

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

Certiorari to Spartanburg County

Honorabable Robin B. Stilwell, Circuit Court Judge

RECEIVED

AUG 31 2018

KESHAUN D. JETER,

S.C. SUPREME COURT

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2018-000080

MOTION TO HOLD APPEAL IN ABEYANCE AND
MOTION TO REATTEMPT TRANSCRIPTION BEFORE REMAND
OR REMAND FOR RECONSTRUCTION OF THE RECORD

Pursuant to Rule 240, SCACR, undersigned counsel requests an order to hold petitioner's appeal in abeyance and direct South Carolina Court Administration to provide the drive containing the recording of petitioner's partial trial and guilty plea on September 2 – 3, 2014, to an employee familiar with information technology (IT) who shall attempt to open the drive and transcribe its contents, or in the alternative to hold petitioner's appeal in abeyance and remand this case to the Spartanburg County Court of General Sessions to reconstruct the record of petitioner's partial trial and guilty plea.

In accordance with Rule 240(c)(3), SCACR, petitioner submits the following documents to support this motion: letter from court reporter (Exhibit #1); application for PCR (Exhibit #2); state's return (Exhibit #3); PCR hearing transcript (Exhibit #4); order of dismissal (Exhibit #5); indictment (Exhibit #6); sentence sheet (Exhibit #7).

Procedural history

Petitioner was indicted by the Spartanburg County Grand Jury on January 18, 2013, for the offense of second degree criminal sexual conduct with a minor. Petitioner proceeded to trial before the Honorable G. Edward Welmaker and a jury on September 2, 2014. Petitioner was represented by Robert Hall and the state was represented by Lindsey Overby. However, petitioner subsequently pleaded guilty on September 3, 2014, before the trial was over. Pamela Faucette was the court reporter. Judge Welmaker sentenced petitioner to two hundred months' imprisonment.

Petitioner filed a timely notice of appeal. The South Carolina Court of Appeals dismissed his appeal in an order dated December 3, 2014. *State v. Keshawn Donte Jeter*, Op. No. 2014-001929 (S.C. Ct. App. filed September 18, 2014). The remittitur was issued on December 22, 2014.

On September 10, 2015, petitioner filed an application for post-conviction relief (PCR). The state made its return on February 16, 2017. A hearing was held before the Honorable Robin B. Stilwell on March 22, 2017. Rodney Richey represented petitioner and Ruston Neely represented the state.

A transcript of petitioner's guilty plea was not produced for use at the PCR hearing. Prior to the PCR hearing, the Attorney General's Office received a letter from court reporter Harriet P. Bennett dated October 13, 2016, which was typed using a typewriter rather than a

computer. Ms. Bennett stated she was unable to produce a transcript of petitioner's guilty plea because, "the hard drive sent to me to produce this record is defective and cannot be opened."

Petitioner's PCR counsel, the Assistant Attorney General, and the court never received a transcript of record. However, the PCR court proceeded with the PCR hearing without a transcript and took testimony from petitioner, his trial counsel, and the Assistant Solicitor who prosecuted the case, and issued an order of dismissal. "[T]he voluntariness of a guilty plea . . . **is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.**" *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984) (emphasis added).

The Assistant Solicitor, Lindsey Overby, testified that petitioner stated during the plea colloquy that he was not satisfied with his counsel, and that counsel should have done more to investigate. Exhibit #4, p. 43, ll. 8-13. Overby said that when Judge Welmaker asked if "the defendant had any complaints against his lawyer, he did indicate at that time that . . . he wasn't satisfied with his attorney, that he could have investigated this more." Exhibit #4, p. 43, ll. 8-13.

Petitioner alleged that his guilty plea was involuntary due to ineffective assistance of counsel. See Exhibit #2. Petitioner testified at the PCR hearing that counsel did not properly investigate the case and that counsel's cross-examination of the alleged victim was deficient. Exhibit #4, p. 15, l. 1 – 16, l. 9; Exhibit #4, p. 17, ll. 18-25. Petitioner said counsel's ineffective cross-examination of the victim caused him to plead guilty. Exhibit #4, p. 17, ll. 11-17. Petitioner also said he had a problem with "the DNA found from the rape kit" but

that he could not recall what the problem was. “I don’t recall, it wa—it’s in my transcript which I don’t have.” Exhibit #4, p. 16, ll. 10-20.

The PCR court denied petitioner’s claims of ineffective assistance and issued an order of dismissal on January 8, 2018. The court in its order denied and dismissed petitioner’s claim that his guilty plea was involuntary despite citing *State v. Roddy*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000), for the proposition that a PCR applicant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record. The court also denied petitioner’s claim that counsel was deficient in failing to investigate, and found the evidence against petitioner was so overwhelming as to negate any prejudice, despite not having a transcript. See Exhibit #5.

