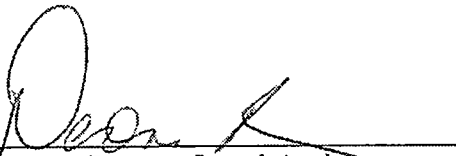
2015-CP-37-0628

AFFIDAVIT OF SERVICE BY MAIL

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

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

DATED this the 25<sup>th</sup> day of May, 2017.

  
 \_\_\_\_\_  
 Deonna Rogers, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
 Gregory Fitzgerald Young,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 2015-CP-37-0628
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

## TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on June 27, 2017, before The Honorable Jocelyn J. Newman in the Court of Common Pleas for the County of Anderson, South Carolina; attended by counsel as follows:

### APPEARANCES:

Rodney W. Ritchey, Esq.  
RITCHIE & RITCHIE  
33 Market Point Drive  
Greenville, South Carolina 29607  
... Appearing for Applicant

Lindsey A. McCallister, Esq.  
OFFICE OF ATTORNEY GENERAL  
Post Office Box 11549  
Columbia, South Carolina 29211  
... Appearing for State of South Carolina

*Transcribed for Vivian H. Cross, Court Reporter*  
Deborah Garrison  
Circuit Court Reporter – 13th Judicial Circuit  
P O Box 27145  
Greenville, South Carolina 29616  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)

Gregory F. Young v State of South Carolina  
Case No. 15-CP-37-0628  
PCR Hearing of June 27, 2017  
Before The Honorable Jocelyn Newman

2

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Redirect Examination by Mr. Richey 22

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## Gregory F. Young v State of South Carolina

3

Case No. 15-CP-37-0628

PCR Hearing of June 27, 2017

Before The Honorable Jocelyn Newman

1

2

(APPLICANT PRESENT)

3

THE COURT: Yes, ma'am?

4

MS. MCCALLISTER: Your Honor, this is

5

Gregory Young versus the State of South

6

Carolina, 2015-CP-37-0628.

7

We are here today in response to Mr.

8

Young's application for post-conviction

9

relief which he filed August 20<sup>th</sup>, 2015, and

10

on September 24<sup>th</sup>, 2015.

11

He was indicted at the January 2014 term

12

of the Oconee County Grand Jury for two

13

counts of criminal sexual conduct with a

14

minor in the first degree. He waived

15

presentment of an indictment for one count

16

of criminal sexual conduct, second degree, on

17

January 15<sup>th</sup>, 2015, and on that same date

18

appeared before Judge Eugene Griffith and

19

pleaded guilty as indicted to the charge of

20

CSC second degree. His other charges were

21

dismissed in exchange for that plea. He was

22

represented by Suzanne Earle.

23

Judge Griffith ultimately sentenced him

24

to a term of imprisonment of twenty (20)

25

years, as recommended by the State.

## Gregory F. Young v State of South Carolina

5

Case No. 15-CP-37-0628

PCR Hearing of June 27, 2017

Testimony of Gregory Young, Applicant - Direct Examination

1 A. Suzanne Earle.

2 Q. You've filed this application and  
3 PCR because you believe that she did not  
4 effectively represent you; is that right?

5 A. Yes, sir.

6 Q. And one of the things that you  
7 allege is that she didn't get a competency  
8 evaluation for you; is that correct?

9 A. That's right.

10 Q. And why do you believe that she  
11 should have had you evaluated?

12 A. Well, I showed proof that I can't  
13 read or write. I was trying to get an  
14 evaluation and she didn't get one and Mr. Day  
15 (phonetic), he didn't get a chance to get  
16 one. He ---

17 Q. So you are not saying that you had,  
18 *per se*, mental issues? You're saying that  
19 your ---

20 A. Yeah, as far as I didn't understand.

21 Q. Did you believe that that would have  
22 assisted her in representing you?

23 A. Yeah, that and also -- well,  
24 everything that I was telling her, she didn't  
25 believe nothing that I was saying. She

Gregory F. Young v State of South Carolina

Case No. 15-CP-37-0628

PCR Hearing of June 27, 2017

Testimony of Gregory Young, Applicant - Direct Examination

1 didn't believe nothing that I said.

2 Q. Okay. So you also allege that she  
3 didn't investigate your case; is that  
4 correct?

5 A. Yes, sir.

6 Q. And what are you alleging that she  
7 didn't do?

8 A. Like the stuff I was telling her and  
9 Mr. Day that the victim was doing sexual acts  
10 for other kids, had been doing them, that  
11 that night they'd spent the night in somebody  
12 else's house and her little sister was lying,  
13 was taking advantage of.

