

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

Perry H. Gravely, Circuit Court Judge

---

**RECEIVED**

JAN 19 2016

**SC SUPREME COURT**

MICHAEL LEE ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001773

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APPENDIX

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STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 )  
 -VS- )  
 )  
 MICHAEL LEE ROBINSON, )  
 )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2013-GS-23-00674

TRANSCRIPT OF RECORD

OCTOBER 9, 2013  
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

CHRIS HODGE, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JAKE ERWIN, ESQUIRE

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were presented during this hearing)

1           **MADAME CLERK:** Your Honor, this is 2013-GS-23-674,  
2 Michael Lee Robinson, indicted for criminal sexual conduct  
3 with a minor, first degree, pleading to criminal sexual  
4 conduct with a minor, victim under eleven years of age,  
5 first degree. And it's a true bill.

6           Would you raise your right hand. Do you swear or  
7 affirm to tell the truth, the whole truth and nothing but  
8 the truth so help you God?

9           **MR. ROBINSON:** Yes.

10          **MADAME CLERK:** Thank you.

11          **THE COURT:** All right. Does he get any jail days?

12          **MS. HODGE:** Yes, sir. He's served one hundred and  
13 seventy-seven days.

14          **THE COURT:** All right. In the last twenty-four hours  
15 have you had any drugs, alcohol or medication?

16          **MR. ROBINSON:** No, sir.

17          **THE COURT:** Have you ever been treated for substance  
18 abuse or mental illness?

19          **MR. ROBINSON:** No, sir.

20          **THE COURT:** I'm sorry?

21          **MR. ROBINSON:** No, sir.

22          **THE COURT:** Okay. You're up here on this indictment.  
23 And it is 2013-674. It alleges that you did in Greenville  
24 County between July 1, 1998 and July 31 of 2000 commit a  
25 sexual battery on T. H., who was less than eleven years of

1 age. CSC with a minor, first degree, twenty-five years to  
2 life.

3 MR. ERWIN: Judge, ---

4 THE COURT: Do you understand that?

5 MS. HODGE: Your Honor, this was pre the law changes  
6 back in '98 and 2000. The sentence was zero to thirty  
7 years.

8 THE COURT: Thirty years, okay. Still considered a  
9 most serious offense.

10 MS. HODGE: Yes, sir.

11 THE COURT: If you get convictions for two or more most  
12 serious offenses you're eligible for life in prison without  
13 parole. It's a violent offense, which means you will  
14 basically do a minimum eighty-five percent of the sentence.  
15 You understand that?

16 MR. ROBINSON: Yes, Your Honor.

17 THE COURT: All right. Understanding the nature of the  
18 charge against you and the maximum possible punishment, how  
19 do you want to plead?

20 MR. ROBINSON: Guilty, Your Honor.

21 THE COURT: I'm sorry?

22 MR. ROBINSON: Guilty, Your Honor.

23 THE COURT: Okay. Is that your free and voluntary  
24 decision?

25 MR. ROBINSON: Yes, Your Honor.

1           **THE COURT:** All right. Do you understand you have an  
2 absolute right to a trial by jury where you would be  
3 presumed innocent unless and until the State could prove you  
4 guilty beyond any reasonable doubt of each and every element  
5 of the offense you're charged with? You'd have a right to  
6 confront and cross examine the witnesses and the evidence  
7 put up against you by the State.

8           You'd have a right to compel in court all relevant and  
9 competent evidence in your own defense. Or you can remain  
10 silent. Your silence cannot be held against you. And you  
11 can never be compelled to incriminate yourself. Do you  
12 understand all those rights?

13           **MR. ROBINSON:** Yes, Your Honor.

14           **THE COURT:** Do you want to give all those rights up to  
15 enter this plea?

16           **MR. ROBINSON:** Yes, Your Honor.

17           **THE COURT:** Are you guilty?

18           **MR. ROBINSON:** Yes, Your Honor.

19           **THE COURT:** Are you completely and totally satisfied  
20 with the representation of your attorney?

21           **MR. ROBINSON:** Yes, Your Honor.

22           **THE COURT:** Do you have any complaints you want to make  
23 about the way you've been treated by anyone?

24           **MR. ROBINSON:** No.

25           **THE COURT:** And have you had enough time to review the

1 evidence the State has against you?

2 **MR. ROBINSON:** Yes.

3 **THE COURT:** Okay. Listen while they tell us the facts.

4 **MS. HODGE:** Thank you, Your Honor. May it please the  
5 Court. February 17th of last year deputies responded to a  
6 disturbance at [REDACTED] Drive in Greenville wherein they  
7 arrived they found the victim in this case, who was a  
8 twenty-one year old male, initials T. H. He was hysterical  
9 and he was angry. And he and his mother were having an  
10 argument.

11 After he settled down a little bit the victim then went  
12 on to tell the police officers about the fact that he had  
13 been raped as a child. He stated when he was eight years  
14 old it happened. He had not told before now because he  
15 thought that his dad would disown him.

16 Officers were also able to get a statement from him  
17 where he stated that when he was eight he lived down the  
18 street, still on [REDACTED] Drive, and that the Defendant, who  
19 was his cousin, had come to his bed when he was asleep, woke  
20 him up, fondled him and made him perform oral sex on the  
21 Defendant. The victim stated this occurred approximately  
22 three times between the ages of eight and ten. At the time  
23 the Defendant was twenty to twenty-two years old.

24 The Defendant did agree to take a polygraph. During  
25 the course of the polygraph he did admit to the examiner

1 that he remembered one incident of having the victim perform  
2 oral sex on him during this time-frame.

3 **THE COURT:** Okay.

4 **MS. HODGE:** He does have a prior record, Your Honor.

5 **THE COURT:** All right. What is that?

6 **MS. HODGE:** A '98 petty larceny, '99 auto breaking,  
7 grand larceny times two, burg, second, non-violent, 2000  
8 shoplifting times two, CDV, 2003 shoplifting, and in Florida  
9 in 2008 a possession of controlled substance. There is no  
10 recommendation as to sentence, Your Honor.

11 We are dismissing -- there were initially six charges  
12 brought. We are dismissing the other five charges. The  
13 victim's mother is here on his behalf and another family  
14 member. And at the appropriate time I think that she would  
15 like to try to address the Court.

16 **THE COURT:** All right. Is all that true?

17 **MR. ROBINSON:** Yes, sir.

18 **THE COURT:** Okay. I'll be happy to hear from her.

19 **MS. HODGE:** Okay. Your Honor, this is Ms. Tracy  
20 Howard. Speak up nice and loud if you can.

21 **MS. HOWARD:** Your Honor, I just want to let you know  
22 what he done to my son has destroyed his life. He don't  
23 leave the house. He don't trust anybody. He's scared to  
24 death that Michael's going to do this to some other kid and  
25 destroy their life.

1           And at one point I loved Michael like he was my own  
2 son. I helped raise him and I trusted him. And he hurt my  
3 child really bad. He's broken, and I don't know if he's  
4 ever going to be able to live a normal life. I just hope  
5 that you'll put him where he needs to be and protect people,  
6 other little children and give my son some peace of mind.

7           **THE COURT:** All right. Thank you very much.

8           **DEFENDANT'S MOTHER:** Your Honor, I'm Michael's mother.

9           **THE COURT:** Ma'am, just a minute. All right. Mr.  
10 Erwin.

11           **MR. ERWIN:** Thank you, Your Honor. I couldn't begin to  
12 try to mitigate the effects on the victim that something  
13 like this would have. I'm certainly not going to try to do  
14 that.

