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June 21, 2018

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED
JUN 25 2018
S.C. SUPREME COURT

The Honorable Mary Brown
Clerk, Berkeley County
300 California Dr.
Moncks Corner, SC 29461

RE: David Stephens, #361522, v. State of South Carolina
2015-CP-08-640

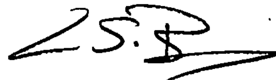
Dear Mr. Shearouse and Ms. Brown:

Enclosed for filing is a Notice of Appeal in the above-referenced case. Also enclosed are the following:

(1) Proof of Service of the Notice of Appeal;
(2) A copy of the Order which is to be challenged on appeal; and
(3) Prior Order of Appointment of Counsel.

As I was appointed to represent Mr. Stephens in his PCR proceeding, I anticipate that the Office of Appellate Defense will represent Mr. Stephens in this appeal.

Yours very truly,



Lance S. Boozer

cc: Megan Jameson, AAG
Office of Appellate Defense
David Stephens, #361522

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
JUN 25 2018
S.C. SUPREME COURT

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Justice Jean H. Toal, Presiding Circuit Court Judge

Case No. 2015-CP-08-640

David Leon Stephens, #361522,..Petitioner,

v.

State of South Carolina,..Respondent.

NOTICE OF APPEAL

The Petitioner appeals the Honorable Jean H. Toal's Order dated June 12, 2018, granting Respondent's Motion to Reconsider and amending prior Order granting post-conviction relief as it relates to denying relief for Petitioner's conviction in 2014-GS-08-645. Undersigned counsel received notice of entry of the Order on June 20, 2018. Copies of the Orders on appeal are attached to this notice.

Respectfully submitted,

Lance S. Boozer
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June 21, 2018

RECEIVED

JUN 25 2018

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Justice Jean H. Toal, Presiding Circuit Court Judge

Case No. 2015-CP-08-640

David Leon Stephens, #361522,..Petitioner,

v.

State of South Carolina,..Respondent.

PROOF OF SERVICE

I, Lance S. Boozer, appointed attorney for Petitioner, certify that I have today served within Notice of Appeal upon the Respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Assistant Attorney General Megan Jameson, P.O. Box 11549, Columbia, SC 29211. I further certify that all parties required by Rule to be served have been served this 21st day of June, 2018.

Lance S. Boozer
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT

David Leon Stephens, SCDC No. 361522,) Case No. 2015-CP-08-0640

Applicant,

v.

State of South Carolina,

Respondent.

ORDER GRANTING RESPONDENT'S MOTION TO RECONSIDER, ALTER, OR AMEND PURSUANT TO RULE 59(e), SCRCP AND AMENDING PRIOR ORDER GRANTING POST-CONVICTION RELIEF

FILED
2018 JUN 15 PM 4:55
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

#1
RBT

This matter comes before this Court by way of an application for post-conviction relief filed on March 11, 2015, by David Leon Stephens ("Applicant"). A hearing on this application was held in the Berkeley County Court of Common Pleas before the Honorable Jean H. Toal, former Chief Justice of the South Carolina Supreme Court and acting circuit court judge. By written order filed November 9, 2017, and received by Applicant on November 17, 2017, this Court granted the post-conviction relief, vacated both of Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial, finding plea counsel was ineffective for failing to move for dismissal of Applicant's charges based on a violation of the Interstate Agreement on Detainers Act (the IAD Act).

Thereafter, on November 27, 2017, Respondent filed a Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, asking this Court to reconsider its ruling and deny relief as to one of Applicant's two convictions for second-degree criminal sexual conduct with a minor. On November 28, 2017, Applicant filed a return to this motion, asking this Court to summarily deny Respondent's motion without a hearing.

A hearing on Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule

59(e), SCRCP, was held on April 4, 2018 at the Richland County Courthouse.[1] Applicant was present alongside counsel Boozer. Respondent was present and represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. Following arguments from counsel, this Court grants Respondent's motion to reconsider its previous order and finds as follows:

PROCEDURAL HISTORY

On September 7, 2010, a report was filed with the Berkeley County Sheriff's office in reference to a sexual assault committed by Applicant against the twelve-year-old minor victim. (Arrest Warrant M-333205). On February 16, 2011, the Berkeley County Sheriff's Office sought and obtained a warrant for Applicant's arrest for second-degree criminal sexual conduct with a minor. (Arrest Warrant M-333205). The accompanying affidavit specifically alleged the following:

> That on or between 05/21/10 and 06/17/2010 the defendant did committee the above stated offense in that he did willfully, unlawfully, and feloniously engaged in sexual intercourse with a female victim date of birth 12/30/07, and said offense having occurred at 236 Horseshoe Road, Goose Creek, SC located in the County of Berkeley. Facts to establish the aforesaid: On 09/07/10 a report was filed with the Berkeley County Sheriff's Office in reference to a sexual assault committed by the defendant. The victim was seen at Lowcountry Children Center and disclosed sexual abuse by defendant. The twelve-year old victim disclosed **vaginal/penile intercourse** by the defendant. The victim became pregnant as a result of the sexual assault. The victim knows the defendant by sight and sound. The victim was twelve years old and the defendant was over the age of twenty-one at the time of the sexual assault. The affiant and the victim are witnesses to prove the same.

(Arrest Warrant M-333205) (emphasis added).