14 Q. Okay.

15 A. And her little sister told me that  
16 she was hurt about it.

17 MS. MCCALLISTER: Objection, Your Honor,  
18 as to what -- hearsay.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. RITCHEY:

21 Q. So you wanted her to investigate  
22 because of other alleged sexual acts that had  
23 been ---

24 A. Yeah, that was before all of this  
25 happened, sir.

1 Q. Okay. And you don't believe that  
2 she did that?

3 A. Yeah. Well, I was told that by the  
4 State that they couldn't do that, and I  
5 didn't know the difference.

6 Q. All right. You also told me that  
7 you were coerced into doing it, that you felt  
8 forced?

9 A. Yeah, because like I said before,  
10 they were telling me that I'd get a life  
11 sentence, but you couldn't get a life  
12 sentence.

13 Q. Okay. They said that they would  
14 give you a life sentence for ---

15 A. Yeah, Chrissy Adams before she was  
16 kicked off this case, that's what she was  
17 saying. That's why I kept going over and  
18 over about a life sentence. That's what she  
19 said at my bond hearing.

20 Q. And you also believe that counsel  
21 failed to file an appeal. Did you ask her to  
22 file an appeal within the ten days?

23 A. No, but the judge did. When she  
24 said, when she told her -- she told him that  
25 he couldn't read or write and that's when the

## Gregory F. Young v State of South Carolina

8

Case No. 15-CP-37-0628

PCR Hearing of June 27, 2017

Testimony of Gregory Young, Applicant - Direct Examination

1 judge said oh, yeah, that 'he's going to need  
2 help on the PCR and that you got ten days to  
3 send him a paper so that he can fill out a  
4 PCR.' So when I -- I didn't get my form  
5 until the next day, and I didn't know how to  
6 fill it out.

7 Q. So the judge told you to file a PCR?

8 A. That's what he told her.

9 Q. The judge told her?

10 A. Yeah.

11 Q. Do you have a copy of the  
12 transcript?

13 A. I've got all my stuff right here.

14 Q. Did you -- was that in your copy of  
15 the transcript?

16 A. There's some stuff missing in my  
17 transcript. It ain't in my transcript.

18 Q. At the guilty plea, you remember  
19 that the judge asked you several questions?

20 A. Yes, sir.

21 Q. Like -- did you understand those  
22 questions?

23 A. Not all of them, no, sir.

24 Q. Do you have the transcript with you  
25 up here?

1 A. Yes, sir.

2 Q. Have you got yours?

3 A. (Indicating).

4 Q. On Page 13 of the transcript, Line  
5 12, when the judge asked you if you were  
6 satisfied with the advice that your attorney  
7 had given you, you said, "I've tried to  
8 understand what she was talking about." What  
9 does that mean?

10 A. I was trying to understand those  
11 questions that she keep asking me ---

12 Q. And did you ---

13 A. --- about the case.

14 Q. Okay. When he asked you if you'd  
15 understood your conversations with Ms. Earle  
16 and you said, "Yes, sir, she explained to me  
17 downstairs awhile ago."

18 A. Yes.

19 Q. You affirmed that you understood  
20 your discussions with her?

21 A. No, that's when -- I didn't really  
22 want to, you know, plead, but she kept saying  
23 that 'this might be the best thing for you.'  
24 So I didn't know what to do, so I did it.

25 Q. So you were trying ---

## Gregory F. Young v State of South Carolina

10

Case No. 15-CP-37-0628

PCR Hearing of June 27, 2017

Testimony of Gregory Young, Applicant - Direct Examination

1           A. I didn't really know what to do  
2 about it. Like I said, a lot of stuff in my  
3 case wasn't looked at and my rights and stuff  
4 was violated, and I didn't know what to do.

5           Q. So you wanted a jury trial?

6           A. Yeah, if they were going to look at  
7 my case, yeah. Like I said, my rights was  
8 violated and they had -- you know, they did  
9 all this without my knowing because -- I  
10 didn't know it it was at the time until I  
11 talked to the investigator and that's when  
12 the investigator told me that they was the  
13 one that -- see, I thought that it was on me  
14 somehow, the warrants, to do stuff like that.

15          Q. So you believe that the attorney  
16 should have investigated that issue.

17 Correct?

18          A. Yeah, all of them.

19          Q. So you are asking the court for a  
20 new trial today. Right?

21          A. Yes.

22          Q. That you want to start from the  
23 beginning, correct?

24          A. Yeah, start over. Get it overturned  
25 or somehow.

1 Q. You understand that the time that  
2 you got is not what you might -- that you  
3 might not get that again. You understand  
4 that, right?

