

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Pickens County

Honorable Daniel D. Hall, Circuit Court Judge

JOHN ADRIAN ZIEGLAR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000482

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	
State of South Carolina	)	
	)	
v.	)	Case No. 14-GS-39-0087 et al
	)	
John Adrian Ziegler,	)	
	)	
Defendant	)	

TRANSCRIPT OF GUILTY PLEA

The within hearing in the above-captioned matter was held on August 24, 2015, before The Honorable Perry H. Gravely in Courtroom 3 of the Pickens County Court of General Sessions, attended by counsel as follows:

APPEARANCES:

Graham Buckner, Assistant Solicitor
Appearing for State of South Carolina

John DeJong, Esq.
Pickens County Public Defender
Appearing for Defendant

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Case No. 14-GS-39-0087

GUILTY PLEA HEARING of August 24, 2015

Before The Honorable Perry H. Gravely

1

(DEFENDANT PRESENT)

2

(JURY QUALIFICATION & SELECTION)

3

(LUNCH RECESS)

4

(PRETRIAL MOTIONS)

5

(BRIEF RECESS)

6

(DEFENDANT PRESENT)

7

JOHN DEJONG: Your Honor, may we

8

approach?

9

THE COURT: Yes, sir.

10

(OFF RECORD BENCH CONFERENCE)

11

THE COURT: I'll give you a few

12

minutes.

13

(BRIEF RECESS)

14

(DEFENDANT PRESENT)

15

THE COURT: I understand that

16

y'all have worked some things out.

17

JOHN DEJONG: Your Honor, my client

18

has shared with me that he wishes to plead

19

guilty, Your Honor. But not as far as with

20

any negotiation, to be candid with the court.

21

THE COURT: All right.

22

CLERK: This is Indictment 14-GS-

23

39-0087, the State versus John Adrian

24

Ziegler, an indictment for kidnapping;

25

Indictment 14-GS-39-0088, an

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1 indictment for assault and battery third
2 degree; and

3 Indictment 140GS-39-0089, an
4 indictment for pointing and presenting a
5 firearm.

6 (WHEREUPON DEFENDANT SWORN)

7 THE COURT: Are you John Ziegler?

8 DEFENDANT: Yes, sir.

9 THE COURT: I need to get some
10 personal information from you. How old are
11 you, Mr. Ziegler?

12 DEFENDANT: Thirty-eight (38)
13 years old.

14 THE COURT: How far did you go in
15 school?

16 DEFENDANT: I graduated and one
17 year of technical college.

18 THE COURT: Where is the last
19 place that you were employed?

20 DEFENDANT: TrueBlue Staffing in
21 Greenville.

22 THE COURT: When was that?

23 DEFENDANT: Right before I got
24 locked up.

25 THE COURT: When was that?

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1 JOHN DEJONG: November 28th, 2013.

2 DEFENDANT: Around October.

3 THE COURT: Okay. Now, you've
4 been represented by Mr. DeJong of the Public
5 Defenders Office.

6 I know that this case has gone --
7 it's been up for trial on a couple of
8 occasions and so forth; so you've had
9 sufficient time to talk with Mr. DeJong at
10 several points throughout this process,
11 haven't you?

12 DEFENDANT: Yes, I have. I have
13 had time to talk to him. But like I told
14 you, I gave you what I have to tell you.

15 THE COURT: Right. I understand
16 that.

17 DEFENDANT: Yes, sir.

18 THE COURT: And in addition to
19 that, you've had sufficient time to talk to
20 him today and -- in particular in relation to
21 the plea which you're entering into now? In
22 fact, I sent word for y'all to take all the
23 time -- enough time to be sure that all your
24 questions were answered by Mr. DeJong. Do
25 you feel like you've had sufficient time to

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1 talk with him this afternoon before going
2 forward with this plea?

3 DEFENDANT: Yes, sir.

4 THE COURT: I know you've
5 indicated some issues that you had about some
6 of the discovery and so forth, but other than
7 those issues do you have any other complaints
8 about Mr. DeJong or anybody in his office?

9 DEFENDANT: No, sir.

10 THE COURT: Are you under the
11 influence of any alcohol or drugs or
12 anything?

13 DEFENDANT: No, sir.

14 THE COURT: I've seen people in
15 jail that was had gotten something -- that's
16 just a question that I ask everybody.

17 DEFENDANT: Yeah. That's not --
18 no problem. I just kinda smiled because it's
19 kinda funny.

20 THE COURT: I know. I get lots
21 of smiles when I ask that question.

22 Now, you got the -- you understand
23 the charges? You have assault and battery
24 third degree, you have kidnaping and you have
25 pointing-and-presenting a firearm. All of

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1 these matters were indicted by the grand
2 jury. Do you understand each of these
3 charges?

4 DEFENDANT: Yes, sir, I do.

5 THE COURT: On the assault and
6 battery third degree, it's up to thirty days.
7 Kidnaping, up to thirty years.

8 Pointing and presenting a firearm,
9 up to five years.

10 Do you understand that would be the
11 maximum on each of those?

12 DEFENDANT: Yes, sir.

13 THE COURT: Okay. I'll go into
14 any negotiations or discussions but basically
15 you understand all that?

16 DEFENDANT: (Affirmative nod).

17 THE COURT: How do you wish to
18 plead to each of these charges?

19 DEFENDANT: I plead guilty.

20 THE COURT: To each of them:
21 assault and battery, kidnaping and pointing-
22 and-presenting a firearm?

23 DEFENDANT: Yes, sir.

24 THE COURT: You are pleading
25 guilty because you are guilty of these

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1 charges?

2 DEFENDANT: Yeah.

3 THE COURT: All right. Now, has
4 anybody -- and, again, I will hear -- is
5 there going to be a recommendation?

6 SOLICITOR BUCKNER: No, Your
7 Honor.

8 THE COURT: All right. Has
9 anybody promised you anything to plead
10 guilty?

11 DEFENDANT: Naw.

12 THE COURT: Has anybody threatened
13 you to plead guilty?

14 DEFENDANT: Naw. No.

15 THE COURT: Okay. Are you
16 pleading guilty freely and voluntarily?

17 DEFENDANT: Yes.

18 THE COURT: Now, as I indicated,
19 the grand jury has issued indictments by true
20 bill to all three of these.

21 In addition, by pleading guilty,
22 you're giving up certain rights that you
23 have. One of them is the right to a jury
24 trial. In fact, we kinda started that
25 process, as you well know. If you did not

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1 proceed with this plea here, we could start
2 the trial. But do you understand that by
3 pleading guilty that you're waiving that
4 right?

5 DEFENDANT: Yes, sir.

6 THE COURT: Okay. You also have a
7 right to make the State prove its case
8 against you beyond a reasonable doubt on each
9 element of each charge; do you understand
10 that?

11 DEFENDANT: Yes, sir.

12 THE COURT: And up to that point,
13 until they have met that burden, you are
14 presumed to be innocent until they prove you
15 guilty; do you understand that?

16 DEFENDANT: Yes, sir.

17 THE COURT: You have a right to
18 confront any witnesses presented by the
19 State, you have a right to examine any of
20 their witnesses and their evidence.

21 You have the right to present your
22 own evidence and witnesses.

23 Do you understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: And you have the right

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1 to remain silent. If we had gone forward
2 with this trial -- and I'll hear your
3 background in a minute, -- you had a right to
4 remain silent and that would have been with
5 you throughout the duration of a trial. That
6 means that you would not be required to
7 testify and that that could not be used
8 against you. In fact, I would tell the jury
9 that they could not consider the fact of
10 whether you testified or not against you.
11 You realize that you do have that right?

12 DEFENDANT: Yes, sir.

13 THE COURT: And you understand
14 each of these rights that I've told you?

15 DEFENDANT: (Affirmative nod).

16 THE COURT: Okay. And you realize
17 that you're pleading guilty by giving these
18 rights up here this afternoon?

19 DEFENDANT: Yes, sir.

20 THE COURT: All right. The way
21 that I do this is that I will listen to the
22 Solicitor and then I'll come back and hear
23 from your attorney and hear from you. We
24 will also need to hear from the victim if the
25 victim wants to say anything. Regardless of

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1 all that, you're the last person that I want
2 to hear from because I want to give you a
3 chance to tell me anything that you want to
4 tell me. Okay?

5 DEFENDANT: Okay.

6 THE COURT: That's just the order
7 that I go in. All right. Solicitor?

8 SOLICITOR BUCKNER: Thank you,
9 Judge. As to the facts, I know you heard a
10 version of the facts during the pretrial
11 Motions, Your Honor.

12 On November 27th of 2013, the
13 defendant, who is the victim's stepcousin
14 became angry with the victim for being on the
15 phone at the Pickens County residence that
16 they share in Easley.

17 When the victim tried to leave with
18 her son, the defendant followed them outside
19 and actually bit the victim on the arm,
20 causing some bruising. He then forced her
21 back into the residence.

22 She sat down on the couch and he
23 pointed a firearm at her head and threatened
24 to kill her at that point, Your Honor.

25 Those are the facts.

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1 Judge, he does have a prior record,
2 if you would like for me to go into that.

3 THE COURT: Yes. What is the
4 prior record?

5 SOLICITOR BUCKNER: Your Honor,
6 out of Georgia, he's got a 1995 false
7 information to police and an assault and
8 battery third; as well as a 1999 simple
9 possession of marijuana; a 2007 possession
10 of a weapon while committing a felony,
11 possession with intent to distribute a
12 controlled substance and an obstructing law
13 enforcement charge.

14 Your Honor, he also has -- and we
15 referenced this earlier, too. He's got
16 pending charges in West Virginia for domestic
17 violence, possession with intent to
18 distribute a controlled substance and fleeing
19 officers. He has a hold on him at our jail
20 right now for those charges, Judge.

21 Judge, he has served a total of six
22 hundred thirty-four (634) days in jail at
23 this point. He was arrested the day after he
24 committed this crime.

25 The State initially offered seven

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1 years incarceration with no victim contact,
2 Judge. This plea is without recommendation.

3 THE COURT: All right.

4 SOLICITOR BUCKNER: Judge, not to
5 interrupt but I've spoken to the victim and
6 she does not want to address the Court at
7 this time. She would just ask that there be
8 no victim contact as a part of whatever
9 sentence that you give.

10 THE COURT: Okay. Mr. Ziegler, I
11 gather that you probably disagree with some
12 if not most of the facts presented. But do
13 you agree that those are the facts that the
14 State was going to be presenting here in this
15 courtroom?

16 DEFENDANT: Do I ---

17 THE COURT: I am not asking you if
18 you agree with them. I am asking if those
19 are the facts that the State would be
20 presenting?

21 DEFENDANT: Yeah.

22 THE COURT: And also do you agree
23 that the six hundred thirty-four days are
24 correct as far as you have been ---

25 JOHN DEJONG: It is, Your Honor.

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1 I didn't do an actual calendar count but he
2 has been in jail since November 28th, 2013.

3 THE COURT: Okay. So based on
4 everything that has been discussed up to this
5 point, Mr. Ziegler, do you still wish to
6 plead guilty to all three charges?

7 DEFENDANT: Yeah.

8 THE COURT: All right. Mr.
9 DeJong, have you had sufficient time to talk
10 to your client about this case?

11 JOHN DEJONG: I have, Your Honor.

12 THE COURT: Have you discussed his
13 rights with him and do you believe that he
14 understands those rights and understands that
15 he is giving his rights up by pleading
16 guilty?

17 JOHN DEJONG: I have discussed those
18 rights with him, Your Honor. I think that he
19 has understood those rights and I think that
20 he understands that he is giving them up by
21 pleading guilty.

22 THE COURT: All right. Mr.
23 Ziegler, I find that your plea to each of
24 these charges is knowingly, intelligently and
25 voluntarily made with the advice of competent

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1 legal counsel. I find that there is a
2 substantial factual basis for the plea.

3 I also find that since the victim is
4 here that the Victims Rights Act has been
5 complied with, and that according to the
6 solicitor that the victim does not wish to be
7 heard. I will honor that request.

8 Mr. DeJong, I will be glad to hear from you.

9 JOHN DEJONG: Thank you, Your
10 Honor, may it please the court. As Mr.
11 Ziegler shared with you, he is thirty-eight
12 years of age. He actually was born in West
13 Virginia, although he shared with me that he
14 has spent the greater portion of his life
15 living in Georgia.

16 He has two children, Your Honor;
17 one sixteen-year-old who is graduating from a
18 military school -- I believe that his
19 graduation is actually this Saturday, if I am
20 not mistaken. He also has a son who is in
21 college. Actually Miss Cynthia Tyler, who
22 was on our witness list, is the mother of at
23 least the sixteen-year old and ---

24 DEFENDANT: She's the mother of
25 both.

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1 JOHN DEJONG: She is the mother of
2 both of them. Thank you.

3 DEFENDANT: (Affirmative nod).

4 JOHN DEJONG: In talking with him,
5 for most of his life his occupation was
6 installing fences.

7 As he shared with you, he has a high
8 school diploma and one year of technical
9 school.

10 Additionally he shared with you,
11 Your Honor, that shortly prior to his arrest
12 that he was working with TrueBlue staffing
13 out of Greenville. He was looking for other
14 work. There was an issue, Your Honor, that
15 he and his cousin only had one vehicle. Mr.
16 Ziegler did not have his driver's license and
17 that became a bit of an issue between the
18 two. With only one vehicle, it reached the
19 point that only one of them could work, Your
20 Honor.

21 You've heard his prior record. I
22 believe that he has one pending charge from
23 West Virginia -- and one from Georgia? Is
24 that correct, Mister Solicitor?

25 SOLICITOR BUCKNER: He has

1 pending charges in West Virginia and he's got
2 convictions in Georgia.

3 JOHN DEJONG: Okay. Well,
4 obviously he has pending charges in West
5 Virginia, Your Honor. I say that simply
6 because, I'd ask you -- he is going to have
7 to go back and face those charges. I'm not
8 sure exactly what they carry, nor am I saying
9 that he is guilty of anything, Your Honor.
10 Certainly he is going to have to deal with
11 that issue.

12 This happened between family
13 members, albeit stepfamily members, Your
14 Honor. I am not condoning his conduct but
15 certainly in my years of experience, Your
16 Honor, this is not the most egregious fact
17 scenario that I have ever heard in my life.

18 He's pled guilty to the pointing-
19 and-presenting, Your Honor, and the kidnaping
20 and the assault and battery. As far as the
21 threats of blowing her head off, he would
22 take some issue with that. I think that he
23 would tell you the same thing.

24 Obviously there was a gun found at
25 the residence, as you heard in pretrial

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1 Motions.

2 I would ask that you take all of
3 that into consideration. Granted he did not
4 accept the State's recommendation but there
5 was a recommendation on the table of seven
6 years at one point in time, Your Honor.

