

LAW OFFICE

**THE HENDERSON LAW FIRM, P.C.**

**Carson M. Henderson**

ATTORNEY AND COUNSELOR AT LAW

**RECEIVED**

MAY 15 2018

S.C. SUPREME COURT

109-B Oak Avenue  
Greenwood, South Carolina 29646

Telephone: (864) 229-8000  
Facsimile: (864) 229-8001

May 11, 2018

Honorable Daniel E. Shearouse  
Clerk of Court  
S.C. Supreme Court  
1231 Gervais Street  
P.O. Box 11330  
Columbia, S.C. 29211

Re: Timothy Earl Beheler (#257965) v. State of South Carolina  
Laurens C/A No. 2017-CP-30-317

Dear Clerk Shearouse:

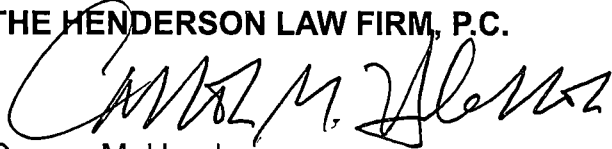
Please file the enclosed Notice of Appeal and Proof of Service and return clocked copies of both documents to me and the S.C. Commission on Indigent Defense, Appellate Division in the enclosed envelopes provided for your convenience. Also enclosed is Circuit Judge J. Mark Hayes, II's Order of Dismissal dated April 20, 2018.

My email address is [carson@carsonhendersonlawfirm.com](mailto:carson@carsonhendersonlawfirm.com).

Thank you for your assistance and cooperation in this matter.

Cordially yours,

**THE HENDERSON LAW FIRM, P.C.**



Carson M. Henderson

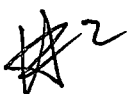
CMH/lhc

Enclosures as indicated

Cc: Megan Harrigan Jameson, Esquire  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

S.C. Commission on Indigent Defense  
Appellate Division  
1330 Lady Street, Suite 401  
Columbia, S.C. 29201

Timothy Earl Beheler (#257965)  
Tyger River Correctional Institution  
100-200 Prison Road  
Enoree, S.C. 29355



THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

RECEIVED

MAY 15 2018

J. Mark Hayes, II, Presiding Circuit Judge – Laurens County  
S.C. SUPREME COURT

\_\_\_\_\_  
C/A No. 2017-CP-30-317  
\_\_\_\_\_

TIMOTHY EARL BEHELER (#257965),

Appellant,

v.

STATE OF SOUTH CAROLINA,

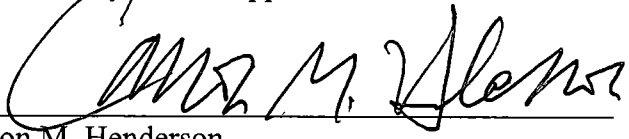
Respondent.

\_\_\_\_\_  
NOTICE OF APPEAL  
\_\_\_\_\_

Timothy Earl Beheler appeals the Order of Dismissal issued by the Honorable J. Mark Hayes, II, on April 20, 2018. This matter was heard in Laurens County on February 28, 2018. The Appellant's trial counsel received the Order of Dismissal from the S.C. Attorney General's Office on Thursday, May 10, 2018.

#1

**THE HENDERSON LAW FIRM, P.C.**  
Trial Attorney for the Appellant

By:   
Carson M. Henderson  
109-B Oak Avenue  
Greenwood, S.C. 29646  
Phone: (864) 229-8000  
Fax: (864) 229-8001

Greenwood, South Carolina

May 11, 2018

Other Counsel of Record:

Megan Harrigan Jameson, Esquire  
S.C. Attorney General's Office  
P.O. Box 11549  
Columbia, S.C. 29211

S.C. Commission on Indigent Defense  
Appellate Division  
1330 Lady Street, Suite 401  
Columbia, S.C. 29201

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Presiding Circuit Judge – Laurens County

RECEIVED

MAY 15 2018

S.C. SUPREME COURT

\_\_\_\_\_  
C/A No. 2017-CP-30-317  
\_\_\_\_\_

TIMOTHY EARL BEHELER (#257965),

Appellant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

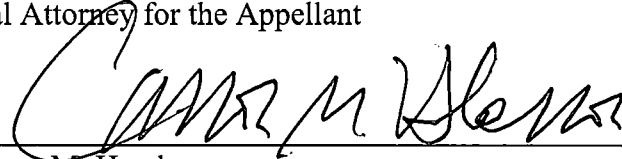
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PROOF OF SERVICE  
\_\_\_\_\_

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on May 11, 2018, addressed to its attorney of record, Megan Harrigan Jameson, Esquire, S.C. Attorney General's Office, P.O. Box 11549, Columbia, S.C. 29211, with a copy also being mailed to S.C. Commission on Indigent Defense, Appellate Division, 1330 Lady Street, Suite 401, Columbia, S.C. 29201.