5 A. The -- yes.

6 Q. Okay. Answer any questions that the  
7 other attorney general might have for you,  
8 please.

9 A. All right.

10 THE COURT: Ms. McCallister?

11 MS. MCCALLISTER: Your Honor, I don't  
12 have any questions.

13 THE COURT: All right. Thank you, sir.  
14 You may go back and sit down next to your  
15 lawyer.

16 (WITNESS STEPS DOWN)

17 THE COURT: Counsel?

18 MR. RITCHEY: We would call Ms. Earle.

19 (WITNESS TAKES STAND)

20 SUZANNE E. EARLE, having been sworn to  
21 tell the truth, and nothing but the truth,  
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RITCHEY:

25 Q. Ms. Earle, do you recall represent-

Gregory F. Young v State of South Carolina  
Case No. 15-CP-37-0628  
PCR Hearing of June 27, 2017  
Testimony of Suzanne Earle- Direct Examination

12

1 ing Gregory Young?

2 A. I do, (affirmative nod).

3 Q. And you represented him for a CSC  
4 charge, lewd act; correct?

5 A. Yes, sir.

6 Q. You heard the testimony of Mr.  
7 Gregory -- Gregory Young. Did he talk to you  
8 about wanting a competency evaluation?

9 A. I do not recall that he and I had  
10 that conversation. He did tell me in talking  
11 to him that he had a limited education and a  
12 limited ability to understand.

13 Q. Were you confident -- did you  
14 believe that he was competent to stand trial?

15 A. I did, (affirmative nod).

16 Q. What was the situation -- do you  
17 recall what the situation was with his  
18 educational level? Was it ---

19 A. He told me that he had attended  
20 twelve years of school and had received a  
21 certificate of attendance, that he had been  
22 Special Education classes.

23 Q. Do you believe that he understood  
24 the talks that y'all had had when y'all would  
25 sit down and talk about the case?

1 A. Yes, sir.

2 Q. And he also alleged that there was a  
3 failure to investigate the case. Could you  
4 tell me what you did to investigate the case?

5 A. The things that he asked me to  
6 investigate, I had explained to him on  
7 several different occasions that those were  
8 not incidents that we would be able to bring  
9 up.

10 What he wanted me to do was find other  
11 people who had had sex with this nine-year-  
12 old and have them come to court and testify  
13 that they had also had sex with her. I  
14 explained to him that a victim's prior sexual  
15 history was not relevant at trial.

16 Q. Okay. So was that the sum of the  
17 investigation that he wanted you to do?

18 A. Yes, sir. It was.

19 Q. There was not an allegation of  
20 intercourse. Right?

21 A. I'm sorry?

22 Q. There was not an allegation of  
23 intercourse in your case. Correct?

24 A. There was an allegation of digital  
25 penetration.

## Gregory F. Young v State of South Carolina

14

Case No. 15-CP-37-0628

PCR Hearing of June 27, 2017

Testimony of Suzanne Earle- Direct Examination

1 Q. Did he talk to you about appealing  
2 the case, his plea?

3 A. I don't believe that he told he that  
4 he wanted to appeal. I had explained to him  
5 earlier that when someone does a plea that  
6 there has to be extraordinary grounds to file  
7 an appeal.

8 Q. Did you -- do you recall any grounds  
9 in this case for him to appeal?

10 A. I did not see any, and I believe  
11 that at the conclusion of his case I had sent  
12 him a letter telling him that he had ten days  
13 from the date of the conviction to file an  
14 appeal; that Appellate Defense would handle  
15 that appeal; that there had to be legal  
16 grounds or reasons; and that I did not plan  
17 to file an appeal because it was a negotiated  
18 plea that resulted in four other charges  
19 being dismissed.

20 Q. Did you ever discuss or tell him  
21 that he could get a life sentence for his  
22 charge? Do you recall that?

23 A. I believe that I did on the original  
24 charge.

25 Q. CSC First?

1 A. Yes.

2 Q. And you discussed that but as to the  
3 charge that he pled to, he was not facing a  
4 life sentence?

5 A. Not for what he pled to, (negative  
6 gesture). But the original sentence (sic)  
7 carried anywhere from twenty-five years to  
8 life, which is what I explained to him.

9 Then the plea was to a lesser offense and  
10 the solicitor had conversation on what it  
11 could be reduced to, so that he could get  
12 down to a twenty-year sentence.

13 Q. Can you explain -- do you recall  
14 talking with him initially? Do you recall  
15 the initial conversations that y'all had?  
16 Any of those?

17 A. I have some notes.

18 Q. Well, let me ask it this way, he --  
19 Mr. Gregory (sic), did you actually believe  
20 him when he said that he was not guilty? Did  
21 you have any belief in that story, based on  
22 anything that you had discovered?

23 A. He -- what he told, I told him did  
24 not make any sense.

25 He told me that he had -- if I remember



1 criminal work?