7 THE COURT: Mr. Ziegler, one
8 other thing that I did not ask you -- and
9 then I will be glad to hear from you. You
10 realize that the kidnaping charge is
11 designated as a Violent and Most Serious,
12 which could -- if you got any additional
13 charges in those categories, three of those,
14 it would be a basis for serving life in
15 prison because of the nature of these
16 charges. It's designated as a Most Serious
17 and Violent. Do you understand that?

18 DEFENDANT: Yes, sir.

19 THE COURT: Based on that, do you
20 still wish to plead guilty to this charge?

21 DEFENDANT: (Pause).

22 THE COURT: That is the basis of
23 the way that South Carolina sets out the --
24 I don't know if you've had a chance to talk
25 with your attorney about that.

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1 JOHN DEJONG: We've talked about it.
2 It's been some time ago, but I think -- we
3 initially talked about that.

4 THE COURT: Do you need a minute
5 to discuss that with Mr. DeJong?

6 DEFENDANT: Yeah.

7 THE COURT: All right. I realize
8 that I didn't discuss that with you. Why
9 don't you spend a minute back there to
10 explain that to him?

11 JOHN DEJONG: Thank you.

12 (BRIEF RECESS)

13 JOHN DEJONG: Thank you, Your Honor.

14 THE COURT: Okay. Did we clear
15 everything up or mess everything up?

16 Mr. Ziegler, out of an abundance of
17 caution, I wanted to make sure you were aware
18 of it. It doesn't change the plea or -- it
19 doesn't change my sentence on this. For the
20 future, I just want to make sure you were
21 aware of that enhancement or that
22 possibility. That does not affect my
23 sentencing. You realize that?

24 DEFENDANT: Oh, yeah.

25 THE COURT: Just to make sure that

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1 you realize that if you should do anything in
2 the future, that ---

3 DEFENDANT: Oh, yeah.

4 THE COURT: That's all that was,
5 just making sure you are aware of that before
6 you plea. I wanted to make sure that you ---

7 DEFENDANT: On these NCIC checks,
8 do you understand that that is just
9 arrest(s), it's not what I am guilty of?

10 THE COURT: You're talking about
11 the stuff in West Virginia?

12 DEFENDANT: All that stuff that
13 he's talking about. Most of those cases, I
14 beat 'em.

15 THE COURT: Okay. Well, let's go
16 through this then -- first of all, so the
17 only issue that we have there is that you're
18 aware that this charge is designated as
19 Violent and Most Serious and ---

20 DEFENDANT: Yes, I understand.

21 THE COURT: It also has an impact
22 on actually how much you serve of the
23 sentence.

24 With this categorizations of these
25 charges, you've had sufficient time to talk

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1 to your attorney about what that means?

2 DEFENDANT: Yeah. Yes, I have.

3 THE COURT: All right, I just
4 wanted to make sure.

5 DEFENDANT: Yeah.

6 THE COURT: All right. So I will
7 -- as I said before, I accept your plea and
8 find that it has been knowingly,
9 intelligently and voluntarily made with the
10 advice of your attorney and I reiterate that
11 there is a substantial factual basis for
12 accepting your plea.

13 All right, Mr. Zieglar, talk to me.
14 Tell me ---

15 DEFENDANT: What do you want me to
16 tell you.

17 THE COURT: Tell me what you want
18 me to hear. I'm getting ready to sentence
19 you, so tell me what you want me to know.

20 DEFENDANT: Like I say, man, it
21 really was like between me and my cousin. It
22 was really like an argument that got out of
23 hand. It wasn't basically -- like he said,
24 he wasn't over -- it wasn't basically not
25 being wanted or anything like. It was

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1 basically -- I need, the AT&T thing, as far
2 as her taking my phone to AT&T and -- the
3 argument that we had as far as my baby mama
4 sending the text, that -- that didn't have
5 anything to do with what he said as far as
6 just going crazy about something, because I
7 wasn't even wanted out of West Virginia. You
8 can look on my sheet back at the police --
9 back at my arrest and the only place I am
10 wanted out of is Augusta, which is for
11 terrorist threats. That is the only thing
12 I'm wanted for. As far as my hold, I only
13 got a hold from Augusta. I don't have a hold
14 from West Virginia.

15 So some things -- some things that
16 he is saying is true. But some things that
17 he is not saying is true, just like -- just
18 like the arrest record, the things that he's
19 saying, the assault on the police officer, I
20 beat that charge, with the possession of a
21 weapon; three assaults on police officers.
22 Out of all three of them cases, I only got a
23 year. I beat two of them and got charged
24 with one. If I had got charged with all
25 three, I guarantee you that I wouldn't have

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1 just only had a year. I beat two of them
2 charges. Them charges are just arrests as
3 far as my arrests go. It doesn't say whether
4 I was guilty or not. I looked at it myself
5 and seen a couple of things that I wasn't
6 guilty of, but they are still presenting that
7 to you as though that's all my guilty pleas.
8 As far as -- that's not, that's not the case.
9 He is really looking at the paper but he's
10 not going by what I'm really guilty of and
11 what I -- or was not guilty of.

12 THE COURT: Anything else that you
13 want to tell me?

14 DEFENDANT: Just that, you know,
15 like I say, it was an argument that got out
16 of hand. Basically I wasn't -- you know what
17 I mean? Basically I wasn't -- I mean -- I
18 told her, like I said, my version of it, I
19 didn't say that I was going to blow her
20 brains out never at any time. Of the three
21 hours that she there, if I had did that, it
22 would have been done. It wasn't nothing but
23 a fight. Like -- all I said was that 'in my
24 younger days, I would have beat your brains
25 out.' But I guess she said, 'okay, he said

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1 blow my brains out.'

2 But, like I said, we were both on
3 the phone. Both of us were on the phone,
4 arguing at the same times, so -- I mean, you
5 know, it basically wasn't one-sided.

6 But I'll take it like it is. Like I
7 said, I came in here, I'm unprepared so I
8 just have to take it like it is. Ain't no
9 use going to trial and losing, getting a
10 bigger sentence. I might as well go ahead
11 and go with it, because we are not all the
12 way fully prepared, like I said.

13 Other than that, I'm a good person.
14 I ain't never had no violent charges on my
15 record, no violent charges at all as far as
16 anything of that nature.

17 I just ask that you take mercy on
18 me.

19 Just as far as this go with me and
20 my cousin, you know, I mean, I love her to
21 death and she knows that. I mean, -- like I
22 said, I didn't drag her up here to just run
23 from this and that. She said that she wanted
24 to leave West Virginia to get a better job.
25 I brought her here, did it and paid for

1 everything. I paid for everything out of my
2 pocket -- since they're saying I didn't have
3 a job and all this, I did. I worked with my
4 mom at her tax business. No one says again
5 about the good things that I do but everyone
6 wants to mention the bad things to make me
7 look like a worse person.

8 THE COURT: Anything else?

9 DEFENDANT: That's pretty much it.
10 I mean, my cousin, you know, she can vouch
11 for that, you know, that I paid for the whole
12 thing; got her a new ID so that she can get
13 her a job; different things like. As far as
14 getting insurance and all transferred over, I
15 paid for everything: the crib, the rent for
16 two months, I paid that. I did all that for
17 her. I mean, as far as bringing her along, I
18 did. I could have left. It wasn't no point
19 of running -- I was already running. So if I
20 was going to run, why would I take her? I
21 would have left her there if I'm really a
22 person that don't care. I would have left her
23 there.

24 I really do appreciate her, you
25 know, as far as bonding me out here and being

State of South Carolina v John Adrian Ziegler

25

Case No. 14-GS-39-0087

GUILTY PLEA HEARING of August 24, 2015

Before The Honorable Perry H. Gravely

1 supportive, going to court with me, her being
2 there, sticking by me. You know what I mean?
3 I do appreciate that. So, you know what I
4 mean? I did show my appreciation as far as
5 that went.

6 I'm sorry that it did. Yes, I am
7 sorry that it did happen, (addressing
8 victim). It didn't really have to go that
9 far.

10 We are here today in front of you
11 presenting it and, you know, I just ask you
12 for mercy.

13 THE COURT: All right. On the
14 assault and battery third degree, 14-GS-0088,
15 that is thirty (30) days, credit for time
16 served -- suspended on time served.

17 On pointing the firearm, that's
18 three (3) years, to run concurrent with the
19 other sentences, with credit for time served,
20 the six hundred and thirty-four (634) days.

21 On the kidnaping, which is 14-GS-39-
22 0087, the sentence is -- and part of this
23 sentence is no contact with the victim, Mr.
24 Ziegler.

25 DEFENDANT: Yes, sir. Yes, sir.

State of South Carolina v John Adrian Ziegler

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Case No. 14-GS-39-0087

GUILTY PLEA HEARING of August 24, 2015

Before The Honorable Perry H. Gravely

1 THE COURT: That is direct or
2 indirect.

3 DEFENDANT: Yes, sir.

4 THE COURT: I know that's family,
5 but no contact with her or immediately
6 family. Okay?

7 DEFENDANT: Say what now?

8 THE COURT: I said no contact with
9 the victim or with her immediate family,
10 directly or indirectly.

11 DEFENDANT: Her immediate family?

12 THE COURT: Right.

13 DEFENDANT: Well, most of her
14 immediate family is my family -- just so that
15 we can all understand. How would I not
16 contact my own family?

17 THE COURT: Well, I thought you --

18 DEFENDANT: The only one that I
19 know of her family is her dad and her mom.
20 That's the only two that I know about. The
21 rest of them is mostly my family, her kinfolk
22 is mine.

23 THE COURT: No contact with the
24 victim herself or ---

25 JOHN DEJONG: Her immediate family,

State of South Carolina v John Adrian Ziegler

27

Case No. 14-GS-39-0087

GUILTY PLEA HEARING of August 24, 2015

Before The Honorable Perry H. Gravely

1 I believe that we could include her parents
2 and her son. I think we're fine with that
3 provision.

4 THE COURT: Her parents, her son
5 or with her.

6 DEFENDANT: Can we make an agree-
7 ment to get my items from her house? She
8 never give those ---

9 THE COURT: Y'all can work that
10 out, that's not something I get involved in.

11 DEFENDANT: Okay.

12 THE COURT: That's part of the
13 conditions. The sentence of the court is
14 nine (9) years, to run concurrent with credit
15 for time served of six hundred and thirty
16 four (634) days. Good luck to you, sir.

17 (HEARING CONCLUDED)

18

19

20

21

22

23

24

25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on August 24th, 2015, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Heborah Garrison

Deborah Garrison

Greenville, South Carolina
March 10, 2016

2015 DEC 30 AM 11 23
STATE OF SOUTH CAROLINA

County of PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

John Adrian Ziegler, #365214

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

State of South Carolina

Name of Respondent.

In the Court of Common Pleas

2015 CP39-1575

**APPLICATION FOR
POST-CONVICTION RELIEF**

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Allendale C.I.
P.O. Box 1151/ Fairfax, SC 29827
2. Name and location of Court which imposed sentence The Court of General Sessions
Pickens County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2014-GS-39-00087, 88 and 89 Kidnapping (9) years
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) 8-24-2015
(b) _____
(c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty The Applicant was coerces into the plea.
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

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

The Applicant was not advise that he had a right to Appeal.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

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

(b) the result in each such Court to which you appealed:

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

(c) the date of each such result:

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

(d) If known, citations of any written opinion or orders entered pursuant to such results:

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

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) The Applicant was not aware he had the Right to Appeal
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See attach Memorandum in Support of PCR Application
 (b) _____
 (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) See the same Memorandum.
 (b) _____
 (c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

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

N/A

12. If you answered "yes" to any part of (11), 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. _____

(c) the disposition thereof:

N/A

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

N/A

i. _____

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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

The issue has not be adjudicated in any Court.

(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. _____

15. If any ground set forth in (9) 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) N/A
 (b) _____
 (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. John Dejong, Esq. / 214 Main Street Pickens, SC 29671
 ii. _____
 iii. _____

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

- i. John Dejong, Esq. at Trial
 ii. _____
 iii. _____

18. State clearly the relief you seek in filing this application.

Motion to Vacate the conviction and sentence

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

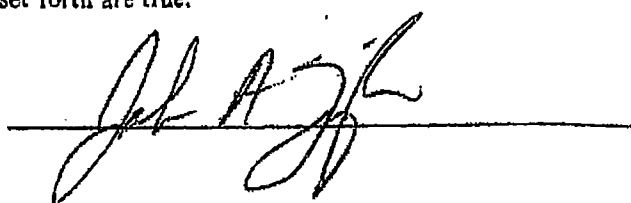
no

STATE OF SOUTH CAROLINA

VERIFICATION

County of Pickens

I, John Adrian Ziegler, #365214, 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.


SWORN to and subscribed before me this 18thday of December, 2015
Debbie L. McCauley (L.S.)
Notary Public
My Commission Expires: July 10, 2024

2015 DEC 30 AM 11:22
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

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

I, John Adrian Ziegler, #365214, 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 therefor.



Applicant

SWORN or affirmed to and subscribed before me this

18th day of December, 2015
Debbie L. McCauley
Notary Public
My Commission Expires July 10, 2024

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT

2015 DEC 30 AM 11 24

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

John Adrian Ziegler, #365214

Applicant,

vs.

State of South Carolina,

Respondent.

MEMORANDUM IN SUPPORT OF POST-CONVICTION RELIEF

This matter comes before the Court by way of a Post-Conviction Relief (PCR) Application.

PROCEDURAL HISTORY

For purposed of this Application, Applicant agrees with the procedural history as stated in the Post-Conviction Relief.

ALLEGATIONS

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

GROUND A. BRADY VIOLATION

SUPPORTING FACTS: The Applicant humbly contends that the Solicitor in the investigation leading to their indictment was guilty of flagrant misconduct for failure to provide exculpatory evidence to the indicting Grand Jury and questionable tactics employed during the course of the investigation. As set forth, the Solicitor withheld exculpatory evidence from the Applicant defense. The holding that the suppression of exculpatory evidence violated Brady's right to due process was affirmed, as was the separate holding that there was no exculpatory evidence that the Applicant kidnaped..... the victim on or about November 27, 2013.

The Court find in Smith v. Cain, 132 S.Ct 627, 181 L.Ed.2d 571,80 U.S. 4028, to be controlling in this matter. Under [Brady], the Solicitor violates evidence that is favorable to the defense and material to the defendant's guilt or punishment. As a result, evidence is material" within the meaning of [Brady], which require the disclosure of material exculpatory evidence by the Solicitor, when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different, and a "reasonable probability does not mean that the defendant would more likely than not have received a different verdict with the evidence, only that the likelihood of a different result is great enough to undermine confidence in the outcome of the trial.

Both due process and common sense dictate the victim was not kidnap by the Applicant. Here, the withheld exculpatory evidence would have prove beyond a reasonable doubt, that the victim was not kidnap, the facts, the victim was in back bedroom on the phone, and she was equip with pepper spray and a weapon was in the bed room with her and the Applicant was located in the front room.

[i] ELEMENTS OF KIDNAPPING

Here, South carolina's kidnapping statute requires proof of and unlawful act of kidnapping one of several alternative forms including seizure, confinement, inveiglement, decoy, kidnapping, abduction, or carrying away. Code 1976, 16-3-910.