On August 22, 2012, Applicant began serving a term of imprisonment within the

[1] By consent of all parties, this hearing was held in Richland County. A scheduling order vesting this Court with jurisdiction to hear this PCR action was signed by the Honorable Donald W. Beatty, Chief Justice of the South Carolina Supreme Court, on March 9, 2018.

#2 JHB

Commonwealth of Pennsylvania Department of Corrections following his guilty plea to "Unsworn Falsifications to Authorities." (Court's Exhibit 1). While incarcerated in Pennsylvania, Applicant became aware of Arrest Warrant M-333205 for second-degree criminal sexual conduct with a minor based on his genital penetration and resulting impregnation of the minor victim. On April 12, 2013, Applicant partially[2] filled out an IAD Act request form, which was forwarded to the Ninth Circuit Solicitor's Office. (Court's Exhibit 1). However, this form was never filed with the Berkeley County Clerk of Court.[3]

On September 18, 2013, Applicant was brought to South Carolina. (Guilty Plea Tr. 18). Shortly thereafter, Applicant was appointed Debra K. Littlejohn, Esquire, to represent him on the charges arising out of the conduct contained within Arrest Warrant M-333205. Littlejohn was aware of the Applicant's request pursuant to the IAD Act and she brought Applicant's IAD Act request for a speedy disposition of his charge to the attention of the State. (Guilty Plea Tr. 13). In response, Anne Williams, the prosecuting Assistant Solicitor, informed Littlejohn that SLED DNA results to determine paternity of the twelve-year-old minor victim's aborted fetus were still pending and she would move for a continuance of the case until such results were obtained.[4] (Guilty Plea Tr. 13-16, PCR Tr. 29, 37). However, the State never sought a continuance.

#3 BBJ

On June 18, 2014, Assistant Solicitor Williams dismissed Arrest Warrant M-333205 and directly presented three new indictments against Applicant based on additional information she

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[2] In Respondent's motion and at the hearing on this motion, Respondent noted that numerous locations on Applicant's IAD Act form are blank and Applicant's signature is not on any of the numerous pages of the form. See Court's Ex. 1.

[3] At the evidentiary hearing, trial counsel Littlejohn testified she was unable to locate a copy of the IAD Act request on file with the Berkeley County Clerk of Court. (PCR Tr. 21). Respondent contacted the Berkeley County Clerk's Office on November 22, 2017, and after a review of the entirety of Applicant's General Sessions files, the Clerk's office confirmed no copy of the IAD Act form was on file.

[4] Results of the paternity test revealed Applicant was the biological father of the twelve-year-old minor victim's aborted fetus. (Guilty Plea Tr. 16; PCR Tr. 16).

gathered during interviews with the minor victim, including additional felonious conduct and a slight variation in the dates the incidents occurred. The three new indictments, all which were true billed by the Berkeley County Grand Jury on May 13, 2014, were as follows: second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644); second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645); and lewd act (2014-GS-08-0646).

On June 19, 2014, Applicant, who had concluded his Pennsylvania sentence, was released on bond on the three indictments.

On September 17, 2014, Applicant appeared in the Berkeley County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge, and pled guilty to second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644) and second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645). At the plea proceeding, the State and Littlejohn both referenced Applicant's IAD Act request and that they were awaiting the SLED DNA results to determine paternity of the aborted fetus before bringing Applicant's case to trial. Pursuant to plea negotiations between Applicant and the State for a sentence cap of fifteen years, Judge Harrington sentenced Applicant to fifteen years imprisonment; the remaining lewd act indictment (2014-GS-08-0646) was dismissed pursuant to the plea agreement. Applicant did not file an appeal.

On March 11, 2015, Applicant filed an application for post-conviction relief alleging a violation of the IAD Act and ineffective assistance of counsel. Respondent made its return on March 28, 2016, requesting an evidentiary hearing be convened on the application. Thereafter, on September 6, 2016, Applicant, though counsel Lance S. Boozer, Esquire, filed an amended

application alleging an additional ground for relief: Applicant's guilty plea counsel was involuntary. An evidentiary hearing was held before this Court on September 16, 2016, in the Berkeley County Court of Common Pleas. Applicant was present and represented by counsel Boozer. Respondent was represented by John Ard, a third-year law student at the Charleston School of Law, practicing under Rule 401, SCACR, and supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office. At the hearing, testimony was taken from Applicant and his former plea counsel, Debra K. Littlejohn, Esquire. At the conclusion of the hearing, this Court took this matter under advisement and requested proposed orders from both parties.

By written order filed November 9, 2017, this Court granted post-conviction relief, finding plea counsel was ineffective for failing to move for dismissal of Applicant's charge based on a violation of the IAD Act. Specifically, this Court found:

#5 [handwritten initials]

> Here, Applicant was deprived of the rare opportunity to have his **charge** dismissed with prejudice due to Counsel's ineffectiveness. This Court is aware that the State could have certainly requested a continuance, however, had Counsel made a motion to dismiss, the burden would have been placed upon the State to show it was "necessary and reasonable" to continue the case. This Court finds Applicant complied with the IAD provisions. This Court finds Counsel's thoughts that the IAD was not properly filed are incorrect. Additionally, this Court finds that Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the **charge** dismissed with prejudice.

(Order Granting PCR 7) (emphasis added). This Court vacated both of Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial.

Thereafter, on November 27, 2017, Respondent filed a Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, asking this Court to reconsider its ruling and deny relief

as to the second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645).

On November 28, 2017, Applicant filed a return to this motion, asking this Court to summarily deny Respondent's motion without a hearing. A hearing on Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, was held on April 4, 2018 at the Richland County Courthouse.