2 A. A total of -- I don't know.

3 Eighteen to twenty years

4 Q. Is that all -- do you do only  
5 criminal work at this time?

6 A. At this point, yes. I am with the  
7 Public Defenders Office now.

8 Q. Was that true at the time of your  
9 representation of Mr. Young, as well, that  
10 you only did criminal work?

11 A. No. I did primarily criminal work.  
12 I did some other matters too.

13 Q. I think that you -- I think you said  
14 you have about eighteen years of expertise  
15 with criminal work?

16 A. With just criminal work, yes.

17 Q. Okay. You talked a little bit about  
18 that you discussed with the Applicant his  
19 side of the story and what he told you ---

20 A. (Affirmative nod).

21 Q. --- had happened. Correct?

22 A. Yes.

23 Q. And did he, in terms of an  
24 investigation, was there anything that he  
25 told you that you tried to follow up on, to

## Gregory F. Young v State of South Carolina

18

Case No. 15-CP-37-0628

PCR Hearing of June 27, 2017

Testimony of Suzanne Earle- Cross Examination

1 try to prove his version of the facts?

2 A. Well, we dismissed what he had told  
3 the sheriff's office investigator and what he  
4 told me, and the difference between them.

5 The main things that he gave me that he  
6 wanted investigated all related to prior  
7 sexual history of the victim.

8 Q. Okay.

9 A. I explained to him repeatedly that  
10 her prior history was not something that  
11 would be brought up at trial.

12 Q. Uh, -- he didn't -- did he give you  
13 any names of other witnesses who might have  
14 seen what happened that day, or anything like  
15 that?

16 A. He told me other people that were  
17 present but no one who actually witnessed  
18 anything.

19 Q. But you did discuss that with him,  
20 the possibility of other witnesses or any  
21 possible defenses that he might have to this  
22 allegation?

23 A. Yes.

24 Q. And you investigated what he gave  
25 you to the extent that you could, is that

1 correct?

2 A. I did not contact the other people  
3 that he told me would have information  
4 concerning the victim's history as far as  
5 having had sex with other people.

6 Q. Okay.

7 A. I made notes of the people that he  
8 said were present but, as I said, none of  
9 them were actually there when this incident  
10 allegedly took place.

11 Q. And did you explain to him why you  
12 could not pursue the issue of the victim's  
13 sexual history?

14 A. I did.

15 Q. And did you feel that he understood  
16 that conversation with you?

17 A. I think that he understood it but  
18 disagreed with me.

19 Q. Okay. I believe that you told Mr.  
20 Richey that you sent a letter to Mr. Young  
21 informing him that he had ten days to appeal  
22 but that you were not planning to file an  
23 appeal. Is that correct?

24 A. That's correct.

25 Q. Is that a fair summary?

1 A. Yes.

2 Q. Do you have that letter in your  
3 file?

4 A. I do, (tendering).

5 Q. (Upon review), okay.

6 MS. MCCALLISTER: (Tenders letter to Mr.  
7 Richey).

8 MR. RITCHEY: (Upon review), no  
9 objection.

10 MS. MCCALLISTER: Your Honor, we would  
11 ask to enter this letter from Ms. Earle to  
12 Mr. Young regarding his appellate rights as  
13 State's Exhibit 1.

14 MR. RITCHEY: No objection.

15 THE COURT: Admitted without objection.

16 (SO ENTERED AS STATE'S EXHIBIT 1)

17 CROSS EXAMINATION CONTINUED

18 BY MS. MCCALLISTER:

19 Q. In terms of the issue of a  
20 competency evaluation, did you ever believe  
21 that Mr. Young didn't understand the  
22 difference between right and wrong or  
23 couldn't understand what he was accused of?

24 A. No. I felt like he fully understood the  
25 charges against him and that he could

1 distinguish right from wrong.

2 Q. Did you have any reason to believe  
3 that a competency evaluation was necessary?

4 A. I did not.

5 Q. In terms of the decision to plead  
6 guilty, did Mr. Young at any point prior to  
7 the guilty plea that day, or during the  
8 guilty plea, say 'hey, I don't want to do  
9 this'?

10 A. He had told me that he didn't really  
11 want to have a trial but that he didn't want  
12 to plead guilty either.

13 Q. Okay.

14 A. And I explained to him that he had  
15 to do one or the other. He was reluctant to  
16 plea but I think that he did understand that  
17 the offer that he had, of twenty years, was  
18 substantially better than what he would be  
19 getting if he was convicted at trial.

20 Q. Did you tell him that he had to  
21 plead guilty?

22 A. I never tell clients that they have  
23 to plead guilty, (negative gesture).

24 Q. Did you say that you felt like a  
25 conviction was likely if he proceeded to

Gregory F. Young v State of South Carolina  
Case No. 15-CP-37-0628  
PCR Hearing of June 27, 2017  
Testimony of Suzanne Earle - Redirect Examination

22

1 trial?