Applicant further contends, in the "Affidavit" states: [On or about 11/27/2013 the defendant, John Adrian Ziegler, did unlawfully seize and confine the victim, Chantelle Mason.]

Here, kidnapping is continuous offense which commences when one is wrongfully deprived of freedom and continues until freedom is restored. As set forth, the victim was not deprived of her freedom. As a result, the victim and her son walk out of the residence own their on greewill. The victim statement will substantiate these facts mention here.

On the one hand, the fact that such evidence was available to the Solicitor and not submitted to the defense places it in a different category than if it had simply been discovered from a neutral source after trial. For that reason the defendant should not have to satisfy the severe burden of demonstrating that factor--

basis probably would have resulted in acquittal. If the standard applied to the usual Application for a New Trial based on facts were the same when the evidence was in the Solicitor's possession as when it was found in a neutral source, the Solicitor's failed to met their burden of proof for the allege kidnapping of the victim.

On the other hand, S.C.Code§ 16-3-910 (Supp.2001) defines the offense of kidnapping as follow, "whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law.

This case, however, does involve deliberate prosecutorial misconduct. Leaving open that the withheld evidence, there was no report indicating that fingerprints were taken and that the fingerprints on the weapon was the Applicant.

GROUND B. ~~CONSTRUCTIVE FRAUD~~

SUPPORTING FACTS: The Applicant contend that the [Law Enforcement Officer] has committed fraud, upon Court in their Report, Deputy Steven Ticknor stated that the weapon lying in plain view, common sense dictate that there is no way Deputy Ticknor could see a pistol from the front porch in the living room of the residence. As set forth, Deputy Ticknor, states the Applicant committed a Assault & Battery 3rd degree. Here, Deputy Ticknor, was fired for Misconduct Office..

Here, Deputy Mackey, stated the Applicant committed Assault and Battery First Degree. Therefore, Deputy Mackey statement contradict Deputy Ticknor statement.

As set forth, in Deputy Mackey, "incident Report" he stated that the Applicant is currently wanted from "Florida", the Record will substantiate beyond a reasonable doubt, that the Applicant is not wanted in "Florida".

Here, 15 pages of text/phone logg will prove beyond a reasonable doubt, that the victim was on the phone when she alleges she was kidnap by the Applicant.

Here, Applicant alleges that both Deputy Ticknor and Deputy Mackey collaborated in a diliberate scheme to commit fraud upon the Court. The Solicitor conspired with both [Deputy] to creat a scheme of perjury and failure to produce documents perpetuated by both [Deputy].

For the reasons hereinafter set forth, fraud upon the Court is "fraud which ... subvert[s] the integrity of the Court itself or is a fraud perpetrated by officers of the Court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Chewning v. Ford Motor Co., 550 S.E.2d 584 (S.C.App.2001).

GROUND C. The record of the guilty plea does show that the trial judge provided an explanation of the constitutional rights applicant was waiving, thus rendering the pleas invalid.

SUPPORTING FACTS: In accepting applicant's guilty plea, the judge briefly told applicant he was waiving his right to remain silent, confront witnesses, and have a jury trial. The judge did not explain these rights to make sure applicant understood the important rights he was waiving.

Due process of law requires that before a guilty plea can be entered voluntarily and intelligently, a defendant must be advised of his privilege against compulsory selfincrimination, the right to trial by jury, and the right to confront one's accusers. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 274 (1969). "A defendant's knowing and voluntatary waiver of the constitutional rights which accompany a guilty plea may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both," Pittman v. State, 337 S.C. 597, 601, 524 S.E.2d 623, 625 (1999). The plea "court's warning should include an explanation of the defendant's waiver of constitutional rights." State v. - Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891 (1975).

In this case, the court failed to explain the waiver of the constitutional rights to applicant. Instead he merely listed them out and asked applicant if he knew he was waiving those rights. This is insufficient to insure the guilty plea was voluntarily given.

GROUND D. DURESS

SUPPORTING FACTS: Duress is a condition of mind produced by improper external pressure or influence that practically destroys the free agency of a party and caused him to do an act or form a contract not of his own violation. ""Duress" may be defined as subjecting a person to a pressure which overcomes the applicant will and coerces him to comply with demands to which he would not yield if acting as a free agent.

some definitions of "duress" contain not only the element of pressure overcoming the victims will but also the element that the pressure or compulsion consists of improper wrongful, or unlawful conduct, acts, or threats.

Further, "duress" has been defined as the condition of mind produced by the wrongful conduct of another rendering a person incompetent to contract with the exercise of his or her free will power, or as the condition of mind produced by an improper external pressure destroying free agency so as to .. cause the victim to act or force into a plea.

GROUND E. Manufactured Indictment

Supporting Facts: However, here, evidence will establish that Solicitor unlawfully impaneled its Grand Jury out side the jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to deep secret its violations of Statutor law.

Specifically, during the course of this case, the Applicant was never front it with an indictment. Obviously, there was no indictment in this case.

Applicant charge that the Solicitor in charge of the investigation leading to their indictment was guilty of flagrant misconduct for failure to provide exculpatory evidence to the indiciting Grand Jury and for questionable tactics employed during the cause of the investigation. As stated earlier, the Court has a responsibility to oversee the work of the Solicitor, especially where serious allegations of prosecutorial abuse are brought to its attention. United States v. Chanen, 549 F.2d 1306,1313; moverover, the power of the Court to dismiss an indictment for prosecutorial misconduct on the basis of its supervisory power is unquestioned in this Court. For a primary example, "the Solicitor should be the gatekeeper," [Gershman] says. "He should see his job as administering justice, not getting convictions. That may mean you don't let juries hear cases if you aren't personally convined of guilt. In the present case, there was no exculpatory evidence to substantiate kidnapping.

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

John Adrian Ziegler, #365214,

2015-CP-39-1575

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the application for post conviction relief (PCR) filed December 30, 2015, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. Applicant was indicted by the August 2014 term of the Pickens County Grand Jury for one (1) count of Kidnapping (2014-GS-39-00087), one (1) count of Assault and Battery, Third Degree (2014-GS-39-00088), and one (1) count of Pointing and Presenting a Firearm (2014-GS-39-00089). John DeJong, Esquire represented Applicant. On August 24, 2015, Applicant pled guilty as indicted. The Honorable Perry H. Gravely sentenced Applicant, without negotiation or a recommendation from the State, to incarceration for nine (9) years for the count of Kidnapping, thirty (30) days for the count of Assault and Battery, Third Degree, and three (3) years for the count of Pointing and Presenting a Firearm. The sentences are set to run concurrently. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Pickens County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department

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

II.

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

1. "Brady Violation"
 - a. "The Solicitor in the investigation leading to their indictment was guilty of flagrant misconduct for failure to provide exculpatory evidence to the indicting Grand Jury and the questionable tactics employed during the course of the investigation"
2. "Due Process Violation"
 - a. "The holding that the suppression of exculpatory evidence violated Brady's right to due process"
3. "Constructive Fraud"
 - a. "The Solicitor conspired with both Deputy to creat (sic) a scheme of perjury and failure to produce documents perpetuated by both"
4. "The record of the guilty plea does show that the trial judge provided an explanation of the constitutional rights applicant was waiving, thus rendering the pleas invalid"
5. "Durress cause (sic) the victim to act or force into a plea (sic)"
6. "Manufactured Indictment"
 - a. "Solicitor unlawfully impaneled its Grand Jury outside the jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to deep (sic) secret its violations of Statutor (sic) law"
7. "Prosecutorial Misconduct"
 - a. "Failure to provide to provide exculpatory evidence to the indicting Grand Jury and for questionable

tactics employed during the cause
(sic) of the investigation”
8. Ineffective Assistance of Counsel

Any claims not specifically enumerated in the PCR 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.

Applicant's first, second, and third allegations are allegations of Brady violations. In evaluating post-trial Brady claims, Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

Respondent submits that Applicant's Brady rights were not violated. Applicant's guilty plea was knowing and voluntary, and he waived any defense. Applicant's primary claim is that the Solicitor in the investigation was guilty of flagrant misconduct for failure to provide exculpatory evidence to the Grand Jury and employed questionable tactics during the course of the investigation. However, Applicant does not support this allegation with specificity sufficient to show a Brady violation. Respondent requests an evidentiary hearing to resolve this matter.

IV.

Respondent interprets Applicant's second claim as an allegation that he was also denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

V.

Applicant also alleges that his guilty plea is involuntary, as his waiver of constitutional rights was not well explained. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a

solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

VI.

Applicant also alleges that his indictment was "manufactured," claiming that the Solicitor unlawfully impaneled its Grand Jury outside the jurisdiction of the court and willfully printed false and misleading information in its indictment. The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective

assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003).¹

VII.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VIII.

For purposes of this Return, Respondent interprets Applicant's allegations to be allegations of ineffective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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.

¹ Respondent construes Applicant's allegation as an allegation of ineffective assistance of counsel, as discussed further in Section VIII.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, 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 Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have 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).

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

IX.

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

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2015-CP-39-1575

JOHN ADRIAN ZIEGLAR, 365214)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

**John Adrian Ziegler, 365214
Allendale Correctional Institution
Post Office Box 1151
Fairfax SC 29827**

DATED this 29th day of June, 2016.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

John Adrian Ziegler, #365214

Applicant,

VS.

State of South Carolina,

RESPONDENT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
PICKENS COUNTY
SOUTH CAROLINA

2015 CP39-1575

MEMORANDUM IN SUPPORT OF
AMENDMENT OF POST-CONVICTION
RELIEF

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11(F). COUNSEL CANNOT BE EFFECTIVE ENOUGH IN A CASE IF HE DOESN'T HAVE TIME TO COLLECT AND OVERSEE THE EVIDENCE. APPLICANT SAT IN PICKEN'S COUNTY JAIL FOR TWENTY MONTHS AWAITING TRIAL. WHILE AWAITING TRIAL APPLICANT WENT THROUGH TWO (2) PUBLIC DEFENDERS TELLING THEM THE EVENTS THAT LEAD UP TO THE CASE WITH EVIDENCE TO SUPPORT, SINCE THE THIRD MONTH OF INCARCERATION. Mr. CONTRELL APPLICANT'S FIRST ATTORNEY WAS DISMISSED BY GENERAL SESSION JUDGE FOR INEFFECTIVE ASSISTANCE OF COUNSEL IN OCTOBER 2014. THE GENERAL SESSION JUDGE ORDERED THAT THE TRIAL BE READY IN JANUARY 2015 AND ASSIGNED THE HEAD PUBLIC DEFENDER JOHN DEJONG. Mr. DEJONG WENT TO SEE THE APPLICANT A WEEK OR TWO (2) LATER TO INFORMALLY INTRODUCE HIMSELF WITH THE FOLDER OBTAINED FROM DAVID CONTRELL. Mr. DEJONG AND APPLICANT WENT OVER EVIDENCE IN CASE TOTALLY TO GET READY FOR TRIAL THAT WAS SET FOR JANUARY BY GENERAL SESSION JUDGE. Mr. DEJONG WAS TO INVESTIGATE AND SUBPOENA EVIDENCE TO GO OVER TRIAL Mr. DEJONG HAD THE TRIAL POSTPONED TILL AUGUST DUE TO OVER BEARING CASE LOAD THAT CAUSED THE COUNSEL TO INEFFECTIVELY PERFORM HIS DUTY. JUNE MR. DEJONG CAME TO SEE APPLICANT WITH NEWLY DISCOVERED EVIDENCE BUT NEVER FULLY OBTAINED THE EVIDENCE FROM THE SOLICITOR, EVEN FRIDAY THREE (3) DAYS BEFORE TRIAL Mr. DEJONG CAME TO SEE APPLICANT AND SHOWED TEXTS TO THE SOLICITOR THAT NEVER REPLIED TO HIS TEXTS.

10(G). APPLICANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA WAS VIOLATED AS A RESULT OF COUNSEL'S FAILURE TO TIMELY CONTACT THE WITNESS CINDY TYLER FOR TRIAL.

11(G). COUNSEL WAS AWARE THAT DUE TO APPLICANT'S WITNESS CINDY TYLER RESIDING IN GEORGIA SHE WAS GOING TO NEED AT LEAST ONE (1) WEEKS NOTICE OF COURT. ON PRIOR COURT DATES, COUNSEL GAVE Ms. TYLER A WEEKS NOTICE OF TRIAL DAY IN WHICH APPLICANT'S CASE HAD NOT BEEN CALLED TO TRIAL. COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS BY CALLING Ms. TYLER ON SUNDAY A DAY BEFORE COURT, DUE TO THE INADEQUATE TIMING SHE WASN'T ABLE TO MAKE IT TO COURT. COUNSEL'S ERROR HAD SOME CONCEIVABLE EFFECT ON THE OUTCOME OF THE PROCEEDING AND INCOMPETANT UNDER PREVAILING PROFESSIONAL NORMS.

2016 SEP 8 PM 3 04

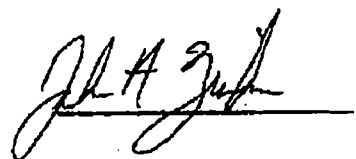
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VERIFICATION

COUNTY OF PICKENS

I, JOHN ADRIAN ZIEGLAR, #365214, 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.


SWORN to and subscribed before me this 1stday of September, 2016

Debbie McCook (L.S.)
Notary Public

My Commission Expires: July 10, 2024

2016 SEP 8 PM 3 04

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

On September 5th John A Ziegler is
sending a amendent Post Conviction
Relief (PCR) to the Clerk of Court
Pat Wellborn Thirteenth Judicial
Circuit Court to be filed and copied
to send Mr Ziegler at Allendale
C.I. Post Office Box ~~2000~~ 1151
Fairfax S.C 29827. The Post Conviction
Relief Case number is 2015 CP39-1575

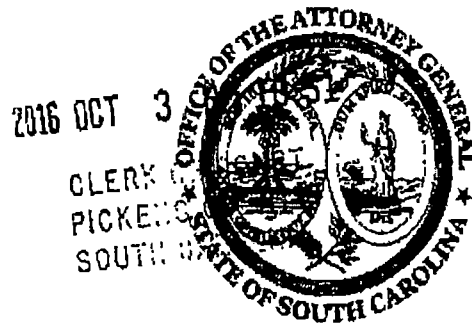
January 10, 2017

Dear Mr. ^{A 28} Pat Welborn

Enclosed please find a copy of pages 5-8 missing from the Amendment of Post Conviction Relief that never was sent by my attorney R. Mills Brail, Jr. to add or that was added before signature after the cancelled 2016 Sep. 8 3:04 PM. The Amendment of Post Conviction Relief was stamped 2016 Oct. 3 10:55 AM without pages 5-8 due to the error of my attorney that was discovered. If you could please stamp and add to the Amended Post Conviction Relief case # 2015 CP39-1575 and send a copy of pages for my confirmation.

Thank you for your consideration of this letter.