**THE HENDERSON LAW FIRM, P.C.**

Trial Attorney for the Appellant

By:

  
Carson M. Henderson

109-B Oak Avenue

Greenwood, S.C. 29646

Phone: (864) 229-8000

Fax: (864) 229-8001

Greenwood, South Carolina

May 11, 2018




STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LAURENS )  
 )  
TIMOTHY EARL BEHELER, #257965 )  
 Plaintiff, )  
 vs. )  
 )  
STATE OF SOUTH CAROLINA )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT  
 CASE NO.: 2017-CP-30-317  
 MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET

Plaintiff's Attorney: Carson M. Henderson, Bar No. _____ Address: 109-B Oak Avenue Greenwood, South Carolina 29646 Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Justin J. Hunter, Bar No. _____ Address: Post Office Box 11549 Columbia, South Carolina 29211 Phone: _____ Fax _____ E-mail: _____ Other: _____									
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
SECTION I: Hearing Information										
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input checked="" type="checkbox"/> NO										
SECTION II: Motion/Order Type										
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.										
SECTION III: Motion Fee										
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <table border="0" style="width: 100%;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td>Name of Court Reporter: _____</td> </tr> <tr> <td><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act <input checked="" type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	Name of Court Reporter: _____	<input type="checkbox"/> Other: _____
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<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____									
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Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____										

LYNN W. LANCASTER  
 CLERK OF COURT  
 2018 MAY -2 AM 11:29  
 LAURENS COUNTY

  
 Signature of Attorney for  Plaintiff /  Defendant      April 18, 2018  
 Date submitted

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS  
OF THE EIGHTH JUDICIAL CIRCUIT

Timothy Earl Beheler,  
S.C.D.C. No. 257965,

2017-CP-30-317

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

LYNN W. LANCASTER  
MAY -2 PM 11:20  
LAURENS COUNTY  
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed April 26, 2017. Respondent made its Return on or about July 21, 2017. An evidentiary hearing into the matter was convened on February 28, 2018, at the Laurens County Courthouse in Laurens County, South Carolina. Applicant was present at the hearing and represented by Carson Henderson, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, Michael Gambrell, Esquire, testified and his former counsel Chelsea McNeil, Esquire, testified. This Court had before it a copy of Applicant's records from the Laurens County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. In September 2013, the Laurens County Grand Jury indicted Applicant for two counts of criminal sexual conduct with a second degree (2013-GS-30-1463, -1567), and contributing to the delinquency of a minor (2013-

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Clerk of Court  
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GS-30-1568). Michael Gambrell, Esquire represented Applicant. Assistant Solicitor Lance Sheek prosecuted the case. On May 31, 2016, Applicant pled guilty as indicted before the Honorable Donald Hocker. Judge Hocker sentenced Applicant to imprisonment for fifteen years for both counts of criminal sexual conduct, second degree, and 1,056 days' time served for contributing to the delinquency of a minor. All sentences were to run concurrently.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal on November 8, 2016, 2016 for failure to provide a sufficient guilty plea explanation pursuant to SCACR 203(d)(1)(B)(iv). The remittitur was sent on November 29, 2016.

#### PCR Application

In his application for post-conviction relief, Applicant alleged the following grounds of relief:

1. Ineffective Assistance of Counsel
  - a. "during the preparation phase of trial"; "a confession given under the influence of drugs is inadmissible"
  - b. "I pled to a 1st degree CSC...but I was never indicted on 1st degree."
  - c. "My attorney told me if I don't plea to these charges the Head Solicitor was going to use me and my case as a stepping stone for his re-election."
  - d. "Counsel failed to investigate, develop, and present all available, relevant and admissible evidence."

At the PCR hearing, Applicant's counsel informed the Court he was proceeded on the grounds of ineffective assistance of counsel for failing to be prepared, failing to pursue his speedy trial request, and failing to perfect a direct appeal.