2 A. I did.

3 Q. And that was based on your investi-  
4 gation and the discovery that you were given?

5 A. Yes. I had gone through all the  
6 discovery and watched the forensic interview,  
7 uh, -- I did not think that a jury would find  
8 him Not Guilty.

9 MS. MCCALLISTER: I beg the court's  
10 indulgence, Your Honor. I just want to make  
11 sure that I've addressed all of the  
12 allegations.

13 THE COURT: Yes, ma'am.

14 MS. MCCALLISTER: I think that's all the  
15 questions that I have.

16 MR. RITCHEY: I have just a couple of  
17 questions.

18 REDIRECT EXAMINATION

19 BY MR. RITCHEY:

20 Q. Did he say that he was not guilty of  
21 the charge?

22 A. He changed what he told me several  
23 times. The last thing that he told me was  
24 that she had asked him to do this and that he  
25 felt like he had not done anything wrong.

1 MR. RITCHEY: No further questions.

2 THE COURT: Thank you, ma'am. You may  
3 step down.

4 (WITNESS STEPS DOWN)

5 MR. RITCHEY: Your Honor, the Applicant  
6 rests.

7 THE COURT: Anything further from the  
8 State?

9 MS. MCCALLISTER: No, Your Honor. I  
10 think that we addressed some of the  
11 transcript, I have some cites from the  
12 transcript that I would ask the court to look  
13 at but it's -- I think that the transcript  
14 speaks for itself.

15 THE COURT: Based on what I've heard  
16 today, I don't see any evidence of any  
17 deficiencies in counsel's performance.

18 To the extent that there are deficiencies  
19 or were deficiencies in Ms. Earle's  
20 performance, there is been no showing of any  
21 resulting prejudice to Mr. Young. Therefore,  
22 his application for post-conviction relief is  
23 denied.

24 Please get me a proposed Order, Ms.  
25 McCallister.

Gregory F. Young v State of South Carolina

Case No. 15-CP-37-0628

PCR Hearing of June 27, 2017

Ruling of The Court

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MS. MCCALLISTER: Yes, Your Honor.

(HEARING CONCLUDED)



Suzanne E. Earle  
Attorney at Law

504 Freedom Drive  
Walhalla, South Carolina 29691

(864) 324 - 3047  
earlelaw@gmail.com

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January 21, 2015

Mr. Gregory Fitzgerald Young  
SCDC ID 00362732  
Kirkland Reception and Evaluation Center  
4344 Broad River Road  
Columbia, South Carolina 29210

re: State vs. GREGORY FITZGERALD YOUNG  
Warrant numbers 2014A3720500041 and 2014A3710500135  
Indictments 2015-GS-37-00088, 2016-GS-37-00080, and  
2015-GS-37-00081

Dear Mr. Young:

Enclosed are copies of your sentence sheet and the dismissals of the charges on the above-referenced warrants. The two direct indictments also have been taken into consideration in your sentence.

You have ten (10) days from the date of conviction to file the appeal. The Office of Appellate Defense will handle the appeal after the appropriate notices are filed. There have to be legal grounds or reasons for the appeal, which usually are not available in the case of a plea. I have not and do not plan to file an appeal from this plea because it was the result of a negotiation with the Solicitor's Office to have four (4) charges dismissed in exchange for a plea to one charge.

This will complete my representation of you on these charges, and I am closing my files.

Sincerely,

Suzanne E. Earle

STATE OF SOUTH CAROLINA )  
 COUNTY OF OCONEE )  
 Gregory F. Young, # 362732, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 OF THE TENTH JUDICIAL CIRCUIT

Case No.: 2015-CP-37-0628

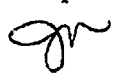
**ORDER OF DISMISSAL**

FILED OCONEE COUNTY, SC  
 BEVERLY H. WHITEFIELD  
 CLERK OF COURT  
 2011 JUL 31 A 11:29

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 20, 2015. Respondent made its Return on May 25, 2017. An evidentiary hearing into the matter was convened on June 27, 2017, at the Anderson County Courthouse before the Honorable Jocelyn Newman. Rodney Richey, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General’s Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Suzanne Earle, Esquire, also testified. This Court had before it a copy of the records of the Oconee County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State’s Return, and the guilty plea transcript.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. Applicant was indicted at the June 2014 term of the Oconee County Grand Jury for two counts of Criminal Sexual Conduct (CSC) with a Minor – First Degree (2014-GS-37-0691, -0692). Applicant waived presentment of an indictment for one count of CSC – Second Degree (2015-GS-37-0088) on January 15,

1  


2015. On that same date, Applicant appeared before the Honorable Eugene C. Griffith, Jr., and pleaded guilty as indicted to the charge of CSC – Second Degree. Applicant’s charges under the 2014 indictments were dismissed in exchange for his plea. Applicant was represented by Suzanne E. Earle, Esquire. Judge Griffith sentenced Applicant to a term of imprisonment twenty years, as recommended by the State, and required him to register as a Sex Offender. Applicant did not appeal his conviction or sentence.