Sincerely
 John A. Giger # 365214
 Allendale Correctional Facility
 1057 Revolutionary Trail
 Fairfax, SC 29827



ALAN WILSON
ATTORNEY GENERAL

September 12, 2016

The Honorable Harold P. Welborn, Jr.
Clerk of Court, Pickens County
Post Office Box 215
Pickens SC 29671-0215

Re: John Adrian Ziegler, 365214 v. State of South Carolina
2015-CP-39-1575

Dear Mr. Welborn:

I received the enclosed "Memorandum in Support of Amendment of Post-Conviction Relief" in the aforementioned matter on September 9, 2016.

Please be advised that Rule 11 of the South Carolina Rules of Civil Procedure requires every pleading, motion or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion or other paper is not signed or does not comply with this Rule, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." *Rule 11, SCRPC.*

Therefore, the State does not consider this motion part of this action. According to our records, inmate John Ziegler is represented by R. Mills Ariail, Jr., Esquire. By copy of this letter, I am notifying counsel of the State's position.

Sincerely,

Patrick Schmeckpeper
Assistant Attorney General

PLS/jacc
Enclosure

cc: R. Mills Ariail, Jr., Esquire
John Adrian Ziegler, 365214

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

John Adrian Ziegler, #365214
Applicant,

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2015 CP39-1575

MEMORANDUM IN SUPPORT OF
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RELIEF

2016 OCT 3 PM 4 13
CLERK OF COURT
PICKENS COUNTY
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This matter comes before the court by way of a Amended Post-Conviction Relief (PCR) Application.

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SUPPOSE TO HAVE TAKEN PLACE IN WHICH COUNSEL SAID HE WOULD INVESTIGATE. THE INVESTIGATION TURNED UP THE WITNESS THAT ENDED UP BACK WITH HIS PARENTS AND WAS CONTACTED (VIA) PERSON TO PERSON VISIT BY COUNSEL. THE WITNESS SAID HE DIDN'T WANT TO BE INVOLVED IN THE CASE TO TESTIFY. IN THE NATURE AND THE SERIOUSNESS OF THE CASE THE WITNESS SHOULD HAVE BEEN SUBPOENAED. COUNSEL'S ERROR WAS SO SERIOUS AS TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL, A TRIAL WHOSE RESULT WAS RELIABLE.

10(F). APPLICANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS A DUTY UNDER THE SIXTH AMENDMENT TO INVESTIGATE THEIR CLIENT'S CASE SO AS TO ENABLE THEM TO MAKE PROFESSIONAL DECISIONS THAT MERIT DISTINCTION AS INFORMED LEGAL CHOICES. EVALUATING TACTICAL OPTIONS IS A NECESSITY, AND COUNSEL'S LACK OF PREPARATION AND RESEARCH CANNOT BE CONSIDERED THE RESULT OF DELIBERATE, INFORMED TRIAL STRATEGY. JOHNSON V. STATES 480 S.E. 3d 733.

11(F). COUNSEL CANNOT BE EFFECTIVE ENOUGH IN A CASE IF HE DOESN'T HAVE TIME TO COLLECT AND OVERSEE THE EVIDENCE. APPLICANT SAT IN PICKEN'S COUNTY JAIL FOR TWENTY MONTHS AWAITING TRIAL. WHILE AWAITING TRIAL APPLICANT WENT THROUGH TWO (2) PUBLIC DEFENDERS TELLING THEM THE EVENTS THAT LEAD UP TO THE CASE WITH EVIDENCE TO SUPPORT, SINCE THE THIRD MONTH OF INCARCERATION. Mr. CONTRRELL APPLICANT'S FIRST ATTORNEY WAS DISMISSED BY GENERAL SESSION JUDGE FOR INEFFECTIVE ASSISTANCE OF COUNSEL IN OCTOBER 2014. THE GENERAL SESSION JUDGE ORDERED THAT THE TRIAL BE READY IN JANUARY 2015 AND ASSIGNED THE HEAD PUBLIC DEFENDER JOHN DEJONG. Mr. DEJONG WENT TO SEE THE APPLICANT A WEEK OR TWO (2) LATER TO INFORMALLY INTRODUCE HIMSELF WITH THE FOLDER OBTAINED FROM DAVID CONTRRELL. Mr. DEJONG AND APPLICANT WENT OVER EVIDENCE IN CASE TOTALLY TO GET READY FOR TRIAL THAT WAS SET FOR JANUARY BY GENERAL SESSION JUDGE. Mr. DEJONG WAS TO INVESTIGATE AND SUBPOENA EVIDENCE TO GO OVER TRIAL. Mr. DEJONG HAD THE TRIAL POSTPONED TILL AUGUST DUE TO OVER BEARING CASE LOAD THAT CAUSED THE COUNSEL TO INEFFECTIVELY PERFORM HIS DUTY. JUNE MR. DEJONG CAME TO SEE APPLICANT WITH NEWLY DISCOVERED EVIDENCE BUT NEVER FULLY OBTAINED THE EVIDENCE FROM THE SOLICITOR, EVEN FRIDAY THREE (3) DAYS BEFORE TRIAL Mr. DEJONG CAME TO SEE APPLICANT AND SHOWED TEXTS TO THE SOLICITOR THAT NEVER REPLIED TO HIS TEXTS.

10(G). APPLICANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA WAS VIOLATED AS A RESULT OF COUNSEL'S FAILURE TO TIMELY CONTACT THE WITNESS CINDY TYLER FOR TRIAL.

11(G). COUNSEL WAS AWARE THAT DUE TO APPLICANT'S WITNESS CINDY TYLER RESIDING IN GEORGIA SHE WAS GOING TO NEED AT LEAST ONE (1) WEEKS NOTICE OF COURT. ON PRIOR COURT DATES, COUNSEL GAVE Mr. TYLER A WEEKS NOTICE OF TRIAL DAY IN WHICH APPLICANT'S CASE HAD NOT BEEN CALLED TO TRIAL. COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS BY CALLING Mr. TYLER ON SUNDAY A DAY BEFORE COURT, DUE TO THE INADEQUATE TIMING SHE WASN'T ABLE TO MAKE IT TO COURT. COUNSEL'S ERROR HAD SOME CONCEIVABLE EFFECT ON THE OUTCOME OF THE PROCEEDING AND INCOMPETANT UNDER PREVAILING PROFESSIONAL NORMS.

10(H) Applicant right to effective assistance of counsel as guaranteed by the sixth amendment of the United States constitution and South Carolina law was violated as a result of counsel failure to notify defendant thoroughly and properly explain due to his guilty plea he would have to register as a sex offender.

11(H) At any time did the counsel John Dejohn notify the defendant due to his guilty plea of kidnapping he would have to register as a sex offender which should have been told to defendant before plea agreement was properly or intelligently made.

10(I) Applicant's right to effective assistance of counsel as guaranteed by the sixth amendment to the United States constitution and South Carolina law was violated as a result of counsel's failure to object to the nine year sentence after 7 year plea recommendation by solicitor.

11(I) Counsel found ineffective for failing to object to the trial judge when he gave applicant 9 years for exercising his right to trial and considered it an aggravating factor instead of the 7 year plea recommendation by the solicitor Mr. Buckner.
HARRY V. JOHNSON 104 S.CT 2543

10(J) Applicant's right to effective assistance of counsel as guaranteed by the sixth amendment to the United States constitution and South Carolina law was violated as a result of counsel's erroneous legal advice leading to plea.

11(J) Trial counsel found ineffective for advising defendant to plea guilty by informing client since the agreement for the gun to be dropped from the case didn't happen that is all the jury needs to convict. (choice 1) Due to applicant having a warrant in West Virginia that will probably result in jail time the judge is looking to go light on your sentence which

can be time served to hand you over to West Virginia instead of costing South Carolina tax payers money to house defendant here. (choice 2) The judge will either go with the seven years recommendation by the solicitor which 85% of seven years is five years ten months that will leave you with about three or four years left. Defendant plead guilty based on this erroneous advice of counsel due to the enormous pressure put on by counsel. Any shortcomings of a defendant's plea agreement will cast doubt on the validity of his plea only if they show either that the defendant made the unfavorable plea on the constitutionally defective advise of counsel. **BRADSHAW v. STUMPF**
125 S.CT 2398

10(K) TRIAL COUNSEL FOUND INEFFECTIVE FOR NOT CHALLENGING THE INDICTMENT IN APPLICANT'S CASE, AN OBJECTION PROPERLY MADE AFTER ARRAIGNMENT AND BEFORE THE JURY IS SWORN WOULD BE IN TIME TO STOP TRIAL UNDER SECTION [CODE 1962 S 17-409] STATE V. POSTON (1922) S.E.

11(K) TRIAL COURT LACKED SUBJECT MATTER JUSTIFICATION TO CONVICT DEFENDANT FOR KIDNAPPING WHERE THERE WAS NO INDICTMENT FOR KIDNAPPING AT THE TIME THE JURY WAS SWORN, AN INDICTMENT WHICH WAS TRUE BILLED AND PUBLISHED AFTER TRIAL. STATE V. BEACHUM S.E 2D 597

10(L) APPLICANT'S RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH & FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION ARTICLE 1 S 3 DUE PROCESS REQUIRES THAT A CRIMINAL DEFENDANT BE PROPERLY SERVED WITH A VALID INDICTMENT.

11(L) APPLICANT WAS NEVER CONFRONTED BY AN INDICTMENT IN WHICH THE INDICTMENT SHOULD HAVE BEEN SERVED THE MOTION OF DISCOVERY. FAIRNESS AND DUE PROCESS REQUIRE THAT THE DEFENDANT RECEIVE INDICTMENT OF CHARGES AGAINST HIM IN SUFFICIENT TIME TO ENABLE APPLICANT TO PREPARE DEFENCE FOR CHARGES IN PRELIMINARY HEARING AND TRIAL. SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE RULE 3 DISPOSITION OF ARREST WARRANTS:

(A) TRANSMITTAL TO CLERK. MAGISTRATES, MUNICIPAL JUDGES, AND OTHER OFFICIALS, AUTHORIZED TO ISSUE WARRANTS SHALL IN ALL CASES WITHIN THE JURISDICTION OF THE COURT OF GENERAL SESSIONS TO FORWARD ALL DOCUMENTS PERTAINING TO THE CASE INCLUDING THE ARREST WARRANT AND BOND WRITTEN FIFTEEN (15) DAYS FROM THE DATE OF ARREST.

(B) TRANSMITTAL TO SOLICITOR. THE CLERK OF THE COURT OF GENERAL SESSIONS SHALL FORWARD A COPY OF ANY ARREST WARRANT RECEIVED (A) ABOVE TO THE SOLICITOR WITHIN TWO (2) BUSINESS DAYS FROM DATE OF RECEIPT FROM THE ISSUING OFFICIAL

(C) ACTION ON WARRANT. WITHIN NINETY (90) DAYS AFTER RECEIPT OF AN ARREST WARRANT FROM THE CLERK OF COURT, THE SOLICITOR SHALL TAKE ACTION ON THE WARRANT BY (1) PREPARING AN INDICTMENT FOR PRESENTATION TO THE GRAND JURY, WHICH INDICTMENT SHALL BE FILED WITH THE CLERK OF COURT, ASSIGNED A CRIMINAL CASE NUMBER, AND PRESENTED TO THE GRAND JURY; (2) MAKING OTHER AFFIRMATIVE DISPOSITION IN WRITING AND FILING SUCH ACTION WITH THE CLERK OF COURT.

(D) EXTENSIONS OF TIME. THE SOLICITOR MAY PETITION THE CIRCUIT COURT FOR AN ORDER DELAYING ACTION ON THE WARRANT FOR SUCCESSIVE NINETY (90) DAY PERIODS IF THE CIRCUIT COURT SPECIFICALLY FINDS GOOD CAUSE FOR SUCH DELAY.

(E) RECORD OF PROCEEDINGS. ANY ACTION TAKEN PURSUANT TO PARAGRAPHS (A), (B), AND (C) ABOVE SHALL BE ENTERED IN THE RECORDS OF THE CLERK OF COURT PURSUANT TO PROCEDURES PROMULGATED BY THE OFFICE OF SOUTH CAROLINA COURT ADMINISTRATION.

10 (M) APPLICANT'S RIGHT TO DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH & FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE SOUTH CAROLINA CONSTITUTION LAW WAS VIOLATED BY MAGISTRATES, MUNICIPAL JUDGES, AND OTHER AUTHORIZED OFFICIALS TO HOLD APPLICANT IN JAIL WITHOUT A TIMELY SUFFICIENT INDICTMENT.

11 (M) APPLICANT WAS HELD IN PICKENS COUNTY JAIL SIXTEEN (16) MONTHS UNLAWFULLY WITHOUT A INDICTMENT. UNDER SOUTH CAROLINA CODE S 17-19-10 NO PERSON SHALL BE HELD TO ANSWER IN ANY COURT FOR AN ALLEGED CRIME OR OFFENSE UNLESS UPON INDICTMENT BY A GRAND JURY.

2016 SEP 8 2 27 PM
CANCELLED
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VERIFICATION

COUNTY OF PICKENS

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

2016 OCT 3 AM 10 56

I, JOHN ADRIAN ZIEGLAR, #365214, 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.

John A. Ziegler

SWORN to and subscribed before me this 1st

day of September, 2016

Darbi McCracken (L.S.)
 Notary Public

My Commission Expires: July 14, 2024

2015 SEP 8 PM 3 04

CANCELLED
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

On September 8, 2015, John A. Ziegler is sending a amended Post Conviction Relief (PCR) to the Clerk of Court Pat Welborn, Thirteenth Judicial Circuit Court to be filed and copied to send Mr. Ziegler at Allendale, C.I. Post Office Box 1151, Fairfax S.C. 29827. The Post Conviction Relief Case number is 2015 CP39-1575

2015 OCT 3 AM 10 56

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2015-CP-39-1575
COUNTY OF PICKENS	)	
	)	
	)	
	)	
JOHN A. ZIEGLAR,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
RESPONDENT.	)	
_____	)	

June 28, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE DANIEL DEWITT HALL, JUDGE

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

R. MILLS ARIAIL, JR., ESQ.
Attorney for the Applicant

DeSHAWN MITCHELL, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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APPLICANT'S EXHIBIT

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P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 11:24 a.m.)

MR. MITCHELL: Your Honor, this is 2015-CP-39-1575, John Ziegler. The applicant is presently confined to the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County clerk of court.

Applicant was indicted by the August 2014 term of the Pickens County grand jury for one count of kidnapping, one count of assault and battery third degree and one count of pointing and presenting a firearm. Mr. John DeJong represented the applicant on August 24, 2015. The applicant pled guilty as indicted. The Honorable Perry H. Gravelly sentenced applicant without negotiation or recommendation from the State to incarceration for nine years for the count of kidnapping, 30 days for the count of assault and battery third degree, and three years for the count of pointing and presenting a firearm. The sentences were set to run concurrent. Applicant did not appeal his conviction.