#### **II. APPLICABLE LAW**

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

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

### III. SUMMARY OF RELEVANT TESTIMONY AT PCR HEARING

#### Counsel Michael Gambrell's Testimony

Mr. Gambrell testified he was appointed to represent Applicant on February 3, 2016. He testified he did not file a motion for discovery since Ms. McNeil, Applicant's initial counsel, filed one and received discovery. He testified he asked for the full file from the State and

received what the State reported was the full file. Mr. Gambrell testified he met with Applicant frequently. He testified Applicant wanted him to talk to the victim's brother, Nick Blackwell, but without any information about Mr. Blackwell, he was unsuccessful in finding him. He testified he did not talk to Applicant's mother or see his house. He testified he spoke with the victim's aunt at the courthouse, and she was limited in what she wanted to tell Mr. Gambrell. He testified the victim's aunt Connie Blackwell did not like Applicant.

Mr. Gambrell testified he drafted an order requiring the Department of Social Services to turn over information about the victim. He testified DSS told him they did a records search and had no records about her. He testified he knew DSS was involved with the victim but was unsuccessful in getting her records. He testified a DSS complaint from the victim was closed. Mr. Gambrell testified he did not have an electronic copy of the forensic interview. He testified the victim did not want to talk to him. Mr. Gambrell testified the victim's mental evaluation was done prior to the crime, but he spoke about it with Applicant on cross-examination during the trial.

Mr. Gambrell testified Applicant's polygraph results showed deception. He did not get a printout of the test or follow up. He testified Applicant was Mirandized and gave a confession. Mr. Gambrell testified the Applicant said his signatures were on each statement form.

Mr. Gambrell testified he did see a motion for a speedy trial and discussed it with Applicant. He testified the guilty plea was almost three years after his arrest.

Mr. Gambrell testified he did not follow up on the other people who had sex with the victim. He testified he asked Officer Hunnicutt about a list of people who would say something different than the victim's story, but Hunnicutt did not have the list. He testified Applicant was unable to give him a list of people who would contradict the victim's story. Mr. Gambrell

testified he followed every lead Applicant could give him. He testified Applicant did not give a list of witnesses but they discussed every aspect of the case.

Mr. Gambrell testified he was prepared for trial but Applicant always wanted to pursue a plea. He testified he discussed possible suppression of Applicant's statement but also how it could be used against him. He testified Applicant admitted to giving the statement and admitted to its contents.

Mr. Gambrell testified he filed a notice of appeal. He testified he could not give a legal basis for appealing the guilty plea. He testified he did not respond in writing but talked to the Court of Appeals and told them there was no legal basis for filing the appeal.

Applicant's Testimony

Applicant testified he waited eight months before filing for a public defender. Applicant testified Mr. Gambrell did not do the things he asked him to do. He testified Mr. Gambrell was not ready for trial, and Applicant learned the Saturday before the plea that his case was on the trial docket. Applicant testified Mr. Gambrell did not talk to him about DSS and the fact that DSS did not have a file for the victim. Applicant testified he never told Mr. Gambrell that he signed a confession. He testified he does not remember giving a statement and was under the influence of pills during the time. Applicant also testified the plea judge told him to lie at the plea hearing.

Applicant testified he gave Mr. Gambrell names to contact, which included Connie and Nick Blackwell. Applicant testified Officer Hunnicutt lost a list from Blackwell of four names who could counter the allegations.

Applicant testified the victim's aunt, Connie Blackwell, was mistreating Applicant's friend Carol (the victim's mother), and when Applicant got mad at Connie, the allegations arose.

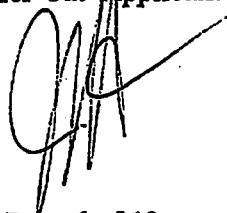
### Counsel Chelsea McNeil's Testimony

Ms. McNeil testified she was appointed to represent Applicant on unrelated drug charges before representing him on this charge. She testified she received discovery from the solicitor's office, which included incident reports, statements from the victim, Applicant's confession, and Applicant's polygraph results. She testified she got the victim's forensic interview report and shared all discovery with Applicant by making a paper copy. She testified she met with Applicant and his family in her office.

Ms. McNeil testified Applicant gave her his version of events. Applicant told Ms. McNeil he did not believe all that the victim had to say, but admitted that he had sex with the victim repeatedly in the bathroom and gave her money, marijuana, or cigarettes in exchange for sex. Ms. McNeil testified Applicant told her the victim was in a gang and was having sex with other gang members. She testified Applicant was mad because he gave Officer Hunnicutt a list of other people who had had sex with the victim and he was mad to be the only person getting in trouble for it. Ms. McNeil testified she talked to Officer Hunnicutt who admitted he had a list of names, before losing it, but the names were all "street names." She testified Applicant did not give her a list of names.