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

#### ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
  - a. Counsel failed to request a competency evaluation;
  - b. Counsel failed to investigate information given by Applicant;
  - c. Counsel violated various Rules of Professional Conduct;
  - d. Counsel coerced Applicant’s guilty plea;
  - e. Counsel failed to file a notice of appeal or motion for reconsideration of sentence.

#### 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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

### Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washington, 466 at 688). 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 pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56. Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton, at 137-38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing

Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138-39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Applicant testified he felt Counsel should have arranged for a competency evaluation to be performed on him although he acknowledged he does not have a mental illness, Applicant testified he has difficulty with reading and writing and has a hard time understanding. Applicant testified Counsel did not believe his version of events and refused to investigate Applicant's allegations that the victim was performing similar sexual acts with other children. Applicant further testified he was coerced into pleading guilty because Counsel told him at his bond hearing that he was facing a life sentence. Applicant further testified he did not want to plead guilty, but Counsel told him it was the best thing to do. Applicant testified he would have wanted a trial if Counsel had investigated his case. Finally, Applicant testified Counsel failed to file an appeal. Although Applicant admitted he never asked Counsel to do so, Applicant testified the judge at his bond hearing directed Counsel to file a PCR application on Applicant's behalf.

Counsel testified she has practiced law for approximately eighteen years, primarily focusing on criminal work. Counsel testified she did not recall having a conversation with Applicant about obtaining a competency evaluation, but they did discuss Applicant's education level and the fact that he was in special education classes in school. Counsel testified she believed Applicant was competent, and Applicant understood all of their discussions and knew the difference between right and wrong. Counsel testified Applicant's story about what

happened did not make any sense, and Applicant claimed he had confessed to protect another child. Counsel testified she went over all the State's evidence with Applicant, including his confession, and she explained to Applicant the alleged additional incidents between the victim and other people could not be introduced as evidence at a trial. Counsel testified Applicant wanted her to call witnesses to testify about the victim's prior sexual history. Counsel further testified after reviewing all the evidence, she concluded it was unlikely Applicant would be found not guilty at trial, and she advised him a conviction was likely. Counsel testified Applicant did not firmly maintain his innocence, and his version of the story changed several times, including differences between what he told her and what he told law enforcement. Counsel testified Applicant could have received a life sentence as he was originally charged with CSC – first degree, but he pleaded guilty to CSC – second degree, which was a lesser offense, to avoid the possibility of a life sentence. Finally, Counsel testified she did not believe Applicant had ever asked her to file an appeal, and she explained the “extraordinary circumstances” standard to him and informed him she did not see any in this case. Counsel produced a letter she sent to Applicant explaining he had ten days from the date of his plea to file an appeal, there needed to be extraordinary circumstances, and she did not plan to file a notice on his behalf.

Regarding Applicant's claim his guilty plea was induced by ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case, and Applicant's decision to plead guilty was made freely and voluntarily. Counsel is a trial practitioner who had experience in the trial of criminal offenses. Counsel conferred with Applicant to discuss the pending charges, the State's evidence, possible defenses and courses of

action, and answered all of Applicant's questions. This Court finds Applicant presented no evidence he asked for an appeal or motion for reconsideration. This Court finds credible Counsel's testimony she felt he had no grounds to support an appeal, and the record reflects she informed Applicant she did not plan to file a notice of appeal on his behalf. Finally, this Court finds Applicant presented no evidence of incompetency which would support a finding that Counsel was deficient for failing to obtain an evaluation prior to Applicant's guilty plea. See Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992) (Applicant "is required to show by a preponderance of the evidence he was incompetent at the time of his plea.").

Additionally, this Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The plea judge explained the charges to Applicant in detail, including the maximum penalty, and the State's recommendation of a twenty-year sentence. The plea judge explained Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of the offense and agreed with the facts presented by the State at the plea. Applicant told the plea judge he was satisfied with his attorney, and he did not need any more time to discuss this matter with Counsel. Applicant further told the plea judge no one had threatened him or made him any promises to get him to plead guilty, and he was doing so of his own accord. Additionally, Applicant explained to the plea judge his educational limitations and stated he had a hard time understanding consequences, and the plea judge thoroughly questioned Applicant a second time as to whether Applicant understood the plea and the nature of the decision he was making. Applicant indicated he understood all of the plea judge's questions, and Counsel had fully explained the agreement to

him. This Court therefore finds that Applicant understood the terms of the plea, and it was knowingly entered into of Applicant's own free will.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. By Applicant's own admission, he has not been diagnosed with a mental illness, and Applicant introduce no evidence to meet his burden of proving he was incompetent at the time of the plea or the time of sexual act. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance, as Counsel negotiated a twenty-year sentence to a lesser offense, sparing Applicant from the possibility of a life sentence, and additional charges were dismissed.