He is present in the courtroom today and represented by Mr. Ariail.

THE COURT: All right. Mr. Ariail, you represent Mr. Ziegler?

MR. ARIAIL: Yes, Your Honor. I do.

1 THE COURT: What is your position as far as his
2 application?

3 MR. ARIAIL: Your Honor, we're ready to proceed.

4 I had filed a -- he had sent me an amended PCR
5 application which I filed which was eight pages, and I had
6 filed it and sent it to Mr. Mitchell. I want to make sure
7 it was part of the Court's file. I also have received
8 from him, and I've shown it to Mr. Mitchell, a page 9 that
9 he has presented to me today. I'd just like to make this
10 a court exhibit.

11 THE COURT: Yeah. I don't have -- I'm sure it's part
12 of the clerk's file. I do not have his amended
13 application.

14 MR. ARIAIL: Your Honor, I can present you a copy and
15 then I've given Mr. Mitchell a copy as well. I can make
16 it a part of the Court's -- I guess an exhibit, and then
17 if you would like a copy, I can get you one.

18 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
19 identification.)

20 THE COURT: All right. Mr. Ariail, call your first
21 witness.

22 MR. ARIAIL: Yes, Your Honor. John Ziegler please.
23 WHEREUPON,

24 JOHN ADRIAN ZIEGLAR,

25 After first having been duly sworn, testified as follows:

1 THE CLERK: Thank you. You may be seated.

2 Please state your full name for the record.

3 THE WITNESS: John Adrian Ziegler.

4 DIRECT EXAMINATION

5 BY MR. ARIAIL:

6 Q Mr. Ziegler, how are you doing today?

7 A I'm doing great.

8 Q Great. And I know you've got some information there.
9 We're going to go through it.

10 I want to take you back to the beginning of this.

11 Were you represented by Mr. DeJong in this matter?

12 A Yes, sir. I was.

13 Q You had a previous attorney before that, correct?
14 Mr. Cantrell?

15 A Yes, sir.

16 Q Okay. And then he was relieved as your attorney?

17 A Yes. For ineffective assistance of counsel. I went
18 in front of the court system and had to plead my case, and
19 they granted me that he be relieved.

20 Q Okay. And then you got Mr. DeJong to take care of
21 your case?

22 A Yes, sir. I did.

23 Q He represented you on it, and y'all, I guess, went
24 through to where you had a guilty plea on this; is that
25 correct?

1 A Yes. I really wanted to go to trial, but as far as
2 to different things going on during trial, it didn't make
3 it really to the point of the court system being reliable.
4 I'm going to show you as I go through the information.

5 Q Right. And I just want to take you back a little bit
6 about the beginning. But you had discussed your case with
7 Mr. DeJong during this process, correct?

8 A Yes, sir. I did.

9 Q Did you understand the information or the evidence
10 that was going to be used against you?

11 A Yes. I understood the evidence that was going to be
12 used against me.

13 Q Did he meet with you and discuss that with you and
14 tell you, you know, what the trial was going to be like?

15 A He met with me. Yes. We went over a couple things
16 of the trial. Yes, he did.

17 Q Okay. Do you think he provided you information as to
18 -- you know, let you make an informed decision about your
19 case?

20 A Not really. I don't think I had enough time to make,
21 I would say, a reasonable decision on the case. I didn't
22 have enough time.

23 Q Okay. And maybe that's where we can go into some of
24 these issues you had. Tell me, and you've submitted a
25 nine-page document, and a lot of this stuff I'm going to

1 try to --

2 A Yes, sir.

3 Q -- give a synopsis and kind of work through with you
4 some of the highlights that I see --

5 A Okay.

6 Q -- including let you provide some information.

7 You have said there was some exculpatory evidence out
8 there which you believe was necessary for him to review or
9 to raise to the Court; do you remember that?

10 A Yes, yes.

11 Q That's kind of your first page of this where you kind
12 of go into that. Can you tell me a little bit about that?

13 A The evidence that we needed, it was -- do I have to
14 go in detail about the evidence or --

15 Q Yeah.

16 A -- you want me to just tell you of the -- well,
17 basically, we had a couple things that the solicitor never
18 got back with us on just like the key, the house key
19 that was missing that I don't -- I can't remember what the
20 -- if I can look through for a second, I can get his name.
21 He came and picked it up from the jail without a release
22 form, and he was waiting on the answer from the solicitor.
23 If I can remember correctly, I think his name was
24 Mr. Neely.

25 Q Okay. Robert Neely?

1 A Yes. Mr. Neely, if I'm not mistaken. And he was
2 waiting on some information back from the solicitor
3 because we was wondering how anything get picking out of
4 -- come and get picked out of the property without a
5 property release form. And it was -- I was told by
6 Sergeant Sue at Pickens County Jail that it was picked up
7 by a Robert Neely. And I asked her about where's -- you
8 know, I didn't have no knowledge of him coming to pick up
9 a key -- a house key. And that was the main part of
10 evidence because that would have shown that I was part of
11 a residence there at the house. Without the house key and
12 without the keys to the car, that shows -- that gives me
13 no right because my name was not on any paperwork as far
14 as the rental agreement. You know what I mean? So that
15 can give them a clear case of -- I want to say a clear
16 case, but a better -- a better shot of getting a charge of
17 kidnapping.

18 Q Okay. So you were saying that if he was able to show
19 that you had the car keys and the house key, that that
20 would have somehow helped you in regards to showing you
21 didn't kidnap the individual?

22 A No. That would have shown when I was a residence of
23 the -- of the house and that it was no way that I could
24 have kidnapped or held them inside because of the -- of
25 the point that it was no reason for me to hold them

1 inside. They were saying that I wasn't a resident and
2 that I was just staying over there, like I was just
3 staying overnight.

4 And we got into it, and it was a certain -- certain
5 things that went down, and that I -- like I obstructed her
6 or I kept her from leaving. That's what they were saying.
7 They didn't say I kept her in the house or this, that and
8 a third. I had -- I had a house key that was, simply, I
9 had my own keys. You know what I mean? So how could I
10 keep her from going anywhere when I'm the only one that --
11 what I was saying is I'm the only one that had a house
12 key. She didn't have a house key. You know what I mean?
13 Because when we came down, I was the only one that
14 purchased the place.

15 But in order for us to purchase the place that we
16 were staying at, they needed -- they needed information as
17 far as background. That's the only reason that the house
18 was in her name is because of the background situation,
19 which my background is not clear so -- because they wanted
20 a clear background. They didn't want any kind of criminal
21 activity as far as the person that's on the application.

22 Q Okay. Now, you say there was some issue in regards
23 to the home phone records of Ms. Chantelle Mason.

24 A Yes, it was.

25 Q Tell me what the issue ---

1 A There was -- the information was -- I believe that
2 the solicitor had the information because they had her
3 cell phone information as far as they submitted to the
4 Court the information as far as the text messages and
5 everything, but that wasn't the information that we was
6 requesting as far as her being on of the phone while she
7 said that she was being kidnapped.

8 Q Okay.

9 A That would have shown evidence that she -- she
10 couldn't have been being kidnapped if she's on the phone.

11 Q Okay. Now, I'm going to just try to keep going
12 though your document as best I can and hitting the points.

13 You say you weren't notified that you had a right to
14 an appeal?

15 A When -- when I spoke -- as you can see in the
16 transcripts that I had to take time. I told him I wanted
17 to talk -- talk to Mr. DeJong because we really didn't
18 have enough time to talk. They only gave me like
19 30 minutes to make a decision of my life that was really
20 like a 0 to 30 -- 0 to 30 years was what -- was what I was
21 facing. So at that time, he only gave me like 30 minutes
22 to come up with that decision.

23 And due to Mr. DeJong, he stood up on -- our
24 arguments does not shown on the transcripts on the -- open
25 arguments as far as the gun and them not having the -- you

1 know, not turning over the fingerprints on the gun and
2 different things because they never got the gun from my
3 possession. They got the gun from out of the house. It
4 wasn't -- you know, it wasn't no where -- they said it was
5 near me, but they never had any pictures or any proof that
6 shows that the gun was in the -- in the same vicinity of
7 where they got me from. So they never had any evidence of
8 that, which I kept asking Mr. DeJong to -- to get for me
9 because I never had a picture of the gun, I never had any
10 information. All I had was the paperwork showing me a
11 name of a gun and the -- and the information of the gun
12 being processed in. I never had any other information of
13 the gun than that. So I was asking Mr. DeJong for a
14 couple of items, and he said he was waiting on the
15 solicitor.

16 The weekend that he came and said we had to get ready
17 for court, he showed me texts on his phone where he had
18 been trying to get in contact with the solicitor and the
19 solicitor never got back with him. So as we went to the
20 argument in front of the court system, in front of the
21 judge, he stood up and told him that, you know, due to his
22 errorness of -- of missubpoena and different things and he
23 didn't get all the evidence together, and due to the
24 solicitor with some of the evidence and him calling my
25 witnesses the weekend right before, and they're from out

1 of town -- he called the witnesses right -- the weekend --
2 I think it was Saturday he called my witnesses, and we had
3 to be at court Monday, which he didn't give him no time to
4 even tell -- notify their jobs that they had to go to
5 court.

6 Q Okay. Now, you also allege in here, and I think
7 you've covered some of these items, that there was an
8 alibi witness that you wanted to call that he didn't
9 investigate?

10 A In investigated it. He went and talked to the -- to
11 the fellow, but he should have subpoenaed the fellow, the
12 -- the witness. He should have -- he should have
13 subpoenaed him. He didn't subpoena him. He went and
14 talked to him and made it -- and let him make a decision.
15 On a case like that, he shouldn't have no decision.

16 Q But did he tell you what he said?

17 A He told me that -- he told me he just didn't want to
18 testify.

19 Q But did he tell you that he said -- what the
20 conversation was and if he could provide an alibi for you?

21 A No. He really didn't go -- he really didn't go into
22 details of that. He just said that the witness didn't
23 want to talk to him, really didn't want to have no
24 conversation or really didn't -- he really didn't want to
25 get involved is what his actual words was, that the

1 witness didn't want to get involved.

2 Q You also indicate there was some newly discovered
3 evidence that was found. What do you mean by that?

4 A Newly discovered evidence?

5 Q Yeah. Mr. DeJong came to see you with newly
6 discovered evidence but never fully obtained the evidence.
7 What is that?

8 A What page is that on, sir?

9 Q It's on page 4, 11-F or 2-F.

10 A 11.

11 Q Last four lines, last five lines.

12 A You say at page 4?

13 Q Page 4, yeah. Let me show you.

14 A Oh, yes, yes. He had came in with like the tapes of
15 the 9-1-1 that we went over that wasn't never submitted to
16 the court system, the 9-1-1 tapes.

17 And we went over the -- I think it was the
18 preliminary hearings that we went over because I had a
19 little problem with the preliminary hearing because some
20 things that the officer said in the prelim, he was trying
21 to explain the situation and he was never there, so I
22 don't understand how could an officer speak of something
23 where he was never there. He was talking from a
24 third-person perspective.

25 So we went over the prelim because they was trying to

1 say that -- we were trying to figure out when -- when did
2 they say the gun was present. They was saying that the
3 gun was present outside and I forced her inside, and then
4 they said that the gun was pulled in the inside and I kept
5 her from going outside. So we really couldn't understand
6 what we was fighting.

7 And like I say, you know, we didn't never have no
8 indictments, so I really didn't -- I was kind of confused
9 of what I was fighting. I understand that I was being
10 charged, but I was never formally indicted for anything,
11 so I -- I didn't understand what I was being held for.

12 Q Okay. And you indicated that at the plea, you said
13 there was a recommendation for a seven-year plea and you
14 got a nine-year sentence and that Mr. DeJong should have
15 done something to object to that, or -- how do you think
16 he should have addressed that?

17 A I really say that he should have -- he should have
18 said something and spoke up because my -- my understanding
19 of everything is when the solicitor stood up when we made
20 the agreement, he said that -- you know, that we'll go
21 along with the seven years that you agreed on. And I was
22 like -- because I was forced into it, like because when he
23 -- like I say, when Mr. DeJong stood up and told the judge
24 all the information that he was missing and what years I
25 was facing, I was -- and the judge just said -- you know,

1 he looked at me and said, "Mr. Zieglar, it's never a good
2 day to go to trial." And I was -- I didn't understand
3 what he was saying with -- I understand it without fully
4 having all the evidence, I wouldn't want to go up against
5 a 30-year trial with a 0 to 30 and I can take the seven
6 and -- and challenge the ruling.

7 Q Okay.

8 A And that was the whole reason I took the seven years
9 was because my whole purpose was -- and when I took the
10 recess to really talk to Mr. DeJong, we was -- I was
11 telling him that I wanted to challenge the judge's ruling
12 because of the way he handled the situation.

13 Q Right. Now, I've gone through and I've taken your
14 document and the main issues that I see that you wanted to
15 raise. And this document is a part of -- is an exhibit,
16 and I think . . .

17 MR. ARIAIL: I don't know if I have at this point in
18 time, Your Honor, if I can move his PCR amended
19 application in as his Exhibit No. 1.

20 THE COURT: We'll make that part of the Court's
21 record.

22 (WHEREUPON, Applicant's Exhibit No. 1 was admitted into
23 evidence.)

24 BY MR. ARIAIL:

25 Q And I tried to summarize as best I can on the key

1 items. Are there other things that you want to raise? We
2 don't have to say them verbatim because they're part of
3 this, but are there other key issues that you want to
4 bring up?

5 A Like the -- the -- the indictment situation.

6 Q Okay. Well, tell me a little bit about that.

7 MR. MITCHELL: I would object to any new allegations
8 being brought forward.

9 THE COURT: I'm going to overrule that. We'll allow
10 him to talk about that.

11 THE WITNESS: Okay. The indictment, which in my
12 discovery I never had an indictment, which, when I went to
13 court, I never had an indictment. And like when I spoke
14 to you about the indictment, when me and you spoke ---

15 BY MR. ARIAIL:

16 Q Right.

17 A --- that's when they sent the information about the
18 indictment. If I can show you the indictment, I received
19 my discovery in January, February, March -- in April. It
20 was April. If I could look right up here I could get you
21 the paperwork. My indictment came in on the fourth month.
22 And the indictment that was sent to you that I never seen
23 was -- it was -- it was printed up on the 9th which is --
24 I'm into August, which is --

25 Q August 2014?

1 A Yes.

2 Q Okay.

3 A And there was no way that I had my indictment and my
4 discovery if my discovery came in the fourth month and the
5 indictment wasn't made until August, which the fourth
6 month would be January, February, March -- would be April.

7 Q But my question is, did you have a copy of the
8 indictment in your possession before your trial?

9 A Yes. I've got a copy of the indictment right here,
10 and I have the -- I have the -- the discovery right here,
11 the top sheet of discovery, which it was the indictment
12 right here -- the indictment right here.

13 Q Okay. And what are you saying in regards to the
14 indictment other than -- I mean, you said you received a
15 copy of it, correct?