The order of dismissal states that Judge Welmaker passed away and would be unable to help reconstruct the record. Undersigned counsel is not acquainted with Judge Welmaker, but called the South Carolina Bar and the Supreme Court’s Office of Bar Admissions, and the records of both organizations show Judge Welmaker to be a judicial member in good standing, and hope that he is with us for much more time to come.

Undersigned counsel has been unable to review the transcript of the partial trial or guilty plea. A transcript of the proceedings is necessary in the interests of due process and to ensure meaningful appellate review of petitioner’s claims of ineffective assistance of counsel. As a result of the unavailability of the transcript and the potential appellate issues presented, counsel requests reconstruction of the record.

Reconstruction of record

Meaningful appellate review is impossible absent a transcript of record under these circumstances. Although the law does not require a “verbatim” transcript, the

record must “allow for meaningful review” of petitioner’s appeal. *State v. Ladson*, 373 S.C. 320, 324-25, 644 S.E.2d 271, 272-74 (2007).

“[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from **both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.**” *Lambert v. State*, 260 S.C. 617, 619, 198 S.E.2d 118, 119 (1973) (emphasis added); *accord Roddy v. State*, 528 S.E.2d 418, 339 S.E.2d 29 (2000); *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984); *Dalton v. State*, 376 S.C. 130, 654 S.E.2d 870 (2007).

“Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial.” *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). “We cannot presume a waiver of these three important federal rights from a silent record.” *Id.*

Through no fault of petitioner, the transcript is unavailable. *State v. Serrette*, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) (dismissing appeal where lack of transcript was due to the defendant’s absence for a ten-year period, and “not a situation where the court reporter’s equipment malfunctioned at trial leading to a loss of the trial transcript”).

When a transcript has been lost or destroyed, the Court may remand to have the record reconstructed. *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002); *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968). *See Deaton v. Leath*, 279 S.C. 82, 302 S.E.2d 335 (1983) (granting the appellant’s motion to set aside convictions and remand

for a new trial where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal).

Because petitioner alleged that he pleaded guilty during the trial as a result of counsel's ineffective performance, undersigned counsel believes that a transcript of both the trial and guilty plea are needed for meaningful review.

Petitioner respectfully requests this Court direct South Carolina Court Administration to provide the drive containing the recording of petitioner's partial trial and guilty plea to a person familiar with information technology (IT) who shall attempt to open the drive and transcribe its contents,¹ and to hold the timelines for filing the petition for writ of certiorari and appendix in abeyance during the pendency of this motion. If the reattempt at transcription is unsuccessful, petitioner requests this Court to remand the case for reconstruction.

Alternatively, petitioner respectfully requests an order remanding his case to the Spartanburg County Court of General Sessions for reconstruction of the record. While this motion is pending, petitioner asks this Court to hold the timelines for filing his petition for writ of certiorari and appendix in abeyance.

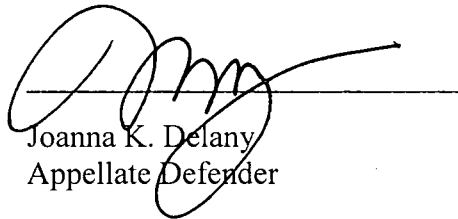
WHEREFORE, in order to allow for meaningful appellate review, petitioner respectfully requests this Court direct South Carolina Court Administration to provide the drive containing the recording of petitioner's partial trial and guilty plea to a person familiar with IT who shall attempt to open the drive and transcribe its contents, and to hold the timelines for filing the petition for writ of certiorari and appendix in abeyance

¹ Harriet P. Bennett, the court reporter who stated she was unable to transcribe the record because the hard drive was defective, typed this information on a typewriter—petitioner believes that it may be worthwhile for someone with IT experience to try to open the drive before a reconstruction is attempted.

during the pendency of this motion. If the reattempt at transcription is unsuccessful, petitioner requests this Court to remand the case for reconstruction.

Alternatively, petitioner respectfully requests this Court to hold the timelines for filing the petition for writ of certiorari and appendix in abeyance during the pendency of this motion and remand his case to the Spartanburg County Court of General Sessions for reconstruction of the record in petitioner's partial trial and guilty plea proceedings, and for what other relief this Court finds just and proper under these highly unusual circumstances.

Respectfully submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

August 31, 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG 31 2018

Appeal from Spartanburg County
Honorable Robin B. Stilwell, Circuit Court Judge

S.C. SUPREME COURT

KESHAUN D. JETER,

PETITIONER,

V.