RESPONDENT'S ARGUMENTS IN SUPPORT OF RECONSIDERATION

In its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, Respondent moved for this Court to reverse its earlier decision and deny post-conviction relief as to Applicant's conviction for second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645), asserting this Court improperly vacated both of Applicant's convictions as this Court's ruling that an IAD violation had occurred should only apply to the conviction that was subject to the initial detainer—the second-degree criminal sexual conduct with a minor based on the genital penetration of the minor victim based on Arrest Warrant M-333205 (2014-GS-08-0644). Respondent also argued this Court improperly determined Applicant had properly filed a request for the speedy disposition of his charges within 180 days pursuant to Article III of the IAD Act, although Respondent conceded there was an IAD violation pursuant to Article IV because Applicant was not brought to trial (and the State did not move for a continuance) within 120 days of being brought to South Carolina based on the detainer for Arrest Warrant M-333205. See S.C. Code Ann. § 17-11-10. Respondent's arguments from its motion and as presented at the hearing on said motion are set forth more fully below:

#6
8/18

Inapplicability of Article III of the IAD Act

Although not dispositive on the underlying issue in light of Respondent's concession that there was an IAD violation pursuant to Article IV, Respondent asks this Court to reconsider its finding that "Applicant properly complied with the IAD provisions." Respondent argues Applicant did not properly file a copy of his IAD paperwork with the Berkeley County Clerk of Court as required to avail himself of the benefits and protections of the IAD Act pursuant to Article III.

The IAD Act is a "compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State." New York v. Hill, 528 U.S. 110, 111 (2000) (citations omitted). Critically, the IAD Act was designed to create "cooperative procedures" between the states and the federal government in order to "encourage the expeditious and orderly disposition of" outstanding charges and detainers against prisoners incarcerated in other jurisdiction based on the "uncertainties" caused by such charges and detainers. S.C. Code Ann. § 17-11-10, art. I; see State v. Finley, 277 S.C. 548, 550, 290 S.E.2d 808, 809 (1982) ("The purpose of I.A.D. is to foster the expeditious disposition of charges outstanding against prisoners so as to eliminate uncertainties which accompany the filing of detainers.").

#7 881

Based on the IAD Act, two distinct deadlines are imposed upon the State after a detainer against a defendant held in another jurisdiction is filed—a 180-day deadline and a 120-day deadline. See S.C. Code Ann. § 17-11-10, art. III(a) (setting out a 180-day deadline for the commencement of trial); S.C. Code Ann. § 17-11-10, art. IV(c) (setting out a 120-day deadline for the commencement of trial). Specifically, when a defendant files a request complying with

the IAD Act's requirements[5] for final disposition in connection to a filed detainer, the defendant "shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint." S.C. Code Ann. § 17-11-10, art. III(a). Likewise, "trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving state" when a defendant is transferred pursuant to a detainer regardless of whether the defendant ever requested final disposition. S.C. Code Ann. § 17-11-10, art. IV(c). Ordinarily, if a defendant is not brought to trial within the applicable statutory period, the IAD Act requires the trial judge to dismiss the pending indictment, information, or complaint with prejudice. S.C. Code Ann. § 17-11-10, art. V(c).

Respondent argues Applicant did not properly comply with the IAD Act's requirements because he did not properly file or otherwise cause to be delivered a copy of his IAD Act request with the Berkeley County Clerk of Court and significant portions of his form were not completed (including a lack of his signature anywhere on the form). Because he did not comply with those express requirements, Respondent asserts the IAD Act's 180-day deadline was not triggered and did not begin to run. See State v. Johnson, 278 S.C. 668, 671, 301 S.E.2d 138, 140 (1983) ("We hold appellant's letter did not comply with the IAD requirements and thus did not trigger the running of one hundred eighty day period during which a prisoner must be brought to trial under

#8
8/8

[5] Regarding the IAD Act's requirements, the defendant must have written notice of the place of his imprisonment and his request for a final disposition delivered to both the prosecuting officer **and** "the appropriate court of the prosecuting officer's jurisdiction." S.C. Code Ann. § 17-11-10, art. III(a). Significantly, if the defendant fails to comply with those express requirements, the IAD Act's 180-day deadline will **not** be triggered and will **not** begin to run. See State v. Johnson, 278 S.C. 668, 671, 301 S.E.2d 138, 140 (1983) ("We hold appellant's letter did not comply with the IAD requirements and thus did not trigger the running of one hundred eighty day period during which a prisoner must be brought to trial under Article III of the IAD.").

Article III of the IAD."). Therefore, Respondent argues Applicant's partially filled-out IAD Act request form, dated April 12, 2013, did not trigger the IAD Act's 180-day deadline and requests this Court alter its ruling finding Applicant was entitled to relief pursuant to Article III of the IAD Act. However, as discussed below, Respondent concedes there was an IAD Act violation pursuant to Article IV.

This Court erred in dismissing both of Applicant's Convictions

Despite Respondent's argument Applicant did not properly comply with the express requirements of the IAD Act to avail himself of the benefit of the Act pursuant to Article III, Respondent concedes Applicant was delivered to South Carolina on September 18, 2013, thereby triggering the 120-day timeline pursuant to S.C. Code Ann. § 17-11-10, art. IV(c), as to the second-degree criminal sexual conduct with a minor charge based on genital intercourse with the minor victim for which Arrest Warrant M-333205 was issued and for which the State lodged a detainer against Applicant (2014-GS-08-0644).