16 A Yes. I received a copy, and it was nine months after
17 -- well, going on ten months after I was incarcerated.
18 And as I -- as I read in the law that you only have
19 30 days after your incarceration that you should have your
20 indictment, or in the -- unless -- unless it is an
21 extension. And an extension only has another 90 days as
22 it reads in the law. I've got that in my paperwork, too.

23 Q So your argument is that you weren't indicted within
24 the correct amount of time?

25 A Yes. I never had an indictment but -- until you --

1 until you sent me that indictment.

2 Q On August 2014 is when you say you were indicted; is
3 that right?

4 A Yes, yes, yes, yes.

5 Q But you never had a copy of that until I gave it to
6 you?

7 A Yes. Until you gave it to me. That's the first time
8 I've seen the indictment.

9 Q You didn't have a copy of that indictment prior to
10 your trial or plea?

11 A No. No, sir. I didn't.

12 Q Okay.

13 A I didn't -- I didn't waiver my indictment, I have no
14 signature of anything waivering the indictment.

15 Q Right. Okay. Now, that's -- I've got that issue.

16 A I have that -- I have that issue inside my -- inside
17 my paperwork, too, sir.

18 Q Correct. That's all that's been -- and it's in part
19 of this.

20 Okay. Those are the main items that I've got. Any
21 other things you want to bring up to the Court before I
22 conclude my questioning of you?

23 A And another thing, as far as when they said that
24 everything was being submitted on, I have this sentencing
25 sheet. At the bottom, you can see where it reads right

1 there, you can read that for the Court.

2 Q Okay. After consultation with counsel, Court orders
3 that sexual registry not required.

4 A All right. And the thing that I'm showing is that
5 how different things is. On my sheet, because inside my
6 -- inside my -- inside my postconviction relief, I'm
7 showing I'm fighting one ground that says that he -- he
8 didn't explain fully upon my sentencing that I was going
9 to have to register as a sex offender. Now, the
10 information you sent me, that top sheet that you have is
11 the information that you had sent me, but the paper that
12 you have up under is the original paperwork. And what
13 does it say at the bottom? What does it show at the
14 bottom?

15 Q These are two different items: one's for kidnapping
16 sentencing sheet, the other one's for a weapon, pointing
17 and presenting.

18 A Let me get the right sheet, yeah, because there's
19 three of them. There were all three of them.

20 Q All right. Kidnapping.

21 A What does it say at the bottom?

22 Q Okay. You're saying that this document does not have
23 anything on the bottom regarding no sex offender registry
24 needed.

25 A And that -- that was added. I'm saying that that was

1 not a part of the sentencing sheet. But the one that you
2 sent me, it seems like it has the judge's signature and
3 the date of when I got sentenced, and it says certain
4 things was discussed that's not on the original sheet.

5 THE COURT: Let me ask a question here. So do you
6 want to register as a sex offender?

7 THE WITNESS: No. I don't want to register as a sex
8 offender. I'm just showing how things can be -- can be --
9 documents can be -- I wouldn't know how to really say the
10 term, but it can be -- it could be made after the
11 situation.

12 THE COURT: All right.

13 BY MR. ARIAIL:

14 Q But you're not required right now to register as a
15 sex offender, correct?

16 A Yes, I am. On the paperwork it shows it. I'm saying
17 that on the original paperwork, it was never discussed,
18 but on the one that you sent me, it seems like it has some
19 writing at the bottom that wasn't on the original sheet.
20 And that's what I'm saying as far as that. And just like
21 my indictment, it doesn't have any true bill stamp. You
22 know what I mean? All the information that you sent me,
23 it seemed like it was trying to cover up the things that I
24 was trying to fight.

25 Q Let me just ask it this way. You agree and -- or

1 saying that you were not supposed to be on the sex
2 offender registry.

3 A What I'm trying to tell you is I was never explained
4 anything about being a sex offender as upon sentencing. I
5 was never told that until I got to Allendale yard, which I
6 talked to a counselor, and she told me, "Do you know you
7 have to register as a sex offender?" And she was telling
8 me my guidelines of when I get out, my time, what time I
9 got, you know, my warrants if I had any or anything like
10 that. She -- she implied that to when I got there. So I
11 never knew anything about that. I'm trying to show you
12 the point that how it makes my -- my attorney ineffective.
13 That's my whole point.

14 MR. ARIAIL: And, Your Honor, I'm understanding he's
15 got two different sentencing sheets. One shows -- and I
16 think it was the one I was presented by the Attorney
17 General's Office. It says "no sexual registry required."
18 "Court orders that sexual registry not required" is what I
19 have.

20 THE COURT: Right. That's what I have, too. I mean,
21 if he's having to -- if he is having to register as a sex
22 offender, it is not -- it is not as a result of this
23 hearing -- I mean, it's not a result of this plea to this
24 kidnapping.

25 THE WITNESS: I'm not really getting to the point of

1 the sex offender part. The part that I'm saying is that
2 that was added to the sheet after -- afterwards. That's
3 -- that's what I'm trying --

4 THE COURT: I understand his -- I understand his
5 argument. It wasn't done -- it wasn't written on there at
6 the time he was sentenced.

7 THE WITNESS: That's the same thing that I'm trying
8 to fight as far as the indictment, too. I never had -- I
9 never had an indictment, so the indictment was made
10 afterwards, after I fought -- after I'm trying to fight
11 these grounds. This is after the grounds was already
12 fought and they had already sent me a reply to my grounds
13 is after I got this new information as far as not being
14 registered as a sex offender and the indictment is what
15 I'm trying to -- I guess that's what I'm trying to get
16 across, that I never had any of that.

17 MR. ARIAIL: Okay. That's all the questions I have.
18 Thank you.

19 THE COURT: All right. Thank you.

20 Mr. Mitchell?

21 MR. MITCHELL: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. MITCHELL:

24 Q Mr. Ziegler, I just have a few questions for you.

25 How many times did you meet with your attorney prior

1 to pleading guilty?

2 A Probably four all together. Four or five.

3 Q Did you guys discuss and talk about discovery of the
4 evidence in your case?

5 A Yes. We discussed some -- some of the stuff on the
6 discovery, but mainly we went over evidence mainly because
7 the judge had already -- when we went -- when he -- when
8 he -- when he went ahead and told me that I could get a
9 new attorney and that he was going to get rid of
10 Mr. Cantrell, he told me that the case had already been
11 prolonged on, so he only gave me until January, which I
12 think we went to the -- I think when I fired my lawyer, it
13 was like October of '14. And he said that I'll give you
14 until January, and do you think you'll be ready with your
15 case because your case has been -- I don't want to keep
16 having your case go on and on, so he said he wanted to go
17 ahead and have my case ready in January. So we really was
18 kind of pushed for time.

19 And -- but Mr. DeJong set it back because he had an
20 overbearing caseload, which I think two of his attorneys
21 at his law firm, whatever kind of firm you call it, had
22 either quit or got fired. I don't know how it went. But
23 he had an overbearing caseload which he had to take some
24 of their cases.

25 Q Okay. So during your discussions with your attorney,

1 did you decide that you wanted to plead guilty or did you
2 want to go to trial?

3 A No. We wanted to go to trial fully. He even
4 discussed with me that he said that he -- he -- to his
5 recommendation of what all the evidence that I was telling
6 him and if the evidence showed of what I said, that --
7 that he pretty much thought I was innocent.

8 Q So when you pled guilty that day, whose decision was
9 it to plead guilty, yours or his?

10 A Well, basically, it was like I think the criminal
11 term is necessity.

12 Q How so?

13 A Necessity. It was -- I only had like 30 minutes to
14 make a decision on my life, and I didn't have all the
15 evidence in front of me to fight. So why would I go to a
16 fight without -- without all my weapons?

17 Q Did you tell the judge that?

18 A Yes. Mr. DeJong did stand up and tell the judge.
19 That's what I explained earlier that he stood up and told
20 the judge that, you know, due to certain circumstances,
21 that my witness couldn't be there, that he didn't come up
22 with the evidence, he was waiting on the evidence from the
23 solicitor. And the judge said, It's never a good day to
24 go to trial, Mr. Ziegler. I explained that to you after
25 you was, you know, kind of listening.

1 Q When the judge asked you if anybody was threatening
2 you or promised you anything to plead guilty, what was
3 your answer to the question? Do you recall?

4 A My answer was I -- I wasn't threatened. I wasn't
5 threatened by anyone.

6 But the point of -- the point of me pleading guilty
7 was that I knew I could challenge it. And that -- that is
8 what we talked about. As you can tell in the transcripts,
9 they gave us a few minutes more to talk, and I talked to
10 Mr. DeJong about challenging it. Even -- even before they
11 -- the last time I seen Mr. DeJong when I was in the
12 holding cell to go back to the Pickens County Jail, I told
13 him again I wanted to challenge it. And he told me that
14 he would challenge it, and he said that -- no. As a
15 matter fact, he said, "Wait till you get down to the --
16 down to where you're going, and you can do a PCR." And I
17 didn't understand what none of that was because I don't
18 know any legal terms or anything like that. I never knew
19 what a PCR was.

20 Q So all this is conversation you had with Mr. DeJong?

21 A Yes. Because I wanted to challenge the decision
22 of ---

23 Q Was anyone else present during -- when you had these
24 conversations with him at all? Just you and him?

25 A Yes. Just me and him.

1 Q Okay. When the Court asked you if you were satisfied
2 with your attorney, what did you tell the Court?

3 A I told the Court yes. I was satisfied to a certain
4 extent. But with him not challenging that issue, that
5 really made it big for me because that was the whole point
6 of me pleading because I didn't want to go to trial. Why
7 would I force myself to go to trial without all the
8 evidence on a 0 to 30 years? I don't know if anybody
9 would do that under them circumstance. I only had
10 30 minutes. Like I say, that's a -- that's a -- it might
11 seem like a lot of time, but when it's -- it's a little
12 bit of time when -- when you're talking about 30 years.

13 Q So when the solicitor read the facts on the record
14 and the judge asked you if you agreed with those facts,
15 what was your response?

16 A I believe my response was yes, but I believe I was
17 just going through the motions because I knew I could
18 challenge it. I was just saying whatever he wanted me to
19 say just to go ahead and get it over with because I could
20 see that it wasn't going to be -- if I would have took it
21 to trial that day, it was going to be an unfair trial.

22 Q Did you hold your cousin or your -- your family
23 member, did you hold that person hostage in your ---

24 A No. No, I didn't. No. I didn't hold them hostage.

25 Q Did you bite them?

1 A Yes, I did. And -- and I -- I -- I wrote down a
2 statement that I did. I never said I didn't.

3 Q Okay. So there was some physical assault at the home
4 that day?

5 A Yes, yes. It was a -- but that's only a 30-day
6 charge, sir.

7 MR. MITCHELL: Thank you. That's all the questions I
8 have, Judge.

9 MR. ARIAIL: No redirect, Your Honor.

10 THE COURT: All right. Thank you, Mr. Ziegler. You
11 can step down.

12 MR. ARIAIL: That is our case Your Honor.

13 THE COURT: Mr. Mitchell?

14 MR. MITCHELL: Your Honor, at this time, the State
15 will call Mr. Daniel Buckner.

16 WHEREUPON,

17 DANIEL GRAHAM BUCKNER

18 After having been duly sworn, testified as follows:

19 THE CLERK: Thank you. Please be seated, and state
20 your full name for the record.

21 THE WITNESS: Daniel Graham Buckner, but I go by
22 Graham.

23 DIRECT EXAMINATION

24 BY MR. MITCHELL:

25 Q Mr. Buckner, how long have you been practicing law?

1 A About five years.

2 Q Five years.

3 What's your current position?

4 A I'm an assistant solicitor in Pickens County.

5 Q Okay. And were you the solicitor assigned to this
6 case?

7 A Originally I was not, actually. Another prosecutor
8 in our office named Brandi Hinton had this case, and then
9 she left our office and I took it over from that point
10 forward.

11 Q Okay. But you were the solicitor at the time of the
12 guilty plea, correct?

13 A I was.

14 Q Okay. Could you briefly describe for me some of the
15 facts surrounding the case?

16 A So the facts that would have been alleged at trial
17 are that Mr. Zieglar had moved down from West Virginia
18 with the victim in this case, Chantelle Mason, and her
19 minor child. Mr. Zieglar actually had pending charges up
20 in West Virginia, and they moved down to -- I believe
21 their address was an Easley address. And while there, a
22 dispute arose between them. He actually pulled a gun on
23 the victim, Ms. Mason, held her at gunpoint on the couch
24 while her son was in the home and would not allow her to
25 leave for a period of time. And eventually, she was able

1 to escape and called 9-1-1 from a nearby motel. And then
2 officers arrived, found Mr. Zieglar at the home and found
3 a gun inside.

4 Q Let me ask you, was the victim in this case willing
5 to testify at trial?

6 A She was.

7 Q Okay. So she was cooperative?

8 A She was cooperative.

9 Q All right. I know normally there's an exchange of
10 discovery information between the solicitor's office and
11 defense counsel. Did you receive a Rule 5?

12 A Yes.

13 Q Okay. And did you turn over all appropriate
14 discovery to defense counsel?

15 A Yes, we did.

16 Q Okay. Can you think, was there anything else at the
17 last minute that came up that you needed to turn over that
18 you didn't at all?

19 A I think the 9-1-1 call, we burned that onto a disk
20 and then provided that later on prior to trial. I'm
21 trying -- there were some -- there were some phone calls
22 that I believe Mr. DeJong was trying to get for his client
23 which we did not have, and I think he was trying to
24 subpoena records from the phone companies. We -- I did
25 not have that in my case file. That was not a part of the

1 law enforcement's investigation in the case.

2 Q Is it fair to say you felt that this was a pretty
3 strong case if it had gone to trial?

4 A Yes.

5 Q Okay. All right. And he pled guilty. I'm assuming
6 there were plea negotiations surrounding the case?

7 A So the original prosecutor who was assigned the case
8 had offered Mr. Zieglar a seven-year offer. He turned
9 that down, and then she left the office and I took over
10 the case after the offer had already expired with every
11 intention of taking it to trial at the earliest available
12 date. So once it was put on the trial docket, all
13 recommendations were off at that point. We actually
14 picked a jury in this case, went through pretrial motions.
15 I don't recall whether we actually did opening statements
16 or not. And then Mr. DeJong walked back in the courtroom
17 with Mr. Zieglar, and all of a sudden he said he wanted to
18 plead guilty. So he pled guilty without any
19 recommendations whatsoever. However, it was put on the
20 record that the original offer in the case was seven
21 years.