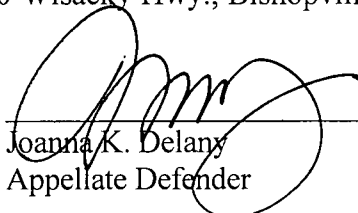
STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2018-000080

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the motion to hold appeal in abeyance and motion to hold appeal in abeyance and motion to reattempt transcription before remand or remand for reconstruction of the record in the above-referenced case has been served upon Jordan Cox, Esquire, Assistant General, Office of the Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, and Keshawn D. Jeter, #361267, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 31st day of August, 2018.


Joanna K. Delany
Appellate Defender

ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 31st day of August, 2018.

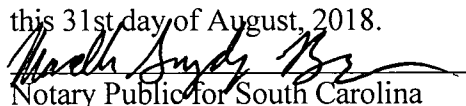
 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 26, 2028

Exhibit #1

HARRIET P. BENNETT
Reporter, S. C. Court Administration
46 Regency Oaks Drive
Summerville, S. C. 29485

October 13, 2016

Ms. Ashley Haworth
Legal Assistant
Office of the Attorney General
P. O. Box 11549
Columbia, S. C. 29201-1549

IN RE: State v. Keshawn Jeter
2013 GS 42 00 27

Dear Ashley:

I have been requested to produce a transcript in the above case, a guilty plea entered in Spartanburg County on September 3, 2014, and taken by Pamela Faucette.

The hard drive sent to me to produce this record is defective and cannot be opened. I'm sorry for the delay in letting you know, but Ms. Allen at Court Administration has attempted to locate other records of Ms. Faucette from around the same date. I'm sorry that was not successful, and that a transcript cannot be produced in this case.

Very truly yours,



Copy to Ms. Desiree Allen
Court Admin.

Exhibit #2

FORM 5

STATE OF SOUTH CAROLINA

County of LEE

IN THE COURT OF COMMON PLEAS

Keshaun Jeter 361267

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

2015-CP-42-3800

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution/990 Wisacky Highway/ Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence Spartanburg General Sessions Court
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013G54200027 (indictment)
 - (b) 2012A421 02 00551 (AIW)

2015 SEP 10 PM 4:29
M. NOBLE BLANKLEY
CLERK OF COURT
SPARTANBURG COUNTY
2015 AUG 21 AM 10:10
M. NOBLE BLANKLEY
CLERK OF COURT
SPARTANBURG COUNTY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) September 19, 2014
- (b) _____
- (c) _____
-
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

CLERK OF COURT
SPRINGFIELD
2015 SEP 10 PM 12:29
M. HOPPE BLACKLEY
2015 AUG 27 AM 10:10
M. HOPPE BLACKLEY

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

(a) Ineffective Assistance of Counsel

(b) Involuntary Guilty plea

(c) Conviction obtained unconstitutional

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

(a) ~~caused~~ counsel failed to investigate case

(b) guilty plea was forced by counsel

(c) police did not have probable cause for arrest

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

(a) any petition in a State Court under South Carolina Law? ~~no~~ yes

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

(c) any petition in the United States Supreme Court for certiorari other than petition if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. Direct Appeal

ii. _____

iii. _____

iv. _____

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

i. S.C. Court of Appeal

ii. _____

iii. _____

iv. _____

2015 SEP 10 PM 12:29
M. HOPE BLANCHET
CLERK OF COURT
SPRING ARBOR, SC
2015 SEP 21 AM 10:10
M. HOPE BLANCHET
CLERK OF COURT
SPRING ARBOR, SC

(c) the disposition thereof:

i. Denied

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

2015 SEP 10 PM 12:29

M. HOPE DOLAN, CLERK

2015 SEP 21 AM 10:10

M. HOPE DOLAN, CLERK

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

(a) N/A

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

(b) your trial, if any? ~~YES~~ NO

(c) your sentencing? YES

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

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

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

i. Robert Hall

ii. _____

iii. _____

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

i. Guilty plea / Sentencing

ii. _____

iii. _____

M. HOPE BLACKLEY

2015 SEP 10 PM 12:29

M. HOPE BLACKLEY

2015 AUG 27 AM 10:00

Revised 3/2003

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

Vacate guilty plea

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

NO

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

I, Keshaun Jeter, 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.

Keshaun Jeter

SWORN to and subscribed before me this 7th day of AUGUST, 2015.

Paul E. Driggers (L.S.)
Notary Public

My Commission Expires: 11-05-2019

Revised 3/2003

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

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

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

Keshaun Jeter

Applicant

SWORN or affirmed to and subscribed before me this

7th day of August, 2015.

