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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Cherokee County

Roger L. Couch, Circuit Court Judge

KENNETH HILTON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002140

A P P E N D I X

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CHEROKEE)

THE STATE)
)
-vs-) TRANSCRIPT OF RECORD
) 2012-GS-11-00226
KENNETH LEE HILTON,) 2013-GS-11-00017
) JANUARY 23, 2013
DEFENDANT.) GAFFNEY, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. DERHAM COLE, JUDGE.

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

KIM LESKANIC, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

DON THOMPSON, PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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(NO WITNESSES CALLED)

EXHIBITS

1	NO.	DESCRIPTION	ID.	EV.
2				
3	CT-1	GOOGLE MAP PHOTOGRAPH	4	
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1 (PROCEEDINGS, JANUARY 23, 2013)

2 (Google Map Photograph marked as Court's Exhibit
3 No. 1 for identification)

4 (Photograph marked as Court's Exhibit No. 2 for
5 identification)

6 (Interview Form marked as Court's Exhibit No. 3
7 for identification)

8 (Waiver Form marked as Court's Exhibit No. 4 for
9 identification)

10 (North Carolina Sentencings marked as Court's
11 Exhibit No. 5 for identification)

12 MS. LESKANIC: May it please the court, standing
13 before you is Kenneth Lee Hilton, pleading guilty on two
14 indictments.

15 2012-GS-11-226 is a True Billed indictment for
16 kidnapping. That plea is being offered without negotiation
17 or recommendation.

18 2013-GS-11-17 is an indictment for assault with
19 intent to commit criminal sexual conduct, second degree.
20 The defendant is waiving presentment to the Grand Jury as
21 indicated by his initials on the sentencing sheet. That
22 plea is being offered without negotiations or
23 recommendation.

24 Your Honor, standing to my right is the victim in
25 this case, Kathy Hawkes. She would like to address Your

1 Honor at the appropriate time.

2 THE COURT: You are Kenneth Lee Hilton?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Mr. Thompson is your lawyer?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: How long has he been representing you?

7 THE DEFENDANT: About a year.

8 THE COURT: Have you had plenty of time to talk to
9 him about these indictments and your decision to plead
10 guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has he been over each of these
13 indictments with you and explained to you what the State
14 claims that you did?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Did he tell you what kind of sentence
17 could be imposed if you were found guilty of kidnapping and
18 assault with intent to commit criminal sexual conduct in the
19 second degree?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did you tell him everything you know
22 about the facts that relate to these events?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you and he discuss whether or not
25 you have some legal defense to either of these charges?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you know of any defense that you
3 have?

4 THE DEFENDANT: (No response).

5 (Off the record)

6 (Back on the record)

7 THE COURT: My question was do you know of any
8 defense that you have to either one of these charges?

9 THE DEFENDANT: (No response).

10 THE COURT: Sir?

11 MR. THOMPSON: Can you answer the judge?

12 THE DEFENDANT: I don't understand. I don't know.

13 (Off the record)

14 (Back on the record)

15 MR. THOMPSON: I was explaining to him, judge,
16 that we have discussed this. We have discussed the
17 possibility of some mitigation, but we really have no
18 defense, that I see.

19 THE COURT: Do you understand that a defense is
20 some reason, either based in law or based upon the fact, but
21 it's some reason as to why you should be found not guilty?

22 In other words, if you have a defense, it means
23 that you should not be found guilty of the crime.

24 Do you know of any defense? Do you know of any
25 reason why you should not be found guilty of kidnapping and

1 assault with intent to commit criminal sexual conduct in the
2 second degree?

3 THE DEFENDANT: I picked this young lady up as a
4 prostitute.

5 MR. THOMPSON: No, you just need to answer the
6 question. Don't go into the facts.

7 THE COURT: Let's do it this way.

8 Mr. Hilton, do you understand indictment
9 2012-11-226 charges you with the crime of kidnapping?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: The State alleges on July the 11th of
12 2011 you did willfully and you did unlawfully seize,
13 confine, kidnap, abduct, or carry away Katherine Hawkes
14 without any authority of law. Do you understand what that
15 charge is?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you know of any reason why you
18 should not be found guilty of kidnapping?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Do you understand it carries up
21 to thirty years in jail?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Indictment 2013-17 charges you with
24 assault with intent to commit criminal sexual conduct in the
25 second degree.

1 This indictment alleges that you did willfully and
2 unlawfully commit an assault on Katherine Hawkes with the
3 intent to commit criminal sexual conduct, and they allege
4 that you used aggravated coercion in your attempt to commit
5 a sexual battery against Katherine Hawkes.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: That carries up to twenty years in
8 jail.

9 THE DEFENDANT: Yes.

10 THE COURT: Do you know of any reason why you
11 should not be found guilty of this crime?

12 THE DEFENDANT: No, sir.

13 MR. THOMPSON: Your Honor, I'm sorry, may I
14 interject something as to the sentencing, as to cover the
15 record?

16 THE COURT: Well, sure.

17 MR. THOMPSON: When I first met with Mr. Hilton, I
18 had sensed -- he was charged with CSC first, and I had CSC
19 first with a minor on my mind and I advised him the sentence
20 on the CSC first was twenty-five to life. I have since
21 corrected that and has advised it was zero to thirty. This
22 charge is zero to twenty, but I just want to make sure the
23 record reflects that I have corrected my mistaken
24 information to him in the beginning.

25 THE COURT: Okay. Do you understand this carries

1 up to twenty years in jail?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And the sentences may be run
4 concurrently or consecutively?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand the difference in
7 concurrent sentences and consecutive sentences?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The criminal sexual conduct indictment
10 has not been considered by the Cherokee County Grand Jury,
11 but I have on this indictment what appears to be your
12 initials indicating that you wanted to waive presentment of
13 this charge to the Grand Jury.

14 Did you discuss the Grand Jury process with Mr.
15 Thompson?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And did you understand this case had
18 not been to the Grand Jury?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you initial the form indicating
21 that you wanted to waive that right?

22 THE DEFENDANT: Yes, sir, I did.

23 THE COURT: And do you understand what you are
24 doing when you waive that right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Thompson has explained that to
2 you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did Mr. Thompson explain to you what
5 would have to be proven in court if your case went to
6 trial --

7 THE DEFENDANT: Yes, sir.

8 THE COURT: -- before you could be found guilty of
9 the crimes of kidnapping and assault with intent to commit
10 criminal sexual conduct in the second degree?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you understand what the State
13 would have to prove before you could be convicted?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Did you tell everything about -- did
16 you tell Mr. Thompson everything that you know about the
17 allegations?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And y'all did determine that you had
20 no legal defense to either charge?

21 THE DEFENDANT: (Shaking head yes).

22 THE COURT: Did Mr. Thompson explain to you each
23 of the Constitutional Rights that you have?

24 In addition to the Grand Jury process, you have
25 other Constitutional Rights that you have to give up in

1 order to plead guilty. Did Mr. Thompson explain those
2 rights to you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did he explain to you about your right
5 to remain silent?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understand that means you
8 don't have to testify. You don't have to make a statement.
9 You don't have to answer any questions that relate to these
10 charges.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You don't have to answer my questions
13 right now, unless you want to plead guilty.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand your right to remain
16 silent?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you wish to give that right up in
19 order to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did Mr. Thompson explain to you about
22 your right to confront and to examine the witnesses in court
23 that offer evidence against you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that you can require

1 the State to bring their witnesses into court, require them
2 to take the witness stand and testify in your presence under
3 oath so that you can see who they are, you can hear what
4 they had to say, and Mr. Thompson can examine them on their
5 testimony in order to test their credibility and the
6 reliability of the information that they are providing to
7 the court?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand when you plead
10 guilty that process does not occur, that the witnesses won't
11 take the witness stand to testify, your lawyer won't be able
12 to examine them on their statements?

13 THE DEFENDANT: I do.

14 THE COURT: Do you wish to give that right up in
15 order to plead guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Did Mr. Thompson explain to you that
18 you have a right to have a jury trial and the twelve jurors
19 to determine whether or not you are guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if you elect to
22 have a jury decide your case, that you help pick the jury?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that twelve are
25 chosen?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that all twelve must
3 be convinced of your guilt beyond a reasonable doubt before
4 you could be found guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand the burden is on the
7 State to convince the jury of your guilt?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You don't have to prove anything. You
10 don't have to testify, because you can remain silent. The
11 burden is never upon you to establish anything. The burden
12 is on the State to convince all twelve jurors beyond a
13 reasonable doubt that you are guilty of these charges before
14 a jury could find you guilty.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand that when you plead
17 guilty, you are giving up your right to have a jury decide
18 the verdict?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you wish to give that right up in
21 order to plead guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has anybody promised you anything that
24 caused you to arrive at your decision to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: Has anybody threatened you in any way?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody coerced you in any
4 fashion?

5 THE DEFENDANT: No, sir.

6 THE COURT: Has anyone put any type of pressure
7 upon you that caused you to make a decision to plead guilty
8 where you otherwise would not have entered that plea of
9 guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you pleading guilty freely and
12 voluntarily?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: It was your decision?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And are you satisfied with that
17 decision?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, I read the indictments to you.
20 Do you recall that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And are you pleading guilty to each of
23 these charges because you are guilty of the charges, just as
24 they are described in these indictments?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You are fifty years old?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: 11th grade.

5 THE COURT: And are you married?

6 THE DEFENDANT: No, my wife has passed away.

7 THE COURT: Do you have any children?

8 THE DEFENDANT: I have no children.

9 THE COURT: Have you worked in the past?

10 THE DEFENDANT: Yes.

11 THE COURT: Doing what?

12 THE DEFENDANT: I worked driving tractor-trailer
13 truck.

14 THE COURT: Excuse me, Mr. Thompson?

15 MR. THOMPSON: Judge, he works for Hucks Piggyback
16 Services. It's a trucking company. He drove
17 tractor-trailer locally for eleven years.

18 THE COURT: And how long have you been in jail?

19 THE DEFENDANT: One year.

20 MR. THOMPSON: One year today.

21 THE COURT: And was that since you were arrested
22 on these charges?

23 MR. THOMPSON: Yes, sir.

24 THE COURT: All right, I'm going to ask the
25 prosecutor to tell me about the facts that relate to these

1 charges as she claims them to be and as she would offer them
2 in trial, if your case went to trial. So listen to what she
3 tells me, because when she's through I'm going to ask you if
4 you agree with her version of the facts or if you disagree
5 with them. Okay?

6 THE DEFENDANT: Yes, sir.

7 MS. LESKANIC: May it please the court?

8 THE COURT: Ms. Leskanic.

9 MS. LESKANIC: Thank you, Your Honor.

10 This occurred on July 11th of 2011. It started in
11 Gastonia. That is where Kathy Hawkes was living at the
12 time.

13 It was about six o'clock in the evening. She was
14 walking from where she and her father were staying to get a
15 check cashed. The defendant pulled up in his jeep. She
16 thought she recognized him as a man that had given she and
17 her father a ride on a couple of prior occasions. He asked
18 her if she needed a ride where she was going. She told him
19 she was going to get this check cashed and she would take a
20 ride. She thought she recognized him. She got in the
21 vehicle with him. Where he was supposed to turn to take her
22 to the check cashing place, he turned in the opposite
23 direction. She told him that he was going the wrong way and
24 he began to tell her that he was going to have his way with
25 her.

1 He got on I-85 and headed towards Cherokee County.
2 During this time Kathy had her purse with her. She had her
3 phone with her. She told him that she had asthma and her
4 inhaler was in her purse. She was able to dial 911.

5 There was an open line with Gaston County 911 that
6 recorded the conversation going on in the vehicle. I have
7 to play for the court at a later time.

8 The jeep was a rag top jeep, so there is some
9 noise with it, but you hear her tell him to "please pull
10 over and let me out. I want to go home. I don't want you
11 to touch me." And he says at one point "if you don't calm
12 down, I'm going to beat you so badly that the police won't
13 recognize you," and he says that he's going to give her what
14 he wants, and he uses some words I'm not going to use, but
15 you will hear on the 911 call.

16 There are points in time when he hits her. In
17 speaking with Kathy, she said that he was driving the
18 vehicle going down the interstate and he was backhand her,
19 hit her in her face, in her throat.

20 He drove her to Quarry Road in Blacksburg, which
21 is located in Cherokee County, to a cemetery.

22 I have just a photograph from Google Earth, Your
23 Honor, marked Court's Exhibit 1 showing that location where
24 he drove her.

25 Court's Exhibit 2 is a photograph we would have

1 offered in court. You can see the tire tracks where the
2 defendant pulled his vehicle in and parked near the tree
3 line of that cemetery.

4 When he was there he got out of the vehicle, made
5 Kathy lay down with her head against the console of the
6 jeep, made her take her shorts off and had her perform oral
7 sex on him. You will hear him on the tape. Asked her what
8 her name is. Clearly she didn't know him from the past. He
9 didn't even know what her name was, but she tells him her
10 name is Katherine, and he says "Katherine, put your head
11 down there and rock it out."

12 She begins to dry heave. He says "I have got
13 something else for you," as he is attempting, I believe, to
14 penetrate her with his penis. He's not able to and he said
15 he's going to get something for her.

16 When he moves to get something out of his console,
17 she is able to get away. She runs with only her shirt on
18 towards I-85. She hides in the woods.

19 You will hear on the 911 call, she takes her phone
20 out of her purse again and begins to dial 911, not realizing
21 that she already has an open line to 911.

22 Cherokee County 911 connects with her. Jason
23 Burgess with the Cherokee County sheriff's office finds her
24 on Quarry Road with only her shirt on. She is able to give
25 a description of the vehicle, a very good description of

1 him.

2 Captain Harvey Owens with the Cherokee County
3 Sheriff's Office investigated the case. They did a drawing
4 of him.

5 Kathy went to the hospital to have a sexual
6 assault kit done. She was very insistent that he had licked
7 her left breast. They took a DNA swab from that and they
8 sent it into CODUS. CODUS got a hit on Kenneth Hilton,
9 because he's in the system for prior sexual convictions that
10 I will go into also involving his six year old niece, but
11 they received a CODUS hit.

12 He was placed under arrest. He gave a statement
13 to police admitting that he had picked Kathy up, said that
14 she just wanted a ride. He gave her a ride. She wanted to
15 have sex with him, but he didn't want to and he dropped her
16 off. He didn't seem to know her and nothing happened.

17 That is Court's Exhibit 4 that I would like to
18 hand up.

19 Court's Exhibit 3 is Ms. Hawkes statement, Your
20 Honor.

21 We were able to get a sample of the defendant's
22 DNA. That was sent in. The swab from the bra where Kathy
23 said that he had licked her breast did come back matching
24 the defendant Kenneth Hilton.

25 Those essentially would be the facts of the case.

1 If your court is inclined, I would like to play
2 the 911 call for the court. Thank you.

3 THE COURT: Okay.

4 MS. LESKANIC: This would be the Gaston County 911
5 call followed by the Cherokee County 911 call.

6 (Whereupon, the 911 Tapes were played to the
7 court)

8 MS. LESKANIC: Your Honor, the only thing further
9 from the State, as far as presentation, the defendant does
10 have a prior record. It includes four convictions for
11 second degree sexual offense and three convictions for
12 indecent liberties with a child. Those are North Carolina
13 convictions that occurred from offense dates of June and
14 July of 1995. I have marked those convictions as Court's
15 Exhibit 5.

16 Based on the reports I received from North
17 Carolina, those convictions arise where the defendant
18 molested his six year old niece. She reported that he had
19 performed oral sex on her and that she was made to perform
20 oral sex on him. He was questioned by police. He admitted
21 that those things had occurred on multiple occasions with
22 his six year old niece, and those are the convictions that
23 arose from that incident, Your Honor.

24 As I stated, at the appropriate time Ms. Hawkes
25 wants to address the court.

1 And Captain Owens is present in the courtroom who
2 investigated this case for the sheriff's office, but I do
3 not believe he wishes to address the court.

4 THE COURT: Okay. I'll be glad to hear from Ms.
5 Hawkes.

6 KATHY HAWKES: My name is Katherine Hawkes.

7 I wanted to just tell you how some of the things
8 that he had done has changed me. And one of the things
9 since that happened I haven't been able to sleep in my own
10 bed because I have night terrors.

11 One time I was having a night terror and I got up
12 and I was trying to run, like I was running through that
13 cemetery again, you know, and I was running to my walls. I
14 put a big hole in my sheet rock.

15 I have to sleep on my couch so I can watch my...
16 front door and my back door, and I have no vehicle. My
17 father and I, we don't have a vehicle and I have to rely on
18 public transportation. I can't walk by myself to even go to
19 the bus stop to catch a bus and stand there. And if I do
20 have to walk, I have to take my father with me and he's had
21 two strokes. Cars come by. They blow, and especially
22 somebody in a white jeep.

23 I looked for that jeep and looked for that jeep,
24 you know, the whole time. I did not when he caught him a
25 week later.

1 My doctors diagnosed me with a form of like
2 schizophrenia with this situation, Post-Traumatic Stress
3 Disorder, and it kind of gives me tendencies like that. He
4 put me on Xanax, Trazodone and Abilify to help calm with my
5 panic attacks.

6 Let's see, at one time after this had occurred I
7 went to the doctor. I had been giving myself bleach baths.
8 And -- as far as internally cleaning myself with bleach
9 water. And still -- I quit doing it after it had broke my
10 skin out and everything, but I quit doing it, but still have
11 tendencies of wanting to do that.

12 I can't -- my daughter wanted me to walk with her
13 to the store. I couldn't even walk with her, you know.

14 And for two weeks I didn't watch television. I
15 didn't do anything. I didn't want to destroy -- destroy,
16 you know, his face in my mind. And when the sketch artist
17 had done that, I almost fell out of the chair, because it
18 looked exactly like him.

19 I have a hard time going out anywhere. I haven't
20 been out anywhere. I haven't been to a mall. I haven't --
21 I have been shopping nowhere. My daughter comes down and we
22 didn't go nowhere. We just sit at my house. I stay in my
23 house all the time.

24 And it terrifies me if somebody blows their horn
25 in I'm walking.

1 I just wanted you to know what Mr. Hilton has put
2 me through that I have got to still deal with.

3 THE COURT: Okay. Thank you, ma'am. Good luck to
4 you.

5 MS. LESKANIC: Thank you, Your Honor.

6 THE COURT: All right, Mr. Hilton, you have heard
7 what solicitor told me about the facts that relate to your
8 case?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you agree or disagree with her
11 version?

12 THE DEFENDANT: I -- I agree with it.

13 THE COURT: Do you still want me to accept your
14 pleas of guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. I'll accept your pleas and
17 hear from you and Mr. Thompson.

18 MR. THOMPSON: Judge, this quite frankly -- I have
19 been practicing thirty-three years and this is one of the
20 more difficult cases I have ever dealt with.

21 I have met with Mr. Hilton. I have talked with
22 him. I have -- I'm going to say some things, not in
23 defense, because there is no defense to what happened, but
24 Mr. Hilton feels there is some things in mitigation that I
25 need to say on his behalf, and I realize those things are

1 going to come across as hurtful to the victim in this case,
2 and I apologize for that, but I represent Mr. Hilton and I
3 need to say them.

4 THE COURT: Well, I assume you have discussed what
5 you are going to present to with him, because he needs to
6 understand that it is important to present mitigating
7 information, but it's not a good idea to present
8 aggravating --

9 MR. THOMPSON: Yes, sir.

10 THE COURT: -- information.

11 MR. THOMPSON: I have discussed that with him.

12 THE COURT: Okay.

13 MR. THOMPSON: Judge, he says that he met this
14 young lady about two and a half weeks before this incident.
15 He says he was coming home from work one day... There was
16 traffic on the interstate. He cut through Gastonia.

17 He says that since his wife had died, he had been
18 in the habit of picking up prostitutes. And he says this
19 young lady is on the side of the road. He picked her up.
20 They went back to the Knights Inn Hotel where she had a room
21 with her dad and that they -- he paid her forty dollars for
22 sex that day.

23 He says for about the next two weeks that
24 continued on almost a daily basis, that he would go by and
25 pay forty dollars for sex.

1 He says that after about two weeks she told him
2 that she needed four hundred dollars. And that if she gave
3 him four hundred dollars -- or if he gave her four hundred
4 dollars, that he could have all the sex he wanted.

5 He tells me that he didn't have that, but he got
6 her two hundred the next day, and then got her the
7 additional two hundred a day or two later.

8 He says after that, though, he would go by there
9 and she wouldn't be there, and several days went by with him
10 going by and her not being there.