22 Q But he ended up, obviously, getting sentenced.

23 So a recommendation, but no negotiated plea at all?

24 A There was no recommendation or negotiated plea. It
25 was a -- what you would call a straight-up plea.

1 Q And you were there, and you heard the judge say that,
2 correct?

3 A Yes.

4 MR. MITCHELL: Thank you. That's all the questions I
5 have for you.

6 MR. ARIAIL: I have no questions.

7 THE COURT: All right. Thank you, Mr. Buckner. You
8 can step down.

9 THE WITNESS: Thank you, Judge.

10 MR. MITCHELL: Your Honor, the State would call
11 Mr. John DeJong.

12 WHEREUPON,

13 JOHN WILLIAM DEJONG

14 After having been duly sworn, testified as follows:

15 THE CLERK: Thank you. And please state your full
16 name for the record.

17 THE WITNESS: John William DeJong. Last name is
18 spelled D-E-J-O-N-G.

19 DIRECT EXAMINATION

20 BY MR. MITCHELL:

21 Q Mr. DeJong, how are you today?

22 A Pretty good for an old guy.

23 Q That's good to hear.

24 How long have you been practicing law here in South
25 Carolina?

1 A Year-wise, I don't know. I was licensed to practice
2 in May of 1975.

3 Q That's quite a while. How much of that time has been
4 devoted to criminal law?

5 A 12 -- roughly 14 years with the Solicitor's Office
6 and now almost 18 as public defender in Pickens County.

7 Q It's fair to say you're pretty experienced in
8 criminal law, correct?

9 A Yes, sir.

10 Q All right. So do you recall how you came to be -- to
11 represent Mr. Ziegler? Were you retained or appointed?
12 Or how?

13 A Well, he was always -- the Public Defender's Office
14 had always been appointed to represent him. Mr. Cantrell
15 is one of my contract part-time lawyers. I believe there
16 was an issue between Mr. Ziegler and Mr. Cantrell. The
17 judge -- whether the judge actually ordered that
18 Mr. Cantrell be relieved, I'm not sure. I don't remember
19 the dialogue during that hearing. I think at some point
20 during the hearing, I volunteered that I would represent
21 Mr. Ziegler under the original appointment by the clerk's
22 office.

23 Q Do you recall how many times you met with
24 Mr. Ziegler?

25 A I do not. We met several times, and plus he had

1 access to the phone. He called me several times.

2 Q Okay. And you said you met several times. Is it
3 normal practice for you to go over the charges with your
4 client?

5 A Oh, absolutely. He -- well, I don't want to say
6 obviously, but he was incarcerated throughout the -- from
7 the time of his arrest to, ultimately, his guilty plea, so
8 I'd go down to the jail to see him periodically, went over
9 his discovery. And I believe, as he indicated, he had a
10 copy of that discovery.

11 Q Very good. Did you review the possible punishments
12 for these particular crimes?

13 A I did.

14 Q Okay. And you talked to him about the burden of
15 proof that the State had against him?

16 A I did.

17 Q And during the course of these discussions with him,
18 did you guys decide on whether this was going to be a
19 potential plea or a trial?

20 A Actually, we got the offer from Ms. Hinton for seven
21 years, although I think Mr. Buckner may have extended
22 that. I'm not 100 percent sure on that. Mr. Ziegler did
23 not desire to plead guilty for the seven years and wanted
24 a trial. So as Mr. Buckner said, we were on the verge, we
25 had struck the jury. I was probably as surprised as

1 anyone when Mr. Zieglar said he wished to plead guilty.

2 Q Okay. I want to talk a little bit about the
3 investigation into the case. What type of investigation
4 did you do?

5 A Not in one sense a great deal. I went out to where
6 the incident took place, I took pictures, we talked about
7 that.

8 I do recall a discussion about the house key. And
9 maybe to put that in a little bit of perspective very
10 briefly, the -- Mr. Zieglar indicated that there was an
11 argument between he and Ms. Mason, that she actually
12 pushed him down, that she then got up to leave. She was
13 going to take the car. The house key was on the key ring.
14 She took the house key off and gave it to him. Now,
15 exactly what transpired there, I believe there was some
16 indication that the house key had been -- I don't want to
17 say removed, but somehow it was not in his personal
18 property.

19 Q Was that key material to the case, in your opinion?

20 A I didn't really think so. It was some evidence that
21 she left with the car, but that was more or less after the
22 allegations were over, if you will. That's not very
23 clear. But if he had, indeed, kidnapped her, then the
24 kidnapping was over at that point in time.

25 Q Absolutely. You had access to all the relevant

1 information from the Solicitor's Office, discovery and all
2 that good stuff?

3 A As far as I know, they turned everything over to me.

4 Q Incident reports, the victim statements and things
5 like that, correct?

6 A Yes, sir.

7 Q Okay. Did you discuss with Mr. Zieglar his version
8 of events of the actual ---

9 A Absolutely.

10 Q Okay. And what was his version of what happened?

11 A His version was that there was an altercation that
12 took -- well, there was certainly a dispute between them,
13 that he had never held her against her will, that if
14 anything, she had really assaulted him, wasn't sure about
15 what actually led her to go to -- I forget the name of the
16 motel there in Easley.

17 And we discussed phone records. Part of what he
18 wanted was to get Ms. Mason's phone records. We
19 ultimately did get her phone records. The -- his position
20 was that she was actually talking on the telephone during
21 the time frame that he was allegedly holding her against
22 her will. We did get those records. I discussed that
23 with Mr. Buckner. I would not say -- I can't say entirely
24 100 percent, but Mr. Buckner did not dispute the fact that
25 she was on the phone, and, indeed, may have even

1 stipulated -- or would have stipulated that she was on the
2 phone during this time frame.

3 Q Were there any other potential witnesses that
4 Mr. Ziegler wanted you to contact or --

5 A The only one that comes to mind, and she was the only
6 one on my witness list, was a Cynthia Tyler, I believe.
7 She lived in the Atlanta area. I talked to her on more
8 than one occasion. She had always faithfully assured me
9 that she would be here when she was needed for trial. I
10 can't say when I contacted her before the Monday of this
11 trial, but then at the midnight hour, she said she could
12 not be here. No, I did not subpoena her, okay?

13 Q What was her involvement with the case, and was she a
14 material witness?

15 A My understanding what she would have testified to or
16 what Mr. Ziegler had shared with me that she would have
17 testified to and, I believe, in my discussion with her,
18 that during the time frame that these allegations arose,
19 that Mr. Ziegler had called her on two or three occasions
20 on his cell phone from Easley to, let's say, Atlanta. I
21 know it was somewhere in Georgia. It was a 404 area code.

22 Q Okay. And in regards to the substance of the
23 allegations against the victim, did she ---

24 A No. She was -- she was not present. She was living
25 in Georgia as far as I know when these allegations arose.

1 Q Okay. Okay.

2 A She was not an eyewitness. She had no -- would have
3 not been able to testify to anything that transpired
4 during the time frame.

5 Q Okay. So assume this is prepared to go forward to
6 trial, what changed in between that period with the
7 defendant deciding to plead guilty?

8 A I honestly don't know. As I said a moment ago, I was
9 probably as surprised as anybody in the courtroom when
10 Mr. Zieglar said he wanted to plead guilty. It may have
11 been 30 minutes. As I said, we had already struck the
12 jury. Actually, I think we had to strike the jury twice
13 in that case because there was a Batson motion that was
14 granted.

15 We did do motions. To my knowledge, the jury was
16 never sworn. Judge Gravely was very patient, as I think I
17 said. It seemed like more than 30 minutes. But we were
18 on in Courtroom 4 in the Pickens County courthouse, and
19 right out the back door is the grand jury room. And
20 Mr. Zieglar and I went back to the grand jury room. He
21 used my phone, my cell phone to call Ms. Tyler. As memory
22 serves me, I don't know if he got her the first time, but
23 I think he called her at least twice before he made his
24 final decision to plead guilty.

25 Q Whose decision was it to plead guilty? Was it yours

1 or his?

2 A It was definitely Mr. Ziegler's. Not mine.

3 Q Let me ask you this. Do you think -- how strong was
4 the State's evidence in the case?

5 A That is always hard to say how a jury is going to
6 react to it. Usually, what I will tell a client is it is
7 a triable case. I'm afraid if you get much further than
8 that, your clients will take it as some sort of guarantee
9 of what's actually going to happen. And it was a triable
10 case.

11 Q Let me ask you this. What would have been the theory
12 of the case to the jury that you would have presented on
13 behalf of the defendant?

14 A The theory of the case would have been for some
15 reason that Ms. Mason was upset, angry with Mr. Ziegler
16 for reasons unknown. Part of what fascinated me and, I
17 think, Mr. Ziegler as we talked about the case was the
18 length of time from when Ms. Mason actually left the
19 residence where this occurred, drove to a motel, and then
20 there was an additional time lapse before she called
21 9-1-1. Indeed, there were a couple of -- at least one,
22 maybe two phone calls to a friend in Virginia or West
23 Virginia. And then after those phone calls, Ms. Mason
24 then called 9-1-1.

25 Q Was there ever any conversation about a potential PCR

1 or ---

2 A Probably was. I oftentimes share with that.

3 Now, I don't recall Mr. Zieglar asking me to appeal
4 the case. I suspect if he did, I would have shared with
5 him on a guilty plea, in my opinion, there was no basis
6 for an appeal, that he, in my opinion, would be better off
7 to forgo the appeal and just immediately file this PCR.

8 MR. MITCHELL: Thank you, Mr. DeJong. That's all the
9 questions I have. Please answer any question Mr. Ariail
10 may have.

11 THE COURT: All right. Mr. Ariail?

12 MR. ARIAIL: Yes, Your Honor. May it please the
13 Court.

14 CROSS EXAMINATION

15 BY MR. ARIAIL:

16 Q Mr. DeJong, how are you doing today?

17 A I'm well. Thank you, sir.

18 Q You took over this case from Mr. Cantrell. Do you
19 believe you had enough time to be able to discuss the case
20 with my client Mr. Zieglar?

21 A Oh, yes. There was -- I don't remember what the time
22 lapse was, but there was, I want to say, a fairly lengthy
23 time lapse from the time I took the case from
24 Mr. Cantrell.

25 Q It seemed to be -- I guess there weren't a lot of

1 witnesses. It was Ms. Mason, himself and a 9-1-1 call was
2 pretty much the evidence in the case.

3 A Potentially -- I don't know if the solicitor would
4 have actually put him on the stand or not, but potentially
5 Ms. Mason's son as well.

6 Q Got it. Okay. So between that, the one thing he
7 raised, and it's in regards to this car key or house key,
8 did you see anything that could have been used at trial
9 that would have helped, I guess, persuade the jury that
10 the way he looks at it, he was allowed in the residence
11 and ---

12 A No. Because whether he was allowed in the residence
13 or not, from my opinion from a legal standpoint, had no
14 bearing on the kidnapping. Now, had he been charged with
15 burglary, that would have been a little different
16 situation.

17 Q Did you explain to him that or have a discussion
18 about this key in relation to kidnapping?

19 A I think we did, Mr. Ariail. I cannot say for sure.

20 Q Okay. Now, the phone records we've heard, I think
21 you've acknowledged that Ms. Mason's phone records show
22 that she was on the phone at some point in time.

23 A That is correct.

24 Q Did you explain that to him how -- I guess he's
25 saying how could she be kidnapped if she's on the phone?

1 A In trying to explain it, how could should be
2 kidnapped while she was on the phone, I can't really
3 explain that.

4 Q Right.

5 A But I said certainly, that was fuel for
6 cross-examination of Ms. Mason at trial.

7 Q Sure. Right. To the best of your recollection, did
8 you explain that to him or discuss that with him?

9 A Yes, sir.

10 Q Okay. Now, we've gone through and he's indicated
11 that potentially there was an alibi witness that didn't
12 want to testify and he says you should have subpoenaed him
13 anyway. Do you remember this?

14 A I was listening to his testimony, Mr. Ariail. In all
15 honesty, I do not remember that.

16 Q You do remember the Cindy Tyler, I guess, who was in
17 Georgia?

18 A Yes, sir.

19 Q Now, what was her testimony going to be in regards
20 to? Do you remember?

21 A Simply, as I understood it and having talked with
22 Mr. Zieglar and Ms. Tyler, that she would have testified
23 that during this time frame, Mr. Zieglar had called her
24 two or possibly three times.

25 Q Okay. And she was not willing to come testify, I

1 guess; is that correct?

2 A It wasn't that she was unwilling. I had talked to
3 her on more than one occasion prior to the actual trial
4 date, and she had always been supportive and saying that
5 she would be there whenever we needed her to be there.

6 Q Okay. When -- I guess on the day of trial, was she
7 coming or was she not coming?

8 A She was not coming.

9 Q Okay. He tried to contact her is what you said to
10 see if she was going to be there?

11 A Not only did he try to contact her, he actually
12 contacted her and talked to her on the phone.

13 Q Oh, so he did have a conversation with her?

14 A Yes, sir.

15 Q And she ---

16 A More than -- I'm sorry. More than one, I believe.

17 Q I mean, your understanding coming out of this
18 conversation was she was not coming.

19 A That is correct.

20 Q Okay. Now, there was some allegation in regards to
21 newly discovered evidence. Do you remember anything being
22 newly discovered during your period of time that came
23 about, stuff you didn't have that the solicitor gave you
24 at the end?

25 A I know we got copies of the text messages. Exactly

1 when they came in, I don't remember. We got a copy of the
2 9-1-1 tape that we listened to. Nothing comes to mind
3 immediately about newly discovered evidence. I don't
4 recall that.

5 Q Okay. Now, in regards to the plea, did Mr. Zieglar
6 talk with the solicitor about the plea before he went in?
7 Do you remember any conversations between you and him or
8 him and the solicitor?

9 A Certainly I remember conversations between me and
10 Mr. Zieglar before he went in to plead. I don't know. I
11 may have gone back and asked Mr. Buckner if he would still
12 do the seven-year recommendation, knowing full well what
13 his answer would be.

14 Q Right.

15 A But I may have asked him that. Mr. Zieglar may have
16 even asked him that.

17 Q Okay.

18 A But the response was no. This is on the trial
19 docket. We're going to trial. There are no
20 recommendations.

21 Q And the best you could get was to put on the record
22 that he had been recommended seven years previously.

23 A Yes, sir.

24 And in one sense almost effectively, I believe he got
25 nine years, but he also had credit for 634, 35 days,

1 something like that.

2 Q Based on your review of the case, was there any other
3 things that you could have done that would have, I guess,
4 been helpful to him at trial that you're now seeing?

5 A I can't really think of anything, Mr. Ariail.

6 Q Okay. Your understanding is if he'd asked you to
7 appeal, you would have appealed?

8 A I think so. We may have talked about an appeal ---

9 Q Okay.

10 A --- okay? And, again, that is not really clear. My
11 experience has been, and I think I shared this with
12 Mr. Ziegler, to appeal a guilty plea, number one, is
13 pretty much an exercise in futility unless there's a real
14 basis for it, and I did not see a basis in this one -- for
15 this one. So if the client wishes to file a PCR, you're
16 just prolonging the amount of time before they can
17 actually file a PCR.