Ms. McNeil testified Applicant always admitted he committed the crime, but said he only did it in the bathroom and not in other locations. She testified he said the sex was consensual, and she had to explain to him the laws of consent.

Ms. McNeil testified she moved to be relieved because of a breakdown in her representation and ethical dilemmas. She testified Applicant filed a grievance against her. She testified she relayed a five year plea offer but Applicant rejected it because it included sex offender registration.



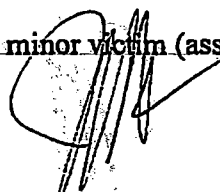
Ms. McNeil testified she was relieved and gave her file to Mr. Gambrell. She testified she got a DSS report and gave it to Mr. Gambrell.

**IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

**Failure to Prepare**

This Court finds Applicant has failed to meet his burden of proving his counsel were ineffective for failing to prepare the case. With the information Applicant provided to Ms. McNeil that he and the victim had in fact had sexual relations, she was placed into an ethical dilemma with pursuing a trial defense to Applicant's liking. From Applicant's testimony at the present hearing and from his written PCR application, much of his complaint about the underlying facts was a failure to develop the sexual activity of the victim with other men. He claimed he was not the father of the thirteen-year old victim's child. He claimed his dying friend Carol (mother of the victim) was badly treated by her sister Connie and the victim while Carol was fighting from cancer. Applicant asserted Carol would have been an important witness for the applicant but she passed away. This Court finds Carol's importance, at best, would have been only to establish the sexual activity of the minor victim (assuming the admissibility of such a line



Page 7 of 13

of questioning). The other area where Carol may have been important was as a potential character witness for Applicant since he and his family cared for her while she battled cancer. Even assuming Applicant is correct that Connie was the driving force behind the minor victim pressing forward with the charges against him, the fact of consensual sexual activity between the victim and the applicant did not change. He admitted to the relationship in his confession.

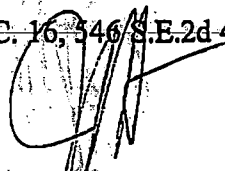
At the present hearing, Applicant claims the signature on the voluntary statement is not his. His assertion is not credible based on the information provided by his attorneys and based on his statements acknowledging this fact during the plea. No other evidence on this issue was presented to this Court. Therefore he has not carried his burden of proof on this issue and this Court concludes the signature was that of Applicant.

Applicant was able to establish that Mr. Gambrell may have a less than desirable method of keeping his files. Nevertheless, Mr. Gambrell appeared credible while testifying before this Court. While Mr. Gambrell's unorthodox method of not serving a formal discovery causes this Court to pause, he did obtain information from Ms. McNeil (who filed Rule 5 and Brady motions), interviewed police, and attempted to obtain additional information from DSS. This Court is left speculating as to why DSS would have not produced files related to the victim when the record before this Court indicates DSS had been involved with her. Mr. Gambrell did obtain an order from a circuit judge requiring production of these records. DSS told Mr. Gambrell they have no records to produce. Assuming somehow Mr. Gambrell was deficient in not obtaining these records, the purpose of these records, at best, would be used to establish the victim as a sexually active young girl and to show Connie was the motivator in getting the victim to go forward with the charges. Also in his letter of April 21, 2016 to Mr. Gambrell, Applicant's desire, again, was for his attorney to gather information about the victim's character and the aunt

being the motivating force behind the victim going forward—not his innocence of the charges. Therefore, this Court finds that even if the evidence had been fully developed by Ms. McNeil or Mr. Gambrell prior to the plea, the list of names not been lost by the detective and they had been interviewed, this Court can conclude this evidence would have shown, in a light most favorable to Applicant that the victim was the “wild child” he references in his PCR application, that she was sexual active with other men, the aunt was pushing the victim to go forward with the charges, and that Applicant and his family were kind to care for Carol while she battled cancer. Even if all of these were true, Applicant has failed to meet his burden of proof as to both prongs of the Strickland test as to his counsel. Ultimately, this Court finds Applicant has failed to meet his burden of proving Mr. Gambrell or Ms. McNeil were ineffective in their preparation and advice prior to trial. Furthermore, Applicant has failed to meet his burden of proving he would not have pled guilty but would have proceeded to trial but for their preparation. It appears from the lower court record and the credible testimony of his attorneys that Applicant wanted to plead guilty and admitted to having sex with the victim and committing the lewd act.