11 Obviously there is -- there is two things that --
12 I think the truth is always somewhere in the middle. There
13 is two things that I think may point to a little bit of
14 truth in this. One is if you look at her statement, she
15 identified him as Bobby. She knew him as Bobby. And he and
16 I talked about that and he said that he don't never give a
17 prostitute his real name. He always just gives them a made
18 up name. He says "that's the name I gave her." Not
19 Kenneth, but Bobby, and she identified him as Bobby.

20 Anyway, he went by the hotel and the dad was there
21 and the dad told him she had just left walking. She's down
22 the road. He said he went down there. He said she was
23 walking through the parking lot at a Curtis Mathis store.
24 He says she came over and got in the car with him and they
25 talked a little bit. He says she was drinking. And the

1 toxicology report from that day does indicate she had
2 alcohol in her system. He says that they talked a little
3 bit. He said finally he raised the four hundred dollars and
4 the sex and said at that point in time she told him she had
5 his money and there is nothing he could do about it. He
6 said when that happened, he got angry and lost it. And from
7 that point it went as you have heard on the tape that was
8 played.

9 He tells me he wishes he had handled it a
10 different way, but his anger caused him to do that.

11 The second thing. I told you there was two things
12 that might point towards that. The second thing is that the
13 DNA testing that come back. Judge, the DNA testing has him
14 as a contributor to saliva on her bra, but there is -- the
15 DNA also has three other contributors to semen and to other
16 saliva. There are three of them on her.

17 I have talked with Mr. Hilton about this. He
18 tells me that at times -- he says that from age six to
19 twelve that he was raped by an older brother, and he tells
20 me there is times when his mind goes back to that twelve
21 years old. And he says that on this day that he just didn't
22 handle things the way they should have been handled.

23 We have talked about a lot of things. The number
24 one thing I have talked to him about seriously is his age.
25 Given fifty years old, he's looking at fifty years on this,

1 if you run consecutive sentences and give him all of it. If
2 you do that, he will die in the Department of Corrections,
3 and I have explained that to him.

4 He's entering a plea, judge. We have talked about
5 this going to trial thinking we had nothing to lose, but
6 he's entering a plea, judge, hoping that you will take into
7 consideration everything; that you will take into
8 consideration that it was one incident, that you will run
9 concurrent sentencing, and that you will be as lenient as
10 you possibly can be in the sentencing.

11 I know his mother is here. She's back there in
12 the gray raising her hand.

13 I really at this point in time don't know anything
14 else to say, judge. I will just ask you to consider
15 concurrent sentencing and be lenient as possible.

16 Mr. Hilton, is there anything that you need to
17 say?

18 THE DEFENDANT: I'm truly sorry for all of this
19 that happened. I wish none of it would have ever happened.

20 When my wife passed away I was a very large man.
21 I weighed three hundred pounds. I went to work every day.
22 I worked for Hucks Piggyback for twelve years with a perfect
23 record. I mean, I would go in every day and I worked.

24 I didn't have no wife.

25 I didn't never want to go back to prison again,

1 but I have met with prostitutes, because that's the only
2 women that I knew to -- I'm so sorry for what I have done.
3 I'm going to assume responsibility for what I have done.

4 This young lady was indeed a prostitute. I --
5 every time I went to the Knights Inn I would go over there,
6 the door would be open. I would pull up, she would jump
7 out, "hey, Bobby, how are you doing?"

8 I said "I'm doing go fine."

9 I said "what do you need? Do you need anything?"

10 Yeah."

11 So she would get into the jeep and we would take
12 off. And she would tell me "if you want better sex, we can
13 have better sex, but you got to buy me some crack cocaine."

14 I said "what's that?"

15 She said "I'll show you."

16 On her phone she had a drug dealer. She just
17 dialed, and we went and she met this man and picked up this
18 crack cocaine. And when she started smoking it in my jeep
19 driving back to the motel room, she started taking all her
20 clothes off.

21 I mean, I bought her three times crack cocaine at
22 three incidents I did that, and I bought sex from this woman
23 every single day for about ten or eleven days. And then she
24 asked me, she said, "look, me and my father, we need -- we
25 live on disability. We need to get out of this apartment

1 here, this motel. We need to get out of it, and I need you
2 to help us." She said "you drive a truck and you got a
3 little bit of money."

4 I said "yeah, but I don't have a lot of money.
5 The gas is nearly four dollars a gallon. What am I supposed
6 to do here?"

7 She asked me for four hundred dollars on the 1st
8 of July, and that was on a Friday, and I took her two
9 hundred dollars on the 1st. And on the 2nd I went back by
10 Bank of America. There is no Bank of America in Shelby, and
11 so I stopped to Bank of America in Gastonia and I gave her
12 the other two hundred dollars.

13 And from the 1st of July to the 5th of July I seen
14 her every day. From the 25th of June to the 30th of June I
15 seen her every day, so she knew that I was coming by every
16 day. I took that money to her. She wanted alcohol. She
17 drinks booze and she takes her pills, but she drinks booze
18 also. I would go to the liquor store and buy her liquor and
19 stuff.

20 And she would have sex with other people in that
21 motel room. I mean, sometimes when I would go over there,
22 there was other people waiting there.

23 I am guilty of what I did. I assume
24 responsibility for what I have done, but it takes two people
25 for this to happen. We had a disagreement.

1 THE COURT: Anything else?

2 THE DEFENDANT: No, sir.

3 THE COURT: Mr. Hilton, did Mr. Thompson also
4 explain to you about the fact that kidnapping and assault
5 with intent to commit criminal sexual conduct in the second
6 degree are each classified as violent offenses?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: They are classified as most serious
9 offenses?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And they are classified as no-parole
12 offenses?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And did he explain to you the
15 significance of those designations?

16 THE DEFENDANT: Yes.

17 THE COURT: And you understand it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you still want me to accept your
20 plea?

21 THE DEFENDANT: Yes, sir.

22 MR. THOMPSON: Your Honor, one other thing. I
23 did -- he's already under the sex offender registry. I did
24 explain that to him and I explained the sexual violent
25 predator also.

1 THE COURT: Okay. Do you agree with that, Mr.
2 Hilton?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you understand the significance of
5 those designations also?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. On Indictment 2012-226, an
8 indictment for kidnapping, the sentence of the court is that
9 you, Kenneth Lee Hilton, be confined to the South Carolina
10 Department of Corrections for a period of 25 years.

11 Indictment 2013-17, assault with intent to commit
12 criminal sexual conduct, second degree, the sentence of the
13 court is that you be confined to the South Carolina
14 Department of Corrections for a period of twenty years.

15 Those sentences are consecutive, one to the other.

16 MS. LESKANIC: Thank you, Your Honor.

17 (END OF REQUESTED TRANSCRIPT OF RECORD)

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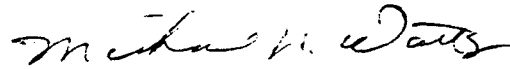
CERTIFICATE

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I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 23rd day of January, 2013.

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

June 11, 2013



Michael R. Watts
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Cherokee)

Kenneth L. Hilton #354034)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 MAY 1 PM 1 34
BRANDY MOORE

013CP-110302

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 Broad River Correctional Institution
4460 Broad River Road, Columbia, South Carolina 29210
2. Name and location of Court which imposed sentence Cherokee County -
General Sessions, Gaffney, South Carolina
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) 2012-GS-11-0226 Kidnapping
 - (b) 2013-GS-11-0017 Assault With Intent To Commit -
Criminal Sexual Conduct, 2nd Degree

013CP-110302

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) January 23, 2013 Sentenced to a total of 45 years -

(b) (25 for Kidnapping + 20 more years consecutive to

(c) the kidnapping sentence for Assault With Intent To Commit Criminal Sexual Conduct, 1st Degree)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

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) Counsel never advised me on the remedy, so I never knew it existed. I Am slow mentally in comprehension.

(b) _____

FILED IN OFFICE OF
CLERK OF COURT
SHERBORN COUNTY, N.H.
2013 MAY 1 AM 11 34
BRANDY W. MOBBE

012CP-110302

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

- (a) Ineffective Assistance of Counsel (more grounds to
- (b) be Ammended @ A later date)
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): The Applicant reserves the right to amend to the Application's

- (a) grounds @ A later date or @ the Evidentiary Hearing prior
- (b) to Any ruling of the lower court, and does request a 59(e) motion
- (c) granted as to each stated ground, if he is denied relief @ the hearing.

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

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

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

(a) the specific nature thereof:

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

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

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

FILED IN OFFICE OF
 CLERK OF COURT
 MERCER COUNTY, S.C.
 2013 MAY 1 AM 11:34
 BRANDY W. NOBEE

013CP-110302

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

N/A

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

(a) which grounds have been presented:

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

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

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

FILED IN OFFICE OF
 CLERK OF COURT
 HANCOCK COUNTY, S.C.
 2017 MAY 1 AM 11 34
 RANDY W. NOBEE

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) All grounds (either stated in 10 or to be amended @ A -
- (b) later date) are A first time challenge
- (c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? no
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ~~yes~~ no
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

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. Don A. Thompson, Chief Public Defender of Cherokee County
310-B North Limestone St. / P.O. Box 8008
 - ii. Gaffney, SC 29340

iii. _____

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

- i. Arraignment, plea, and sentencing
- ii. _____
- iii. _____

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2013 MAY 1 AM 11 34
 BRANDY W. MOBBE

013CP-110302

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

I, Kenneth Lee Hilton, 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.

[Handwritten signature of Kenneth Lee Hilton]
Applicant

SWORN or affirmed to and subscribed before me this 30 day of April, 2013.

[Handwritten signature of Eugene Keef]
Notary Public

My Commission Expires April 4, 2016

My Commission Expires: _____

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 MAY 1 AM 11 34
BRANDY W. MOBEE

013CP-110302

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

Vacate conviction, Set aside verdict, remanded/reversed for a new trial. Once remedied, to have all convictions/sentences to be ran concurrently together.

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

No

STATE OF SOUTH CAROLINA)
)
County of Cherokee)

VERIFICATION

I, Kenneth Lee Hilton, 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.

Kenneth Lee Hilton

SWORN to and subscribed before me this 30 day of April

Eugene Keefe (L.S.)
Notary Public

My Commission Expires: My Commission Expires April 4, 2018

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 MAY 1 AM 11 34
BRANDY W. MOBEE

40
State Of South Carolina

County Of Cherokee

Kenneth L. Hilton # 354034
Applicant

v.

State Of South Carolina
Respondents

In The Court Of Common Pleas

013CP-110302

Certificate Of Service And Mailing

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 MAY 1 AM 11 34
BRANDY W. MCBEE

I, the Applicant in the above referenced matter, do hereby certify that I have mailed the following documents:

(1.) Post Conviction Relief Application, w/ Certificate of Service and Mailing - w/ copies thereof: by personally depositing originals / and copies thereof in the United States mail, first class postage pre paid and addressed to:

(A) Mrs. Brandy W. McBee, Clerk
Clerk of Court, Cherokee County
Post Office Drawer 2289
Gaffney, SC 29342

(B) MR. Alan McCray Wilson, Attorney Gen
Attorney General's office (of S.C.)
Dennis Bldg., Box 11549
Columbia, SC 29211

SWORN TO BEFORE ME THIS 30 DAY
of April, 2013.

Eugene Keefe

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES My Commission Expires April 4, 2016

Respectfully Submitted BY:

Kenneth L. Hilton
Kenneth L. Hilton, #354034: Pro Se

Broad River Correctional Institution
Waterloo Unit # 214 (A)
4460 Broad River Road
Columbia, SC 29210

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
)
 Kenneth Hilton, #354034,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

2013-CP-11-0302

**RETURN AND MOTION FOR A MORE
 DEFINITE STATEMENT**

The Respondent, making its Return to the application for post-conviction relief filed May 1, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was true billed indicted at the May 2012 term of the Cherokee County Grand Jury for Kidnapping (2012-GS-11-0226). Additionally, Applicant waived presentment to the January 2013 term of the Cherokee County Grand Jury for Assault with Intent to Commit Criminal Sexual Conduct, Second Degree (2013-GS-11-0017). Don Thompson, Esquire, represented him. On January 23, 2013, Applicant pled guilty without negotiations or recommendations. The Honorable J. Derham Cole sentenced Applicant to twenty-five years imprisonment for Kidnapping and twenty years imprisonment for Assault with Intent to Commit Criminal Sexual Conduct Second Degree; with all sentences running concurrent. No direct appeal was filed.

Attached herewith and incorporated herein by reference are the records of the Cherokee County Clerk of Court regarding the subject convictions, records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

I. Ineffective Assistance of Counsel.

- a. "The Applicant reserves the right to amend the Applications grounds at a later date or at the evidentiary hearing prior to any ruling of the lower court and does request a 59(e) motion granted as to each stated ground if he is denied relief at the hearing."

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

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced 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.

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

IV.

In his application, Applicant alleges that he is being held in custody unlawfully based on "ineffective assistance of counsel." However, Applicant has wholly failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are

entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and plea counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRCP.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 17, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Kenneth Hilton,

)

2013-CP-11-0302

Applicant,

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)
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v.

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CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

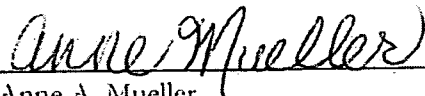
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Respondent.

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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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
 Law Office of Leah B. Moody, LLC
 P.O. Box 1015
 Rock Hill, SC 29730



 Anne A. Mueller
 Legal Assistant for the Respondent

DATED this 17th day of March, 2014:

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STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

COURT OF COMMON PLEAS NONJURY

KENNETH L. HILTON,)
APPLICANT,)
vs.)
STATE OF SOUTH CAROLINA,)
RESPONDENT.)

TRANSCRIPT
OF
RECORD
2013-CP-11-302

March 27th, 2015
Spartanburg, South Carolina

B E F O R E :

THE HONORABLE ROGER L. COUCH, Judge.

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

KENNETH L. HILTON
Pro Se

SUZANNE H. WHITE
Assistant Attorney General
Attorney for the Respondent

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X O F W I T N E S S E S

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WITNESSES

PAGE

KENNETH HILTON

Direct examination by Mr. Hilton

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DON THOMPSON

Direct examination by Ms. White

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Cross-examination by Mr. Hilton

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certificate

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	<u>Applicant's Exhibits</u>		
A-1	Documents		25
A-2	order		57

P R O C E E D I N G S

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3 THE COURT: All right. We're on the record in the case
4 of the, the -- of Kenneth Hill, I believe, versus the State
5 of South Carolina. It's a petition for post-conviction
6 relief that was filed by Mr. Hilton. Mr. Hilton is present.
7 The State is also present represented by Mr. -- Ms. White.

8 Mr. Hilton, if you would, please stand and, to the best
9 of your ability, raise your right-hand.

10 Your right-hand. There you go.

11 (WHEREUPON, the Applicant was placed under oath at this
12 time.)

13 THE COURT: All right. You can put the -- your hand
14 down, Mr. Hilton. You can be seated too.

15 Let me just ask you a couple of questions.

16 According to the records that are before me, it appears
17 that you are representing yourself in this matter.

18 Is that true?

19 MR. HILTON: Yes.

20 THE COURT: And is that how you wish to proceed today?

21 MR. HILTON: Yes.

22 THE COURT: And are you aware or have you been made
23 aware that, should you wish to have an attorney, an attorney
24 could be appointed for you in this matter?

25 MR. HILTON: I do not need an attorney, sir.

1 THE COURT: Okay.

2 MR. HILTON: I chose to be pro se.

3 THE COURT: I understand that. I just want to be --
4 put on the record that that's still how you---

5 MR. HILTON: Yes, sir.

6 THE COURT: ---wish to proceed.

7 MR. HILTON: Thank you, sir.

8 THE COURT: Now, Mr. Hilton, there's a couple of things
9 I'm required to go over with you about this. So---

10 MR. HILTON: Yes, sir.

11 THE COURT: ---be patient with me and let me get
12 through these things.

13 MR. HILTON: Yes, sir.

14 THE COURT: Mr. Hilton, the -- I want to be sure that
15 you're aware of the kinds of things that an attorney might
16 do to be of service to you in this matter.

17 MR. HILTON: Right.

18 THE COURT: Are you aware of those things?

19 MR. HILTON: Yes, I am.

20 THE COURT: Do I need to go over those with you at this
21 time?

22 MR. HILTON: No, sir.

23 THE COURT: Mr. Hilton, how far did you go with your
24 education?

25 MR. HILTON: About the eleventh grade.

1 THE COURT: Okay. And are you married?

2 MR. HILTON: My wife is passed away.

3 THE COURT: I'm sorry to hear that.

4 Do you have children?

5 MR. HILTON: No, I do not.

6 THE COURT: Now, before you were incarcerated, were you
7 employed somewhere?

8 MR. HILTON: I was working at Hucks Piggyback Trucking
9 Service and I worked for them for 14 years.

10 THE COURT: Okay. So you were self-employed and able
11 to support yourself?

12 MR. HILTON: Not self-employed. I worked for the
13 company.

14 THE COURT: You were employed yourself and---

15 MR. HILTON: Right.

16 THE COURT: ---you were able to take care of yourself?

17 MR. HILTON: Yes, sir.

18 THE COURT: Did you handle your own business affairs at
19 that time?

20 MR. HILTON: Yes, I did.

21 THE COURT: Now, do you suffer from any mental,
22 physical, or nervous conditions today that would affect your
23 ability to reason or to make good decisions?

24 MR. HILTON: No, sir.

25 THE COURT: Have you taken or used any drugs,

1 medications, or other substances that would have that
2 effect?

3 MR. HILTON: No, sir.

4 THE COURT: So, Mr. Hilton, do you know what you're
5 doing?

6 MR. HILTON: Yes, I do.

7 THE COURT: Are you able to proceed in this matter
8 today?

9 MR. HILTON: I am indeed, sir.

10 THE COURT: And do you understand what this hearing is
11 about?

12 MR. HILTON: Yes, I do, sir.

13 THE COURT: All right. I'll make a finding that Mr.
14 Hilton is in a position to represent himself in this matter.

15 Mr. Hilton, if you change your mind about that, at
16 anytime during this proceeding, I'm going to ask that you
17 inform me immediately so that we can discuss that.

18 MR. HILTON: Right.

19 THE COURT: You understand that?

20 MR. HILTON: Yes, sir.

21 THE COURT: All right. Now, I'm gonna ask the State,
22 at this time, to go over the status of your case, Mr.
23 Hilton, with me. I want you to listen to what Ms. white
24 tells me because, when finished -- she's finished, finishes
25 that, I'm gonna check to see if you agree with that's where

1 we are.

2 MR. HILTON: Okay.

3 THE COURT: All right. Ma'am, if you would, go over
4 the status of the case with me.

5 MS. WHITE: Thank you, Your Honor.

6 It's the case of Kenneth Hilton versus the State. It's
7 Case Number 2013-CP-11-0302. Mr. Hilton filed this
8 application May 1st, 2013. He was true bill indicted in May
9 2012 for kidnapping and then waived presentment in January
10 of 2013 for an assault with an intent to commit criminal
11 sexual conduct second degree. He was represented by Mr. Don
12 Thompson, and, on January 23rd, he pled guilty to both
13 charges without recommendations or negotiations. He was
14 sentenced by Judge Cole to 25 years of prison for kidnapping
15 and 20 years for assault with intent to commit criminal
16 sexual conduct second degree. The sentences were set to run
17 concurrent. No direct appeal was filed.

18 He filed this application alleging ineffective
19 assistance of counsel, and, Your Honor, there are several
20 documents I believe in your packet. Mr. Hilton filed some
21 documents while represented originally by appointed counsel.
22 But then we have included, I believe, ones that he has filed
23 once he was -- once counsel was relieved.

24 we had had a hearing in April of 2014 at which time he
25 relieved -- requested that appointed counsel be relieved and

1 so, at that point, we've proceeded with him pro se.

2 THE COURT: All right. Now, you indicated -- were
3 these guilty pleas?

4 MS. WHITE: Yes, Your Honor.

5 THE COURT: Okay. All right. Now, Mr. Hilton, did you
6 hear what Ms. White told me about the status of your case?

7 MR. HILTON: Yes.

8 THE COURT: Do you agree with that being true?

9 MR. HILTON: I was asked by Mr. Thompson to plead
10 guilty.

11 THE COURT: Well, I -- we'll get into the facts of that
12 in just a minute. I just want to know if she told me the
13 status of the case correctly---

14 MR. HILTON: Yes.

15 THE COURT: ---that you have filed for PCR?

16 MR. HILTON: Yes, I have.

17 THE COURT: That you dismissed your prior counsel?

18 MR. HILTON: Right.

19 THE COURT: So did -- all the things she told me about
20 where we are in the case---

21 MR. HILTON: Yes.

22 THE COURT: ---is that true?

23 MR. HILTON: Yes.

24 THE COURT: Is there anything you'd like to add to
25 that?

1 MR. HILTON: Can I -- because of -- I'm trying to
2 challenge the Court's jurisdiction to accept those guilty
3 pleas.

4 THE COURT: Well, you have the right to, to challenge
5 the Court's jurisdiction in a PCR. You -- so you have the
6 right to raise that issue.