Importantly though, Respondent argues any grant of relief based on an IAD Act violation should only apply to the second-degree criminal sexual conduct with a minor charge for Applicant's genital penetration of minor victim based on the information contained in Arrest Warrant M-333205 (2014-GS-08-0644) and not the other, unrelated second-degree criminal sexual conduct with a minor charge based on Applicant's digital penetration of minor victim that was indicted in 2014 (2014-GS-08-0645) or the lewd act indictment (2014-GS-08-0646) that was dismissed pursuant to the plea agreement entered into between Applicant and the State. Respondent argues the two separate charges are based on conduct separate and apart from the conduct giving rise to the charge upon which Arrest Warrant M-333205—the basis for the detainer lodged against Applicant—was founded.

Applicant was not made aware of these two additional charges until after he was directly indicted for both on May 13, 2014, well after he was brought to the state pursuant to the IAD Act (and in fact, after he had completed serving his sentence on the Pennsylvania charges). See Court's Exhibit 1 listing Applicant's parole eligibility as "2/23/13" and maximum expiration of the present sentence as "5/23/14" for the Pennsylvania charge. Therefore, Respondent argues the IAD Act is inapplicable to these two charges and any purported violation should not result in the dismissal of these charges (the other second-degree criminal sexual conduct with a minor charge and the lewd act charge).

In support of this argument, Respondent cites to the following language from the IAD Act:

> The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.

S.C. Code Ann. § 17-11-10, Art. V(d). Respondent argues the plain reading of Article V(d) makes it clear the IAD Act only applies to the charge or charges subject to the detainer, which in the present case, would only be the second-degree criminal sexual conduct with a minor charge for Applicant's genital penetration of minor victim based on the information contained in Arrest Warrant M-333205.

Beyond the plain language in the IAD Act, Respondent argues numerous other jurisdictions have interpreted the IAD Act in a similar manner. See United States v. Sanders, 669 F.2d 609, 610 (9th Cir. 1982) (holding, without discussion, that where a one-count complaint, upon which the detainer was based, was dismissed for failure to comply with the prescribed time

period and a new complaint was filed containing the dismissed count and two new but related counts, the trial court properly dismissed only the original count); Espinoza v. State, 949 S.W.2d 10, 12 (Tex. App. 1997) (noting that "[b]y its terms, [the IAD] limits dismissal to a charge forming the basis of the detainer" and holding that conviction, even though on a related charge, was not on the charge on which the detainer was lodged; Commonwealth v. Boyd, 451 Pa. Super. 404, 679 A.2d 1284, 1287 (1996) (holding that speedy trial provisions of IAD did not apply where charges for which detainer was lodged were "separate and apart" from new charges that were subject of conviction); People v. Greenwald, 704 P.2d 312 (Colo.1985) (holding statute requiring trial within 120 days of defendant's return to state relates only to the charges underlying the detainer by which state secured temporary custody of prisoner incarcerated in another state); People v. Oiknine, 79 Cal. App. 4th 21, 93 Cal. Rptr. 2d 720 (1999) (holding although a dismissal with prejudice of the five counts from the original complaint satisfied the requirements of the IAD, nothing in the IAD suggests that new charges, which were not specified in the detainer, can or should be dismissed along with the older charges that were listed in the detainer).

#11 8B1

Respondent argues the IAD Act is only applicable to the second-degree criminal sexual conduct with a minor charge for Applicant's genital penetration of minor victim based on the information contained in Arrest Warrant M-333205 (2014-GS-08-0644), as it was the only known conduct at the time the detainer was issued against Applicant. Therefore, Respondent asks this Court to reconsider its ruling and deny Applicant relief on his convictions for the unrelated second-degree criminal sexual conduct with a minor conviction based on Applicant's digital penetration of the minor victim (2014-GS-08-0645).

APPLICANT'S RESPONSE TO RESPONDENT'S MOTION FOR RECONSIDERATION

In its reply, Applicant argues this Court's order granting post-conviction relief contained the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRCP, and this Court properly ruled on all issues presented at the post-conviction relief hearing.

At the hearing, Applicant argued the arguments set forth in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, were contradictory to the position previously taken by Respondent and that Respondent should be foreclosed from making any different or new arguments. When questioned by this Court as to whether the provisions of the IAD Act or its applicability to both of the charges was addressed fully, Applicant conceded that neither party had addressed this issue at the hearing and the issue was not addressed in this Court's order granting post-conviction relief.

#12 8/85

SUMMARY OF ARGUMENTS PRESENTED AT THE HEARING

At the hearing, Respondent argued the positions as set forth in its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP. In reply, Applicant argued the arguments set for in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, were contradictory to the position previously taken by Respondent and that Respondent should be foreclosed from making any different or new arguments. When questioned by this Court as to whether the provisions of the IAD Act or its applicability to both of the charges were addressed fully, Applicant conceded these specific issues were not addressed in this Court's order granting post-conviction relief.

In reply, Respondent argued it had not taken a contradictory position, as it always argued the IAD Act was inapplicable to the new indictments issued after Applicant was brought to South Carolina.