15           I will say this, Your Honor, this happened fifteen  
16 years ago. Mr. Robinson, himself, has been living with the  
17 guilt of having done something like this. In the  
18 intervening fifteen years he has -- I acknowledge that he  
19 does have a record, but you heard there's not been anything  
20 sexual or sexually violent or anything like that. He has  
21 not had anything like that happen to him nor has he, you  
22 know, that's not been in his character.

23           He's here today to acknowledge that he did this, to  
24 take responsibility for it. He understands that he's facing  
25 a boat load of time. But nonetheless he wants to stand up

1 here and acknowledge his part in this and what he's done.

2 His parents are here. And my understanding is that  
3 they did not wish to speak. And but they are -- they want  
4 to stand here and show support for him.

5 I'll just give you a little brief background on what  
6 Michael's been doing with his life. He is -- he hangs steel  
7 panels. They do some work for BMW. He's a working man.

8 And, you know, Your Honor, he has a hundred and  
9 seventy-seven days, we said. There was a period of time  
10 before he ran out of money where he was on house arrest. I  
11 understand that it's up to the Court's discretion, now you  
12 are allowed to give him credit for that time. I'd ask you  
13 to consider that because there is a pretty significant --  
14 there's several more months of time that he's been on house  
15 arrest.

16 Your Honor, I really don't have much more to say. This  
17 is awful. And Michael acknowledges that. And he's just  
18 here to own up to it and ask the Court for mercy in your  
19 sentence.

20 **THE COURT:** All right. What do you want to tell me?

21 **MR. ROBINSON:** Nothing, Your Honor.

22 **THE COURT:** Nothing? Somebody want to talk?

23 **DEFENDANT'S MOTHER:** I just want to say that this has  
24 been a long, hard road. And her husband, he's the one that  
25 got him on drugs when all this started. I don't understand

1 why all this happened because one person gets hooked on  
2 drugs and ---

3 **THE COURT:** Well, no, no. That ain't why it happened.  
4 Okay.

5 **MR. ERWIN:** Your Honor, I would like to add -- I  
6 apologize. But in the fifteen years since then I do not  
7 believe there's been any contact between the Defendant and  
8 the victim, and I don't believe there will be any going  
9 forward. I think that's important to know.

10 **THE COURT:** Okay. Twenty-five years. Good luck.

11 **MS. HODGE:** Thank you, Your Honor.

12 (Hearing ended at 3:42 pm)

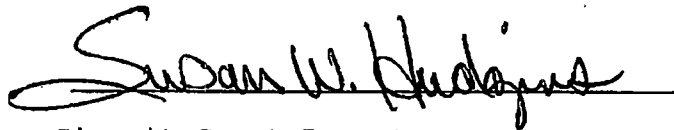
13 (End of requested transcript of record)

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 9th day of October 2013.

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

September 10, 2014

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in black ink and is positioned above a horizontal line.

Circuit Court Reporter

FORM 5

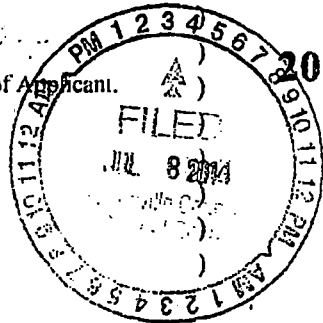
STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE )

MICHAEL LEE ROBINSON )  
Full name and prison number (if any) of Applicant.

2014-CP-23- 03760



APPLICATION FOR

v.  
State of South Carolina

POST-CONVICTION RELIEF

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention LEE Correctional Institute, 990 Wisacky Hwy, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Greenville County, 305 East Worth St., Greenville, South Carolina 29601
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 201365006666
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 10/9/2013

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My lawyer did not advise me/inassistance of council
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective Assistant Counsel (SEE ATTACHMENT ON BACK THAT'S AMENDED)

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) No council prior to hearing & I wasn't advixed of confines surrounding the please offer.

(b) He used fear tactic to coerce defendant to accept the plea that he did'nt understand

(c) \_\_\_\_\_

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

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

\_\_\_\_\_

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) My council wouldn't contact me and only appeared to take me into court for a plea

offer where he coerced me by fear to accept the plea. I didn't know what to do.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Arraignment - did not have one; Plea - Jake Irwin (No contact before the plea hearing)

(b) your trial, if any? n/a

(c) your sentencing? Public Defender. Jake Irwin

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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

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

i. Jake Irwin, 305 East Worth St, Greenville, SC 29601

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Plea

ii. Sentencing

iii. \_\_\_\_\_

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

New trial with competent legal council, or a decrease in time incarcerated.

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

No

STATE OF SOUTH CAROLINA )  
 )  
County of LEE )

VERIFICATION

I, MICHAEL LEE ROBINSON, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Robinson

SWORN to and subscribed before me this 18  
day of June, 2014.

Debra Surles (L.S.)  
Notary Public

My Commission Expires: 11-4-2015

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

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

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

Michael Robinson  
Applicant

SWORN or affirmed to and subscribed before me this  
18 day of June, 2014.

Diana Jones  
Notary Public

My Commission Expires: 11-4-2015

## AMENDMENT TO P.C.R APPLICATION

(MICHAEL LEE ROBINSON)

10. (A) Applicant states counsel was clearly ineffective under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendment for failing to investigate the statutory construction for criminal sexual conduct with a minor, and coercing applicant into pleading to a fabricated erroneous charge because the evidence supports Second Degree instead of First Degree, which is in complete violation of due process.

11 (A) Applicant states a guilty plea must be knowingly, intelligently and voluntarily entered into with a full understanding of the consequences of the plea, Boykin v. Alabama 395 U.S. 238 (1969), 243-244, 89 S.Ct. 1709, 1710; Dover v. State, 405 S.C. 20 391, 392. The plea cannot be knowing, intelligent and voluntary if applicant does not have proper advice from counsel or if counsel has misadvised applicant on what conduct constituted guilt for charged crimes. If counsel has been incompetent to investigate the statutory construction for criminal sexual conduct and had advised applicant to plead guilty to the wrong element/nature then applicant due process has been violated.

S.C. Code 16-3-655, states criminal sexual conduct with a minor is having some type of inappropriate relationship with a minor. It states a person can be guilty of criminal sexual conduct with a minor in the first degree if he has some type of sexual contact with a minor less than eleven years old or has prior offenses. A person can be guilty of criminal sexual contact with a minor who is sixteen or less in certain circumstances.

The courts have stated this charge is extremely complicated and has many factors that can determine guilt or innocence. Also a major factor in this charge depends on a lot of variables which include the Age of the victim, the Relationship of the aggressor to the victim, any prior convictions and the Type of force used.

Applicant states without effective assistance of counsel performing up to the demands of the 6<sup>th</sup> Amendment under Strickland v. Washington 466 U.S. 668, 686 (1984). There's no way a layman who has difficult reading and writing would understand whether counsel's advice is competent or incompetent.

Applicant states the evidence supports the victim was Fourteen (14) years old and applicant was 18 years old. Under criminal sexual conduct with a minor prong (B) states:

- 1) The actor engages in sexual battery with a victim who is fourteen years of age but who is at least eleven years of age; or

- 2) The actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than 16 years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However a person may not be convicted of a violation with another person who is at least fourteen years of age. Under section 46-15-140, upon conviction, must be fined in the discretion of the court or imprisoned not more than Fifteen (15) years or both. Applicant was sentenced to 25 years which violated the applicant's due process. Prong (C) needs to be reviewed in this applicant's case. This charge committed was in April 4, 1996 and the age of the victim becomes a major factor in deciding what charge the applicant should plead to Seventeen (17) years later as applicant was coerced into pleading to a fabricated charge.