7 I assume -- are you prepared for that issue?

8 MS. WHITE: Yes, Your Honor.

9 THE COURT: That's something you're aware of?
10 Okay.

11 MS. WHITE: Yes, it is, Your Honor.

12 THE COURT: All right. Anything else you want me to be
13 aware of?

14 MR. HILTON: Could, could I read what I have on the
15 record?

16 THE COURT: Well, what I'm going to do is if, if --
17 once we have agreed that the status is right, I'm gonna ask
18 that you come forward and testify on your behalf. So, yeah,
19 you can then put whatever you'd like to put in the record.

20 MR. HILTON: I'd like to record this on the record.

21 THE COURT: Well, I don't know what that is, but
22 we'll---

23 MR. HILTON: This is my claims and issues.

24 THE COURT: Okay. That's fine.

25 All right. Now, are you ready to proceed?

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1 MR. HILTON: Yes, sir.

2 THE COURT: All right. You have been placed under oath
3 before the Court.

4 Do you acknowledge that you're under oath now?

5 MR. HILTON: Yes, sir.

6 THE COURT: Come forward if you would. Bring your
7 paperwork with you. Come to the witness stand over here to
8 my left.

9 (Mr. Hilton complies.)

10 THE COURT: Be seated in the witness stand, Mr. Hilton.
11 You can put your paperwork in front up here. Thank you,
12 sir.

13 KENNETH HILTON, having been previously
14 sworn, testified as follows:

15 THE COURT: All right. Mr. Hilton, you've acknowledged
16 you're under oath. You may proceed. Present your case.

17 DIRECT EXAMINATION

18 BY MR. HILTON:

19 THE WITNESS: I am challenging Trial Court's
20 jurisdiction to accept, convict, and sentence me upon two
21 guilty pleas that were void, invalidated multiple times
22 throughout the judicial proceedings creating structural
23 errors having nothing to do with guilt or innocence. I am
24 not seeking another plea hearing. The violations go beyond
25 the plea process to the conviction and sentencing.

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1 South Carolina Rule Civil Procedure Rule 71.1(e)
2 mandates the burden is on the Applicant, myself, to
3 establish my entitlement to the relief I seek by
4 preponderance of evidence. South Carolina Code Anna (sic)
5 17-27-80, South Carolina Rule, Civil Procedural Rule 52(a)
6 cite all claims shall be properly raised at PCR hearing.
7 McCray versus State of South Carolina, 305 S.C. 329, 408
8 S.E. 2d District 241, (1991), McCullough versus State, 464
9 S.E. 2d District 304 South Carolina (1991).

10 For the record, South Carolina State Attorney General
11 is named Respondents in this action. It's failed -- filed
12 no responsive defense pleading. Therefore, in default,
13 South Carolina Rule Civil Procedure Rule 55(e). See Buford
14 versus Trax, 563 S.E. 2d District 660 South Carolina. This
15 case (2002).

16 In addition to default status, the failure to file a
17 responsive defense pleading waives the right to appeal any
18 judgment PCR ordered issued in this action. South Carolina
19 Rule Civil Procedural Rule 12(b) and 8(b) cite every defense
20 shall be stated in a responsive pleading. South Carolina
21 Rule Civil Procedure Rule 55(e) provides, in relevant part,
22 no default judgment shall be entered against the State of
23 South Carolina or an agency thereof or an official of said
24 agency unless Applicant established their claims to the
25 relief by evidence satisfactory to the Court. Therefore,

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1 Applicant is actually entitled to relief under default,
2 South Carolina Rule Civil Procedure Rule 55(e).

3 Also, the State has the burden to establish that the
4 Court had subject matter jurisdiction citing State versus
5 Ellis, 307 S.C. 477, Southeast Second District 816, (2000).
6 Correction, sir, this case is (1992).

7 Respectfully, my claims have a five page uncontested
8 sworn affidavit filed in this Honorable Court September the
9 18th, 2014, in support of claim that issue in this action
10 adopted and incorporated by reference hereof. The affidavit
11 has four statements and 17 paragraphs, summation, but
12 official appendixes A-1 through C-1, and prayer for relief.

13 Wherefore, with the Court's permission, I would like to
14 cite my claim and findings of fact on the record. I have a
15 speech impairment. So, for my convenience, I have copied --
16 I have all my claims written and numbered and, for the
17 Court's convenience, I have copies of the relevant trial
18 transcript for the Court and the Respondents.

19 Also, South Carolina PCR Uniform Act provides for a
20 hearing inquiry on issues of ineffective assistance of
21 counsel. I have prepared inquiry with yes and no questions
22 in support of my claims should counsel wish to submit to the
23 judicial inquiry of proceedings. However, I would like to
24 put my claims on the record first.

25 Uncontested jurisdictional claims. This is my add in

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1 (sic) filed July 9th, 2014, without objection. The add in
2 (sic) incorporated all Applicant's claims and makes specific
3 findings of facts and conclusions of law to each claim cited
4 herein all in support of the primary claim. Trial Court
5 lacked subject matter jurisdiction to accept Applicant's
6 guilty plea and convict him upon guilty pleas that were
7 void.

8 Trial Court's first structural defects withholding
9 factual evidence and failed to order a mental evaluation.
10 Paragraphs 1. Solicitors failed to follow state mandatory
11 rules and South Carolina laws for criminal guilty pleas
12 violated Applicant's constitutional due process rights to
13 receive a fair, impartial, and constitutional plea hearing
14 process. Factual evidence submitted after inquiry with
15 almost over.

16 Paragraph 2. Solicitor's unprofessional errors
17 invalidated Applicant's guilty plea and created a
18 jurisdictional structural defect by withholding factual
19 evidence of the Applicant's psychological, mental history
20 from the Trial Judge misleading the judge into believing
21 Applicant's case was ready for trial. Withholding factual
22 evidence is a serious offense.

23 Paragraph 3. Furthermore, assistant solicitor had
24 Applicant's official records. Thus knew Applicant had a
25 history of mental illness dating back into his childhood.

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1 Therefore, before announcing that Hilton is pleading guilty
2 to indictment, prosecutor had a year to obtain the
3 psychological mental evaluation to determine if Applicant
4 was competent enough to make the guilty plea alleged by the
5 Assistant Solicitor. Transcript Page Number 4, Lines 12 and
6 14. See South Carolina Constitution 17-24-20(a) (1976).
7 Solicitor had a duty to order evaluation. Appendix C-1.

8 Paragraph four. Although assistant solicitor stated
9 Hilton is pleading guilty to two indictments, the court only
10 produced one written indictment waiver which was the sexual
11 conduct offense. Transcript Page Number 9.

12 THE COURT: Just one second, sir.

13 MS. WHITE: Yeah.

14 Your Honor, Mr. Hilton has filed numerous documents and
15 I was going through to make sure that Your Honor had copies
16 of what -- I was trying to figure out exactly what he was
17 reading from.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. WHITE: I know that you have documents that were
20 filed March 31st, April, I believe, 7th, and April 14th,
21 and then September 5th. So, in going through our file, it
22 appears I've found a document that we perhaps need -- that
23 it appears Mr. Hilton is reading from that you---

24 THE COURT: Uh-huh. (Affirmative).

25 MS. WHITE: ---will need that we can maybe make a copy

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1 of, but---

2 THE WITNESS: I've got relevant trial transcript, sir,
3 in my paperwork over there if you would allow me to give it
4 to you. I would be happy to do so.

5 THE COURT: I have the trial transcript.

6 THE WITNESS: Okay.

7 MS. WHITE: I'll bring this up, if I may, Your Honor?

8 THE COURT: I think I've got a copy---

9 MS. WHITE: Do you?

10 THE COURT: ---of everything here.

11 Which one do you think he's reading from?

12 MS. WHITE: well, it looked -- it sounds like he's
13 reading from one that's dated I've got May 19th, 2014, and
14 I'm trying to make sure that that one is put together
15 with---

16 THE COURT: You can approach the witness and look at
17 the document if you'd like.

18 MS. WHITE: Okay.

19 (Pause.)

20 MS. WHITE: Is this what you're reading from?

21 That doesn't look exactly the same.

22 THE WITNESS: No.

23 MS. WHITE: All right.

24 THE WITNESS: But I can give you the relevant trial
25 transcript if you'd like it. I have copies for the Court

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1 and the Respondent. I have no problem, sir. I do have
2 them.

3 THE COURT: I'm looking at the trial transcript right
4 now.

5 THE WITNESS: Thank you, sir.

6 THE COURT: Yes, sir.

7 MS. WHITE: And, Your Honor, that's -- I'm, I'm sorry
8 for interrupting.

9 THE COURT: Has he---

10 MS. WHITE: I've got several documents that are -- that
11 appears to be copies and kind of some repetitive. So I'm
12 having a hard time figuring out exactly where we are. But,
13 I, I believe the gist of them is in the documents that we
14 have.

15 THE COURT: Okay. Well, I'm gonna let -- how much
16 longer do you have to read, sir?

17 THE WITNESS: Just the rest of this right here.

18 THE COURT: Let's just let him finish.

19 MS. WHITE: Okay.

20 THE COURT: Go ahead.

21 THE WITNESS: Transcript Page 9, Lines 11 and 12. Plea
22 invalidated by no mental competency evaluation. Judge
23 stated on the record I have on this indictment this is one.

24 Paragraph 5. Assistant solicitor---

25 THE COURT: Just one second.

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1 You quoted page what now?

2 I'm looking at the transcript. Page 9 you said.

3 THE WITNESS: Uh-huh. (Affirmative).

4 THE COURT: Line what?

5 THE WITNESS: 12 through -- 12 -- I mean 11 through 12.

6 THE COURT: 11 through 12. 11 starts but I have, on
7 this indictment---

8 THE WITNESS: On this indictment.

9 THE COURT: ---what appears to be your initials
10 indicating that you wanted to waive presentment to the Grand
11 Jury.

12 Is that the question you're referring to?

13 THE WITNESS: There was not two indictments. There was
14 only one indictment there.

15 THE COURT: He's only, he's only going over one
16 indictment with you. Criminal sexual conduct.

17 THE WITNESS: Uh-huh. (Affirmative).

18 THE COURT: Okay. I'm gonna -- I see what you're
19 talking about.

20 Go ahead.

21 THE WITNESS: Yeah, judge stated on the record I have
22 on this indictment.

23 THE COURT: Uh-huh. (Affirmative).

24 THE WITNESS: Paragraph Number 5. Assistant solicitor
25 failed to demonstrate on record the Applicant's pleas were

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1 submitted in compliance with Miranda warning proceeding
2 383---

3 THE COURT: In compliance with what?

4 THE WITNESS: Proceedings.

5 THE COURT: No, no, no. Back up there.

6 THE WITNESS: Miranda warnings.

7 THE COURT: Miranda warnings.

8 THE WITNESS: Proceedings 383---

9 THE COURT: Okay. Go ahead, sir.

10 THE WITNESS: ---U.S. at 467 or that he had been
11 determined by a mental physician to be competent enough to
12 make the guilty plea and stand trial for his offenses.

13 Paragraph 6. Trial records are silent as to how the
14 Court and solicitor determined Applicant was competent
15 enough to make a voluntary knowing guilty plea to two
16 indictments as alleged by the assistant solicitor.

17 Paragraph 7. It's understandable a Trial Judge has no
18 choice but to depend on solicitor's judgment that the
19 accused is ready for trial. However, the judge erred in
20 accepting the assistant solicitor's erroneous assumption.
21 The Honorable Court lacked jurisdiction to assume Applicant
22 was competent enough to make knowing, voluntary, independent
23 guilty plea without a mental competency mental evaluation.
24 South Carolina Constitution Article 5 Section 21. Primary
25 purpose of judicial hearing is to determine if the accused

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1 is competent enough to stand trial for the charges faced
2 with. See State versus Jones (1985). 285 S.C. 286, 330
3 S.E.2d District 286.

4 Paragraph 8. A prosecutor's primary duty is to prepare
5 the accused for trial and ensure the guilty shall not escape
6 punishment or innocent suffer in United States versus Agurs,
7 427 U.S. 97, 96 S.Ct. 2392, 49 L. Ed.2d 342, (1976).

8 Paragraph 9. Applicant's conviction must be set aside,
9 void proceeded to the Court's lack of jurisdiction to accept
10 the Applicant's guilty plea. Anderson versus Anderson, 299
11 S.C. 110, 115 382 S.E. 2d District 897, 900, (1989). The
12 Court held we think it's elementary with no need for
13 citation of authority that the acts of the Court with
14 respects to a matter which it has no jurisdiction are void.
15 Accord Lillard versus Searson, 170 S.C. 304, Southeast,
16 Southeast Second 499, (1933).

17 Paragraph 10. Both assistant solicitor and trial
18 counsel withheld factual evidence of the Applicant's
19 psychological and mental, mental illness history from the
20 Trial Judge. As a result of assistant solicitor and trial
21 counsel's unprofessional act and omissions to withhold
22 evidence of the Applicant's psychological mental history
23 from the Trial Judge, intentional or not, is irrelevant.

24 The errors violated due process, invalidated
25 Applicant's guilty plea and deprived the Honorable Court of

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1 jurisdiction to accept the Applicant's guilty plea because
2 the Court should have stopped the proceedings and ordered a
3 mental competency evaluation upon being advised of
4 Applicant's history of psychological and mental illness that
5 continue throughout his childhood. Transcript Page 20,
6 Lines 8 through 23, Transcript Page 26, Lines 17 through 22.
7 See Pate versus Roberson, 383 U.S. 375. 385-86, 1966.

8 Competency hearing was required in light of defendant's
9 history of irrational behavior. U.S. versus Jones, 95 F.3d
10 274. 277, Sixth Circuit, (2007). Due process violated by
11 Court's failure to order a competent hearing because Court
12 ruled defendant competent without a mental evaluation. See
13 Transcript Page 6, 20, and 26, irrational behavior.

14 Paragraph 11. Assistant solicitor and trial counsel
15 withheld factual evidence created a structural defect,
16 invalidated the guilty plea. Then the Court's failure to
17 order an evaluation deprived the Court of jurisdiction to
18 accept the Applicant's guilty plea.

19 Paragraph 12. Applicant's conviction must be void.
20 See Anderson versus Anderson, 299 S.C. 111, 115 382.
21 Southeast Second district 897, 900, (1989). The Court held
22 we think it's elementary, with no need for citation of
23 authority, that the acts of the Court with respects to a
24 matter which it has no jurisdiction are void.

25 THE COURT: You already read that to me. Sir, you've

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1 already read that to me.

2 Are you going back over things?

3 THE WITNESS: No, this is still a part of my, my, my
4 process here.

5 13. Assistant solicitor---

6 THE COURT: Just one second. Don't read the same stuff
7 to me. That quote I've heard before.

8 THE WITNESS: But it's -- yes, sir, it's --.

9 THE COURT: Let's move on to something else.

10 THE WITNESS: 13. Assistant solicitor's actions
11 constitute prosecutor misconduct. Counsel's defective
12 performance constituted ineffective trial counsel in
13 violation of the Sixth and Fourteenth Amendment. USC
14 Constitution Article 1, Section 3 created a jurisdictional
15 structural defect. Strickland id, 466 U.S. at 694, 104
16 S.Ct. at 2068. (1984).

17 14. Trial counsel like the assistant solicitor had
18 Applicant's North Carolina and South Carolina state SLED
19 official records and record provided counsel was acting as
20 if plea negotiate with the assistant solicitor and counsel
21 was ineffective as both counsel and plea negotiator.

22 At 15. At one point Applicant shows serious mental,
23 psychological, irrational behavior losing (sic) control to
24 lack the ability to respond to the Judge's questioning.
25 Transcript Page Number 6, Lines 2 through 15. The trial --

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1 the Court repeatedly asked Applicant if had a defense for
2 his actions. Then appeared to get upset with Applicant's
3 irrational behavior. Counsel still withheld Applicant's
4 mental history.

5 Paragraph 16. Then the Court asked counsel if he could
6 answer the judge. Trial counsel told the Court, in relevant
7 part, I was explaining to him, judge, that we really have no
8 defense. Transcript Page Number 6, Lines 15 through 18.
9 The Court should have stopped the proceedings and ordered
10 Applicant to submit to the Department of Mental Health for a
11 psychological evaluation. South Carolina Section
12 44-23-410(1) or, two, South Carolina Code of Laws, (1976),
13 Section 17-24-28 Code of Laws, (1976). Counsel should have
14 motioned the Court for the Court, instead of withholding
15 Applicant's condition from the Honorable Judge. Counsel
16 knew Applicant needed mental treatment.

17 17. Counsel's lack of representation to provide a
18 legal defense forced Applicant to plead guilty violated due
19 process, shifted the burden to Applicant to provide an
20 excuse and a defense for his offenses. Counsel repeatedly
21 told Applicant, during jail visits, we don't have a defense
22 for your actions. See Transcript Page Number 6, Lines 15
23 through 18.

24 THE COURT: How much more are you planning on reading?

25 THE WITNESS: I got 28 issues, sir.

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1 THE COURT: Oh, I don't doubt you have 28 issues.
2 That's not, that's not what I asked you.

3 How much -- if there's a written document that you'd
4 like to submit to the Court, I'll let the State look at it
5 and I can have it made a part of the record and I can read
6 it. You don't have to read it to me.

7 So my question is, if that's a written document that
8 you'd like to have the Court consider, why don't I let the
9 State take a look at it, if they don't object to it, then I
10 can have it made a part of the record and then I'll be happy
11 to read it.

12 THE WITNESS: Um. When it comes to the PCR hearing,
13 aren't I allowed to be -- I mean, as pro se, aren't I
14 allowed to have a full meaningful---

15 THE COURT: Oh, absolutely. But there's, there's no
16 need for you to read that to me when I can read it myself.
17 Is there anything wrong with me reading it?

18 THE WITNESS: No, sir.

19 THE COURT: That's the point I'm trying to make.

20 THE WITNESS: Yes, sir.

21 THE COURT: So do you want the State to take a look at
22 it and see you -- if there's any objection to us making that
23 a part of the record?

24 It goes into the record just like you reading it into
25 the record.

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1 THE WITNESS: Yes, sir. That's fine, sir.

2 THE COURT: All right. You want to step up and take a
3 look at the document he's reading from. Because it's -- it
4 looks like he's probably got 45 pages or so, there.

5 MS. WHITE: Okay.

6 THE COURT: Some of it is repetitive.

7 MS. WHITE: The State has no objection, Your Honor, to
8 any of that because I believe the majority of it probably is
9 in the record based on what---

10 THE COURT: All right. Well, hand it down to the, to
11 the court reporter---

12 MS. WHITE: Okay.

13 THE COURT: ---and let's have it marked then as an
14 Applicant's Exhibit.

15 (WHEREUPON, the documents were marked as Applicant's
16 Exhibit No. 1 and received into evidence at this time.)

17 THE COURT: And now if you'll pass that back to Mr.
18 Hilton.

19 Mr. Hilton, rather than reading all the citations -- I
20 don't have any problem with you going over your issues you
21 would like for me to consider. Tell me about them. But as
22 far as reading that document to me, since it's in written
23 form, I'll be happy to read it and we'll save a little time.

24 THE WITNESS: Uh-huh. (Affirmative).

25 THE COURT: I can actually pay attention better if I

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1 read if than if you read it to me.

2 THE WITNESS: Would you like to read it, sir?

3 THE COURT: I'm going to. Not right now. I want you
4 to tell me what your issues are and you can go through that
5 document and pick out your issues.

6 THE WITNESS: Uh-huh. (Affirmative).

7 THE COURT: But let's go -- let's find out what the
8 issue -- let's get down to what the issue are so that I know
9 what I'm looking for.

10 THE WITNESS: Uh-huh. (Affirmative).

11 THE COURT: And I think I've gotten to the point where
12 you think that the Court did not have jurisdiction because
13 the prosecutor and your attorney withheld evidence
14 concerning your psychological condition, and that you
15 believed that deprives the Court of jurisdiction. I think
16 that's one of the things you have raised a couple of times
17 already.