18 Q Okay. And then you discussed with him about being
19 able to file a PCR?

20 A Yes, sir. I definitely discussed with him to file a
21 PCR.

22 MR. ARIAIL: I have no further questions, Your Honor.

23 THE COURT: Thank you.

24 Mr. Mitchell? Any ---

25 MR. MITCHELL: Nothing else, Your Honor.

1 THE COURT: All right.

2 Thank you, Mr. DeJong. You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Anything further, Mr. Mitchell?

5 MR. MITCHELL: Nothing, Your Honor.

6 THE COURT: All right. What I'm going to do is I'll
7 issue a ruling tomorrow. I need to go over Mr. Ziegler's
8 amended petition in detail, and I'll do that between now
9 and tomorrow after I have read everything he has in that
10 document. And I'll notify -- well, I'll see you here in
11 court tomorrow, and then I'll notify Mr. Ariail by e-mail.
12 Thank you.

13 (WHEREUPON, proceedings concluded at 12:22 p.m.)
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24
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)

4 COUNTY OF GREENVILLE)

5
6
7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Pickens County, South Carolina, on the
14 28th day of June, 2017.

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

17
18 August 9, 2017

19
20
21 Cheryl A. Smith

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

John Adrian Ziegler, #365214,

2015-CP-39-1575

Applicant

v.

State of South Carolina,

Respondent

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for Post-Conviction Relief filed on December 30, 2015. Respondent made its Return on or about June 29, 2016. An evidentiary hearing into the matter was convened on June 28, 2017 at the Greenville County Courthouse in Greenville, SC at which time the Applicant was present in court and represented by R. Mills Ariail Jr., Esquire. The Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's plea counsel, John DeJong, Esquire also testified as did Daniel Buckner, Esquire, Assistant Solicitor for the Thirteenth Judicial Circuit. This Court had before it a copy of the records of the Pickens County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return, and Applicant's records for the Department of Corrections.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. Applicant was indicted by the

August 2014 term of the Pickens County Grand Jury for one (1) count of Kidnapping (2014-GS-39-00087), one (1) count of Assault and Battery, Third Degree (2014-GS-39-00088), and one (1) count of Pointing and Presenting a Firearm (2014-GS-39-00089). John DeJong, Esquire represented Applicant. On August 24, 2015, Applicant pled guilty as indicted. The Honorable Perry H. Gravely sentenced Applicant, without negotiation or a recommendation from the State, to incarceration for nine (9) years for the count of Kidnapping, thirty (30) days for the count of Assault and Battery, Third Degree, and three (3) years for the count of Pointing and Presenting a Firearm. The sentences are set to run concurrently. Applicant did not appeal his conviction and sentence.

ALLEGATIONS

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

1. "Brady Violation"
 - a. "The Solicitor in the investigation leading to their indictment was guilty of flagrant misconduct for failure to provide exculpatory evidence to the indicting Grand Jury and the questionable tactics employed during the course of the investigation"
2. "Due Process Violation"
 - a. "The holding that the suppression of exculpatory evidence violated Brady's right to due process"
3. "Constructive Fraud"
 - a. "The Solicitor conspired with both Deputy to creat (sic) a scheme of perjury and failure to produce documents perpetuated by both"
4. "The record of the guilty plea does show that the trial judge provided an explanation of the constitutional rights applicant was waiving, thus rendering the pleas invalid"

5. "Duress cause (sic) the victim to act or force into a plea (sic)"
6. "Manufactured Indictment"
 - a. "Solicitor unlawfully impaneled its Grand Jury outside the jurisdiction of the Court of General Sessions, and then willfully printed and published false and misleading information in its indictment in order to deep (sic) secret its violations of Statutor (sic) law"
7. "Prosecutorial Misconduct"
 - a. "Failure to provide to provide exculpatory evidence to the indicting Grand Jury and for questionable tactics employed during the cause (sic) of the investigation"
8. Ineffective Assistance of Counsel

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant

Applicant testified he was previously represented by a different attorney prior to Mr. DeJong (plea counsel) representing him. He testified he really wanted to go to trial but did not believe the court system was reliable. He testified he met and discussed his case with plea counsel while also going over the evidence in the case. Applicant further testified he did not think he had enough time to make a reasonable decision on the case. He testified there was some exculpatory evidence the solicitor never turned over to him. Applicant testified there was a house key missing which would have shown he was a resident of the home and could not have kidnapped the victim. Applicant also testified the solicitor did not turn over cell phone records from the victim which would have shown she was on the phone and could not have been kidnapped. He also testified he was not notified he had a right to appeal. Applicant also testified plea counsel talked to a potential alibi witness in preparation for trial but did not subpoena that

witness. He testified there was newly discovered evidence of 911 tapes that were never presented to the court system. Applicant testified at the guilty plea proceeding there was a recommendation that he receive a seven year plea but he got a nine year sentence and plea counsel should have objected to that. Applicant testified he never received an indictment with his discovery materials and that he was not indicted in a timely manner after being arrested.

Daniel Graham Buckner

Daniel Buckner, an Assistant Solicitor for the 13th Circuit Solicitor's Office testified. Mr. Buckner testified he was not the original solicitor assigned to Applicant's case but when that solicitor left the office he took over the case. Mr. Buckner testified that a dispute arose at the home of the victim and the Applicant. He testified Applicant pulled a gun on the victim and held her at gunpoint on the couch while the victim's son was in the home and would not allow her to leave for a period of time. Mr. Buckner testified the victim was cooperative and willing to testify in this case had it gone to trial. Mr. Buckner also testified he received a Rule 5 request for discovery and turned over all appropriate discovery to defense counsel. Mr. Buckner testified he also provided a copy of the 911 call of the victim to defense counsel prior to trial. He also testified plea counsel was trying to get some phone calls for his client that his office did not have in its investigation file. Mr. Buckner also testified the original prosecutor in the case had offered Applicant a seven year plea deal and Applicant turned the offer down. He testified once he took over the case all previous recommendations were off and he placed the case on the trial roster. He testified they actually picked a jury in this case and went through pretrial motions before Applicant decided to plead guilty. Finally, Mr. Buckner testified at the guilty plea hearing there was no recommendation or negotiated plea and that it was a straight up plea.

John William DeJong

Mr. DeJong (plea counsel) testified he had been practicing law since 1975. He testified he was appointed to represent Applicant after a different attorney was relieved from the case. Plea counsel testified he met with Applicant several times and Applicant called him several times as he had access to a phone. He also testified he went down to the jail and went over the discovery in the case with Applicant while also going over the charges and possible punishments with Applicant. He testified he received a seven year plea offer but Applicant did not desire to plead guilty and wanted a trial. Plea counsel testified they had struck a jury and was surprised when Applicant informed him he wished to plead guilty. Plea counsel testified he went out to the location of the incident and took pictures. He testified the issue regarding a house key was not material to the Applicant's case. He further testified as far as he knew he had access to all of the discovery from the solicitor's office. Plea counsel testified he discussed Applicant's version of events and got the victim's phone records. Plea counsel testified that Applicant wanted him to contact a potential witness named Cynthia Tyler. He testified he talked to her on more than one occasion. He testified he did not subpoena her and that she was not an eye witness adding that she would not have been able to testify to anything that transpired during the time frame of the kidnapping. Plea counsel testified it was definitely Applicant's decision to plead guilty. He testified he did not recall Applicant asking him to appeal his case and if Applicant would have he would have told him in his opinion there was no basis for an appeal.

On cross examination, plea counsel testified that the issue of the key and him being allowed in the house had no bearing on the case as this was a kidnapping case and not a burglary.

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 at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). This Court finds the testimony of Counsel to be credible. This Court further finds that the testimony by Applicant is not credible.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel’s deficient performance must have prejudiced the

applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant also failed to prove he was prejudiced by the alleged deficiencies. As a matter of general impression, this Court finds the testimony of Applicant's counsel to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Prosecutorial Misconduct/Brady violation

Applicant alleges that prosecutor in this case failed to turn over exculpatory evidence to him. Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Clark v. State, 315 S.C.385, 388, 434 S.E.2d 266, 268 (1993). Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment. Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Under this requirement, "favorable" evidence includes both exculpatory evidence and impeachment evidence. State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998). "Determining whether evidence withheld by the state is 'material' under Brady turns on whether the cumulative effect of the withheld evidence results in

a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” State v. Hill, 368 S.C. 649, 661, 630 S.E.2d 274, 280–81 (2006). Put another way, to establish a Brady violation, the aggrieved party must show “that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” Kyles v. Whitley, 514 U.S. 419, 434 (1995). At the PCR hearing the assistant solicitor testified he turned over all materials in discovery to Applicant. Plea counsel also testified he believed he received all discoverable information during this process. Applicant testified there was a house key missing that should have been turned over as well as cell phone records. Plea counsel testified the house key was not material to the Applicant’s case and he had obtained the victim’s phone records. Because of this, the Applicant had failed to demonstrate that there was prosecutorial misconduct or a likewise a Brady violation. Accordingly, this Court finds that this allegation is denied and dismissed.

Guilty Plea Invalid

Applicant also alleges that he was under duress during the guilty plea proceeding making his guilty plea invalid. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of her plea and the charges against him. See Boykin, 395 U.S. at 243. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge, 431 U.S. at 73-74. Statements made during a guilty plea should be considered conclusively, unless an

plea and the possible sentences he could receive. Accordingly, this Court finds that this allegation is denied and dismissed.

Manufactured Indictment

Applicant also alleges that his indictment was manufactured. More specifically, Applicant testified at the PCR hearing he never received an indictment with his discovery materials and that he was not indicted in a timely manner after being arrested. Rule 3(c) of the South Carolina Rules of Criminal Procedure state;

Within ninety (90) days after receipt of an arrest warrant from the Clerk of Court, the solicitor shall take action on the warrant by (1) preparing an indictment for presentment to the grand jury, which indictment shall be filed with the Clerk of Court, assigned a criminal case number, and presented to the Grand Jury; (2) formally dismissing the warrant, noting on the face of the warrant the action taken; or (3) making other affirmative disposition in writing and filing such action with the Clerk of Court. Rule 3(c), SCRCrimP

In State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984) the South Carolina Supreme Court interpreted the rule requiring solicitors to act on a warrant within ninety days of its issue. The court agreed with and affirmed the trial court's holding that such a rule was administrative not jurisdictional. *Id.* Furthermore, the court stated a solicitor's delay does not within itself invalidate a warrant or prevent subsequent prosecution. *Id.* at 40, 316 S.E.2d at 681. This Court finds that Applicant has failed to show any irregularities with respect to the indictments. Accordingly, this Court finds that this allegation is denied and dismissed.

Failure to File Notice of Appeal

Applicant alleges plea counsel was ineffective for failing to file a notice of appeal after his guilty plea. Though counsel is required to make certain that a defendant is made fully aware of his or her right to appeal after a *trial*, a different standard applies to a guilty plea:

Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.

Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (citations omitted).

At the evidentiary hearing, plea counsel testified he did not recall Applicant asking him to appeal his case. He testified if Applicant had asked him he would have advised him in his opinion there was no basis for an appeal.

The Court finds no deficiency on the part of plea counsel or prejudice therefrom. The Court relies upon the credibility findings already set forth above, and finds Applicant never asked for an appeal and no other reason existed for plea counsel to believe Applicant wanted or would want an appeal. Accordingly, Applicant's request for relief by way of this allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 13th day of February, 2018.



DANIEL D. HALL
Presiding Judge
Thirteenth Judicial Circuit

York

, South Carolina

CLERK OF COURT
YORK COUNTY
SOUTH CAROLINA

2018 MAR -6 A 9:51

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on **AUG 19 2014** the Grand Jurors of Pickens
County present upon their oath:

That JOHN ADRIAN ZIEGLAR did in Pickens County, on or about the 27th day of November, 2013, unlawfully
seize, abduct, confine, inveigle, decoy or carry away Chantelle Mason, without the authority of law. This is in
violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

Certified Copy
Harold P. Veltman
Clerk of Court
Pickens County, SC
Dated *AB*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided:

Brian Hunter
SOLICITOR

WITNESSES

Eric Mackay

Pickens County Sheriff's Office

11/28/2013

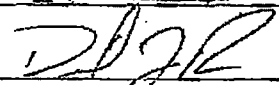
ARREST WARRANT NUMBER
2013A3910300707

ACTION OF GRAND JURY

TRUE BILL

Date

AUG 19 2014



Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-39-0087

BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUG 19 2014

TERM 2014

THE STATE

vs.

JOHN ADRIAN ZIEGLAR

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

Certified Copy

Handwritten: P. Walker

Clerk of Court
Pickens County, SC

Dated

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
ASSAULT AND BATTERY 3RD DEGREE

At a Court of General Sessions, convened on
County present upon their oath;

AUG 19 2014

the Grand Jurors of Pickens

That JOHN ADRIAN ZIEGLAR did in Pickens County on or about the 27th day of November 2013,
unlawfully injure Chantelle Mason or offer to injure Chantelle Mason with the present ability to commit
the act, to wit; bit the victim on the shoulder and pinned her arm behind her. This is in violation of §16-
03-0600 of the South Carolina Code of Laws (1976) as amended.

Certified Copy

Harold P. Walker

**Clerk of Court
Pickens County, SC**

Dated *AMB*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Brenda Hunter
SOLICITOR

WITNESSES

Eric Mackey

Pickens County Sheriff's Office

11/28/2013

ARREST WARRANT NUMBER

2013A3910300705

ACTION OF GRAND JURY

TRUE BILL

Date

AUG 19 2014

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-39-0088
BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUG 19 2014

TERM 2014

THE STATE

vs.

JOHN ADRIAN ZIEGLAR

Indictment for

3414

ASSAULT AND BATTERY 3RD DEGREE

VIOLATION § 16-03-0600(E)(1)

Certified Copy

Hannah P. Walker

Clerk of Court
Pickens County, SC

Dated

AUG

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
POINTING AND PRESENTING A FIREARM

At a Court of General Sessions, convened on

AUG 19 2014

the Grand Jurors of Pickens

County present upon their oath:

That JOHN ADRIAN ZIEGLAR did in Pickens County, on or about the 27th day of November, 2013, point or present a firearm, to wit: a .45 handgun, at or in the presence of Chantelle Mason. This is in violation of §16-23-410 of the South Carolina Code of Laws (1976) as amended.

Certified Copy

Harold P. Waller

Clerk of Court

Pickens County, SC

Dated

AMB

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Brian Huxton
SOLICITOR

WITNESSES

Eric Mackey

Pickens County Sheriff's Office

11/28/2013

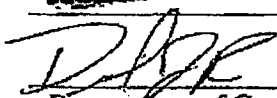
ARREST WARRANT NUMBER
2013A3910300706

ACTION OF GRAND JURY

TRUE BILL

Date

AUG 19 2014


Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:DOCKET NO. 2014-GS-39-0089
BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUG 19 2014

TERM 2014

THE STATE

VS.

JOHN ADRIAN ZIEGLAR

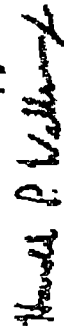
Indictment for

0122

POINTING AND PRESENTING A FIREARM

VIOLATION § 16-23-0410

Certified Copy

Clerk of Court
Pickens County, SC

Dated