GRANT OF RECONSIDERATION AND AMENED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

After reviewing the records and arguments presented in this case, this Court grants Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, and finds as follows:

#13 JWB

Respondent's Arguments in Support of Reconsideration are Properly Before this Court

As an initial matter, this Court finds the arguments presented by Respondent are not contradictory or new and, therefore, are properly before this Court. This Court is mindful that new issues cannot be presented to the court for the first time in a motion to reconsider. See Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (recognizing that an issue may not be raised for the first time in a motion to reconsider). However, this Court finds the issues raised in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, were raised to this Court at the evidentiary hearing. The record establishes that Respondent has consistently argued any purported IAD Act violation would not apply to new indictments issued after Applicant was brought to South Carolina, including second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645). See PCR Tr. 42 ("[W]here it comes down to, the solicitor dismissed those charges in accord with, you know, her rightful authority to do so, and at that point, the IAD issue has no bearing on this case and there is no prejudice on behalf of the defendant."). Additionally, there is conflicting testimony and argument from Applicant as to whether any IAD violation would

impact both of his convictions, as Applicant argues any violation would apply to his single conviction or both convictions, as evidenced by his interchangeable use of "charge" and "charges" throughout the evidentiary hearing. See e.g. PCR Tr. 13, 41-42. Furthermore, the witnesses were questioned as to whether any IAD Act violation would apply to the new indictments obtained after Applicant was delivered to South Carolina. See e.g. PCR Tr. 22-23, 25, 38. Clearly, these arguments and issues were raised to this Court prior to Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP.

Moreover, this Court finds its previous order did not address the particular provisions of the IAD Act or its applicability to the specific convictions subject to this application—second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644), second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645), as well as the dismissed lewd act indictment (2014-GS-08-0646). Therefore, it was imperative that Respondent file a motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCP. "Upon reaching a decision, a post-conviction relief court is required to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented" in a PCR application, including whether the applicant satisfied his burden as to each prong of the Strickland test described above." Tappeiner v. State, 416 S.C. 239, 249 n.5, 785 S.E.2d 471, 476 n.5 (2016) (citing S.C. Code Ann. § 17–27–80; Marlar v. State, 375 S.C. 407, 408, 653 S.E.2d 266, 266 (2007)). As our Supreme Court noted in Marlar,

> We take this opportunity to reiterate our admonition that "[c]ounsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the

order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by 17-27-80 and Rule 52(a), SCRCP.

Marlar, 375 S.C. at 410, 653 S.E.2d at 267 (citing Pruitt v. State, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992)). Because this Court's previous order did not address the particular provisions of the IAD Act or its applicability to the specific convictions subject to this application, Respondent properly filed the necessary motion asking this Court to address these issues.

An IAD Violation warrants the dismissal of the Second-Degree Criminal Sexual Conduct with a Minor Conviction Based on Genital Penetration

#15 8/07

In its previous order, this Court found plea counsel Littlejohn was ineffective for failing to motion or request for the dismissal of Applicant's charge based on an IAD violation. (Order Granting PCR 6). This Court found, "Applicant was deprived of the rare opportunity to have his **charge** dismissed with prejudice due to Counsel's ineffectiveness. . . . [T]his Court finds that Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the **charge** dismissed with prejudice." (Order Granting PCR 6).

This Court reaffirms it prior ruling that Applicant was not brought to trial within the timelines proscribed by the IAD Act. This Court previously determined Applicant properly complied with the requirements of the IAD and therefore was entitled to a dismissal of his charges pursuant to Article III when he was not brought to trial within 180 days of delivery of his IAD form to the Ninth Circuit Solicitor's Office. Respondent argues Applicant did not properly comply with the requirements as set forth in Article III, but concedes there was an IAD Act violation pursuant to Article IV when Applicant was not brought to trial within 120 days of his delivery to South Carolina based on the detainer for Warrant M-333205 pursuant to Article IV.

Regardless of whether Article III or Article IV of the IAD Act controls, this Court finds, and Respondent concedes, a violation of the IAD Act warranted dismissal of the charge upon which the detained was based—the conduct outlined in Warrant M-333205—the second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644). This Court finds counsel was ineffective to move for dismissal of his he second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644) based on this IAD Act violation. Because the IAD Act violation warranted dismissal of the second-degree criminal sexual conduct with a minor indictment based on genital penetration of the minor victim (2014-GS-08-0644), this Court finds that this conviction must be reversed and this indictment must be dismissed with prejudice.

#16

The Lewd Act Indictment is Dismissed with Prejudice

This Court finds Applicant's indictment for lewd act (2014-GS-08-0646) must also be dismissed with prejudice and cannot be revived by the State. The lewd act indictment was dismissed pursuant to a plea agreement entered into between Applicant and the State, and therefore, this Court finds this dismissal is final and with prejudice.

Applicant has failed to establish he is entitled to relief as to the surviving second-degree criminal sexual conduct with a minor conviction based on his digital penetration of the minor victim (2015-GS-08-0645)

This Court finds Applicant's conviction for second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2015-GS-08-0645) was separate and independent from the conduct upon which the detainer was based (as set forth in Warrant M-333205), and therefore, the IAD Act violation does not impact this conviction. <u>See</u> S.C. Code Ann. § 17-11-10, Art. V (d) ("The temporary custody referred to in this agreement shall be **<u>only</u>** for the purpose of permitting prosecution on the charge or charges contained in one or more

untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.") (emphasis added). As there was no IAD Act violation as to this charge, this Court finds plea counsel was not ineffective for failing to move for dismissal of this charge.

Moreover, this Court finds Applicant has failed to establish any ineffectiveness of counsel relating to this conviction.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her 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 [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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 Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58 (1985). In the guilty plea context, the inquiry with respect to the counsel's alleged deficiency turns on whether the plea was voluntarily, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). Furthermore, "[t]he second, or 'prejudice,' requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. at 59. Therefore,

> A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.

Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citations omitted). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558,

640 S.E.2d 884, 886 (2007) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

Here, the record establishes Applicant's guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) was voluntarily, knowingly, and intelligently entered. The plea court engaged in a thorough plea colloquy with Applicant, during which it reviewed the possible punishments and the plea negotiations entered into between Applicant and the State (Plea Tr. 5-6). The plea court also reviewed the classifications of each offense (Plea Tr. 7-9), and advised Applicant he should expect to serve the entirety of his sentence day-for-day. (Plea Tr. 8). The plea court advised Applicant he would be placed on the sex offender registry for life, followed by Applicant's affirmation that he still wished to plead guilty. (Plea Tr. 9). Applicant told the court he had not been promised anything or threatened to induce his guilty plea and that it was solely his decision to plead guilty. (Plea Tr. 10). Applicant told the court he was satisfied with the services of counsel. (Plea Tr. 10). The plea court reviewed all of Applicant's constitutional rights and Applicant stated he wished to waive these rights and plead guilty. (Plea Tr. 10-11). Applicant admitted to the conduct giving rise to these indictments, including the digital penetration of the minor victim and the sexual intercourse with the minor victim. (Plea Tr. 11-12, 14-16). Following the State's recitation of the facts, Applicant told the plea court the facts as presented were accurate. (Plea Tr. 17). Following mitigation from counsel, Applicant addressed the court, wherein he apologized to the victims, admitted to his conduct, and asked the plea court to be as lenient as possible. (Plea T. 20-23).

At the evidentiary hearing, Applicant's only complaints about counsel's performance were that she failed to move for dismissal pursuant to the IAD Act and she failed to speak on his behalf. (PCR Tr. 5-15).

This Court finds Applicant has not met this requisite burden of proof of establishing counsel was ineffective or that his guilty plea was involuntary. The guilty plea transcript shows Applicant voluntarily, knowingly, and intelligently entered his guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645). As discussed previously, any allegation that counsel was ineffective for failing to move for dismissal based on an IAD Act violation pertaining to the second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) is without merit, as the IAD Act is not implicated by this conviction. Additionally, Applicant's claim that counsel failed to speak on his behalf is clearly refuted by the record, as counsel presented arguments in mitigation on Applicant's behalf. (Plea Tr. 20-22). Accordingly, this Court finds Applicant voluntarily, knowingly, and intelligently entered his guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) and Applicant has failed to establish any ineffectiveness of counsel as to this conviction.

CONCLUSION

Based on all the foregoing, this Court grants Respondent's motion to reconsider, alter, or amend its previous order granting post-conviction relief pursuant to Rule 59(e), SCRCP, and substitutes this order in placed of its previously issued order. This Court finds Applicant is entitled to post-conviction relief and the dismissal of his conviction for second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-

0644) based on a violation of the IAD Act. Additionally, this Court finds Applicant's indictment for lewd act (2014-GS-08-0646) that was dismissed pursuant to Applicant's plea has been dismissed with prejudice and cannot be revived by the State. Moreover, this Court finds Applicant's conviction for second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645) was not affected by any IAD Act violation and denied post-conviction relief as to this conviction.

This Court notes either party wishing to secure appellate review of this Order must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Respondent's motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCP is granted;

2. This Order is substituted for this Court's prior order granting post-conviction relief;

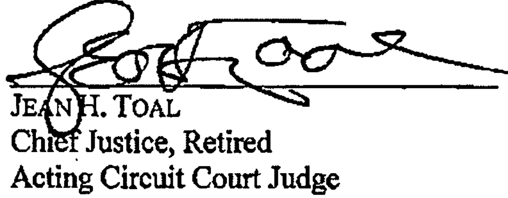
3. Post-conviction relief is **granted** and Applicant's conviction and sentence for **second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644) is dismissed with prejudice** based on a violation of the IAD Act;

4. The dismissal of Applicant's lewd act indictment (2014-GS-08-0646) is with prejudice and cannot be revived by the State;

5. Post-conviction relief is **denied as to second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645)**;

6. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 12th day of June, 2018.



JEAN H. TOAL
Chief Justice, Retired
Acting Circuit Court Judge

Columbia, South Carolina

#22

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
David Leon Stephens, #361522,	)	2015-CP-08-0640
Applicant,	)	
v.	)	ORDER GRANTING PCR
State of South Carolina,	)	
Respondent.	)	

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MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 11, 2015. Respondent made its Return on March 28, 2016. An evidentiary hearing into the matter was convened on September 16, 2016 at the Berkeley County Courthouse. Lance S. Boozer, Esquire represented Applicant. Jonathan S. Arndt, a third-year law student at the Charleston School of Law under the South Carolina Supreme Court Rule 401 (Student Practice Rule), under the supervision of J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

#1

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2014 term of the Berkeley County Grand Jury for two counts of Criminal Sexual Conduct with a minor (CSC), 2nd degree (2014-GS-08-0644, -645).[1] The Applicant was represented by Debra K. Littlejohn, Esquire ("Counsel").

On September 17, 2014, the Applicant pled guilty as indicted. The Applicant was sentenced

[1] Applicant was originally charged with Criminal Sexual Conduct, with a minor, 2nd Degree. Applicant was served with this warrant on or about September 19, 2013. The disposition of this charge is discussed further below.

by the Honorable Kristi Lea Harrington to confinement for a period of fifteen years. The Applicant did not appeal his conviction or sentence.