18 THE WITNESS: Uh-huh. (Affirmative).

19 THE COURT: So I understand that issue.

20 THE WITNESS: Uh-huh. (Affirmative).

21 Counsel's lack of representation to provide a legal
22 defense forced Applicant to plead guilty.

23 THE COURT: All right. Anything you'd like to say
24 about that?

25 THE WITNESS: They shifted the burden to me to provide

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1 an excuse and a defense for my offenses. Counsel repeatedly
2 told Applicant, during jail visits, we don't have a defense
3 for your actions. See the Transcript Pages 6 and 15 through
4 the 18. Trial counsel told the Court, in relevant part, I
5 was explaining to you, judge, that we were really have no
6 defense that I see. Then, again, at Transcript Page 23,
7 Lines 21 through 23.

8 Counsel second statement to the Court, in relevant
9 part, there is no defense to what happened.

10 18. Trial counsel two unprofessional confessions to
11 the Trial Judge that he had no legal defense to submit for
12 Applicant's offenses forced Applicant to plead guilty.
13 Counsel's errors violated due process. Denied Applicant of
14 his Constitutional right to effective legal representation
15 under the Sixteenth and Fourteenth Amendment. South
16 Carolina Constitution Article 1 Section 3. Strickland id.
17 466 at 694. 104 S.Ct. at 2068, (1984). Such errors removed
18 any presumption of entitlement of competency under the
19 Strickland Two-Prong Test.

20 Counsel's substance of representation was nonexistent.
21 No defense. No motions. No objections. We have a factual
22 evidence of my mental history from the Trial Judge until the
23 proceedings was over. That's on Transcript Page 20, Lines
24 8.

25 THE COURT: Are you reading it to me again?

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1 THE WITNESS: I'm, I'm just letting you know what, what
2 my issue is.

3 THE COURT: Okay. You, you explained that you think
4 your attorney, because he told the judge there was no
5 defense to what you had done, that he forced you to plead
6 guilty.

7 THE WITNESS: (Witness nods affirmatively.)

8 THE COURT: All right. Let's move on to the next
9 issue.

10 THE WITNESS: Being advised by both the assistant
11 solicitor and the trial counsel of the Applicant's mental
12 history, counsel's errors violated due process and
13 undermined the plea hearing proceedings invalidated
14 Applicant's guilty plea. Court's failure to order a mental
15 competency evaluation created a---

16 THE COURT: All right. Mr. Hilton, is it your position
17 that, at some point in time, the Court was informed that you
18 had mental issues?

19 THE WITNESS: Yeah.

20 THE COURT: That's in the transcript?

21 THE WITNESS: Well, it was in my paperwork, yes.

22 THE COURT: No, sir, I'm talking about in the
23 transcript, what was given to the Court that day. I'm
24 looking at the transcript. I just about finished reading
25 it. I didn't see anything in there about that.

Kenneth Hilton - Direct examination
by Mr. Hilton

1 THE WITNESS: It's in there.

2 THE COURT: All right. Tell me where.

3 where is it in there that the Court was made aware that
4 you had mental issues?

5 Of course, this morning you're telling me---

6 THE WITNESS: 20 and 26.

7 THE COURT: On Page 26?

8 THE WITNESS: Twenty and six is where it is, sir.

9 THE COURT: All right. Let me go there. I'm on Page
10 26 now.

11 (Pause.)

12 THE COURT: I don't see anything about your mental
13 issue. I see there was a DNA test. They found your saliva
14 on the lady's bra.

15 THE WITNESS: Uh-huh. (Affirmative).

16 THE COURT: I don't see anything about your mental
17 condition in there.

18 Is that the only citation you have where the Court was
19 informed that there was a mental issue and an evaluation---

20 MR. HILTON: The solicitor---

21 THE COURT: ---should of been done?

22 THE WITNESS: ---knew too.

23 THE COURT: Sir?

24 THE WITNESS: The solicitor knew too.

25 THE COURT: I'm asking when the Court was informed.

Kenneth Hilton - Direct examination
by Mr. Hilton

1 You said the Court should of ordered that. I'm trying to
2 find in the transcript where that was ever brought up in
3 your -- what I have read is that the judge asked you
4 numerous questions and you answered them all appropriately.

5 THE WITNESS: Oh.

6 THE COURT: It appears that you knew exactly what the
7 questions were and knew how to answer them.

8 THE WITNESS: I didn't understand what he was talking
9 about.

10 THE COURT: You did -- you never told him that?

11 THE WITNESS: I didn't tell him. Mr. Thompson told me
12 not to tell him. He said if you tell him that you -- you
13 know---

14 THE COURT: It does appear that you answered the
15 questions appropriately.

16 Go ahead. What's the other -- next issue?

17 THE WITNESS: Counsel failed to bring the kidnapping
18 indictment for my signature of a waiver. Therefore, the
19 kidnapping indictment nor the sentencing form were not
20 signed by, by me. Counsel's failure to obtain my signature
21 of a waiver on the kidnapping indictment for the Court
22 created a structural defect that deprived the Court of
23 subject matter jurisdiction to accept my guilty plea.

24 THE COURT: Sir, I'm looking at your kidnapping
25 indictment. This is the one that's been supplied to me.

Kenneth Hilton - Direct examination
by Mr. Hilton

1 Case Number 2012-GS-11-226.

2 Is that what you're talking about?

3 (Pause.)

4 THE COURT: You see down here where it says
5 kidnapped---

6 THE WITNESS: Uh-huh. (Affirmative).

7 THE COURT: ---where my finger is?

8 THE WITNESS: Uh-huh. (Affirmative).

9 THE COURT: That indictment appears to have been true
10 billed by the Grand Jury right here.

11 THE WITNESS: Uh-huh. (Affirmative).

12 THE COURT: So there wouldn't have been any need for a
13 waiver to the Grand Jury presentment on that indictment
14 since it went to the Grand Jury it appears if I'm looking at
15 the right one.

16 Am I looking at the right one?

17 MS. WHITE: Your Honor, he waived presentment and
18 initialed that on the assault too---

19 THE COURT: Yes, I know that.

20 MS. WHITE: ---with intent to -- right.

21 THE COURT: On the other charge, but on this one---

22 MS. WHITE: On the kidnapping it was true billed.

23 THE COURT: It was true billed by the Grand Jury?

24 MS. WHITE: Yes, sir.

25 THE COURT: Okay.

Kenneth Hilton - Direct examination
by Mr. Hilton

1 All right. Let's go to the next issue.

2 THE WITNESS: Is my signature on that?

3 THE COURT: When the Grand Jury indicts a case, they
4 don't ask you to sign it. The Grand Jury signs it. It is
5 signed by the foreperson of the Grand Jury.

6 THE WITNESS: Well --.

7 THE COURT: So, no, you did not sign it --

8 THE WITNESS: Okay.

9 THE COURT: -- to answer your question.

10 THE WITNESS: All right. Okay. Both knowing or should
11 have known that South Carolina Constitution provides, in
12 relevant part, a written waiver is mandatory before a Trial
13 Judge can accept a guilty plea. 17-23-130 and 140.

14 THE COURT: Written waiver of Grand Jury presentment?
15 Is that what you're referring to?

16 THE WITNESS: I'm -- that a Trial Judge must have -- it
17 must, it must be signed by me.

18 THE COURT: Okay, sir. I understand that issue.
19 Let's go to the next one.

20 THE WITNESS: Solicitor Leskanic and trial counsel,
21 Mr. Tom (sic) Thompson, Public Defender of Cherokee County,
22 withheld factual evidence of, withheld factual evidence,
23 material evidence, from the Trial Judge until the inquiry
24 was almost over. That was 20 and 26. The punishment stage
25 was ready to start. Solicitor and counsel officials are

Kenneth Hilton - Direct examination
by Mr. Hilton

1 sworn to honesty and both had custody of all my North
2 Carolina state mental history files. Therefore, both knew
3 my mental history dating back throughout my childhood.

4 THE COURT: Yes, sir, I've already told you that I'm
5 aware that you're alleging that the attorneys withheld
6 information from the Court about your mental history. I've,
7 I've heard you make that allegation several times.

8 THE WITNESS: Uh-huh. (Affirmative).

9 THE COURT: So, I'm aware---

10 THE WITNESS: Both of them---

11 THE COURT: ---of that issue.

12 THE WITNESS: Okay. Both knew and failed to inform the
13 Trial Judge that I had not had a mental evaluation.

14 THE COURT: All right.

15 THE WITNESS: Both assistant solicitor and counsel knew
16 or -- that I had not signed the guilty plea Grand Jury
17 waiver to the kidnapping offense. Paragraph 7.

18 THE COURT: We just went over that one now.

19 THE WITNESS: Yes, sir.

20 THE COURT: I understand that, that issue and I'm
21 looking at that indictment, and, again, it appears that
22 indictment was indicted by the Grand Jury. Therefore, a
23 waiver was not necessary. So I'm aware of your issue. I
24 know what you're saying, but it was signed by the, the
25 foreman of the Grand Jury and a true bill was issued on

Kenneth Hilton - Direct examination
by Mr. Hilton

1 kidnapping.

2 So let's move on to the next one.

3 THE WITNESS: Both failed to inform the Trial Judge
4 that I had not signed the waiver or the sentencing sheet for
5 the kidnapping indictment. Thus Paragraph 8 both allowed me
6 to be sentenced to 25 years on a defective kidnapping
7 indictment, an error that mandates a dismissal of the
8 indictment and voids the conviction. This is the sentencing
9 flaw.

10 Court had no waiver, I had no jury trial, but I
11 received 25 years. The Honorable Judge held one indictment
12 in his hand. Transcript Page Number 9, Lines 9 through 13,
13 then conceded on record that I only have one indictment with
14 a written waiver guilty plea signature or initial.

15 THE COURT: Mr. Hilton, again, I want to mention to
16 you---

17 THE WITNESS: The Grand Jury indictment is not---

18 THE COURT: Mr. Hilton?

19 Listen to me for just a second, Mr. Hilton.

20 There were two charges. The kidnapping charge had gone
21 to the Grand Jury. I've shown it to you. This is it.

22 THE WITNESS: Uh-huh. (Affirmative).

23 THE COURT: There's where the Grand Jury indicted you.
24 So there is no waiver required on that indictment. The one
25 that was required was the criminal sexual conduct case.

Kenneth Hilton - Direct examination
by Mr. Hilton

1 THE WITNESS: Uh-huh. (Affirmative).

2 THE COURT: Because it had not yet gone to the Grand
3 Jury, and the reason -- and I read that part of the
4 transcript already where the judge said he had one of the
5 indictments in his hands that required a waiver. There was
6 only one that did require a waiver because the kidnapping
7 had gone to the Grand Jury. So the -- you're right. That's
8 what the judge said. But that appears to be the proper way
9 to handle that.

10 Now, let's move on to your next issue.

11 THE WITNESS: Upon being advised of my psychological
12 mental history, the Court's failure to stop the plea hearing
13 process and order a psychological mental evaluation violated
14 due process, invalidated the guilty plea, created a
15 structural defect depriving the Court of jurisdiction to
16 accept my guilty plea.

17 THE COURT: All right. What's the next issue?

18 THE WITNESS: Intentional or not, it may be assumed to
19 both assistant solicitor and counsel's technical decision to
20 withhold the same factual evidence until they presentation
21 of the punishment stage resolves the illusion of a solid
22 record and---

23 THE COURT: All right. What factual evidence, evidence
24 are you talking about there---

25 THE WITNESS: For such---

Kenneth Hilton - Direct examination
by Mr. Hilton

1 THE COURT: ---that the attorneys withheld until the
2 punishment phase?

3 THE WITNESS: That he knew I had mental illness. I had
4 mental illness when I was a child. He knew it. I told him.

5 THE COURT: So it's the same thing you've told me about
6 five times now?

7 THE WITNESS: Uh-huh. (Affirmative).

8 THE COURT: Okay. Let's go on to something else.

9 You've already -- I'm clear, I'm clear that you're
10 alleging that the attorneys did not inform the Court, until
11 too late you're now saying, that you had a mental issue and
12 that should deprive the Court of jurisdiction because a
13 mental exam was not ordered. I understand that's your
14 issue.

15 So, unless there's something new, let's move on to --
16 you said you had 20 some odd issues.

17 THE WITNESS: Uh-huh. (Affirmative).

18 THE COURT: So I want to hear them all but I'm hearing
19 some over and over again.

20 So what's next?

21 THE WITNESS: It is clear that the Honorable Trial
22 Judge relied upon the assistant solicitor---

23 THE COURT: Speak up so I can hear you.

24 THE WITNESS: ---assistant solicitor and Mr. Thompson's
25 judgment. It's also clear, as a joint plea negotiator, the

Kenneth Hilton - Direct examination
by Mr. Hilton

1 assistant solicitor primary goal was to ensure that I was
2 found guilty and sentenced to the maximum and to die in
3 prison. Neither party could of cared less of the unlawful
4 position their actions put the Honorable Court Judge in to
5 correct their structural defects.

6 I was totally incompetent and asked Mr. Thompson two or
7 three times to get me a mental evaluation. Counsel just
8 laughed and said it was too late for that. Counsel rushed
9 me to Court and forgot to get a written waiver on the
10 kidnapping indictment and allow the Court to sentence me to
11 25 years on a defective kidnapping indictment.

12 THE COURT: Yes, sir, I'll hear the next issue.
13 What is that one?

14 THE WITNESS: The claim of ineffective assistance of
15 Trial Counsel states an independent ground for relief.
16 However, I am not seeking relief of ineffective Trial
17 Counsel independent, independent ground. I am seeking
18 relief upon the cumulative of constitutional due process
19 violations that invalidated and void my guilty plea and upon
20 the Court's failure to correct the errors, the violations
21 that created structural defects depriving the Trial Court of
22 subject matter jurisdiction to accept my guilty plea, which
23 was, in fact, void.

24 The assistant solicitor's unconstitutional motive
25 invalidated, void my guilty plea and her opening

Kenneth Hilton - Direct examination
by Mr. Hilton

1 presentation by submitting my guilty plea to the Court
2 without first ordering a mental competency evaluation to
3 determine if I was competent enough to make the plea then
4 continue with multiple constitutional violations that
5 undermined the entire plea hearing process resulting in
6 jurisdictional errors that had nothing to do with the guilt
7 or innocence. Anderson versus Anderson 299, S.C. 110. 115
8 382 S.E. 2d District 897, 900, (1989).

9 Acts of a Court with respects to a matter which it has
10 no jurisdiction---

11 THE COURT: Now you're reading the law to me again. I
12 want you to go over the issues you want me to decide.

13 THE WITNESS: That is the issues, sir.

14 THE COURT: No, sir, that's the law that was --
15 supports your argument to those issues and I'm gonna read
16 that, but, again, I want to know what the issues are, and
17 you've just told me an issue. I've heard it.

18 Go ahead. Let's do another one.

19 What's the next one?

20 I'll read your arguments in support of those issues.
21 Don't get me wrong. I had that made an exhibit for a
22 reason. I can read it. But I just want you to tell me what
23 the issues are and I think you've told me several.

24 Are there anymore?

25 THE WITNESS: I don't think so, sir.

Kenneth Hilton - Direct examination
by Mr. Hilton

1 THE COURT: So you think you've covered them?

2 THE WITNESS: I think so, sir.

3 THE COURT: All right. Anything else you want to
4 testify to in support of those issues?

5 THE WITNESS: No, sir.

6 THE COURT: Okay. You may cross-examine him.

7 MS. WHITE: Your Honor, the State has no questions for
8 the witness.

9 THE COURT: All right. Sir, you may step down. If
10 you'll leave that document with the court reporter down
11 here. She'll see that I get it.

12 THE WITNESS: Okay.

13 THE COURT: See that she gets it. There we go.

14 Okay. All right. Mr. Hilton, is there any other
15 evidence that you would like to present in support of your
16 application?

17 MR. HILTON: No, sir.

18 THE COURT: All right. State wish to call any
19 witnesses?

20 MS. WHITE: Yes, Your Honor.

21 We'd call Don Thompson to the stand.

22 THE COURT: Sir, come forward to be sworn. And once
23 here, if you'll place your left-hand on the Bible, raise
24 your right.

25 DON THOMPSON, being first duly

Don Thompson - Direct examination
by Ms. White

1 sworn, testified as follows:

2 THE COURT: Have a seat please.

3 All right. Mr. Hilton, I want to caution you that Mr.
4 Thompson's gonna be testifying. When the State finishes
5 asking him questions, I'll give you an opportunity to ask
6 him questions. So you need to be paying attention to what
7 he says so you'll be in a position to ask those questions.

8 You understand that, Mr. Hilton?

9 MR. HILTON: Yes, sir.

10 THE COURT: Thank you.

11 Yes, ma'am, you may proceed.

12 MS. WHITE: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. WHITE:

15 Q Mr. Thompson, do you recall representing Mr. Hilton on
16 these charges?

17 A I do.

18 Q And he pled on January 23rd, 2013.

19 Do you recall how long in advance of the plea you had
20 represented him?

21 A I was appointed on February 1st, 2012.

22 Q So almost a year?

23 A No, I'm sorry.

24 Q Oh.

25 A Yeah, February 1st, 2012.

Don Thompson - Direct examination
by Ms. White

1 Q Okay. So you represented him for almost a year prior
2 to this plea?

3 A Yes, ma'am.

4 Q And to start off with the mental evaluation, when you
5 talked with Mr. Hilton initially, did he share with you that
6 there were any mental issues or many -- any competency
7 issues that he thought he may have?

8 A No, one of the things I always do, in my initial
9 interview with the client, is I have a form that I go down
10 and make sure I get background information. You know, age,
11 marriage status, children, things like that. But one of the
12 things I do also have on there is any health issues and also
13 any mental health issues, and, according to my form at that
14 time, he told me he had no mental health issues.

15 Q And did he share with you that he had worked 12 years
16 for this trucking company and had worked full-time, I guess,
17 and carried that job for that length of time?

18 A He told me he had worked with the -- I think it's
19 Piggyback, or something like that, Trucking Company, that he
20 drove a truck for them. He told me an amount of time, but
21 quite off -- frankly, off the top of my head, I don't
22 remember how long he said.

23 Q Okay. And in your conversations with him, and your
24 meetings with him, was the issue of competency ever anything
25 that, that came up that you were concerned about?

Don Thompson - Direct examination
by Ms. White

1 A No.

2 Q Did he appear to understand your conversations and
3 assist you in preparing for trial or the plea?

4 A Yes.

5 Q Okay. And the facts in this situation, were, I guess,
6 touchy in a situation because of the victim perhaps being
7 involved sexually with him before or with others.

8 Is that right?

9 A He, he told me that the victim was a prostitute and I
10 think I relayed that to the judge during the guilty plea.
11 They, they were some questions in there as to how she knew
12 him and things like that that just, if she was just a
13 stranger he picked up off the street, they just didn't go
14 right. But when you start factoring in the fact that she
15 was a prostitute, he'd had sex with her in the past, that
16 seemed to fit her story.

17 Q Okay.

18 A They're those holes in her stories.

19 Q Okay. In regards to the evidence that the State had,
20 he was initially indicted for kidnapping and then was he
21 also indicted on a criminal sexual conduct charge?

22 A Criminal sexual conduct in the first degree. He was
23 indicted for that also, yes.

24 Q And is that what ultimately led to the waiving of
25 presentment to the attempt to commit the charge?

Don Thompson - Direct examination
by Ms. White

1 A Yes, there was -- the kidnapping charge, there was no
2 question on that one. The CSC, there was an issue of
3 whether there was actually a sexual battery, and, in
4 negotiating the plea, the State agreed to reduce it down to
5 an attempt to commit CSC second, and since that had not been
6 indicted for an attempt, we had to waive presentment.

7 Q Was there anything that concerned you about the, the,
8 the nature of the kidnapping indictment?

9 Was there anything that you saw was improper?

10 A No.

11 Q Okay. If you had seen something, was that something
12 you would of -- you could of raised?

13 A Yes.

14 Q Okay. And the evidence that the State had against Mr.
15 Hilton, obviously they had the victim in the case, was there
16 something else that provided, I guess, when you talked about
17 not having a defense, what was it that you meant?

18 A Well, usually, in a case, you have one side saying this
19 happened and your side saying this happened and you got to
20 figure out what went on. In this case, we didn't have that.

21 In this case, when this victim was -- got in the
22 vehicle with Mr. Hilton, and realized that something was
23 going on, she dialed 9-1-1 on her cell phone and the entire
24 incident is recorded in a recording for about 45 minutes of,
25 of what happened. So we didn't have to rely on she said/he

Don Thompson - Direct examination
by Ms. White

1 said. We had the actual recording of what went on, and when
2 you listened to it, there is no defense to these charges.