This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both."). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton, 376 S.C. at 137, 654 S.E.2d at 874 ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements."). This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his plea and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal on his own behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

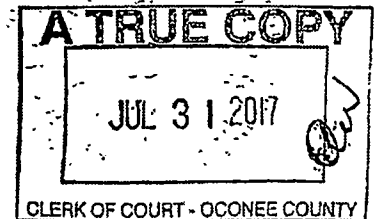
1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 25<sup>th</sup> day of July, 2017.

*Joelyn Newman*  
 THE HONORABLE JOCELYN NEWMAN  
 Presiding Judge  
 Tenth Judicial Circuit

FILED OCONEE COUNTY, SC  
 BEVERLY H. WHITFIELD  
 CLERK OF COURT  
 2011 JUL 31 A 11:29

Columbia, South Carolina.



STATE OF SOUTH CAROLINA )  
COUNTY OF Oconee )

INDICTMENT

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Oconee County present upon their oath:

**Sex / Criminal sexual conduct - Second degree**

That **Gregory Fitzgerald Young, age 36**, did in Oconee County, South Carolina, on or between **November 1, 2013 and December 1, 2013**, commit the offense of criminal sexual conduct, second degree, with <sup>Minor</sup> a minor, by using aggravated coercion to accomplish sexual battery. To wit: defendant did forcibly penetrate victim's vagina with his fingers and urge the victim to keep the incident secret. This is in violation of 16-3-653 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.

  
ASSISTANT SOLICITOR

**WITNESSES**

Gentry Hawk, Oconee Co Sheriff's Dept

**The State of South Carolina**

**County of Oconee**

**COURT OF GENERAL SESSIONS**

**Term**

**ARREST WARRANT NUMBER**

**DIRECT**

**THE STATE**

**vs.**

**Gregory Fitzgerald Young**

**ACTION OF GRAND JURY**

**LSS**

*Foreperson of Grand Jury*

*Date:*

**Indictment for**

**VERDICT**

**Sex / Criminal sexual conduct - Second degree**

SC Code: 16-03-0653

CDR Code: 0161

*\*Foreperson of Petit Jury*

*Date:*

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Oconee )

INDICTMENT

JAN 06 2015

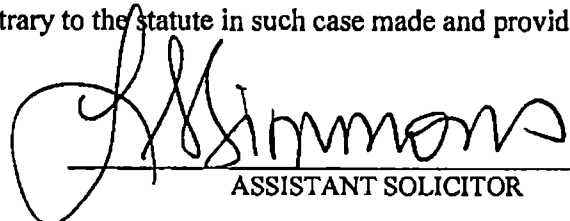
At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Oconee County present upon their oath:

**Criminal Sexual Conduct with a Minor- Third Degree**

That **Gregory Fitzgerald Young**, who is over the age of 14, did in Oconee County, South Carolina, on or between **November 1, 2013 and December 1, 2013**, willfully and lewdly commit or attempted to commit a lewd or lascivious act upon the body or parts of <sup>Minor</sup> whose date of birth is

/2004, a child under the age of 16 and said act was committed with the intent of arousing, appealing to or gratifying the lust, passions or sexual desires of himself or the child, to wit: defendant did rub the vaginal area of the child with his hands. This is in violation of 16-03-655 (C) 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.

  
 ASSISTANT SOLICITOR

DOCKET NO. 2015GS37 00080

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2015 JAN 8 PM 2 41

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept.

*Will Freedstat*

*[Signature]*

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JAN 06 2015

Term

ARREST WARRANT NUMBER

DIR2014A3710500135

THE STATE

vs.

Gregory Fitzgerald Young

ACTION OF GRAND JURY

*True Bill*

LSS

*Melissa Caperton*  
Foreperson of Grand Jury

Date: JAN 06 2015

Indictment for

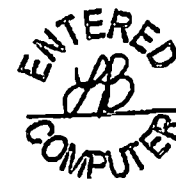
VERDICT

Criminal Sexual Conduct with a Minor- Third Degree

SC Code: 16-03-655 (C)  
CDR Code: 3661

Foreperson of Petit Jury

Date:



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Oconee )

## INDICTMENT


At a Court of General Sessions, convened on JAN 06 2015, the Grand Jurors of Oconee County present upon their oath:

**Criminal Sexual Conduct with a Minor- Third Degree**

That **Gregory Fitzgerald Young**, who is over the age of 14, did in Oconee County, South Carolina, on or between **September 26, 2012 and October 28, 2013**, willfully and lewdly commit or attempted to commit a lewd or lascivious act upon the body or parts of <sup>Minor</sup> whose date of birth is

2004, a child under the age of 16 and said act was committed with the intent of arousing, appealing to or gratifying the lust, passions or sexual desires of himself or the child, to wit: defendant did rub the vaginal area of the child with his hands. This is in violation of 16-03-655 (C) 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.