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

1. "Constitutional rights were violated due to violation of my IAD which was dismissed when they brought these charges on me"
    a. "I was expedited here on a (IAD) signed in April, 2013; which expired in October, 2013 and didn't have court until Nov. 2013"
2. "Public Defender said I'm going to let my client speak for himself"
    a. "My public Defender did not speak on my behalf in pleading my case"
3. "Held in custody 7 months on a charge that was supposed to be dismissed in Oct. 2013 until evidence was found to charge me with these charges."
    a. "After I was charged with these crimes my charge I sat in jail for 7 months after violation of my IAD was dismissed"

At the evidentiary hearing, Applicant testified on his own behalf. Debra K. Littlejohn, Esquire also testified. This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

STANDARD OF REVIEW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 268 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is reasonable probably that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Based on the record and testimony presented at the PCR hearing, this Court finds Applicant has met his burden of proof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Ineffective Assistance of Counsel

At the evidentiary hearing, Applicant alleged and testified Counsel failed to file a motion

and/or otherwise request from the court that his charges be dismissed for failing to abide by the Interstate Agreement on Detainer (IAD). Applicant also alleged Counsel failed to speak on his behalf. Applicant testified he was previously incarcerated in a Pennsylvania correctional facility. Upon notice that he was being sought in connection with the CSC, 2nd degree, referenced in footnote 1 above, Applicant testified and the plea transcript reflects he waived extradition to South Carolina in or around September 2012. Plea tr. p. 12, ll. 5-10. Applicant testified and the plea transcript further reflects, that in April 2013, Applicant completed and submitted the IAD forms. Plea. tr. p. 12, ll. 11-16. Applicant further testified he submitted the IAD request in order to seek disposition of the charge within 180 days and believed that deadline would have expired sometime in October 2013. Applicant testified he was not delivered to South Carolina until September 2013.

#4 Applicant also testified that he requested that Counsel file for a dismissal of the charge based on an IAD violation. Applicant testified counsel indicated she would look into it but never pursued any such motion or request to have the charge dismissed based on an IAD violation. Applicant indicated he remained in custody and, eventually, the State realized there was an error in the original warrant for CSC, 2nd degree, and directly indicted the Applicant for three (3) counts of CSC, 2nd degree. Applicant testified he then proceeded to plead guilty because he felt he had been "railroaded."

Counsel testified she first began representing the Applicant in October 2013, shortly after his arrival to Berkeley County from Pennsylvania. She recalled discussing Applicant's concern that he felt there was an IAD violation. Counsel further testified that she was not very familiar with IAD requests and asked other attorneys in her office about the issue and conducted legal research. She also testified she attempted to locate a copy of the IAD in the Berkeley County Clerk

of Court's file, however, she could not locate where it had been delivered to the County. She did not believe that the Applicant had properly complied with all parts of the IAD such as obtaining or requesting a certified delivery receipt.

On cross-examination and upon questioning by this Court, Counsel acknowledged that the Applicant arrived in South Carolina in September 2013. When shown a copy of the plea transcript, Counsel admitted that it appeared that the Solicitor was on notice of the Applicant's IAD submission and he was in fact in Berkeley County pursuant to the IAD request and the completed IAD form was provided to the plea court. Counsel testified she should have pursued a request for dismissal of the charge due to an IAD violation but believed the Solicitor would have requested a continuance.

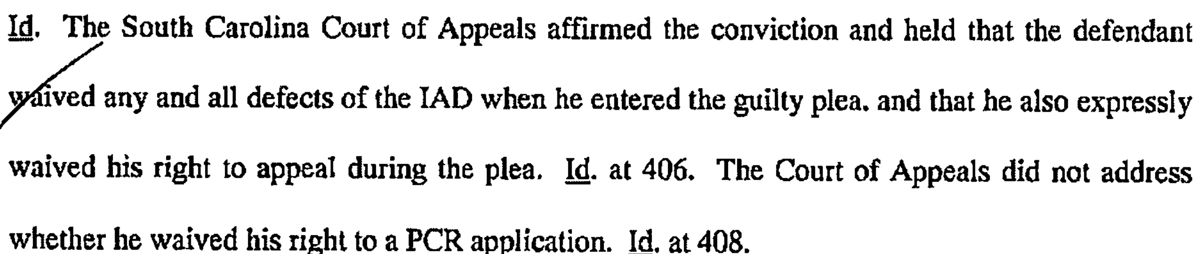
#5

The IAD is an interstate compact by which the states, the District of Columbia, and the Federal Government have established uniform procedures for the transfer of prisoners serving sentences in one state to another state for the disposition of pending charges, South Carolina enacted the IAD into law in 1962. S.C. Code Ann. 17-11-10 (2006). Article III(a) of the IAD requires that a defendant "be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition the made..." Article III(d) further provides that if a defendant is not tried within this timeframe, the charge will be dismissed with prejudice, however, the court may grant a continuance upon request.

Violations of the IAD do not amount to constitutional violations warranting the application of a dismissal. See State v. Tucker, 376 S.C. 412, 416–17, 656 S.E.2d 403, 405–06 (Ct. App. 2008). Additionally, "[g]uilty pleas 'generally act as a waiver of all non-jurisdictional defects and

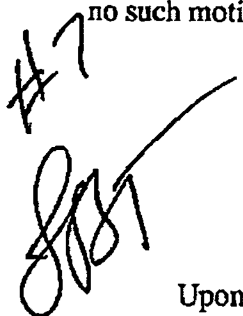
defenses.'" Id. (quoting State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000)); see also State v. Deaner, No. 2011-UP-472, 2011 WL 11735733, at 1 (S.C. Ct. App. Oct. 26, 2011) (holding that by proceeding with a voluntary guilty plea the defendant implicitly waived any challenges to his conviction based on violations under the IAD).