3 Q Okay. And when you shared that with Mr. Hilton, did
4 you discuss whether or not you could go to trial on what you
5 could try to present?

6 A Yes, in fact, we had been told it were -- they were
7 gonna try the case the week that he pled and that we worked
8 out a plea rather than go to trial.

9 Q And in your discussions with him, did you have any
10 concerns that he did not know what he was pleading to or the
11 sentencing ranges?

12 A No, sir. No, ma'am, because, quite frankly, one of the
13 things we spent a lot of time talking about was, you know,
14 she only turned her cell phone on when she noticed or dialed
15 9-1-1 when she noticed something was going wrong. We spent
16 a lot of talking about how he met her, how she come to be in
17 his vehicle, and we spent -- he had an issue of whether
18 there was actual sexual intercourse, and, you know, we spent
19 a lot of time talking about that. So I mean there was no
20 question he was assisting me in his, in his defense.

21 Q Okay. And Mr. Hilton was already -- had a record for
22 prior sexual offenses out of North Carolina.

23 A Out of North Carolina, yes.

24 Q Okay. Do you think that played a part in the
25 sentencing as well?

Don Thompson - Direct examination
by Ms. White

1 A I'm certain that it did.

2 Q Okay. Thank you.

3 That's all I have at this time, Your Honor.

4 THE COURT: Mr. Hilton, at this time I'll give you a
5 chance to ask questions of Mr. Thompson.

6 MR. HILTON: Uh-huh. (Affirmative).

7 THE COURT: I will caution you, and I'm not picking on
8 you by saying this, people that represent themselves, quite
9 often, aren't use to the courtroom setting. I'll allow you
10 to ask questions. If it were to degenerate into an
11 argument, I will stop you at that point in time because
12 we're not here to try to argue with each other. But you
13 have every right to question him. So I'll allow, allow you
14 to go about you asking him questions.

15 Do you wish to ask any questions of Mr. Thompson?

16 Do you wish to ask questions, sir?

17 MR. HILTON: Yeah.

18 THE COURT: All right, sir. It's okay for you to stand
19 on that side of the bar and ask any questions you'd like to
20 ask.

21 MR. HILTON: Okay.

22 CROSS-EXAMINATION

23 BY MR. HILTON:

24 Q Mr. Thompson, well, the first time I met you, you told
25 me that you would try to help me as much as you can. You

Don Thompson - Cross-examination
by Mr. Hilton

1 didn't know what they had.

2 A Yes, sir.

3 Q So as it comes down, SLED took DNA because I am a
4 registered sex offender in North Carolina. So my DNA must
5 be on FBI profile as a sexual offender. I registered all
6 the time in North Carolina. I knew this woman through --
7 she was a prostitute. My wife had passed away and this
8 woman had borrowed \$400 from me. I went to that woman's
9 apartment, her motel room. I told you I did. I went---

10 THE COURT: Mr. Hilton, now there has to be a question
11 in there somewhere.

12 MR. HILTON: I will. I will.

13 THE COURT: I'm hoping you'll get to the question.

14 MR. HILTON: I will.

15 THE COURT: Let's get there.

16 Q I told you, Mr. Thompson, that I picked that woman up
17 because she took my money from me, not knowing what to do,
18 and I took her to South Carolina and I dropped her off
19 because I knew she could not drive. She had no vehicle.
20 She had no way to drive. There was no sexual DNA found on
21 me. No nothing. SLED, South Carolina SLED, cleared me
22 totally. It is on my paperwork. I have it on my paperwork
23 that you gave me.

24 Mr. -- the officer, Mr. Owens, made a statement to---

25 THE COURT: Now, Mr. Hilton, I'm gonna sit you down if

Don Thompson - Cross-examination
by Mr. Hilton

1 you don't ask a question.

2 MR. HILTON: Okay.

3 would you agree---

4 THE COURT: I don't know where this is going.

5 Q would you agree---

6 THE COURT: But if you don't ask---

7 A would you agree---

8 THE COURT: Listen to me, Mr. Hilton.

9 If you don't ask a question I'm gonna stop it.

10 MR. HILTON: Okay.

11 THE COURT: You understand what I'm saying?

12 I can't be any clearer than that.

13 MR. HILTON: Okay. Thank you, sir.

14 THE COURT: Thank you.

15 Q would you agree the true test of ineffective of a trial
16 counsel goes to the substance of representation, not merely
17 form of qualifications of counselor?

18 A I would agree it didn't go to formal qualifications.

19 Q It does. That's exactly right.

20 would you agree that the substance of representation
21 was, in fact, nonexistence, no motions, no objection, no
22 legal defense?

23 Yes or no.

24 A well, no, because there was no grounds for any motions.

25 There was no grounds for any objections, and when you

Don Thompson - Cross-examination
by Mr. Hilton

1 listened to the tape, there was no defense.

2 Q Sir?

3 A It's not my job to make up a defense for you. It's my
4 job to take the facts and see if there is a defense.

5 Q Would you agree that errors that deny the basic trial
6 process can never be harmless, yes or no, and that your
7 failure to provide an -- a defense for me violated due
8 process?

9 A No, sir.

10 Q You don't.

11 So you're saying that you're not suppose to have,
12 according, according to -- okay.

13 Did you have a strategy in mind when you failed to
14 advise the Trial Judge of my mental history?

15 A I wasn't aware of a mental history, Mr.---

16 Q Yes, you was, sir. I told you of my mental history.

17 THE COURT: Now that's an argument. That's not a
18 question.

19 Q Okay. So---

20 THE COURT: If you want to ask a question, I'll defend
21 your right to do so.

22 MR. HILTON: Yes, sir.

23 THE COURT: If you want to argue with the witness---

24 MR. HILTON: No, sir, I don't want to argue.

25 THE COURT: ---I'm gonna sit you down.

Don Thompson - Cross-examination
by Mr. Hilton

1 MR. HILTON: Sir, I don't wish to argue.

2 THE COURT: All right. Ask questions. I warned you
3 when we started.

4 Q Would you agree that the failure to provide a legal
5 defense denied me of my Sixth and Fourteenth Amendment
6 constitutional right to effective legal representation and
7 the confession to the Trial Judge that you had no legal
8 defense for my offenses, Transcript Page 6, removes any
9 presumption of competency entitlements you have been
10 entitled to under the Strickland two prong test?

11 A No.

12 Q That would be 466 U.S. Sec 164, 104 S.Ct. at 2068,
13 (1984).

14 I mean I'm entitled to representation.

15 A Yes, sir, and you had representation.

16 Q You told me you had no representation for me.

17 A No, you had no defense.

18 Q You told me to plead guilty, sir, and I am---

19 THE COURT: Mr. Hilton, you're arguing with the witness
20 again. That's the second time I've warned you. I will not
21 warn you again. Now, if you want to ask questions, you have
22 every right to do that.

23 MR. HILTON: Yes, sir.

24 THE COURT: I'll defend your right to do that.

25 MR. HILTON: Thank you, sir.

Don Thompson - Cross-examination
by Mr. Hilton

1 THE COURT: But if you go back into argument with this
2 witness, that will end your cross-examination.

3 MR. HILTON: Yes, sir.

4 In fact, you were even told the Trial Judge on
5 Transcript Page Number 6, Lines 15 through 18, I was
6 expecting -- I was explaining to him, judge, that we really
7 had no defense that I see. That's on Transcript Page 23,
8 Lines 21 through 23.

9 A Yes, I did say that to the judge.

10 Q You told the trial judge there is no defense to what
11 happened.

12 Did you not tell the Court this?

13 A I believe I did.

14 Q Would you, be hindsight, agree that no guilty -- oh,
15 excuse me.

16 Would you, be hindsight, agree that not guilty by
17 reason of insanity -- mentally incompetent to stand trial is
18 a defense accepted by the Courts today?

19 A That is a defense the Courts would accept, yes, if
20 it -- if the facts existed to support it.

21 Q Would you agree that ineffective assistance of counsel
22 should demonstrate that, in fact, you found yourself to be
23 ineffective when you told the Court you had no defense for
24 my an, an -- for my actions?

25 Yes or no.

Don Thompson - Cross-examination
by Mr. Hilton

1 A I think I understand your question and the answer is
2 no.

3 Q Could I read, read it again for you?

4 A If you'd like.

5 Q Would you agree that ineffective assistance of counsel
6 has been demonstrated that, in fact, you found yourself to
7 be ineffective when you told the court you had no defense
8 for my actions?

9 Yes or no.

10 A No.

11 Q That critical is in a fact. So your error can not be
12 forgiven as harmless.

13 Did you have a strategy in mind when you failed to
14 motion the court for an -- I -- of a Fourth Company -- a
15 fourth competency test for before trial, two, before guilty
16 when solicitor Leskanic and yourself advised judge of my
17 mental history on, four, when solicitor Leskanic and
18 yourself advised judge of my mental history?

19 Transcript Page 20 and 26.

20 THE COURT: Just one second before you answer that one.

21 (Pause.)

22 THE COURT: Do you need to see the transcript?

23 THE WITNESS: I think I've got a copy.

24 THE COURT: You've got it.

25 THE WITNESS: That's what I was looking for.

Don Thompson - Cross-examination
by Mr. Hilton

1 THE COURT: You quoted Transcript Page 20 and 26?

2 MR. HILTON: Uh-huh. (Affirmative).

3 THE COURT: Is that right, Mr. Horton (sic)?

4 MR. HILTON: Mr. Hilton. 20.

5 THE COURT: All right. On Page 20, can you tell me
6 what you're referring to as far as---

7 MR. HILTON: Oh.

8 THE COURT: ---mental history that was -- the Court was
9 informed of?

10 It's important to me. I'd like to see where that is.
11 Then I'll let you ask your question of Mr. Thompson.

12 MR. HILTON: Okay. Okay.

13 THE COURT: Page 20, tell me what you're referring to
14 there where the Court---

15 MR. HILTON: Okay. I'm trying to. I'm reading it too,
16 sir.

17 THE COURT: All right.

18 (Pause.)

19 THE COURT: Mr. Horton (sic), have you read Page 20?

20 MR. HILTON: I did, sir.

21 THE COURT: what part are you referring to in there
22 about mental health?

23 MR. HILTON: I'm sorry, sir. I must be on another
24 page. I apologize.

25 THE COURT: well, let's go to Page 26.

Don Thompson - Cross-examination
by Mr. Hilton

1 Is that the other page you referred to?

2 So you're telling me you didn't see anything on, on --
3 about mental health on Page 20?

4 Look at me, Mr. Horton (sic).

5 MR. HILTON: Mr. Hilton, sir.

6 THE COURT: Are you telling me that you didn't find
7 anything on Page 20 about mental health?

8 MR. HILTON: I'm looking at it, sir.

9 THE COURT: Well, I thought you finished. You turned
10 the page. I saw you.

11 (Pause.)

12 MR. HILTON: If you --.

13 THE COURT: All right. Now, before you turn the page,
14 have you read Page 20?

15 MR. HILTON: I did.

16 THE COURT: Did you find anything in there about---

17 MR. HILTON: I did not.

18 THE COURT: ---mental health?

19 MR. HILTON: No, sir.

20 THE COURT: All right. Let's go to Page 26.

21 You see, Mr. Horton (sic), I've read over this and I
22 have not found those citations that you're referring to and
23 I'm -- I want to -- I want you to point them out to me. I
24 want to read where the Court was informed that you had --
25 that you were mentally ill at that time.

Don Thompson - Cross-examination
by Mr. Hilton

1 MR. HILTON: It says right here that I only have saliva
2 on the bra and not another contributor to anything else.

3 THE COURT: Well, I'm looking for evidence though that
4 you were mentally ill at the time of your plea or at the
5 time this incident occurred. I don't see any reference on
6 Page 26 to your mental illness. I'm looking for it. I want
7 you to show it to me cause your question was about to ask
8 Mr. Thompson about the fact that the Court was aware that
9 you were mentally ill and that they had not or that they had
10 not provided proper information to the Court. I don't see
11 any reference to your mental illness on Page 26.

12 MR. HILTON: I have talked to Mr. Hilton about his
13 tell -- what he tells to me. He says that, from the age of
14 six years old to the age of 12 years old --

15 THE COURT: Uh-huh. (Affirmative).

16 MR. HILTON: -- I was raped by my older brother.

17 THE COURT: Uh-huh. (Affirmative).

18 MR. HILTON: I had to go have mental health.

19 THE COURT: Yes, sir.

20 MR. HILTON: And I told him and he knew this. He knew
21 this.

22 THE COURT: So that's the mental illness you're
23 referring to?

24 MR. HILTON: That's the mental illness. I mean I was
25 raped as a child.

Don Thompson - Cross-examination
by Mr. Hilton

1 THE COURT: I didn't doubt that. I just wanted to know
2 if that's what you're referring to.

3 MR. HILTON: Yes, sir.

4 THE COURT: All right. Go ahead.
5 Ask your question.

6 MR. HILTON: And --.

7 THE COURT: You can ask your question. I interrupted
8 you.

9 MR. HILTON: I don't have any further questions.

10 THE COURT: All right. You sure you don't want to ask
11 that question cause I did interrupt you?

12 I did. I wanted -- but I wanted to pinpoint exactly
13 what you were referring to.

14 MR. HILTON: Well --.

15 THE COURT: I think I have. So you can ask the
16 question. You were started -- you started to ask the
17 question when you were referring to Pages 20 and 26.

18 MR. HILTON: Uh-huh. (Affirmative).

19 THE COURT: And I stopped you and we read them.
20 Do you want to ask that question or not?

21 MR. HILTON: Uh-huh. (Affirmative).

22 THE COURT: Mr. Hilton, do you want to ask that
23 question or not?

24 MR. HILTON: No, I'm fine. Thank you, sir.

25 THE COURT: Okay. So you're through questioning?

1 MR. HILTON: Yes, sir.

2 THE COURT: All right. You can be seated. Thank you.
3 Any further questions on redirect?

4 MS. WHITE: Nothing further, Your Honor.

5 THE COURT: All right. Mr. Thompson, you may step
6 down.

7 THE WITNESS: Thank you, judge.

8 MS. WHITE: And the state has no other witnesses, Your
9 Honor.

10 THE COURT: All right. Thank you, Ms. White.

11 Mr. Horton, this is your opportunity to make a closing
12 statement to the Court.

13 Is there anything you'd like to say to me about the
14 matter?

15 I'll be happy to hear from you at this time.

16 MR. HILTON: Yes, sir.

17 THE COURT: Is there something you'd like to say to me?

18 MR. HILTON: I would like to read if I could?

19 THE COURT: Read -- what are you gonna read to me?

20 MR. HILTON: These final disposition order.

21 THE COURT: Final what?

22 MR. HILTON: Disposition order.

23 THE COURT: Can you show that to Ms. White and see if
24 she can identify the document?

25 It may already be in the record.

1 MR. HILTON: No, it's just that -- just three pages.

2 MS. WHITE: Okay. It appears, Your Honor, that he's
3 prepared a proposed order --

4 THE COURT: Oh, okay.

5 MS. WHITE: -- dismiss -- I guess for his, for his
6 claim. That's what it appears that he's --.

7 THE COURT: All right, sir. Do you want to submit that
8 as an exhibit to the Court so I'll have it to read?

9 MR. HILTON: Yes, sir.

10 THE COURT: All right. Very good.
11 Any objection to his proposed order being submitted?

12 MS. WHITE: None, Your Honor.

13 THE COURT: All right. Let's have it marked as an
14 Applicant's Exhibit.

15 (WHEREUPON, the order was marked as Applicant's Exhibit
16 No. 2 and received into evidence at this time.)

17 THE COURT: All right. Anything else you want me to
18 consider, Mr. Horton (sic)?

19 I'll read that. It's in the record now. I'll take a
20 look at it.

21 Anything else you want me to consider?

22 MR. HILTON: No, sir.

23 THE COURT: All right. State wish to make argument?

24 MS. WHITE: No, Your Honor. We'll rely on the record.

25 THE COURT: All right. Very good. I'll take the

1 matter under advisement. That concludes the hearing.

2 Thank you very much.

3 MS. WHITE: Thank you, Your Honor.

4

5

6 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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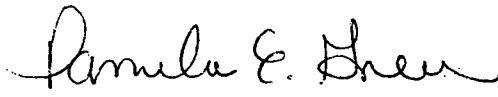
25

C E R T I F I C A T E

1
2
3 I, Pamela E. Green, Official Court Reporter for the
4 Seventh Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete Transcript of Record of the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of Common Pleas Nonjury for
9 Spartanburg County, South Carolina, on the 27th day of
10 March, 2015.

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

13
14
15
16 November 13th, 2015

17
18
19 
20

21 PAMELA E. GREEN, Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

KENNETH L. HILTON
PRO SE APPLICANT

C/A NO: 2013-CP-11-0302

-vs-

STATE OF SOUTH CAROLINA
RESPONDENTS

EVIDENTIARY HEARING TO HAVE
CLAIMS RAISED ON THE RECORD,
S.C. § 17-27-80 SCRCP RULE
52 (a); SCRCP RULE 71.1 (e),
FINDINGS OF FACTS AND
JUDICIAL CONCLUSION

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Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, South Carolina 29211-1549

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- 2 Certi
- Filed 7/9/20
- 3 Certi
- Addendum, Pl
- 4 Table
- 5 Uncont
- 6 Affidav

Mr. Kenneth Hilton, SCDC# 354034
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210
SUZANNE WHITE, Respondent

FILED IN THE OFFICE OF THE CLERK OF THE COURT OF COMMON PLEAS, SEVENTH JUDICIAL CIRCUIT, COLUMBIA, SOUTH CAROLINA

7 Append PHONE 803-734-3737 ation.
with no signature or initial of a waiver). tment as issued

8 Appendix (C-1) South Carolina Mental Competency
Examination Form.

Respectfully Submitted,

UNCONTESTED JURISDICTIONAL CLAIMS
THIS IS MY ADDENDUM, FILED JULY 9, 2014 WITHOUT OBJECTIONS.
THE ADDENDUM INCORPORATED ALL APPLICANT'S CLAIMS, AND MAKES
SPECIFIC FINDINGS OF FACTS AND CONCLUSION OF LAW TO EACH CLAIM,
CITED HEREIN, ALL IN SUPPORT OF THE PRIMARY CLAIM: "TRIAL COURT
LACK SUBJECT MATTER JURISDICTION TO ACCEPT APPLICANT GUILTY
PLEAS, AND CONVICT HIM UPON GUILTY PLEAS THAT WERE VOID.



STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

KENNETH L. HILTON
PRO SE APPLICANT

C/A NO: 2013-CP-11-0302

-VS-

STATE OF SOUTH CAROLINA
RESPONDENTS

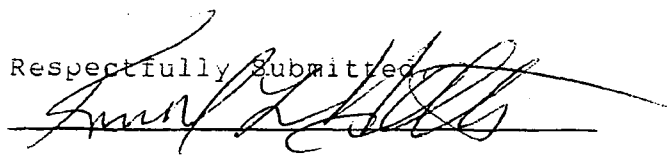
EVIDENTIARY HEARING TO HAVE
CLAIMS RAISED ON THE RECORD,
S.C. § 17-27-80 SCRCP RULE
52 (a); SCRCP RULE 71.1 (e),
FINDINGS OF FACTS AND
JUDICIAL CONCLUSION

TABLE OF CONTENTS

- 1 OPENING STATEMENT
- 2 Certificate of Service for Jurisdictional Addendum Claims,
Filed 7/9/2014.
- 3 Certificate of Service for Affidavit Certifying Facts in
Addendum, Pleadings, Notice & Motion for Summons
- 4 Table of Authority, STATE & FEDERAL
- 5 Uncontested Jurisdictional Claims, Summation
- 6 Affidavit, (17-Factual Paragraphs), & Summation.
- 7 Appendix (A-1 thru C-1), Trial Indictment as issued
with no Signature or Initial of a waiver).
- 8 Appendix (C-1) South Carolina Mental Competency
Examination Form.

FILED IN COURT OF
COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT
CHEROKEE COUNTY, S.C.
2015 APR 19 PM 4 00
BRANDY A. ROSE

Respectfully Submitted,



UNCONTESTED JURISDICTIONAL CLAIMS

THIS IS MY ADDENDUM, FILED JULY 9, 2014 WITHOUT OBJECTIONS.
THE ADDENDUM INCORPORATED ALL APPLICANT'S CLAIMS, AND MAKES
SPECIFIC FINDINGS OF FACTS AND CONCLUSION OF LAW TO EACH CLAIM,
CITED HEREIN, ALL IN SUPPORT OF THE PRIMARY CLAIM: "TRIAL COURT
LACK SUBJECT MATTER JURISDICTION TO ACCEPT APPLICANT GUILTY
PLEAS, AND CONVICT HIM UPON GUILTY PLEAS THAT WERE VOID.