Applicant states to obtain relief on an ineffective assistance claim involving a guilty plea, applicant only has to convince the court that a decision to reject the plea bargain would have been rational under the circumstance, *Padilla v. Kentucky*, 559 US. 356 (2010); Applicant clearly would have rejected pleading to first degree had the applicant known the elements of conduct do not constitute guilt of crime charged. It is the state courts responsibility under the U.S. Constitution to ensure the no criminal defendant is left to the mercies of incompetent counsel. The highest court stated incompetent advice distorts a defendant's decision making process and the fairness of the proceedings and rejected the argument made by the state that a knowing and voluntary plea supersedes defense counsels errors.

*Missouri v. Frye*, 132 S.Ct. 1399 (2012), held in order that benefits in pleas bargains can be realized criminal defendants require effective counsel during plea negotiations, anything less might deny a defendant effective representation by counsel at the only stage when legal aid and advice would help him. *Massiah v. US*, 377 U.S. at 201, 205-206 (1964), quoting *Spano v. New York*, 360 U.S. 315 (1959). "A guilty plea is properly open to challenge in situations where the circumstances that coerced applicant into deciding plea has an abiding impact and also taint the plea." Applicant states under *Hill v. Lockhart*, 474 U.S. 56-60 (1985); supra had applicant known his conduct did not constitute guilt of first degree criminal sexual conduct there's no way applicant would have plead guilty.

10 (B) Applicant states counsel was clearly ineffective under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments for failing to investigate the prejudice concerning the preindictment delay and consider reasons for delay as well as prejudice to applicant, which violated applicant due process.

11 (B) Applicant states this (P.C.R.) court task is to determine whether actions complained of violate those fundamental conceptions of justice which lie at the base of Civil and Political institutions and which define community's sense of fair play and decency. Applicant argues counsel should have known that applicable statutes of limitations protect against prosecutions bringing stale criminal charges against any defendant and beyond that protection, fifth amendment requires dismissal of an indictment even if it is brought within statute of limitations, if defendant can prove that governments delay in bringing indictments was deliberate device to gain advantage over him and that it caused applicant actual prejudice in presenting his defense and such protections apply to criminal defendants within and without prison walls.

The courts have stated the 6<sup>th</sup> Amendment right may attach before an indictment and as early as the time of arrest and holding to answer a criminal charge. US v. MacDonald, 456, US 1, 67,102 S.Ct, 1497 (1982); US v. Lovasco, 431 US at 322, 92 S Ct. 464 (1977); US v. Marton, 404 US, at 320, 92, S.Ct, 463 (1984).

Also the courts held applicable statutes of limitations protect against the prosecution's bringing stale criminal charges against any defendant, US v. Lovasco, 431, US at 322, 92 S. Ct at 464 (1977).

Applicant states the material claim that a delay of Sixteen (16) years lapsed between the alleged commission of the offense and the trial, which clearly prejudiced applicant's defense and was the catalyst which forced applicant to enter an unknowing, unintelligent, involuntary guilty plea. The Sixth Amendment guarantees an important safeguard used to prevent undue and oppressive incarceration prior to trial and to limit the possibilities that long delay will impair the ability of the applicant to defend against charges. Impairment of applicant's defense is a most serious interest protected by the 6<sup>th</sup> amendment because with time physical evidence might deteriorate, witness's memories might demish and because the inability to sufficiently prepare a case skews fairness under State and Federal law. State v. Dukes, 1825, 2D 286; US v. Walker, 92F. 30,714. The higher courts have stated if the courts finds the delay was an intentional device to gain a tactful advantage over petitioner, the Honorable Court should dismiss the indictment, Howell v. Barker 904 2d, 895 (1990); Jones v Virginia, 95-6383. Applicant

states the due process violation occurred in reckless disregard of circumstances known to the prosecution which was; this crime was alleged to have occurred when victim was 14 years old and applicant was 18 years old.

This claim arises out of the due process clause of the 5<sup>th</sup> and 14<sup>th</sup> amendments, which states a guilty plea may not be accepted unless it is voluntarily entered with a complete understanding of the nature and consequences of the plea. *Boykin v. Alabama* 395 U.S. 238 (1969); *Kercheval v. US* 274 U.S.220 (1927); *Brady v. US*, 397 U.S. 742. 748 (1970), *Henderson v. Morgan* 426 U.S. 637, 96 S.Ct. (1976); *Smith v. O'Grady* 411 F. 2d 181 (1969); *McCarthy v. US*, 394 U.S. 459, 466 (1969); *State v. Armstrong*, 211 S.E. 2D 889 (1975).

During plea negotiation before deciding whether to plead guilty, petitioner is entitled to the effective assistance of competent counsel, *McMann v. Richardson*, 397 U.S. 759,771 (1970); *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Padilla v. Kentucky*, 559 US. 356 (2010). In *Hill v. Lockhart*, 474 U.S. 56-60 (1985); the court held the two part *Strickland v. Washington*, test applies to challenges to guilty pleas based on ineffective assistance of counsel. If a plea bargain has been offered, petitioner has the right to effective assistance of counsel and counsel acting as an advocate under *Cronic & Strickland*, in considering whether to accept a guilty plea. If that right is denied prejudice can be demonstrated by showing that the pleas was unknowingly, unintelligently and involuntarily made because of incompetence and misadvice of counsel.

In these above cases, Justice Alito, concurring in the judgments states; *"In my views such an attorney must refrain from unreasonable providing incorrect advice."*

Justice Scalia stated, *"In the best of all possible worlds, criminal defendants contemplating a guilty plea ought to be advised of all serious collateral consequences of conviction, and surely ought not be misadvised. The Constitution, however, is not an all-purpose tool for judicial construction of a perfect world; and when we ignore its text in order to make it that, we often find ourselves swinging a sledge where a tack hammer is needed."*

Petitioner is innocent of these charges and should not have been advised by counsel to plead guilty. Voluntariness of a plea of guilty as well as understanding of the nature and elements of a charge should be fully explored before a plea of guilty is accepted, which counsel failed to do. Petitioner states under *Hill v. Lockhart*, *supra*. Petitioner would not have plead guilty to these fabricated charges with proper advice.

10 (C) Applicant states counsel was clearly ineffective under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendments for coercing applicant into an unknowingly, unintelligently and involuntarily

guilty plea due to counsel's poor performance in failing to investigate the charged crimes, which violated applicants due process of the law.

11 (C) Applicant states counsel clearly coerced, influenced applicant into pleading guilty by placing fear into applicant of the harsh sentencing threat applicant faced by going to trial in complete disregard of the circumstances and applicant not wanting to plea.

10 (D) Applicant states counsel was clearly ineffective under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendments for counsel failing to keep the agreed open sentence of three (3) to seven (7) years applicant would get if applicant plead guilty.

11 (D) Applicant states that applicant's due process was violated because the guilty plea was a product of coercion, trickery, deceit, and an unkept plea bargain which completely violated applicants due process and if proven, makes the guilty plea unknowingly, unintelligently, and involuntarily because the plea was only accepted after applicant was given ill advice.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Michael Lee Robinson, )  
 S.C.D.C. No. 357385, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2014-CP-23-3760

**RETURN**

In response to the post-conviction relief application filed July 8, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the February 2013 term of General Sessions for first-degree criminal sexual conduct (CSC) with a minor (2013-GS-39-0666). Jake Erwin, Esquire represented the Applicant.