  
 ASSISTANT SOLICITOR

DOCKET NO. 2015GS37 00081

96

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT

2015 JAN 8 PM 2 41

WITNESSES

R. JONES, Westminster Police Dept.

*Rory Jones*

The State of South Carolina  
County of Oconee

COURT OF GENERAL SESSIONS

JAN 06 2015

Term

ARREST WARRANT NUMBER

DIR2014A3720500041

THE STATE

vs.

Gregory Fitzgerald Young

ACTION OF GRAND JURY

*True Bill*

LSS

*Melissa Cappellone*

Foreperson of Grand Jury

JAN 06 2015

Date:

Indictment for

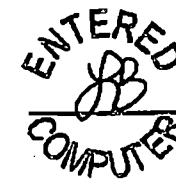
VERDICT

Criminal Sexual Conduct with a Minor- Third  
Degree

SC Code: 16-03-655 (C)  
CDR Code:3661

Foreperson of Petit Jury

Date:



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Oconee )

INDICTMENT

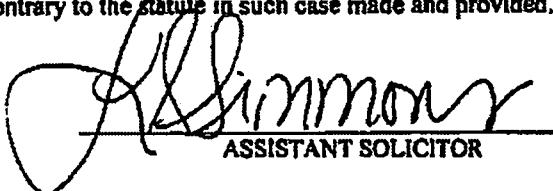
JUN 02 2014

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Oconee County present upon their oath:

**SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11 YEARS OF AGE- FIRST DEGREE**

That Gregory Fitzgerald Young did in Oconee County, South Carolina between November 1, 2013 and December 1, 2013, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor (Minor whose date of birth is 2004) in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: defendant did digitally penetrate the vagina of the victim. This is in violation of 16-3-655(A)(1) 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.

  
ASSISTANT SOLICITOR

DOCKET NO. 2014GS37 00691

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept.

*[Handwritten signatures]*

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUN 02 2014

Term

ARREST WARRANT NUMBER

2014A3710500135

THE STATE

vs.

GREGORY FITZGERALD YOUNG

ACTION OF GRAND JURY

*True Bill*  
*Rodrick Cain*  
*Rodrick Cain*

Foreperson of Grand Jury  
Date:

JUN 02 2014

VERDICT

LSS

Indictment for

SEX / CRIMINAL SEXUAL CONDUCT WITH  
MINOR - VICTIM UNDER 11 YEARS OF AGE-  
FIRST DEGREE

SC Code: 16-03-0655(A)(1)  
CDR Code: 0385

Foreperson of Petit Jury  
Date:

FILED OCONEE, SC  
BEVERLY H. WHITEFIELD  
CLERK OF COURT  
2014 JUN - 5 P 4: 52



STATE OF SOUTH CAROLINA )  
COUNTY OF Oconee )

INDICTMENT

JUN 02 2014

At a Court of General Sessions, convened on \_\_\_\_\_, the Grand Jurors of Oconee County present upon their oath:

**SEX / CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11 YEARS OF AGE- FIRST DEGREE**

That Gregory Fitzgerald Young did in Oconee County, South Carolina between September 26, 2012 and October 28, 2013, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor (Minor whose date of birth is 2004) in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, to wit: defendant did digitally penetrate the vagina of the victim. This is in violation of 16-3-655(A)(1) 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.

  
ASSISTANT SOLICITOR

DOCKET NO. 2014GS37 00692

WITNESSES

R. JONES, Westminster Police Dept.

*J. Bower, f. Bower Westminster PD*

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUN 02 2014

Term

ARREST WARRANT NUMBER

2014A3720500041

THE STATE

VS.

GREGORY FITZGERALD YOUNG

ACTION OF GRAND JURY

*True Bill*  
*Rodrick Cain*  
*Rodrick Cain*

Foreperson of Grand Jury  
Date:

JUN 02 2014

LSS

Indictment for

VERDICT

SEX / CRIMINAL SEXUAL CONDUCT WITH  
MINOR - VICTIM UNDER 11 YEARS OF AGE-  
FIRST DEGREE

SC Code: 16-03-0655(A)(1)  
CDR Code: 0385

Foreperson of Petit Jury  
Date:

2014 JUN -5 P 4: 52

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT