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

KENNETH L. HILTON
PRO SE APPLICANT

C/A NO: 2013-CP-11-0302

-VS-

STATE OF SOUTH CAROLINA
RESPONDENTS

EVIDENTIARY HEARING TO HAVE
CLAIMS RAISED ON THE RECORD,
S.C. § 17-27-80 SCRPC RULE
52 (a); SCRPC RULE 71.1 (e).

Your Honor, This is my OPENING STATEMENT *For the Record* ~~PLEASE~~

This Matter comes before the Court by way of an Application for Post Conviction Relief. For the Record my name is Kenneth L. Hilton, Pro Se. Applicant in this Action. I am currently serving my sentence in South Carolina Broad River Corrections, Columbia. S.C. I was Convicted Upon (2) Guilty Pleas, *that was Void.*

- 1) INDICTMENT - 2013-GS-11-17, Assault with intent to commit Criminal Sexual Conduct, Sentenced to (20-Years);
- 2) INDICTMENT - 2012-GS-11-226, Kidnapping, Sentenced (25-Years).

I am challenging Trial Court's Jurisdiction to accept, Convict and sentence me upon (2) Two Guilty Pleads, that were invalidated / Void, Multiple times, though-out the Judicial Proceedings. Creating Structural Errors having nothing to do with Guilt or innocence. *I am Not seeking another plea hearing, the violations goes beyond the plea process, to the conviction AND sentences.*

SCRPC Rule 71.1 (e) Mandates the Burden is on the Applicant (Me) to establish my entitlement to the Relief I seek, by Preponderance of evidence. S.C. Code Ann § 17-27-80, SCRPC 52, (a) all Claims Shall be properly raised, at PCR Hearing. McCray V. State, 305 S.C. 329, 408 S.E. 2d 241 (1991); McCullough V. State, 464 S.E. 2d 304 (S.C. 1991).

For the Record, S.C. State Attorney *General is Named*, Respondents in this Action. It Filed no Responsive Defense Pleading; therefore in Default SCRPC Rule 55-~~e~~ See Beauford V. Trask, 563 S.E. 2d 660 (SC. 2002).

I

In Addition to Default Status, the failure to file a Responsive Defence Pleading, Waives the Right to Appeal, any Judgement PCR Orders, issued in this Action. *SCRPC 12 (b) AND 8 (b). Sites every DEFENSE shall be stated in A Responsive Pleading.*

SCRPC RULE 55 (e) Provides in Relevant part. [No Default Judgment shall be enter against the state of South Carolina, or an Agency thereof, or an Official of said Agency], {Unless Applicant* establishes their claim to Relief by evidence Satisfactory to the Court}. Therefore, Applicant is actually entitled to Relief under Default SCRPC RULE 55 (e). Also, "The State has the burden to establish that the Court had subject Matter Jurisdiction" Citing State V. Evans, 307 S.C. 477, S.E. 2d 816 (1992).

Respectfully, my claims have a (5-Page) Uncontested Sworn Affidavit, Filed in this Honorable Court (Sept. 18, 2014), In support of Claims and issues in this Action, Adopted and Incorporated by Reference hereof.

The Affidavit has (4) Statements, and (17) Paragraphs, Summation, With Official Appendix, (A-1 thru C-1), and Prayer for Relief.

WHEREFORE: With the Court's permission I will Cited my, Claims and Findings of Facts on the Record, ^{I have A speech Impairment - SO} For my Convenience I have my Claims, Written and Numbered. And for the Court's Convenience I have Copies of the Relevant Trial Transcripts for the Court and Respondents.

~~_____~~
 Also, South Carolina PCR Uniform Act provides for (A Hearing Inquiry), on issues of ineffective Assistant of Counsel, I have Prepared inquiry with Yes ___ and No ___, questions in support of my Claims, Should Counsel wish to submit to the judicial Inquiry Process. *HOWEVER, I would like to put my Claims on Record First.*

ON THIS ___ DAY OF MARCH 2015
 COLUMBIA, S.C. 29210

Respectfully Submitted

 Kenneth L. Hilton

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE
7th JUDICIAL CIRCUIT

DATE July 7, 2014

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2014 JUL 9 AM 11:09
BRANDY W. MCBEE

KENNETH L. HILTON
PRO SE APPLICANT

POST CONVICTION RELIEF
C/A No. 2013-CV-11802

-VS-

S.C. CONST. SEC. 4; ART V.
MOTION FOR LEAVE OF COURT TO
FILE AN ADDENDUM OF MORE
DEFINITE FACTUAL INFORMATION
SCRCP RULE 15 (a). 40; (h),77(b).

STATE OF SOUTH CAROLINA
RESPONDENTS

CERTIFICATE OF SERVICE For Addendum

I [Signature] Pro Se Applicant in above action does hereby state under the Penalty of Perjury, I have personally served a true original of the Attached Addendum, dated May 19, 2014 upon Respondents, The Honorable Assistant Deputy Attorney General, Ms Suzanna H. White, Requesting Written Consent Pursuant SCRCP RULE 15 (a); Personally Served through institutional Postal Office, for Record of service.

Wherefore; I have on cited date below, personally served the Original; One of the Originals Addendum to the Honorable Cherokee County Clerk of Court, to file with my cited Action, for Judicial Review.

By Placing the same in the institutional Postal Service, Postage Pre Paid.

ON THIS 7 DAY OF July 2014
Columbia, S.C. 29210

Respectfully Submitted,
[Signature]
Kenneth L. Hilton #354034

cc;All Originals
Honorale Brand McBee
Cherokee County Clerk of Court
NOTICE 2nd Copy
Sworn Certificate of service,
Honorale Suzanna H. White
files

Pro Se, [Signature]

Sworn and subscribed before
me this 7th day of July 2014
[Signature]
NOTARY PUBLIC
My Commission Expires
March 5, 2018

My Commission expires

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
KENNETH HILTON # 354034
PRO SE, APPLICANT

COURT OF COMMON PLEAS
7th, JUDICIAL CIRCUIT
C/A No: 2013-CP-11-302
CONSOLIDATED

-VS-

STATE OF SOUTH CAROLINA
STATE ATTORNEY GENERAL.
RESPONDENTS

CERTIFICATE OF SERVICE, FOR
PLEADINGS, SCRPC RULE 10 (c),
NOTICE & MOTION OF SUMMONS,
SCRPC RULE 65 (f), 12 (b),
AFFIDAVIT VERIFYING FACTS,
OF ADDENDUM FILED 7/9/14
APPENDIES, (A Thru C).

FILED IN OFFICE OF
CLERK OF COURT
SEP 15 10 10 AM '14
BRANDY W. MCBEE

I, Kenneth Hilton Pro Se, Applicant in above Cited Action,
does hereby declare under penalty of perjury that the Pleadings,
Findings of Facts, cited in the Adendum, Affidavit in support,
conclusion of the "Complex Issues involved", adopted herein by
reference hereof, Are True Findings and Statements, in my Honest
Opinion, and my belief to be True, to the best of my knowledge,
and is Supported by Preponderance of evidence, (The Plea Hearing
Transcripts), by reference thereof.

WHEREFORE, I have on the Cited Date below, personally served (1)
of the Originals Sworn Affidavit, Verifying Facts, in the
Addendum filed 7/9/2014, (2) Notice & Motion for Summons, with
attached copies of Appendies, Official Documents (A thru C), Upon
the Cherokee County Clerk of Court,

ON THIS 15 DAY OF sept 2014. Respectfully Submitted,
Columbia, S.C. 29210 Pro Se, Kenneth Hilton

cc: The Honorable Brandy McBee,
Cherokee County Clerk of Court

Kenneth Hilton, # 354034
BRCI Wateree Unit, 162
4460 Broad River Rd.
Columbia, S.C. 29210

The Honorable Suzanna H. White,
Assistant Deputy Attorney General,
Files

Sworn before me on this
15 day of sept 2014
Suzanna H. Frye
NOTARY PUBLIC

My Commission Expires
March 5, 2018

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
KENNETH L. HILTON, #354034
PRO SE APPLICANT

-VS-

STATE OF SOUTH CAROLINA
RESPONDENTS

IN THE COURT OF COMMON PLEAS.
7th. JUDICIAL CIRCUIT
C/A 2013-CP-11-302
CONSOLIDATED

NOTICE AND MOTION FOR SUMMONS
SCRCP Rules, 65 (F), 12 (b), 8 (d).
REMEDIAL RELIEF

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY
SEP 18 10 11 AM '14
BRANDY W. MCBEE

NOTICE TO ASSISTANT ATTORNEY GENERAL

THE HONORABLE SUZANNA H. WHITE

You are Hereby Summoned, and required to answer each cited allegation within the Addendum. SCRCP Rule 12 (b), Filed July 9, 2014; as all Facts & Conclusions of Law have been (consolidated into the Addendum); You were properly served a True Copy of the same, Dated May 19, 2014, Requesting your Written Consent SCRCP Rule 15 (a).

The Addendum has both Findings of Facts and Conclusion of Law, PCR Act § 17-27-80 SCRCP Rule 52 (a) McCray V. State, (1991 S.C.) 408 S.E.2d 241.

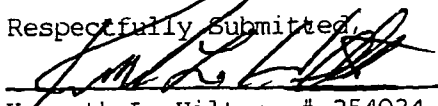
The Summons has Sworn Supporting Affidavit; Appendix official documents Relevant to issues involved. Incorporated by reference hereof.

If you fail to file your answer with (30) Days from the receipt of this summons, exclusive date of service, Judgment by Default may be sought for the requested relief. upon the preponderance of factual material evidence.

ON THIS 15 DAY OF Sept 2014
Columbia, South Carolina

Respectfully Submitted,

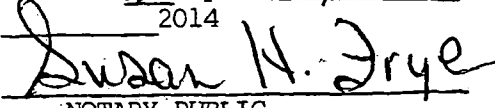
PRO SE


Kenneth L. Hilton, # 354034
BRCI Wateree Unit 162
4460 Broad River Road
Columbia, S.C. 29210

CC: Honorable Brandy McBee
Cherokee County Clerk of Court

Honorable Suzanna H. White
Assistant Deputy Attorney General
files

Sworn and subscribed before
me this 15 day of Sept
2014


NOTARY PUBLIC
My Commission Expires
Commission Expires

RELEVANT TABLE OF AUTHORITY

KENNETH L. HILTON
PRO SE, APLICANT
C/A 2013-CP-11-0302

-VS- STATE OF SOUTH CAROLINA
RESPONDENTS

ADDENDUM

	YEAR	PAGES
<u>Anderson V. Anderson</u> , 299 S.C. 110.115 382 S.E.2d 897,900	1989	3,5,8,9,10
<u>Beauford V. Trask</u> , 563 S.E. 2d 660, S.C.	2002	1,
<u>Lillard V. Searson</u> , 170 S.C. 304 S.E. 499	1933	3,
<u>McCray V. State</u> , 305 S.C. 329, 408 S.E. 2d 241	1991	1,
<u>McCullough V. State</u> , 464 S.E. 2d 304, S.C.	1991	1,
<u>Phillips V. State</u> , 134 S.E. 2d 313 S.C. at 313	1984	8,
<u>State V. Evans</u> , 307 S.C. 477 S.E. 2d 816	1992	2,
<u>State V. Lynch</u> , 344 S.C. _____, 545 S.E. 2d 511, 514	2001	7,
<u>State V. Jones</u> , 285 S.C. 286, 300 S.E. 2d 286	1985	3,
<u>State V. Pendergrass</u> , 720 S.C. _____, 239 S.E. 2d 750	1977	7,
<u>State V. Sowell</u> , 85 S.C. 278, 67 S.E. 2d 216	1910	8,
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SOUTH CAROLINA Const. Section 4 Art V-(Mental Testing)	1976	5,
S.C. Code § 44-23-410 (1) & (2); § 17-24-20 (a)	1976	2,5,
S.C. Code § 17-27-80, SCRCP Rule 52 (a)		1
SCRCP Rule 71.1 (e), SCRCP Rule 55 (e)		1,

25,

RELEVANT FEDERAL AUTHORITY

<u>Boykin V. Ala</u> , 395 U.S. 238, 243	1976	9
<u>Chapman V. Cal</u> , 386 U.S. 18 S.Ct. 24, L. Ed. 705	1976	9
<u>Rose V. Clark</u> , 106 S. Ct. 301, 487, 529, Citing <u>Chapman</u> , at 3105-06	1986	9,
<u>Hyman V. Aiken</u> , 824 F. 2d 1405 (4th Cir.)	1987	7,9,
<u>Mirranda Warnings</u> , 383 U.S. at 467		2,
<u>Pate V. Roberson</u> , 383 U.S. 375, 385-86	1966	4,
<u>Strickland id</u> , 466 U.S. at 694, 104 S.Ct. at 2068	1984	5,6,8,
<u>U.S. V. Agurs</u> , 427 U.S. 96 S.Ct. 2392, 49 L. Ed.	1976	3,
USCA Amends. 6th, 8th, 14th,		1-thru-10

UNCONTESTED JURISDICTIONAL CLAIMS

THIS IS MY ADDENDUM, FILED JULY 9, 2014 WITHOUT OBJECTIONS. THE ADDENDUM INCORPORATED ALL APPLICANT'S CLAIMS, AND MAKES SPECIFIC FINDINGS OF FACTS AND CONCLUSION OF LAW TO EACH CLAIM, CITED HEREIN, ALL IN SUPPORT OF THE PRIMARY CLAIM: "TRIAL COURT LACK SUBJECT MATTER JURISDICTION TO ACCEPT APPLICANT GUILTY PLEAS, AND CONVICT HIM UPON GUILTY PLEAS THAT WERE VOID."

TRIAL COURT'S FIRST STRUCTURAL DEFECTS
WITH-HOLDING FACTUAL EVIDENCE & FAIL TO ORDER MENTAL EVALUATION

1. Solicitor's failure to follow state Mandatory *Rules & S.C. LAW* for Criminal Guilty Pleas Violated Applicant's Constitutional Due Process Rights to Receive a Fair, impartial and Constitutional Plea Hearing Process. (Factual Evidence submitted after *inquiry Almost Over*).
2. Solicitor's Unprofessional Errors invalid Applicant's guilty Pleas, and Created a Jurisdictional Structural Defect, By with holding "Factual Evidence, of Applicant's Psychological Mental History, from the Honorable Trial Judge; Misleading the Judge into believing Applicant's Case was ready for a Trial. With-holding "Factual Evidence "is a serious offense,
3. Furthermore, (Assistant Solicitor had Applicant Official Records, thus, knew Applicant had a History of Mental illness, dating back into his child-hood, therefore, Before announcing that "Hilton is pleading guilty to two indictments") Prosecutors had a year to obtain ~~the~~ Psychological, Mental examination to determine if Applicant was competent enough to make the two Guilty Pleas, alleged by the Assistant Solicitor, (Tr Pg. 4)(L, 12-14). Or stand trial for the charges faced with. *SEE S.C. Const. § 17-24-20 (A) (1976)*
Solicitor had A duty to order evaluation Appendix C-1
4. Although Assistant Solicitor stated Hilton is pleading guilty to two indictments, the Court only produced (1) Written indictment waiver, which was the sexual Conduct Offense. (Tr Pg. 9)(L, 11-12). Plea invalid, by no Mental Competency Evaluation. *Judge stated ON RECORD "I have ON THIS indictment (This = is ONE)*
5. Assistant Solicitor fail to demonstrate [ON RECORD] that Applicant's Pleas were submitted in Compliance with Miranda warrings Proceedings, 383 U.S. at 467; or that he had been determined by a Mental Physician to be Competent enough to make The Guilty pleas, and stand trial for his offenses.

6 Trial Records are silent, as to how the Court, & solicitor determine Applicant was competent enough to make a Voluntary knowingly Guilty Plea" to (2) indictments, as alleged by Assistant Solicitor,

7. It's understandable a Trial Judge has no choice but to depend on solicitor's judgment, that the accused is ready for trial; However, the Honorable Judge erred in accepting the Assistant Solicitor's Erroneous Assumption. The Honorable Court Lack Jurisdiction to Assume Applicant was Competent enough to make knowing, voluntary, independent guilty pleas, without a mental Competency evaluation. S.C. Const. Art V § 21; Primary purpose of Judicial hearing is to determine if the accused is competent enough to stand trial for the charges faced with, see State v. Jones, (1985) 285 S.C. 286, 330 S.E.2d 286.

8 A Prosecutor's Primary duty *is to prepare the Accused For trial and ensure the guilty* shall not escape punishment, or innocence suffer, United States V. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L. Ed.2d 342 (1976); IN Berger V.

United states, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L. Ed. 1314.
~~(holding the Prosecution to a higher standard is necessary, lest the "Special Significant to the Prosecutor's Obligation to serve the cause of Justice, be lost, 427 U.S. at 111, S.Ct. at 2401)~~

9 Applicant's conviction must be set aside, Void, pursuant to Court's Lack of Jurisdiction to accept the Applicant's Guilty pleas. Anderson V. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) The Court held. "We think it elementary with no need for Citation of authority, that the acts of a court with respect to a matter which it has no jurisdiction are void." Accord Lillard V. Searson, 170 S.C. 304 S.E. 499 (1933).

0 Both Assistant Solicitor and Trial Counsel With-held actual Evidence of Applicant's Psychological and Mental illness history, from the Judge.

As a result of Assistant Solicitor and Trial Counsel's un-professional acts and Omissions, to with-hold Evidence of Applicant's Psychological mental History from the Trial Judge, intentional or not, is irrelevant, the Errors Violated Due Process and invalid Applicant's Guilty Pleas, and Deprived the Honorable Court of Jurisdiction to accept Applicant's Guilty Pleas. Because the Court should have Stop the Plea Proceedings, and Ordered a Mental Competent Evaluation, Upon being advised of Applicant's History of Phychological and Mental illness that continue through out his child hood. (Tr. Pg. 20)(L,8-23) (Tr. Pg: 26)(L, 17-22). See Pate V. Roberson, 383 U.S. 375, 385-86 (1966) (Competency hearing was required in light of defendant's history of irrational behavior..." U.S. V. Jones, 95 F. 3d 274, 277 (6th Cir. 2007) (Due Process violated by Court's failure to order a Competency hearing; Because Court ruled defendant competent with-out a mental evaluation. 'see (TR pgs. 6, 20, and 26), *IRRATIONAL BEHAVIOR*.

11 Assistant solicitor and Trial Counsel's With-holding Factual Evidence, Created a Structural Defect, invalid the guilty pleas, Then Court's failure to Order *EVALUATION*, deprived the Court of Jurisdiction to accept Applicant Guilty Pleas.

12 Applicant's Conviction must be void; See Anderson V. Anderson, 299 S.C. ~~1107115~~, 382 S.E.2d 897, 900 (1989), The Court held. "We think it elementary with no need for citation of authority, that the acts of a Court with respect to a matter as to which it has no Jurisdiction are void."

13 Assistant Solicitor's actions constitute Prosecutor Mis-conduct, ~~and~~ Counsel's deficient performance constituted *abuse of discretion* - ineffective trial Counsel, in violation of 6th. 14th. Amends USC; S. C. Const. Art 1 § 3; Created a Jurisdictional Structural Defect, Strickland id., 466 U.S. at 694, 104 S.Ct. at 2068 (1984).

14 Trial Counsel, like the Assistant Solicitor, had Applicant's North Carolina, and South Carolina SLED Official records, and Records provides Counsel was acting as a Plea Negotiation with the Assistant Solicitor, and Counsel was ineffective as both Counsel and Plea Negotiator.

15 At one point, Applicant showed serious Mental Psychological irrational behavior, loosing control to a point that he lack the Ability to respond to the Judge's questions. (Tr. Pg.6)(L,2-15), The court repeatedly ask Applicant, if he had a defense for his actions, then appeared to get up-set with Applicant's irrational behavior. Counsel still with-held Applicant's Mental History.

16 Then the Court ask Counsel if he *could* answer the Judge. Trial Counsel told the Court in relevant Part. "...I was explaining to him Judge,..that we really have no defense." (Tr pg 6)(L,15-18) *Court - should-* have stop the Proceeding and Ordered Applicant be submitted to the Department of Mental Health for a Psychiatric examination. S.C. Section § 44-23-410(1) or (2). S.C. Code of Laws (1976), Section § 17-24-20(A) Code of Laws (1976). Counsel should have Motion the Court for an Order, instead of with-hold Applicant's Condition from Honorable Judge. Counsel knew Applicant needed mental treatment.