On October 9, 2013, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to 25 years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in

custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
  - a. Failed to “investigate the statutory construction for criminal sexual conduct with a minor, and coercing applicant into pleading to a fabricated erroneous charge because the evidence supports Second Degree instead of First Degree.” (emphasis in original)
  - b. Failed to “investigate the prejudice concerning the preindictment delay and consider the reasons for delay as well as prejudice to applicant.”
  - c. Coerced the Applicant’s guilty plea “by placing fear into applicant of the harsh sentencing threat applicant faced by going to trial in complete disregard of the circumstances and applicant not wanting to plea.”
  - d. Failed to “keep the agreed open sentence of three (3) to seven (7) years applicant would get if applicant plead guilty.”

### III.

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

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

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

S.E.2d 624, 625 (1989).

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

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

#### IV.

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

#### V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.


Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH  
Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:   
Attorneys for Respondent

October 30, 2014

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 )  
 )  
 MICHAEL LEE ROBINSON, 357385 )  
 )  
 )  
 )  
 Applicant, )  
 )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA, )  
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 )  
 Respondent. )  
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IN THE COURT OF COMMON PLEAS

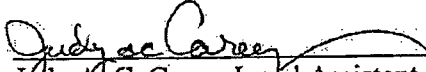
2014-CP-23-3760

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:

**Michael Lee Robinson, 357385**  
**Lee Correctional Institution**  
**990 Wisacky Highway**  
**Bishopville SC 29010**

DATED this 30th day of October, 2014.

  
 Judy A. Carey, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	
State of South Carolina	)	
	)	
v.	)	Case No. 14-CP-23-03760
	)	
Michael L. Robinson,	)	
	)	
Defendant.	)	

## TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on June 16, 2015, before The Honorable Perry H. Gravely, in Courtroom 6 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by counsel as follows:

### APPEARANCES:

Karen Christine Ratigan, Attorney  
 U.S. ATTORNEY'S OFFICE  
 Post Office Box 11549  
 Columbia, South Carolina 29211-1549  
 Appearing for State of South Carolina

Caroline M. W. Horlbeck, Attorney  
 101 Whitsett Street  
 Greenville, South Carolina 29601  
 Appearing for Applicant

Deborah Garrison  
*Circuit Court Reporter – 13<sup>th</sup> Judicial Circuit*  
 P O Box 27145  
 Greenville, South Carolina 29616  
[dgarrison@sccourts.org](mailto:dgarrison@sccourts.org)

Michael Lee Robinson v State of South Carolina  
Case No. 14-CP-23-03760  
Hearing of June 16, 2015  
Before The Honorable Perry H. Gravely

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Before The Honorable Perry H. Gravely

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(APPLICANT PRESENT)

MS. HORLBECK: May it please the Court,  
Your Honor?

THE COURT: Yes.

MS. RATIGAN: This is the case of *Michael Lee Robinson v the State of South Carolina*.  
The docket number is 2014-CP-23-3760.

Mr. Robinson was indicted on First Degree CSC with a Minor. He was represented at this trial by Mr. Erwin. On October 9, 2013 he pled guilty before Judge Miller and received a twenty-five year sentence.

Mr. Robinson did not file an appeal.

The application is timely filed and the State is ready to proceed.

THE COURT: All right.

MS. HORLBECK: Judge, we would call Mr. Michael Lee Robinson to the stand.

THE COURT: Thank you, please state your full name for the record.

MICHAEL ROBINSON: Michael Lee Robinson.

THE COURT: Thank you.

(WITNESS TAKES STAND)

MICHAEL ROBINSON, having been duly sworn to tell the truth and nothing but the truth

Michael Lee Robinson v State of South Carolina  
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1 testified as follows:

2 DIRECT EXAMINATION

3 BY MS. HORLBECK:

4 Q. Mr. Robinson, who represented you on  
5 these charges?

6 A. James Erwin.

7 Q. All right. And where did you first  
8 meet with Mr. Erwin? Were you incarcerated  
9 or had you made bond?

10 A. I was incarcerated.

11 Q. All right. And how soon after your  
12 arrest did you meet with Mr. Erwin?

13 A. Maybe two to four months.

14 Q. Okay. All right. Did Mr. -- you --  
15 did Mr. Erwin get your bond reduced or was --  
16 did you just post the bond as it was?

17 A. I had another lawyer do that.

18 Q. Okay. Who represented you on the  
19 bond hearing? Do you remember? If you don't  
20 remember, that's okay.

21 A. I got it in here somewhere.

22 Q. It -- It wasn't Mr. Erwin ---

23 A. It wasn't Mr. Erwin.

24 Q. All right, but ultimately you made  
25 bond; correct?

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1 A. Yes, ma'am.

2 Q. Okay. And after you made bond did  
3 you have a chance to meet with Mr. Erwin at  
4 his office.

5 A. No.

6 Q. Okay. Did you meet with Mr. Erwin  
7 at all at his office before this guilty plea?

8 A. No.

9 Q. All right. Where did you meet with  
10 Mr. Erwin to discuss your case?

11 A. I was back in the county because I  
12 couldn't pay the -- I lost my job and I  
13 couldn't pay the home arrest monitoring  
14 system.

15 Q. I see, all right. So when -- let me  
16 just back up a little bit. When you were  
17 released on bond were you also -- was a  
18 condition of your bond home incarceration?

19 A. Yes, ma'am.

20 Q. All right. And you -- you weren't  
21 able to pay the home incarceration fees and  
22 you were rearrested? Is that correct?

23 A. Yes, ma'am.

24 Q. All right. Tell me where you --  
25 after you were rearrested from the home

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1 incarceration violation, did you meet with  
2 Mr. Erwin then?

3 A. No.

4 Q. Okay. So when did you meet with Mr.  
5 Erwin to discuss your case?

6 A. In here.

7 Q. All right. How many times did you  
8 meet with Mr. Erwin?

9 A. Three times.

10 Q. And when you say "in here" what do  
11 you mean? In the courthouse or the court-  
12 room?

13 A. In the courthouse.

14 Q. Okay.

15 A. In the little room where I met you.

16 Q. The holding cell that's here?

17 A. Yes, ma'am.

18 Q. All right. And when you -- did you  
19 ever meet with Mr. Erwin when you were  
20 incarcerated at the jail or home -- during  
21 your home incarceration?

22 A. He came -- he came one time.

23 Q. All right. And did you and Mr.  
24 Erwin go over discovery?

25 A. No, ma'am.

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Before The Honorable Perry H. Gravelly

1 Q. Did you review the police reports  
2 and any statements?

3 A. No, ma'am.

4 Q. Okay. All right, did you -- do you  
5 recall telling the judge that you had  
6 reviewed discovery with Mr. Erwin?

7 A. No ma'am.

8 Q. All right. Do you -- do you recall  
9 the judge asking you if you reviewed  
10 discovery with Mr. Erwin?

11 A. I don't recall.

12 Q. All right. Do you recall telling  
13 the judge that you had reviewed all that and  
14 understood all the evidence that the State  
15 had against you?

16 A. I think I did, but I don't recall.

17 Q. Okay. Why did you tell the judge  
18 that if that wasn't so?

19 A. I was just going along with that  
20 plea that he had said.

21 Q. Okay.

22 A. I don't remember ---

23 Q. You were just going along with what  
24 plea that who said?

25 A. He said something like if I go in

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1 here and plea out that I could -- that it was  
2 a good judge on the bench and I could get  
3 three to seven.

4 Q. All right. Who said this to you?

5 A. Mr. Erwin.

6 Q. All right. What did he say about  
7 the three to seven? Did he promise you  
8 anything to get you to plea?

9 A. He was just like there was a good  
10 judge on the -- on the stand and that -- and  
11 that he is real lenient and it would be best  
12 for me to go ahead and plea out.

13 Q. Okay. Tell me what Mr. Erwin said,  
14 if anything, about three to seven years.

15 A. He was like 'we don't want to go to  
16 trial with Dennis' because I could get life  
17 or ---

18 Q. Okay.

19 A. And three to seven sounded better  
20 than life.

21 Q. All right. Was it your under-  
22 standing was there a recommendation from the  
23 State?

24 A. That was -- the way he put it that's  
25 the way I understood it.

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1 Q. Okay. Did the State say anything  
2 about a recommendation during the plea  
3 hearing in front of Judge Miller?

4 A. He was like something like zero to  
5 thirty when I got in there.

6 Q. All right. When you pled guilty in  
7 front of Judge Miller then you understood the  
8 possible sentence was between zero and  
9 thirty?

10 A. I didn't really understand it  
11 because my lawyer then told me three to seven  
12 when I got in there.

13 Q. All right. Do you recall the  
14 prosecutor mentioning a recommendation for  
15 three to seven during the plea hearing?

16 A. No, she recommended like something  
17 -- it was like a zero to thirty when I got in  
18 there.

19 Q. All right. Did she -- when you  
20 heard the State's recommendation from zero --  
21 for zero to thirty, did you say anything to  
22 the judge or stop the proceedings and say  
23 'Hey, I was told we had a deal for three to  
24 seven'?

25 A. No, I just thought it was still the

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1 three to seven.

2 Q. Okay.

3 A. Judge said zero to thirty.

4 Q. All right. Did Mr. Erwin -- did --  
5 once again, did Mr. Erwin ever promise you  
6 that your sentence would be three to seven  
7 years.

8 A. No, ma'am, he never promised  
9 nothing, but---

10 Q. Okay, ---

11 A. That's what he was telling me 'cause  
12 he was telling me not to go to trial.

13 Q. Okay. So if you're -- knowing what  
14 you know now -- I mean, would you still have  
15 pled guilty or would you have gone to trial?

16 A. I'd gone to trial.

17 Q. Okay. Did you and Mr. Erwin discuss  
18 any potential defenses at trial?

19 A. No.

20 Q. Okay.

21 A. I talk -- I told him like I was  
22 wanting to go to trial, but then -- and then  
23 -- and then the next time that I seen him up  
24 here he told me that, that wouldn't be a good  
25 idea.

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1 Q. All right. If you wanted to go to  
2 trial, why did you plea then?

3 A. Because he offered me the three to  
4 seven.

5 Q. All right. Okay.

6 A. And that sounded way better than the  
7 life.

8 Q. Okay. Did Mr. Erwin show you a  
9 written recommendation from the State  
10 concerning three to seven years? Was there  
11 anything in writing?

12 A. He had papers altogether in front of  
13 him, but I couldn't see them.

14 Q. Okay. Is it your argument today  
15 that you somehow -- why did you plea? Did  
16 anybody push you into pleading or did you do  
17 that of your own free will?

18 A. Well, I felt like I had just lost  
19 everything and the three to seven sentence  
20 sounded way better than the life. I just  
21 wanted to get back out and do my life, you  
22 know what I mean?

23 Q. Okay. Did anybody put any pressure  
24 or force you to enter that guilty plea?

25 A. Well, I felt like I was pressured

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1 because he told me the ---

2 Q. Who pressured you?

3 A. The -- the solicitor, the judge, my  
4 lawyer.

5 Q. All right. What kind of pressure?

6 A. He was just like, 'You don't want to  
7 go away for the life, three to seven sounds  
8 better'.

9 Q. All right. So you were scared about  
10 the potential sentence?

11 A. Yeah.

12 Q. All right. Okay, when you say life,  
13 it's -- you-- had you -- had the State  
14 proceeded on the new law you would have faced  
15 a possible life sentence, is that what you  
16 are saying?

17 A. Yeah, that's what I'm saying.

18 Q. Okay. And the State agreed to go  
19 under the old law, is that the case?

20 A. I didn't go under ---

21 Q. If you pled?

22 A. I mean, I didn't think I went under  
23 the old law.

24 Q. Okay. All right. Okay, well  
25 turning to your petition. You also -- you

1 made an all -- you alleged in your petition  
2 that this -- the elements for CSC with a  
3 minor, first, were not satisfied and elements  
4 for the CSC with a minor, second; can you  
5 explain that?

6 A. Yeah, they got me with second degree  
7 here, but they dropped them and somehow  
8 another they hit me with the first (degree).

9 Q. Okay. Did you discuss that with Mr.  
10 Erwin why this was a -- why this -- did you  
11 discuss the elements of CSC with a minor,  
12 first degree.

13 A. No, ma'am, I didn't really have time  
14 to ---

15 Q. All right, ---

16 A. I only talked to him for about two  
17 to three minutes.

18 Q. All right. Did you understand that  
19 the victim in this case alleges that he was  
20 between the ages of eight and ten at the time  
21 this happened?

22 A. This -- this never occurred.

23 Q. Okay. I'm just saying, but did you  
24 and Mr. Erwin ever discuss the fact that this  
25 victim says that this happened when he was

## Michael Lee Robinson v State of South Carolina

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1 between the ages of eight and ten? Do you  
2 understand that?

3 A. I understand what he said ---

4 Q. All right.

5 A. I understand what he said.

6 Q. I guess then I am trying to get why  
7 you would -- why you believe this would have  
8 satisfied the elements for CSC with a minor,  
9 second as opposed to a first?

10 A. Hey, I've got it right here. Can I  
11 show it to you?

12 Q. Sure, yeah go ahead, just -- just  
13 testify.

14 THE COURT: Do you want to see what it  
15 is?

16 COURT REPORTER: You want this as  
17 Petitioner's one -- Applicant's one?

18 DIRECT EXMANINATION CONTINUED

19 BY MS. HORLBECK:

20 Q. Mr. Robinson, I am handing you  
21 Applicant's Exhibit 1. I just ask you to go  
22 ahead and explain that to us.

23 A. All right. It saying -- it says  
24 Criminal Sexual Conduct in Second Degree; it  
25 says June 4, 1996. And then -- and then I

1 got charged with Criminal Sexual Conduct with  
2 a Minor First.

3 Q. Okay. So are you saying that --  
4 that you were also charged with Lewd Act? Is  
5 that what you are saying and that those  
6 charge -- that charge or those charges were  
7 ultimately dismissed?

8 A. That's what it says right there.

9 Q. Okay ---

10 A. Why -- why for a Second though -- it  
11 says Second Degree.

12 Q Okay. All right. Let me see this.

13 THE COURT: All right. Plaintiff's  
14 Exhibit 1 is it without objection.

15 MS. RATIGAN: That's correct, Your Honor.

16 (SO ENTERED AS APPLICANT'S EXHIBIT 1)

17 DIRECT EXAMINATION CONTINUED

18 BY MS. HORLBECK:

19 Q. Okay. Any other reasons that you  
20 want to present why this was a CSC Second and  
21 not a First?

22 A. Well, I mean how did they come up  
23 with that -- that date?

24 Q. Okay. Did you discuss that with Mr.  
25 Erwin? Why this happened so long ago and why

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1 the victim was able to come forward now and  
2 make these allegations?

3 A. No. He never did see me except for  
4 in here and he was just -- it was just real  
5 brief.

6 Q. All right. Is this -- was this the  
7 situation when there was a lapse of some  
8 sixteen years between the happening and the  
9 reporting?

10 A. It was longer than that. I think it  
11 was like seventeen or eighteen years.

12 Q. Okay. All right. Okay, do you have  
13 any other allegations that you want to  
14 present today regarding Mr. Erwin's  
15 representation?