Involuntary Guilty Plea

To the extent Applicant’s testimony raised a question of whether his guilty plea was freely, voluntarily, and intelligently made, this Court finds Applicant has failed to meet his burden of proof. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that



Page 9 of 13

her guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

The plea transcript indicates the judge reviewed, in detail, with Applicant all of his constitutional rights (including his right to a jury trial) and that he wished to waive all of his rights. Tr. 8-10. Applicant indicated he was pleading guilty to the charges because he was in fact guilty of those charges. Tr. 5. Applicant also indicated that he was not coerced, pressured or promised anything to enter the plea. Tr. 5-6. He indicated he was freely, voluntarily and intelligently entering the pleas. Tr. 6. The victim appeared at the plea and stood with the solicitor when the plea was presented to the judge. The facts were presented to the judge that Applicant and the victim engaged in a physical, sexual relationship, again, when the victim was 13. It was also stated to the judge that once the report was made to law enforcement, Applicant admitted that approximately once a month for almost a year, in exchange for the sexual encounters with the minor victim, Applicant would give her either money or marijuana. Tr. 6-7. The judge asked Applicant if those fact were true, and he replied "Yes, sir". Tr. 7. The judge also informed the Applicant that he could receive twenty years on the CSC charges. Tr. 8. The judge also asked Applicant if he was satisfied with the legal representation of his plea attorney Mr. Gambrell, and he replied "Yes, sir". Tr. 10. The judge went further when he asked "Has he done everything you've asked him to do?". Again the applicant responded, "Yes, sir". Tr. 10. Furthermore, the

judge asked Applicant, "Do you have any complaints against anyone in the solicitor's office, including Solicitor Sheek, or any law enforcement personnel involved in this case?" His response was "No, sir" Tr. 10-11. Then the judge asked Applicant "Have all of your answers been truthful and accurate?" His unqualified response was "Yes, sir" Tr. 11.

Prior to issuing his sentence the judge gave the applicant an opportunity to be heard. Applicant stated to the judge and the others in the courtroom that during the three years he had been in jail, all of his witnesses and evidence, "you know, my defense pretty much fell apart for me. I'm standing here today pleading guilty to this and move on with my life and everybody move on with their lives and get it over with. maybe get back to my family as soon as possible. Get it over with." Tr. 16.

This Court finds Applicant has failed to show his plea was not voluntarily made. This Court finds Mr. Gambrell prepared him well for the plea and the plea judge thoroughly advised Applicant of every aspect of his guilty plea. Applicant made no indication he did not understand the plea hearing and he affirmed his understanding during the hearing itself. Accordingly, this allegation must be dismissed.

**Failure to Pursue Request for Speedy Trial**

This Court finds Applicant has failed to meet his burden of proving his counsel was ineffective for failing to pursue his speedy trial request. The three years it took the case to be heard is troubling to this Court. However, this Court cannot find that Applicant has met his burden of proof that the three year delay was constitutionally deficient representation by his lawyers. This Court finds Applicant's attorneys did not delay the case and actively investigated and pursued his plea deal. A breakdown in Applicant's relationship with Ms. McNeil, which included Applicant filing a grievance against her, resulted in Ms. McNeil being relieved as

counsel and contributed to the delay. This Court further finds that Applicant has failed to show that he was prejudiced by his counsels' failure to pursue his request for a speedy trial. He has failed to show resulting prejudice to his case and has failed to show that a speedy trial motion would have been successful had it been heard before the court. Accordingly, this allegation must be dismissed.

#### Failure to Perfect Direct Appeal

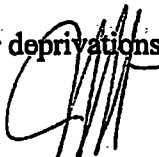
This Court finds Applicant has not met his burden of proving Mr. Gambrell was deficient for failing to perfect the direct appeal. The record shows Mr. Gambrell filed a notice of appeal. He testified he had no legal grounds to challenge the guilty plea. The appeal was ultimately dismissed for Applicant's failure to provide a sufficient guilty plea explanation, as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules (SCACR). This Rule provides

If the appeal is from a guilty plea, an Alford plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed

SCACR 203(d)(1)(B)(iv). Applicant has failed to meet his burden of proving Mr. Gambrell was ineffective. Applicant has also failed to meet his burden of proving that he was prejudiced by Mr. Gambrell's actions, as he has failed to meet his burden of proving the outcome would have otherwise been different. Accordingly, this allegation must be dismissed.

#### V. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his



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application for post-conviction relief. Applicant failed to demonstrate that Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

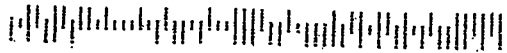
1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20<sup>th</sup> day of July, 2018.

J. MARK HAYES, II  
Presiding Judge  
Eighth Judicial Circuit

*Laurens*, South Carolina

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