STRUCTURAL DEFECTS & INEFFECTIVE TRIAL COUNSEL

17. Counsel's lack of Representation to provide a Legal Defense, Forced Applicant to Plea Guilty; Violated Due Process, and shifted the Burden to Applicant to provide an excuse, and a Defense for his Offenses. Counsel repeatedly told Applicant during jail Visits. "We don't have a defense for your actions". See (Tr. Pg. 6)(L,15-18) Trial Counsel told the Court, in relevant part. "I was explaining to him Judge....that "We really have no defense, that I see". Then again at (Tr PG. 23)(L,21-23), Counsel's Second Statement to the Court, in Relevant Part. "There is no defense to what happened".

18. Trial Counsel's (2) Two Legal Un-Professional Confessions to the Trial Judge, that he had no Legal Defense to submit for Applicant's Offenses, (Forced Applicant to Plea Guilty. Counsel's errors violated Due Process, denied Applicant of his Constitutional Rights to effective legal representation, , Under the 6th. 14th. Amendment. S.C. Const. Art 1 § 3, Strickland id., 466 U.S. at 694, 104 S.Ct. at 2068 (1984); Such errors removed any presumption of entitlement of Competency under the Strickland Two-Prong Test.

19. Counsel's Substance of Representation was Non-Existence, ^{No DEFENSE,}
 NO Motions, No Objections, With-held Factual Evidence of Applicant's mental History, from the Trial Judge, until the Proceedings was over. (Tr. Pg.20)(L,8-20) (Tr. Pg. 26)(L.17-22).

20. Counsel acted as a Plea Negotiator with Assistant Solicitor, and Both was incompetent in Both Positions. Prejudicial to Both the trial Court and Applicant. Trial Court deprived it's self of Jurisdiction, When it fail to Order a Mental Evaluation, after

being advised by Both the Assistant Solicitor and the trial Counsel of Applicant's Mental History. Counsel's errors violated Due Process and undermined the Plea Hearing Proceedings. Invalid Applicant's guilty Pleas, Court's failure to order a Mental Compency Evaluation Created a Structural Defect depriving it's self Jurisdiction to accept Applicant guilty pleas.

21. Counsel acting as a Negotiator got the Sexual Conduct indictment from the Assistant Solicitor and brought it to me in the jail, telling me "I need you to initial this, its a waiver of the Jury Trial, so you can plea guilty, , as I told you before, we don't have a defense to submit: then told me not to tell the judge what he said, because the Judge may not accept my plea. I initial it where he showed me, then initial the sentencing form at the court Room table, day of Court, *the very next day, JAN. 23. 2013.*

22. Counsel *Failed* to bring me the Kidnap indictment for my signature of a waiver. Therefore, the Kidnap indictment, nor the sentencing Form was not *signed* by me. Counsel's failure to obtain my signature of waiver on the Kidnap Indictment, for the Court. created a structrual defect, that deprived the Court of Subject matter Jurisdiction to accept my Guilty Pleas.

23. Counsel's Cumulative errors cannot be forgiven as harmless errors; even though "prejudice is not required when analyzing whether the Court has Subject matter Jurisdiction." Counsel's errors *State V. Lynch, 344 SC. — 545 SE 2d 511, 514 (2001)* Contributed to the Court's lack of Jurisdiction, denying fundamental fairness essential to the concept of justice.

24. See Hyman V. Aiken, 824 F.2d 1405 (4th Cir. 1987) The Federal Court of Appeals , held (The test of ineffectiveness goes to the substance of representation, not merely Formal Qualifications of counsel. See State V. pendergrass, 720 S.C.____, 239 S.E.2d 750 (1977).

25. Counsel knew or should have known that South Carolina constitution Section § 17-23-130 and 140, Cites that "A Written Waiver is mandatory before trial Judge can accept a guilty plea." Citing Phillis V. State, 134 S.E.2d 313 (S.C. 1984). in Relevant part, (Failure to sign a waiver of indictment invalidated his guilty plea....."at 313. Wherefore; Applicant Conviction must be vacated, Void. Anderson V. Anderson 299 s.c. 110, 115, 382 S.E.2d 897 900 (1989).

26. Counsel know that he had not brought me the Kidnap indictment for my initials of approval, that the jury Trial on the kidnap offense had not been waived; Therefore, Counsel had a duty to Motion the Court to dismiss the Kidnap indictment, before the Judge accepted Applicant's guilty plea. citing Phillips id., at 313. Counsel's errors constituted ineffective assistant of Counsel, in violation of 6th. 14th Amends USC Strickland id., 466 U.S. at 694, 104 S.Ct. 2068 (1984); IN State V. Sowell, 85 S.C. 278, 67 S.E. 216 (1910) the court held; "State Lack Jurisdiction to accept a guilty plea upon a "Defective indictment."

27. Because of Counsel's Lack of Professional Legal Representation, Trial Records does not have a Written Waiver on the Kidnap indictment, mandatory by S.C. Ann Code Section § 17-23-130 and 140. I was also sentenced to (25) Years with-out a Jury Trial or Waiver. Clearly this is a Structural Defect. Trial Court lack Jurisdiction to accept Applicant's Guilty Plea. Counsel was clearly ineffective, and Applicant's Guilty Pleas cannot be presumed knowing, Where Applicant was Forced to plea guilty upon the lack of effective Assistant of Counsel, The Cumulative Structural defects mandate that my convictions be vacated, Void.

18 Court Records are silent as to how the court determined I was competent enough to make knowing, voluntary guilty pleas, and stand Trial for the charges he was faced with. In Boykin V. Ala., 395 U.S. 238, 243 (1969) The Court held (Knowing and Voluntary Waiver of Constitutional Rights cannot be presumed from a silent Record. See Also, Chapman V. California, 386 U.S. 18 S.Ct. 24, 17 L. Ed. 2d 705 (1967) The Court held "Error that denythe basic trial Process can never be harmless"... "Such errors has nothing to do with established guilty or innocence." Accord Rose V. Clark 106 S.Ct 301, 478, 529 (1986) Citing Chapman at Ante 3105-06. (Even if counsel was general competent such mistakes created Jurisdictional Structural Defects, that invalid Applicant's Guilty Pleas). Deprived The Court of Jurisdiction.

The Test of ineffectiveness goes to Substance of representation. Hyman V. Aiken, 824 F. 2d 1405 (4th. Cir. 1987). Anderson V Anderson, 299 S.C. 110,115, 382, S.E.2d 897 900 (1989), "We think it elementary with no need for citation of authority, That the acts of a Court with respect to a matter as to which it has no Jurisdiction are void.,

Judicial Transcript / Records are assumed to be correct, The Burden is on the State provide factual evidence that the records are erroneous. ^{BECAUSE the records} supports Applicant's claims.

The Honorable Trial Judge relied upon Unconstitutional Structural Defects in reaching his decision to accept Applicant's guilty pleas. Due Process of the Fourteenth Amendment, mandates when a Court relied upon an erroneous understanding of the law, the verdict must be set aside, vacated. Void.

WHEREFORE: Applicant's Convictions must be void; Pursuant to the Court's Lack of Jurisdiction to accept Applicant's Guilty Pleas

ON THIS 5/19 DAY OF 2014
COLUMBIA, S.C. 29210

RESPECTFULLY
Kenneth L. Hilton
Kenneth L. HILTON


SUMMATION

Pursuant to the Trial Counsel and Assistant Solicitor's amount of Cumulative Constitutional errors, The Honorable Trial Judge, may have had an Unconstitutionanal Mis-understanding of the laws involving [with-holding Factual Evidence from the Trial Judge], Psychological Mental Evaluaion, Guilty Pleas, Waivers of Grand Jury indictments, Structural Defects, Defective indictments, Incompetent Trial Attorney, Counsel's Failure to Provide a Legal Defense for Applicant, And Applicant's lack of ability to assist in his own defense,

Pursuant to the Court's Failure to Correct the errors, it appears the Trial Judge may have had an unconstitutional Mis-Understanding of the laws and mandatory Proceedings involved, before accepting a Criminal Guilty Plea.

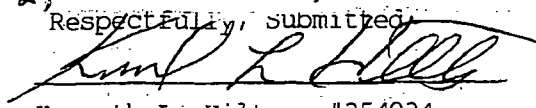
However Where the Court lack Jurisdiction to accept Applicant's Guilty Pleas, or Convict Applicant upon a Defective Kidnap Indictment; A Mis-Understanding of the laws is irreverent, acts of a Court of which it had no Jurisdiction are void. Applicant Convictions must be void, Pursuant to the Trial Court's Lack of Jurisdiction, to convict, and accept Applicant's guilty pleas. Also The State HAS NOT DENIED ANY OF MY CLAIMS. (There is no need for additional Citation of authority). Citing Anderson id

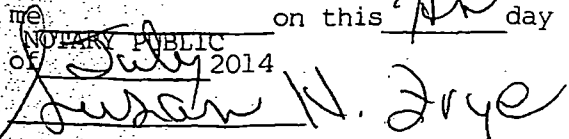
ON THIS 7 DAY OF July 2014
COLUMBIA, S.C. 29210

RESPECTFULLY SUBMITTED

Kennety L. Hilton, #354034

I THANK THE COURT FOR IT'S PATIENCE, WITH ALL DUE RESPECT, I WOULD LIKE TO CITE MY UN-CONTESTED AFFIDAVIT FACTS ON RECORD. *Starting ON Pg-2,*

ON THIS 7 DAY OF July 2014
COLUMBIA, S.C. 29210

Respectfully, submitted

Pro Se, Kenneth L. Hilton, #354034
BRCI Wateree Unit 162
4460 Broad River Road
Columbia, S.C. 29210

Sworn and Subscribed before
me on this 7th day
of July 2014

My Commission Expires

My Commission Expires
March 5, 2018

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
CHEROKEE COUNTY
7th. JUDICIAL CIRCUIT

ENNETH L. HILTON # 354034
PRO SE APPLICANT

COURT OF COMMON PLEAS
NON JURY DOCKET
C/A No. 2013-CP-11-302
Sworn Affidavit Verifying
Facts cited in the
ADDENDUM FILES 7/9/2014,
SCRCP Rule 10(c) and
Summons, Rule 65(f)

-VS-

STATE OF SOUTH CAROLINA
RESPONDENTS

UNCONTESTED AFFIDAVIT

IN SUPPORT OF CLAIMS & ISSUES

FILED IN OFFICE OF
CLERK OF COURT
JANET W. MCBE
NOV 18 AM 11:55

1) Respectfully submitted in support of the Nature and Complex issues involved, and as to the Accuracy, Reliable of the Jurisdictional Addendum's Pleadings, Finding of Facts, Appendixes Official Documents, Are True Copies, all supported by Law, and Preponderance of Factual Material Evidence; "The Plea Hearing Trial Transcripts, adopted and incorporated by Reference herein.

2) The Jurisdictional Addendum Although not Specifically named as such, is Actually a True Finding of Facts, contain the Claims and allegations raised in the PCR Application, and Reply; Consolidated to do Justice and supported, by Preponderance of factual Plea Hearing Trial Transcripts, § 17-27-
McCray V. State 408 S.E.2d 241, (SC.1991).

START ON
PAGE - 2
PARAGRAPH - 1

3) In addition to the illusion of 'Silent Records', It was the Assistant Solicitor's Cumulative constitutional Due Process violations that actually created the 'Theory of 'Silent Records; by failing to order me a mental Competency Evaluation, to determine if I was competent enough to make (2) Two knowingly voluntary Written Guilty Plea Waivers, as alleged by the Assistant Solicitor (Tr Pg. 4)(L, 12-14). Assistant Solicitor's Errors violated Due Process, invalidated the Guilty pleas. and created a Structural Defect, that deprived the Court of Jurisdiction to accept my Guilty Pleas.

4) The Assistant Solicitor had a Statutory Duty to Order; The evaluation, shall be requested by the Solicitor,.....as soon as possible S.C. Code of Laws § 17-24-20 (a) S.C. Const. Section 4 Art V; § 44-23-410 (1) or (2) (1976) See Appendix C-1, attached herein, and incorporated by reference hereof. Assistant Solicitor's Tactical decision deprived me of my Right to have a Mental Competent test, before being compelled to make a Guilty Plea. A Competent Test would have resolved the illusion of a Silent Record.

Affidavit HAS - 17 UNContested Paragraphs, Summation, Appendix (A-1 thru C-1).

1) Both Solicitor, Leskanic, and Trial Counsel, Mr Don Thompson, Public Defender Cherokee County, with-held Factual Material Evidence, from the Trial Judge, until the Guilty Plea inquiry was almost over, (Tr. Pg. 20-26); The Punishment Presentation was ready to start.

2) Both Solicitor & Counsel; Officials are sworn to honest, and Both has Custody of all my North Carolina, State — Mental History Files, Therefore, Both Knew My Mental History, dating back-through-out my Child hood.

3) Both Officials fail to inform the Judge that I had A History of Psychological Mental problems.

4) Both Knew and or Should have known that South Carolina Const. Provides in Relevant part. ".....A Written waiver is mandatory before a Trial Judge can accept a Guilty Plea." § 17-23-130 & 140.

5) Both Knew and Fail to inform the Trial Judge that I had not had a Mentally Evaluation, during (1) one year in Jail. ~~ask~~
Counsel two or three times to help me get mental examination.
Counsel told me it's to late for that, Laughed and told me to
stay away from the inmates in jail.

6) Both Assistant Solicitor and Counsel Knew that I had not signed a Guilty Plea, Grand Jury Waiver to the Kidnap Offense.

7) Both fail to inform the Trial Judge , that I had not signed a waiver or the sentencing sheet for the Kidnap indictment, Thus,

8) Both allowed me to be sentenced to (25) Years upon a Defective Kidnap Indictment, An error that mandates the Dismissal of the indictment. and voids the Conviction. *it's A Sentencing Flaw.*
Court had Me Waive, I had No Jury Trial, but I RECEIVED 25-YEARS

9) The Honorable Judge held (1) One indictment in his hand, (Tr Pg. 9)(9-13), then Conceded on Records that he only had one indictment with a "Written Guilty Pleas signature or initials. The Grand jury indictment is dated (Jan. 22; 2013).

10) Both the Assistant Solicitor and Trial Counsel, Knew or should have known that the Kidnap indictment was issued by a Different Grand Jury dated March 22, 2012)(9~ months different), Thus. the Trial Judge only had one indictment with Written waiver in support. Thus, Court Lack Jurisdiction to accept my guilty plea.

11) Both Assistant Solicitor and Counsel knew or should have known that (indictment Negotiations or not, a guilty plea cannot be waived, even by Consent, that South Carolina Const. mandates a Written Waiver, before a Judge can accept a guilty plea. ~~Anderson v. Anderson, 299 S.C. 110, 115 382 S.E. 2d 897, 960 (1989)~~. Court's failure to obtain a Written waiver, violated Due Process, and invalidated the guilty plea. Thus Depriving the Court of Jurisdiction to accept, or convict me upon a Defective indictment.

12) Upon being advised of my Psychological mental History, The Court's Failure to Stop the plea hearing process, and order a Psychological mental Evaluation, violated due Process, invalidated the guilty pleas. Created a Structural Defect, depriving the Court of Jurisdiction to accept my guilty plea.

(13) Intentional or not is irrelevant, it may be assumed pursuant to Both Assistant Solicitor and Counsel's Tactial decision to with hold the same factual evidence, Until the presentation of the Punishment stage, Resolved the illusion of a Silent Record. and reasons for such, along with Counsel's Negative statement to the Trial Judge, that, ("if you run consecutive sentences....he will die in Department of Corrections"), (Tr Pg.27)(L, 1-2).

(14) With holding Factual material Evidence of my mental History created the "Theory of a Silent Record" and this Unconstitutional Motives allow the Honorable Trial Judge to Assume, that I had a Mental Competency Evaluation, and found to be Competent enough to make the Guilty pleas, and stand trial.

(15) Pursuant to the Cumulative amount of Constitutional Due Process violations, that Resulted in structural Defects. Because, the Trial Judge fail to correct any of the violations, Deprived the Honorable Court of Jurisdiction to accept my Guilty Pleas, or Sentence me upon a Defective Kidnap Indictment; with-out a Written Waiver, Section § 17-23-130 and 140.

(16) It is clear that the Honorable Trial Judge relied upon the Assistant Solicitor and Mr. Thompson's Judgment. Its also clear as a Joint-Plea Negotiator, ^{The} and Assistant solicitor,s Primary Goal was to ensure I was found guilty, and sentence to the maximum, and to die in prison. Neither party could have cared less of the Unlawful position their action put the honorable Judge in; to correct their Structural Defects.

(17) I was totally incompetent, and ask Mr Thompson (2-3 times), to help me get Some Mental help. Counsel just laughed and said it was to late for that. ~~an inmate in Jail help me file a Motion to dismiss counsel, Then he cam begging me to dismiss the Motion, that he was going help me. So I let him Coerce me into dismissing the Motion,~~ Counsel Rush me to Court, and forgot to get a Waiver on the Kidnap Indictment, ^{And,} allowed the Court to sentence me to (25-yers) on the Defective Kidnap Indictment.

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ALWAYS RAISE YOU HAND, GETTING JUDGE'S ATTENTION, THEN STAND, BEFORE SPEAKING.

Now, Does Counsel wish to submit to inquir
yes — NO —

Also, your Honor,

I HAVE FINAL DISPOSITION
ORDERS, PREPARED, I WOULD LIKE TO SUBMIT FOR CONSIDERATION.
AND, IF THE STATE HAS NO OBJECTIONS, AND WITH YOUR
SIGNATURE, THE CLERK could file THE ORDERS.
THUS RESOLVING THIS MATTER NOW? I now submit the
Disposition orders.

THANK YOU AGAIN YOUR HONOR.

SUMMATION

The Claim of Ineffective Assistant of Trial Counsel, States an [Independent Ground for Relief]. However, I am not seeking relief upon Ineffective Trial Counsel as an 'Independent Ground'.

I am seeking Relief upon the Cumulative Constitutional Due Process Violations, that invalidated / Void my guilty pleas. and Upon the Court's Failure to correct the violations, that created Structural Defects, depriving the Trial Court of Subject matter Jurisdiction to accept my guilty pleas, Which were in fact Void.

The Assistant Solicitor's Unconstitutional Motives, invalidated / Void my Guilty Pleas, in her opening Presentation, by submitting my Guilty Pleas, to the Court, with-out first ordering a mental Competent evaluation, to determine if I was Competent enough to make the Pleas. Then Continue with Multiple Constitutional Violations that undermined the entire Pleas Hearing Proceedings. Resulting in Jurisdictional errors, that had nothing to do with Guilt or innocence. See Anderson V. Anderson, 299 S.C. 110,115, 382, S.E. 2d 897, 900 (1989), "...the acts of a Court with respect to a matter which it has no Jurisdiction, are Void.

I Pray the Honorable Court will uphold South Carolina Case Authority in above matters and Void my Convictions

ON THIS 15 DAY OF sept 2014
COLUMBIA, S.C. 29120

XLH

Respectfully Submitted,

[Signature]

FILED
CLERK
HERBERT
SEP 15 2014
COLUMBIA
SOUTH CAROLINA

Affidavit

I Declare under the penalty of perjury, that the facts cited herein are true to the best of my knowledge, submitted in good faith, in attempt to resolve this matter, as soon as possible, so as not to cause an unnecessary delay, and in ever one's interest.

Sworn and subscribed before
me 15 this Day sept 2014
of Susan N. Frye
My Commission expires.

Pro Se,

[Signature]
Kenneth L. Hilton #254034
BRCI Wateree Unit 162
4460 Broad River Rd.
Columbia, S.C. 29210

My Commission Expires
March 5, 2018

OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

CITY OF Cherokee
VS.
Kenneth Lee Hilton

INDICTMENT/CASE#: 2013-GS-11-0017

A/W#: Direct Indictment

Date of Offense: 7/11/2011

S.C. Code § : 16-03-0656, 16-3-653

CDR Code #: 0254

WHITE Sex: M Age: 50
SS#: [REDACTED]
[REDACTED] 28150

SENTENCE SHEET

Yes No CMV Yes No Hazmat Yes No

Position of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
assault with Intent to Commit Criminal Sexual Conduct Second Degree [0-20y]

ation of § 16-03-656, 16-3-653 of the S.C. Code of Laws, bearing CDR Code # 0254
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)

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

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

ST: *Kimberly K. Harris* 16837 SC Bar# *Kenneth Lee Hilton* Defendant *Debra A. Thompson* Attorney for Defendant *SS35* SC Bar#

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

terminate term of 20 days/months/years or under the Youthful Offender Act not to exceed ___ years

to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment

___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
ion, 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
State Department of Corrections.

the Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

uant 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
itic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

STITUTION: Deferred Def. Waives Hearing Ordered PTUP
\$ ___ plus 20% fee: \$ ___

nt Terms: _____
t by SCDPPPS _____

ent: _____

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender's Office

Other: _____

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

206 (Assessments 107.5 %)	\$
211(A)(1) (Conv. Surcharge)	\$160
211(A)(2) (DUI Surcharge)	\$100
2995 (DUI Assessment)	\$12
286 (DUI Breath Test)	\$25
47.9 (Public Def/Prob)	\$500
212 (Law Enforce. Funding)	\$25
213 (Drug Court Surcharge)	\$150
21-114(BUI Breath Test Fee)	\$50
2942(J) (Vehicle Assessment)	\$40/ea
90.5 (SCCJA Surcharge)	\$5
County (if paid in installments)	\$ 3.90
Total	\$133.90

of Court/ Deputy Clerk *Brandi McBea*
Reporter: *Michelle Harris*

Presiding Judge _____
Judge Code: 2053
Sentence Date: 1/23/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

OF SOUT
OF

At a Court of General Sessions, convened on JAN 22 2013

WHITE
th
Zip:

Grand Jurors of Cherokee County present upon their oath:

ASSAULT WITH INTENT TO COMMIT
CRIMINAL SEXUAL CONDUCT, 2ND DEGREE

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-VIOLE

That Kenneth Lee Hilton, did in Cherokee County on or about July 11, 2011, willfully and unlawfully commit an Assault With Intent to Commit Criminal Sexual Conduct, Second Degree, in that the Defendant did assault the victim, _____ by using aggravate coercion to attempt the sexual battery, all in violation of §16-3-656 and §16-3-653, in violation of THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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

Kimberly D. Jeskovic
ASSISTANT SOLICITOR

STITUTION
S _____
Terms:
by SCDP
it: _____
06 (Asses
11(A)(1)
11(A)(2)
995 (DU
86 (DUI
7.9 (Pub
12 (Law
13 (Drug
14 (Sto
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0.5 (SCC
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Appendix A-2, pg 12

LBM
Court/ Di
porter:
1/27/20

TH CAROLINA

IN THE COURT OF GENERAL SESSIONS

Cherokee

INDICTMENT/CASE#: 2012GS1100226

VS.

A/W#: M133967

Kenneth Lee Hilton

Date of Offense: 7/11/2011

Sex: M Age: 50

S.C. Code § : 16-03-0910

SS#: ~~XXXXXXXXXX~~

CDR Code #: 0095

~~XXXXXXXXXXXXXXXXXXXX~~

346184 N.C. 2015

SID#:

SENTENCE SHEET

CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

he said indictment comes now the Defendant who was [0-30v]

§ 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

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

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

Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

J. Kim 110837 *Kenneth Lee Hilton* *Donald Thompson* 5515
KIM SC Bar# Defendant Attorney for Defendant SC Bar#

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

term of 25 days/months/years or under the Youthful Offender Act not to exceed ___ years

fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment

___; plus costs and assessments as applicable*; the balance is suspended with probation for ___

subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of are incorporated by reference.

SENT or CONSECUTIVE to sentence on:

ent is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied Department of Corrections.

ent is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

NOTE: Deferred Def. Waives Hearing Ordered PTUP
plus 20% fee: \$ ___

Obtain GED days/hours Public Service Employment *Barry W. McBe*

Attend Voc. Rehab. or Job Corp. CLERK OF COURT

May serve W/E beginning: CHEROKEE COUNTY, S.C.

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ ___ beginning ___

\$ ___ paid to Public Defender Fund

Other: ___

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

fees	\$
assessments 107.5 %	\$
(Conv. Surcharge)	\$109
(DUI Surcharge)	\$100
(Assessment)	\$12
Breath Test)	\$25
Public Def/Prob)	\$500
Enforce. Funding)	\$25
Court Surcharge)	\$150
Breath Test Fee)	\$50
Vehicle Assessment)	\$40/ea
JA Surcharge)	\$5
if paid in installments)	\$ 3.90
	\$ 133.90

Deputy Clerk *Barry W. McBe*

Presiding Judge *[Signature]*
Judge Code: 2053
Sentence Date: 4/23/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

MAR 22 2012

At a Court of General Sessions, convened on _____, the
Grand Jurors of Cherokee County present upon their oath:

KIDNAPPING

That Kenneth Lee Hilton, did in Cherokee County on or about July 11, 2011,
willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap,
abduct or carry away one _____ without authority of law, all
in violation of §16-03-910, THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as
amended).

Turisdiction

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

Kimberly D. Testa
Assistant Solicitor

Appendix B-2, Pg 14

ADMINISTRATION—MISCELLANEOUS

COMMITMENT TO DEPARTMENT OF MENTAL HEALTH

ORDER

ADMINISTRATIVE ORDER

Pursuant to the provisions of Section 4, Article V, South Carolina Constitution,

IT IS ORDERED that the attached form order SCCA 221 (September 1987), a copy of which is attached and made a part of this order, is approved effective this date for the commitment of defendants to the custody of the South Carolina Department of Mental Health to determine capacity to stand trial and criminal responsibility pursuant to the statutory provisions of this state. This form order is required to be used for this purpose in the court of general sessions and the family court to the exclusion of all others until further order of the Chief Justice.

Chief Justice

September 25, 1987
Bamberg, South Carolina

THE STATE OF SOUTH CAROLINA) IN THE COURT OF
) GENERAL
COUNTY OF _____) SESSIONS
) IN THE FAMILY
The State of South Carolina,) COURT
)
) ORDER FOR
) COMPETENCY
) EVALUATION
) (AND CRIMINAL
) RESPONSIBILITY
vs.)
)
)
Defendant)

This matter comes before me on motion of _____ for an order requiring the defendant, _____ charged with _____ to submit to a psychiatric examination.

I have considered the showing made in respect to the motion for such an order and am of the opinion that the defendant should be so examined pursuant to the statutory provisions of this State.

THEREFORE, IT IS ORDERED that the defendant shall be:

- (a) Examined and observed at the appropriate facility of the South Carolina Department of Mental Health for a period not to exceed fifteen (15) days relative to his mental capacity to stand trial. (Section 44-23-410(1) or Section 44-23-410(2), Code of Laws of South Carolina, 1976)

And shall/shall not be:

- (b) Examined as aforesaid to determine whether or not the above-named defendant is criminally responsible pursuant to the McNaughten test

for his actions on or about _____

And shall/shall not be:

- (c) If found responsible pursuant to the McNaughten test, examined as aforesaid to determine whether or not, because of mental disease or defect, the defendant lacked sufficient capacity to conform his conduct to the requirements of the law. (Section 17-24-20(A), Code of Laws of South Carolina, 1976)

The order examination shall be requested by the solicitor and scheduled by the examining facility as soon as possible. The defendant is to be transported to arrive at the examining facility at the time established by confirmed appointment with the staff of the examining facility.

The defendant continues under the jurisdiction of this court. If the defendant is currently free on bond or personal recognizance, such bail is hereby revoked to the extent necessary to carry out the provisions of this order.

If the examination and observation of a patient committed to the custody of the Department of Mental Health have not been concluded at the end of fifteen (15) days, the defendant may be kept in the custody of the said Department of Mental Health for an additional period not to exceed fifteen (15) days, provided the superintendent of the facility so requests in writing the additional period of observation and examination.

Within five (5) days of the examination or at the conclusion of the observation period, a written report shall be made to the court pursuant to Section 44-23-420, Code of Laws of South Carolina, 1976, as amended.

If, in the judgment of the designated examiners or the superintendent of the facility, the defendant is presently mentally ill and in need of hospitalization, then the said defendant shall be retained in the custody of the Department of Mental Health until such time as a hearing, required and provided by Section 44-23-430, Code of Laws of South Carolina, 1976, as amended, may be conducted by this court.

AND IT IS SO ORDERED.

_____, South Carolina
This ____ day of _____, 19__

Judges Signature

I SO MOVE OR CONSENT:

I SO MOVE OR CONSENT:

Solicitor (Name Typed)

Attorney for the Defendant (Name Typed)

Solicitor's Signature

Address

City, State, Zip

Attorney for Defendant Signature

ADDITIONAL INFORMATION FOR FAMILY COURT EVALUATIONS

APPENDIX C-1, pg-15

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

COURT OF COMMON PLEAS
7th. JUDICIAL CIRCUIT

KENNETH L. HILTON # 354034
PRO SE, APPLICANT
CHEROKEE COUNTY, S.C.

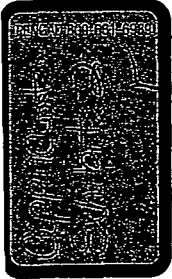
FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

-VS- 2015 MAY 19 PM 4 00 C/A No: 2013-CP-11-0302

STATE OF SOUTH CAROLINA
STATE ATTORNEY GENERAL RANDY W. MCBEE
RESPONDENTS

EVIDENTIARY HEARING FOR
FINAL DISPOSITION
AND FINDINGS OF FACTS

Your Honor, For The Record This is A PURPOSED
FINAL DISPOSITION ORDER IN ABOVE ACTION



The above Action came before this Honorable Court for Evidentiary Hearing, for final Disposition. Applicant was present Acting Pro Se, and Properly Raised all His Claims on Record, Challenging the Trial Court's Jurisdiction to Accept and Convict him upon (2) Two Guilty Pleas; that Applicant alleged were invalidated / Void, Multiple Times upon Constitutional Due Process Violations. of the 14th. Amends. US CONST. *AND S.C ART 1-3.*

Applicant Asserted the Trial Court's Failure to Correct the Errors resulted in Structural defects, Depriving the Court of Jurisdiction to Accept the Guilty Pleas, submitted by the Assistant Solicitor, and Convict Applicant upon Pleas, that were in fact, Void by the Solicitor's failure to obtain a Mental Competency Testing, to Determine if Applicant was Competent enough to make (2) two knowing, Voluntary Guilty Pleas; Before Submitting such to the Trial Judge.

The State was Represented by Assistant Deputy Attorney General, Ms Suzanne H. White, Who was present and heard all Applicant's Asserted Claims, Challenging Trial Court's Jurisdiction to Accept his Guilty Pleas, and Convict him upon a Defected Kidnap Indictment, that had no Written Waiver, to support the Guilty Plea, or Conviction.

Where the Claim is the Court Lack Jurisdiction, the State has the Burden of Proof, that the Court Did Not Lack Jurisdiction. State V. Evans 307 S.C. 477, 415 S.E.2d 816 (1992),

Also, S.C. PCR Act § 17-27-70 (a) Requires the state to provide "Factual Material Evidence", with their Responsive Defense Arguments, that the Court Did Not Lack Jurisdiction.

FINDINGS OF FACTS AND,
JUDICIAL CONCLUSION. § 17-27-80, SCRCP 52 (a).

At the Conclusion of the Evidentiary Hearing, the State Conceded with-out Objections that Applicant is entitled to the relief he seeks.

This Court finds that the State failed to establish that Trial Court had Competent Subject Matter Jurisdiction to accept Applicant's Guilty Pleas, that were in fact Void.

This Court Further finds that, Although the State Attorney General was named as Respondents in this Action. It filed no Responsive Pleading, Denying any of Applicant's Claims. Therefore, in Default SCRCP Rule 55, See Beauford V. Trask, 563 , S.E. 2d 660 (S.C. 2002),

This Court Further finds that the State's Failure to File a Responsive Defense Pleading, Act as a Waiver of Right to Appeal any Judicial Orders issued in this Action.

There is no Genuine issue as to any Material Fact that Respondent are entitled to Judgment as a matter of Law.

FINAL DISPOSITION ORDER

WHEREFORE: this matter being fully resolved; Judgment is for the Applicant, Kenneth L. Hilton, His Convictions are hereby, Unconditionally Vacated/ Void Pursuant to Anderson V. Anderson, 299 S.C. 110,115, 382 S.E.2d 897,900 (1989), In Relevant Part, ("....With no need for Citation of Authority, that the acts of a Court with respects to a matter of which it had no Jurisdiction are Void.

IT IS SO ORDERED ON THIS 27 DAY OF MARCH, 2015,
IT IS FURTHER ORDERED that the Applicant, Kenneth L. Hilton, is to be returned to S.C. Dept of Correction for Release Proceedings.

The State Attorney General's Office, the Respondents will make the Necessary arrangements, for Mr Hilton's release, with-in (72-Hours), or ASAP.

IT IS SO ORDERED ON
THIS 27th DAY OF MARCH, 2015

The Honorable Roger L. Couch
Presiding Circuit Judge of
Seventh Judicial Circuit
State of South Carolina

CC:Clerk of Court

The Honorable _____
Seventh Judicial Circuit

The Honorable Assistant Deputy Attorney
General, MS. Suzzane H. White'
Respondent for the State

Kenneth . Hilton, # 354034
Pro Se Applicant, C/A 2013-CP-11-0302

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)
)
 Kenneth Lee Hilton,)
 S.C.D.C. No. 354034,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-11-0302

ORDER OF DISMISSAL

FILED IN THE OFFICE
 CLERK OF COURT
 2015 SEP 28 PM 11:30
 BRANDY W. MCREE
 SNA
 CHEROKEE COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 1, 2013. The Respondent made its return and motion for a more definite statement dated March 17, 2014. An evidentiary hearing was held on March 27, 2015 at the Spartanburg County Courthouse. The Applicant proceeded pro se. Suzanne H. White, 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, Don Thompson, Esquire. The Court had before it the guilty plea transcript, the Cherokee County Clerk of Court records, the South Carolina Department of Corrections records, the PCR application, the return, and the Applicant's Exhibits.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. The Applicant was indicted at the March 2012 term of the Cherokee County Grand Jury for kidnapping (2012-GS-11-0226) and the Applicant waived presentment on the charge of assault with intent to commit second-degree criminal sexual conduct (CSC) (2013-GS-11-0017). He was represented by Don

A handwritten signature or set of initials, possibly 'D. Thompson', written in dark ink.

Thompson, Esquire.

On January 23, 2013, the Applicant pled guilty. He was sentenced by the Honorable J. Derham Cole to consecutive terms of 25 years for kidnapping and 20 years for assault with intent to commit second-degree CSC. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.

In an "Addendum of More Definite Judicial Factual Information" dated March 18, 2014 and filed July 9, 2014, the Applicant made the following allegations:

1. "With-holding factual evidence & fail to order mental evaluation."
2. Court lacked jurisdiction to accept pleas.
3. Ineffective assistance of counsel.

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

The Applicant alleges he received ineffective assistance of plea 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

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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) (citations omitted).

A.

The Applicant argued the plea judge did not have jurisdiction to accept his guilty pleas because plea counsel and the assistant solicitor withheld information regarding his mental status. The Applicant argued there were jurisdictional and structural defects in his case. The Applicant argued plea counsel failed to bring the kidnapping indictment to him for his signature.

Plea counsel testified the Applicant was originally indicted for kidnapping and second-degree CSC, but that the Applicant waived presentment on the charge of assault with intent to commit second-degree CSC.

This Court finds the Applicant has failed to substantiate his allegation that the plea judge lacked jurisdiction in his case. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently appraises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102,

610 S.E.2d at 500. The kidnapping indictment in this case was true-billed and clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007). Further, there is a waiver of presentment for the assault with intent to commit second-degree CSC indictment that was also sufficient to put the Applicant on notice of the charge he was facing. The Applicant's claim that the lack of his signature on the kidnapping indictment somehow voided that indictment is without merit, as there is no such requirement. This Court also finds the Applicant failed to meet his burden of proving either that any party "withheld" his alleged "mental status" from the plea judge or that doing such would have left the judge without jurisdiction to preside over the case. These issues are patently without merit. This Court concludes the Applicant failed to meet his burden of proving plea counsel's actions resulted in the plea judge not having jurisdiction in his case. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (in a PCR proceeding, the applicant bears the burden of proving the allegations in their application).

B.

The Applicant argued he had mental health issues and should have been evaluated. The Applicant argued neither plea counsel nor the assistant solicitor informed the plea judge of his mental illness.

Plea counsel testified an initial interview of his clients' backgrounds is performed. Plea counsel testified the Applicant's form indicated there was no history of mental illness. Plea counsel testified he was not aware of the Applicant having a background of mental health issues. Plea counsel testified there were no problems with the Applicant's competency.

Plea counsel testified the Applicant did not inform him of any history of mental illness and that he did not perceive issues related to competency. This Court finds plea counsel's

testimony is credible. This Court finds the Applicant has failed to meet his burden of proving plea counsel was deficient in not investigating his alleged mental health background. See Lee v. State, 396 S.C. 314, 721 S.E.2d 442 (Ct. App. 2011) (holding plea counsel cannot be found deficient if she has no indication of the defendant's mental health history). Further, the Applicant "bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). To sustain a claim that plea counsel was ineffective for failing to request a competency hearing, the petitioner must show reasonable probability that he would have been found incompetent. Id. at 233, 417 S.E.2d at 596. The Applicant, however, failed to produce either an expert witness to testify about his alleged mental health issues or any documentation on this matter that would have been relevant to the issue. As such, the Applicant failed to meet his burden of proof. See Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (finding that, as the applicant failed to have an expert testify at the evidentiary hearing, "any finding of prejudice is merely speculative"); see also Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

C.

This Court finds in regards to the allegations of ineffective assistance of counsel, plea counsel's testimony was credible, while the Applicant's testimony was not credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that plea counsel's conduct did not fall below the objective standard of reasonableness. ✓

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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 plea counsel failed to render reasonably effective assistance. See Frasier 351 S.C. at 389, 570 S.E.2d at 174.

Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” See Frasier 351 S.C. at 389, 570 S.E.2d at 174.

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 argued plea counsel’s lack of representation forced him to plead guilty to these charges. This Court notes, however, that the Applicant admitted to the plea judge that the facts recited by the solicitor were true. (Plea transcript, p.23). 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.11-14). This Court also notes the Applicant's admission prior to sentencing that "I am guilty of what I did." (Plea transcript, p.29). This Court finds the Applicant's testimony is not credible. This Court further finds the plea transcript refutes the Applicant's allegation that his guilty pleas were involuntary. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007). This Court concludes the Applicant entered knowing and voluntary guilty plea and that plea counsel did not coerce him into entering such. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712; see also Frasier 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

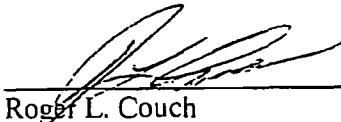
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for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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 24th day of September, 2015.



Roger L. Couch
Presiding Judge
Seventh Judicial Circuit

13-GS-11-0017

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 22 2013

TERM

THE STATE

vs.

Kenneth Lee Hilton

Indictment for

**ASSAULT WITH INTENT TO COMMIT
CRIMINAL SEXUAL CONDUCT, 2ND DEGREE**

SC Code: 16-3-656 and 16-3-653

CDR Code: 0254

Class FEL/C

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

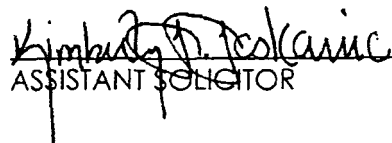
INDICTMENT

At a Court of General Sessions, convened on JAN 22 2013 the
Grand Jurors of Cherokee County present upon their oath:

ASSAULT WITH INTENT TO COMMIT
CRIMINAL SEXUAL CONDUCT, 2ND DEGREE

That Kenneth Lee Hilton, did in Cherokee County on or about July 11, 2011, willfully and unlawfully commit an Assault With Intent to Commit Criminal Sexual Conduct, Second Degree, in that the Defendant did assault the victim, _____, by using aggravate coercion to attempt the sexual battery, all in violation of §16-3-656 and §16-3-653, in violation of *THE CODE OF LAWS OF SOUTH CAROLINA, (1976)*, as amended.

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


ASSISTANT SOLICITOR

DOCKET NO
12-GS-11-0226

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 22 2012

TERM

THE STATE

vs.

Kenneth Lee Hilton

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

MAR 22 11 3 58
MAR 22 11 3 58
MAR 22 11 3 58

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)


INDICTMENT

At a Court of General Sessions, convened on MAR 22 2012, the
 Grand Jurors of Cherokee County present upon their oath:

KIDNAPPING

That Kenneth Lee Hilton, did in Cherokee County on or about July 11, 2011,
 willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap,
 abduct or carry away one _____ without authority of law, all
 in violation of § 16-03-910, THE CODE OF LAWS OF SOUTH CAROLINA, (1976,
 as amended).

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


 Assistant Solicitor