16 A. I got a lot of them.

17 Q. Okay. Well let's -- let's go on to  
18 the ones you haven't already reviewed. Okay?

19 A. All right.

20 Q. You've already said that your plea  
21 was not voluntary and your -- so what other  
22 -- what other reasons do you have to support  
23 your petition?

24 A. Yeah, I just don't understand how  
25 somebody can come up sixteen or seventeen

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1 years later and say something like that. And  
2 if he remembers that date so -- that specific  
3 date, how come it wasn't said then?

4 Q. Okay. Did you discuss any statute  
5 of limitations issues with Mr. Erwin?

6 A. No. Are there any?

7 Q. Well, I don't -- I don't believe so  
8 in this state, but I was wondering if you had  
9 been able to discuss that and got an answer  
10 to that question from Mr. Erwin?

11 A. No. No, ma'am.

12 Q. All right. Okay. Please answer any  
13 questions Ms. Ratigan may have for you.

14 A. All right.

15 CROSS EXAMINATION

16 BY MS. RATIGAN:

17 Q. Did you ever review with Mr. Erwin  
18 the charges against you?

19 A. What's that?

20 Q. Did you ever talk about the charges  
21 you were facing?

22 A. Briefly.

23 Q. Did Mr. Erwin ever tell you the  
24 elements of those charges? What the State  
25 would have to show to prove that you were

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1 guilty?

2 A. No, ma'am.

3 Q. Did he ever tell you the possible  
4 sentences that you were facing on each of  
5 these charges?

6 A. He said something like life, that's  
7 what I recall.

8 Q. So you never went through each of  
9 your charges and talked about the different  
10 sentences you could have gotten?

11 A. No, ma'am.

12 Q. Did you tell him your version of  
13 what had happened with the victim?

14 A. I told him nothing happened, nothing  
15 occurred. That I wanted to go to trial.

16 Q. So you talk about the fact that you  
17 allegedly made an admission to the polygraph  
18 examiner that this had happened at least  
19 once. Did y'all talk about that?

20 A. No, ma'am. I didn't say nothing  
21 like that and if I did they tricked me into  
22 it.

23 Q. Okay. But you never talked about  
24 that with your lawyer?

25 A. No. Only thing that I can remember

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1           that I said I did was contributing to the  
2 delinquency of a minor. Or to the polygraph  
3 examiner.

4           Q.   And did you discuss this with your  
5 lawyer? The things that you said to the  
6 polygraph examiner?

7           A.   I told him that I ain't -- I told  
8 him that I -- that I did the contributing to  
9 a minor, but not what these charges here that  
10 they are saying.

11          Q.   Do you recall the judge telling you  
12 on the day of the plea that you were facing a  
13 sentence of zero to thirty years?

14          A.   When I got in there?

15          Q.   Yes, sir.

16          A.   Yeah.

17          Q.   But your contention today is that  
18 your lawyer told you that you would get  
19 between three and seven?

20          A.   Yeah. He said there was a good  
21 judge on the stand, that we would possibly  
22 walk out with something better than that.

23          Q.   Why didn't you tell the judge that  
24 your attorney had told you that you would get  
25 three to seven years?

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1 A. Well, he didn't ask.

2 Q. Okay. Well what about when he  
3 sentenced you to twenty five? Did you not  
4 think about what you should say something  
5 about how you were told you would get three  
6 to seven?

7 A. Well they just shuffled me out the  
8 door. I didn't have no time to say nothing.

9 Q. Okay. Do you recall the solicitor  
10 during the plea saying that there was no  
11 recommendation as to sentence?

12 A. I can't remember. There was a whole  
13 line of them and it was like seven of us at a  
14 time that day lined up. We was just in a  
15 line, it was like they were in a real hurry  
16 that day.

17 Q. So you never -- you don't remember  
18 anyone saying no recommendation?

19 A. I don't recall.

20 MS. RATIGAN: That's all I have, Your  
21 Honor.

22 MS. HORLBECK: Nothing further.

23 THE COURT: All right. Mr. Robinson  
24 you can step down.

25 (WITNESS STEPS DOWN)

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1 MS. HORLBECK: Judge, we would rest.

2 THE COURT: All right.

3 MS. RATIGAN: The State calls Mr.  
4 Erwin.

5 THE COURT: Thank you, please state  
6 your full name for the record.

7 JOHN ERWIN: John Kenneth Erwin, Jr.

8 THE COURT: Thank you.

9 (WITNESS TAKES STAND)

10 JOHN KENNETH ERWIN, JR., having been duly  
11 sworn to tell the truth and nothing but the  
12 truth testified as follows:

13 DIRECT EXAMINATION

14 BY MS. RATIGAN:

15 Q. Mr. Erwin, were you appointed in  
16 this case or were you retained?

17 A. Appointed.

18 Q. And did you file the usual *Brady* and  
19 Rule 5 Motions?

20 A. I did.

21 Q. Did you receive those into your  
22 office from the State?

23 A. I did.

24 Q. Did you review them independently?

25 A. I did.

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1 Q. Did you review them with your  
2 client?

3 A. I did. On February 1, 2013, I have  
4 a note that we met in my office and went over  
5 discovery at that point.

6 Q. What was Mr. Robinson originally  
7 charged with?

8 A. Let's see, he had three criminal  
9 sexual conduct with a minor charges, three  
10 lewd acts with a minor, and one contributing  
11 to the delinquency of a minor.

12 Q. Were those CSC charges all first  
13 degree or were they first and second?

14 A. They were all first (degree).

15 Q. And did you review those charges  
16 with Mr. Robinson?

17 A. I did.

18 Q. Did you review with him the elements  
19 of those charges?

20 A. Yes, I did.

21 Q. Did you review with him the sentence  
22 ranges on each of those charges?

23 A. No, I didn't.

24 Q. Did he tell you, kinda his version,  
25 of the facts?

1           A. Yeah, he -- pretty much the entire  
2 time he said that this had not happened and  
3 that he wanted a trial. And there was an  
4 admission at one point to an investigator and  
5 like -- like he was saying before I remember  
6 him saying that it was actually a  
7 miscommunication, that he admitted to a  
8 Contributing to the Delinquency charge, but  
9 not to any of the Criminal Sexual Conduct or  
10 Lewd Acts and that was sort of confusing. So  
11 that was his version to it didn't happen and  
12 that that admission was sort of misconstrued.  
13 Yeah.

14           Q. Did you always have the meeting in  
15 your office without a package while he was  
16 out on bond?

17           A. Yes, I think he was on house arrest  
18 at that point.

19           Q. Okay. And did he eventually end up  
20 going back to jail?

21           A. He did.

22           Q. Did you have meetings with him at  
23 the jail once he was back there or meetings  
24 at the courthouse?

25           A. I think after that all of our

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1 meetings would have been at the courthouse  
2 and I've got three in my files, updates that  
3 we met. Which I guess would have included  
4 the day that he actually pled.

5 Q. In your opinion, were there any  
6 defenses that you could have raised to any of  
7 these charges?

8 A. I mean, not really, I mean there's  
9 always you know 'this didn't happen' and  
10 sometimes in a case like this that can be --  
11 that can be a hard defense to -- to -- to  
12 use, but that was what we had at that time.  
13 Is that really a defense? Kinda not, but it  
14 would've been -- it would've been a  
15 reasonable doubt case basically if we would  
16 have gone to trial.

17 Q. Do you know what caused him to  
18 change his mind and decide to plead guilty  
19 instead of going to trial?

20 A. I mean -- I don't know, kind of  
21 seems to me at the time it was a lie once he  
22 was off house arrest and once he was back in  
23 jail. He started to have a little more of a  
24 realistic idea of -- of the way -- of the way  
25 things were going to go, starting looking at

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1 his situation and starting considering  
2 pleading a little more. I know that there  
3 was one -- there was a day that he was  
4 brought over here to potentially go in front  
5 of the judge to plea.