In Tucker, the defendant, through counsel, made a motion to dismiss his charges due to an IAD violation. Id. at 405. The court denied defendant's motion. Id. The defendant then entered a guilty plea and expressly waived his right to appeal the court's ruling on the IAD motion and also to file a PCR application. Id. Subsequently, the defendant filed a direct appeal alleging the court erred in ruling on the IAD violation and his plea and conviction should have been vacated. Id. The South Carolina Court of Appeals affirmed the conviction and held that the defendant waived any and all defects of the IAD when he entered the guilty plea. and that he also expressly waived his right to appeal during the plea. Id. at 406. The Court of Appeals did not address whether he waived his right to a PCR application. Id. at 408.



Applicant's case is distinguishable from Tucker. Specifically, in Tucker, the defendant actually made a request to dismiss his charge due to an IAD violation, however, that request was denied. The defendant attempted to challenge the court's ruling through a direct appeal. In Applicant's case, he was not even afforded the opportunity to request that his charge be dismissed when there was actually an IAD violation. He testified at the PCR hearing that he requested his Counsel raise the IAD violation, however, she did not. Counsel confirmed she did not make a motion or request for dismissal of Applicant's charge. This Court finds Counsel was ineffective for failing to do so. Furthermore and unlike the defendant in Tucker, Applicant did not file a direct appeal but rather a PCR application alleging his Counsel was ineffective for failing to pursue dismissal of his charge, rendering his guilty plea involuntary.

The "statutory right to dismissal due to an administrative violation of these [IAD] rules is therefore not "'fundamental,' even though its impact on a defendant may be great." U.S. v. Palmer, 574 F.2d 164, 167 (3rd Cir. 1978). Here, Applicant was deprived of the rare opportunity to have his charge dismissed with prejudice due to Counsel's ineffectiveness. This Court is aware that the State could have certainly requested a continuance, however, had Counsel made a motion to dismiss, the burden would have then been placed on the State to show it was "necessary and reasonable" to continue to the case. This Court finds Applicant complied with the IAD provisions. This Court finds Counsel's thoughts that the IAD was not properly filed are incorrect. Additionally, this Court finds that the Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the charge dismissed with prejudice. The record and Counsel's testimony reflects no such motion or request was made.



CONCLUSION

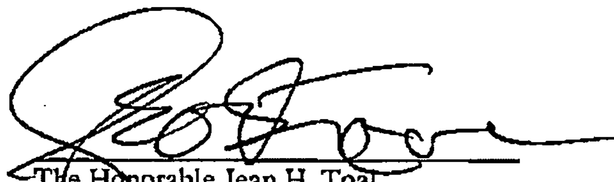
Upon review of the entire record, including the Applicant's IAD request that was made a part of the PCR hearing record, this Court finds Applicant has met his burden of proof that counsel was ineffective for failing to pursue dismissal of the charge, rendering his guilty plea involuntary. Accordingly, this Application for PCR must be granted.

IT IS THEREFORE ORDERED:

1. That the Application for PCR is granted;
2. Applicant's convictions are vacated and sentence reversed;
3. Applicant be remanded to the custody of Berkeley County; and

4. Applicant receive a new trial.

AND IT IS SO ORDERED this 18th day of Oct., ~~2016.~~ 2017



The Honorable Jean H. Toal
Presiding Judge
Ninth Judicial Circuit

2758

#8

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY David Leon Stephens, Plaintiff(s), -vs- State of South Carolina, Defendant(s).	)	IN THE COURT OF COMMON PLEAS 9th JUDICIAL CIRCUIT CASE NO.: 2015CP0800640 APPOINTMENT OF COUNSEL OR GAL *(Select one.)* ☒ ORDER ☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: *(Check one.)*

☐ Post-Conviction Relief (PCR)/habeas case ☐ Adoption ☐ Juvenile
☐ SVP case ☐ Custody and/or Visitation ☐ Abuse and Neglect
☐ Minor Name Change ☒ Other: Post Convict Rel 500

It appears David Leon Stephens, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: *(Select only one.)*

☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.

☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:

☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.

☐ court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.

☐ Other: .

Therefore, it is ordered that Lance Boozer hereby is appointed as *(Select one.)*

☒ counsel ☐ lead counsel *(if capital PCR case)* ☐ guardian ad litem

for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

2015 MAY -5 AM 11: 29

FILED

☐ *(If Death Penalty PCR Case)* It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
May 5, 2015

Mary P Brown
☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

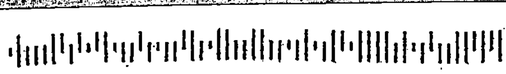
Lance Boozer	
807 Gervais Street, Ste 203	
Columbia, SC 29201	

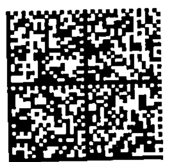
Defendant Attorney:

James Rutledge Johnson	
Post Conviction Relief Section	
P.O. Box 11549	
Columbia, SC 29211-1549	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CP20 (08/08)
SCCA/267 (03/07)





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The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
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