6 When we met before, and at this  
7 point he told me that he wanted to plea but  
8 that he was still going to maintain his  
9 innocence and that that's not really how it  
10 works -- that's not how it typically works  
11 and so I know we got into it a little bit  
12 that day. That would have been in August of  
13 2013. We got into it a little bit that day  
14 because he wanted to plea but was not going  
15 to admit his guilt and I knew that was going  
16 to be bad news, so I wouldn't let him do it  
17 that day.

18 And then later on another time he  
19 was brought up here and we talked about it  
20 some more. I guess he just decided that he  
21 was willing to admit that he -- that this did  
22 happen and he did.

23 Q. Did the State ever make any kind of  
24 offer in this case?

25 A. They did, it was not much of an

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1 offer. Basically, it was that they were  
2 going to dismiss all of the charges except  
3 for one CSC with a Minor First. And that  
4 they were going to agree to let Mr. Robinson  
5 plea and be sentenced under the old version  
6 of the law, which has a sentencing range of  
7 zero to thirty. And they indicated that if  
8 we were to go to trial they were going to  
9 pursue the new version of the law which has a  
10 mandatory minimum twenty five up to life. So  
11 it was my recommendation the offer  
12 essentially was dismiss everything except for  
13 one, go straight up zero to thirty.

14 Q. And did you relay this to Mr.  
15 Robinson?

16 A. I did. I would have and in fact I  
17 think we already had that offer. Yeah, when  
18 we met -- when we had the office meeting that  
19 I talked about earlier in February, we  
20 already had the offer at that point and in my  
21 notes it says that we reviewed discovery and  
22 offers, so we would've talked about it then.

23 Q. And did you ever tell Mr. Robinson  
24 if he pled guilty he would get between three  
25 and seven years?

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1           A.    No, I have no idea where that  
2           would've come from.

3           Q.    Did you make him any kind of  
4           promises about sentencing?

5           A.    Absolutely not.

6           Q.    Did he ever contact you at any time  
7           after the plea and express any kind of  
8           surprise that he did not receive the three to  
9           seven-year sentence?

10          A.    I don't think so. I don't have any  
11          letters in the file or anything like that and  
12          I don't remember hearing from him after the  
13          plea.

14          Q.    That's all I have, Your Honor.

15          THE COURT:    Any questions?

16                            CROSS EXAMINATION

17          BY CAROLINA HORLBECK:

18          Q.    The statement that Mr. Robinson made  
19          to the polygraph examiner, was that a  
20          statement or was it a response to a question,  
21          does that make sense?

22          A.    Yeah, ---

23          Q.    Do you remember?

24          A.    And this is -- this is how I  
25          remember it. They did the -- what -- what I

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1 call the polygraph trick, where they bring  
2 somebody in and they send down for a  
3 polygraph examiner. And the polygraph  
4 examiner takes him through the entire process  
5 and then they leave for a while and they turn  
6 a light on in the room. And then they come  
7 back a few minutes later, obviously they  
8 haven't had time to review the test or  
9 anything like that, but they just bluff and  
10 they come in and say, 'You failed the test,  
11 we know you're lying, now's the time to tell  
12 us the truth.' That's when he said 'Yeah,  
13 one -- it happened one time', or something  
14 like that. And that -- and that's when they,  
15 you know, and I think that's when they  
16 decided to -- to go ahead and arrest him for  
17 it.

18 Q. Okay. To your understanding would  
19 the polygraph -- and I -- but this probably  
20 would never come into this, but was -- did  
21 the report say that Mr. Robinson failed his  
22 polygraph test?

23 A. I don't remember what exactly what  
24 the report said about that.

25 Q. All right. And then was there any

1 discussion on what the State about a  
2 potential -- a potential of reducing the  
3 charges to a second degree or a third degree?

4 A. No, that's not something that we  
5 ever talked about. I remember -- the only  
6 thing is I remember Mr. Robinson said, you  
7 know, what he was looking for was a sentence  
8 of about two years. And I have that in my  
9 notes and I remember pitching that to the  
10 Solicitor as a possible solution, and that  
11 was just -- that didn't get very far. She  
12 was not into that.

13 Q. Okay. Was there any evidence that  
14 this case -- that under the element --  
15 elements of the second degree?

16 A. Well, no. I mean -- it's a -- it's  
17 just cause the -- the -- the -- the reason a  
18 CSC is based on age.

19 Q. Right.

20 A. And the victim was very clear about  
21 the timeframe of this stuff and it was  
22 between the ages of eight and ten, which is  
23 under eleven and there's just -- there's no  
24 way that turns into a second unless the  
25 Solicitor is going to make that deal and that

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1 was not what happened here.

2 Q. Okay. All right. And then any --  
3 there's been some -- in the petition there  
4 was a mention of force. What, in your  
5 opinion, was there ever a defense to be made  
6 that there was no pressure or force put on  
7 this victim? Would that have been a  
8 potential defense?

9 A. I mean, I -- from what I remember I  
10 don't remember that being a particularly  
11 strong defense. I mean, surely if we would  
12 have gone to trial we would have argued  
13 something along those lines. But the fact of  
14 the matter was, you know, there was a pretty  
15 large difference in age here, they were  
16 family and it did sound like at the very  
17 least there was -- there was coerciveness. I  
18 think the State would have argued that it was  
19 force.

20 MS. HORLBECK: All right, that's all I  
21 have. Thank you.

22 THE COURT: Follow up?

23 Ms. RATIGAN: I have nothing, Your Honor.  
24 And the State would rest.

25 THE COURT: You may step down.

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(WITNESS STEPS DOWN)

THE COURT: Anything further for the  
Petitioner?

MS. RATIGAN: No, Your Honor.

THE COURT: All right. I'll be glad to  
hear from you.

MS. HORLBECK: Judge, I just rest on the  
-- I don't have any further argument. We  
just ask that the Petition be granted.

THE COURT: Ms. Ratigan?

MS. RATIGAN: I waive argument, Your  
Honor.

THE COURT: All right. I believe based  
on the testimony that the Court determines  
that -- I don't feel like the Petitioner has  
met his burden under the PCR standard and I'm  
going to deny the Petition. The matter is  
dismissed.

MS. RATIGAN: Thank you, Your Honor.

(HEARING CONCLUDED)



These charges were dismissed on 10/10/2013

State of South Carolina vs Michael Lee Robinson					
Case Number:	M993094	Court Agency:	Greenville General Sessions	Filed Date:	03/27/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Dismissed	Assigned Judge:	Garrett, Charles R.	Disposition Judge:	Solicitor / Master In Equity G S And C P
Disposition:	Pled Guilty to Other Charges				
Disposition Date:	10/10/2013	Date Received:	03/26/2012	Arrest Date:	03/22/2012
Law Enf. Case:	2012-23773	True Bill Date:	02/19/2013	No Bill Date:	
Prosecutor Case:		Indictment Number:	2013GS2300676	Waiver Date:	
Probation Case:					

Case Parties	Charges	Actions	Financials	Bonds
Name	Charge Code - Charge Description	Original Charge Code - Original Charge		Disposition Date
Robinson, Michael Lee	2468-Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)	2468-Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)		10/10/2013

State of South Carolina vs Michael Lee Robinson					
Case Number:	M993895	Court Agency:	Greenville General Sessions	Filed Date:	03/27/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Dismissed	Assigned Judge:	Garrett, Charles R.	Disposition Judge:	Solicitor / Master In Equity G S And C P
Disposition:	Pled Guilty to Other Charges				
Disposition Date:	10/10/2013	Date Received:	03/26/2012	Arrest Date:	03/22/2012
Law Enf. Case:	2012-23773	True Bill Date:	02/19/2013	No Bill Date:	
Prosecutor Case:		Indictment Number:	2013GS2300673	Waiver Date:	
Probation Case:					

Case Parties	Charges	Actions	Financials	Bonds
Name	Charge Code - Charge Description	Original Charge Code - Original Charge		Disposition Date
Robinson, Michael Lee	2468-Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)	2468-Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)		10/10/2013

State of South Carolina vs Michael Lee Robinson					
Case Number:	M993896	Court Agency:	Greenville General Sessions	Filed Date:	03/27/2012
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Dismissed	Assigned Judge:	Garrett, Charles R.	Disposition Judge:	Solicitor / Master In Equity G S And C P
Disposition:	Pled Guilty to Other Charges				
Disposition Date:	10/10/2013	Date Received:	03/26/2012	Arrest Date:	03/22/2012
Law Enf. Case:	2012-23773	True Bill Date:	02/19/2013	No Bill Date:	
Prosecutor Case:		Indictment Number:	2013GS2300677	Waiver Date:	
Probation Case:					

Case Parties	Charges	Actions	Financials	Bonds
Name	Charge Code - Charge Description	Original Charge Code - Original Charge		Disposition Date
Robinson, Michael Lee	2468-Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)	2468-Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)		10/10/2013



Why were these charges dismissed?

The charges dismissed were for a minor under 16 yrs of age. You were charged for a minor under 11 yrs of age. Why the switch? Do you know?

10/13  
2013  
1996  
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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Michael Lee Robinson, )  
 S.C.D.C. No. 357385, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2014-CP-23-3760

2015 JUL 20 PM 4:40  
 COURT REPORTER  
 COURT REPORTER

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 2014. The Respondent made its return on October 30, 2014. An evidentiary hearing was held on June 16, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Jake Erwin, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2013 term of the Greenville County Grand Jury for first-degree criminal sexual conduct (CSC) with a minor (2013-GS-39-0666). He was represented by Jake Erwin, Esquire.

On October 9, 2013, the Applicant pled guilty. The Honorable Edward W. Miller

sentenced the Applicant to 25 years imprisonment. The Applicant did not appeal.

### ALLEGATIONS

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

1. Ineffective assistance of counsel.
  - a. Failed to "investigate the statutory construction for criminal sexual conduct with a minor, and coercing applicant into pleading to a fabricated erroneous charge because the evidence supports Second Degree instead of First Degree." (emphasis in original)
  - b. Failed to "investigate the prejudice concerning the preindictment delay and consider the reasons for delay as well as prejudice to applicant."
  - c. Coerced the Applicant's guilty plea "by placing fear into applicant of the harsh sentencing threat applicant faced by going to trial in complete disregard of the circumstances and applicant not wanting to plea."
  - d. Failed to "keep the agreed open sentence of three (3) to seven (7) years applicant would get if applicant plead guilty."

### 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 conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he had three meetings with plea counsel but that they did not review his charges, the elements of his charges, or the discovery materials. The Applicant stated he wanted a trial but plea counsel said this was a bad idea. The Applicant stated he felt pressured to plead guilty because plea counsel told him he faced a life sentence. The Applicant stated he believed there was a recommendation for a 3-7 year sentence but admitted plea counsel did not promise him anything.

Plea counsel testified the Applicant originally faced 3 counts of first-degree CSC with a

minor, 3 counts of lewd act upon a child, and 1 count of contributing to the delinquency of a minor. Plea counsel testified he filed discovery motions in this case, received those materials, and reviewed them with the Applicant. Plea counsel testified he had several meetings with the Applicant. Plea counsel testified they had a meeting on February 1, 2013 in order to review the discovery materials. Plea counsel testified he and the Applicant reviewed the charges, elements of the charges, sentence ranges, potential defenses, and the Applicant's version of events. Plea counsel testified the State made a recommendation to dismiss all the charges but one of the counts of first-degree CSC with a minor if the Applicant pled guilty under the old version of the law that was 0-30 years. Plea counsel testified he relayed this to the Applicant. Plea counsel testified there was no offer of a 3-7 year sentence and that he made no promises to the Applicant regarding what sentence he would receive. Plea counsel testified the Applicant wanted a 2-year sentence, that he conveyed this to the State, and that the State would not agree.

Initially, this Court notes the Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.6; p.8). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.5-6). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama,

395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel either misadvised him about the sentence he would receive or pressured him into pleading guilty. Plea counsel testified they had several meetings to discuss the Applicant's case. Plea counsel testified there was no recommendation for a 3-7 year sentence and he made no promises to the Applicant about the sentence he would receive if he pled guilty. This Court finds plea counsel's testimony is credible. This Court notes the sentencing sheet – which was signed by the Applicant – reflects the box for "Without Negotiations or Recommendation" was checked. Further, the plea transcript refutes much of the Applicant's argument. The assistant solicitor recited the Applicant's prior record to the plea judge, noted there was no recommendation, and further noted five other charges were being dismissed. (Plea transcript, p.8). The Applicant agreed all of this was true. (Plea transcript, p.8). If the Applicant believed there was a 3-7 year plea recommendation in this case, he should have told the plea judge at this point – but he did not do so. This Court also finds the Applicant failed to demonstrate plea counsel coerced or pressured him to plead guilty. The Applicant stated he was satisfied with counsel and had no complaints to make against anyone. (Plea transcript, p.6). While the Applicant may have felt unsettled when plea counsel advised he was facing a life sentence, this was an accurate statement of the law. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under

prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

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

#### CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Furthermore, the Applicant’s guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 12<sup>th</sup> day of July, 2015.

*Perry H. Gravely*

\_\_\_\_\_  
Perry H. Gravely  
Presiding Judge  
Thirteenth Judicial Circuit

*Greenville*, South Carolina.

**WITNESSES**

Robert Joseph Perry  
Greenville County Sheriffs Office  
3/22/2012



DOCKET NO. 2013-GS-23-  
KBH

000666

The State of South Carolina  
County of Greenville

COURT OF GENERAL SESSIONS  
February TERM 2013

THE STATE

vs.

MICHAEL LEE ROBINSON

ARREST WARRANT NUMBER  
M993897

ACTION OF GRAND JURY

**TRUE BILL**



FOREMAN GRAND JURY

*Foreperson of Grand Jury*

VERDICT

0385

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

*Foreperson of Petit Jury*  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

FEB 19 2013

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That MICHAEL LEE ROBINSON did in Greenville County, between July 1, 1998 and July 31, 2000, commit a sexual battery on T. H., who was less than eleven years of age. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(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.

*W. Hodge*  
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF STATE

Greenville VS.

Michael Lee Robinson

AKA:

Race: Sex: M Age: 33

DOB: -1978 SS#: [redacted]

Address: [redacted]

City, State, Zip: Marietta, SC 29661-9051

DL#: SID#:

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Hodge, Kris SC Bar# 0245 X Michael Robinson Defendant Attorney for Defendant SC Bar# 7941

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment

of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections. 177 DM5 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Recipient:

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

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

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

Clerk of Court/ Deputy Clerk Court Reporter: SCCA/217 (03/2011)

Paul B. Wislizenus

Presiding Judge Judge Code: 2130 Sentence Date: 10/2/13

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-23-0674 A/W#: M993897 Date of Offense: 7/3/1998 S.C. Code § : 16-03-0655(A)(1) CDR Code #: 0385

SENTENCE SHEET