[Signature]
Notary Public

My Commission Expires: 11-05-2019

CLERK OF COURT
SPRINGFIELD, MO
2015 SEP 10 PM 12:29
M. HOPE BLACKLEY

CLERK OF COURT
SPRINGFIELD, MO
2015 AUG 21 AM 10:10
M. HOPE BLACKLEY
Revised 3/2003

Exhibit #3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Keshaun D. Jeter, #361267,	)	Case No.: 2015-CP-42-3800
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on August 10, 2015, would respectfully show this Court:

I.

Keshaun Donte Jeter ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the January 2013 term of the Spartanburg County Grand Jury for Criminal Sexual Conduct with a Minor, Second Degree (2013-GS-42-0027). Robert B. Hall, Esquire, represented Applicant. On September 9, 2014, Applicant pleaded guilty as indicted before the Honorable G. Edward Welmaker. Judge Welmaker sentenced Applicant to 200 months imprisonment for Sex/Criminal Sexual Conduct with a Minor, or Attempt- Victim 11 to 14 years of Age inclusive, Second Degree.

Applicant filed a timely notice of appeal. Robert B. Hall, Esquire, represented Applicant on appeal. The South Carolina Court of Appeals dismissed Applicant's petition in an Order dated December 3, 2014. State v. Keshaun Donte Jeter, Op. No. 2014-001929 (S.C. Ct. App. filed September 18, 2014). The Remittitur was issued on December 23, 2014.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the Department of Corrections, and the records of this action. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to investigate case"
2. "Involuntary guilty plea"
 - a. "guilty plea was forced by counsel"
3. "Conviction obtained unconstitutional"
 - a. "Police did not have probable cause for arrest"

III.

Respondent interprets Applicant's first allegation as claims of ineffective assistance of counsel. These allegations are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial.” Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

A transcript cannot be produced for this case. 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).

IV.

Respondent interprets Applicant's second claim as an allegation that his guilty plea was involuntary. This allegation is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the Applicant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An Applicant alleging his guilty plea was induced by

ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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 his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000). When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

A transcript for this case cannot be produced. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305

V.

Applicant's final allegation raises 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 a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent will move to strike any amendments withheld until the last minute where such amendments result in prejudice to Respondent. See Rules 15(a)-(b), SCRCP.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held solely on the claims of ineffective assistance of counsel and the involuntariness of his guilty plea.

Respectfully submitted,

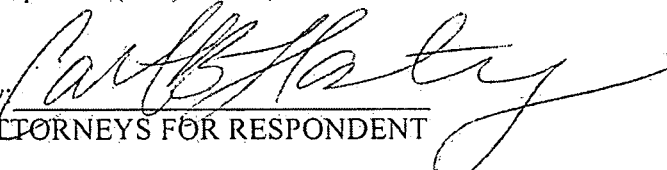
ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

CAITLIN B. HASTINGS
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
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By: 
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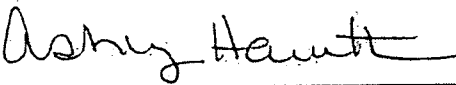
Feb. 16th, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
KESHAUN D. JETER, #361267,	)	2015-CP-42-3800
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Mr. Rodney Wade Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this 16th day of February, 2017.



Ashley Haworth, Paralegal
For Respondent

Exhibit #4

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Keshaun D. Jeter,)
5 Applicant,) TRANSCRIPT OF RECORD
6 The State,) 2015-CP-42-3800
7 Respondent.) March 22, 2017
8) Spartanburg, South Carolina
9
10
11

11 B E F O R E:

12 HONORABLE ROBIN B. STILWELL, JUDGE
13
14

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

16 RODNEY W. RICHEY, ESQUIRE
17 Attorney for the Applicant
18 RUSTON W. NEELY, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

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MOTIONS AND MATTERS

1 THE COURT: Alright, we'll call to bar the case of
2 Keshawn Jeter vs., uh, State of South Carolina
3 2015-CP-42-3800, Mr. Richey, do you need to speak to Mr. Jeter
4 before we bring him in and talk about reconstruction?

5 MR. RICHEY: Um, Judge, I would like to have a few
6 minutes.

7 THE COURT: Okay, alright, sir.

8 MR. RICHEY: I'm sorry, Judge.

9 THE COURT: No, that's alright, I know this is a little
10 bit different, ---

11 MR. RICHEY: Yeah.

12 THE COURT: --- uh, mighta been different what you
13 anticipated so I can give ya how 'bout five minutes, that
14 okay?

15 MR. RICHEY: That'll be fine.

16 THE COURT: Okay, good, enough.

17 MR. RICHEY: Uh, thank Your Honor.

18 THE COURT: We'll wait for ya.

19 (Pause.)

20 THE COURT: Let's call to bar, excuse me, the case of
21 Keshawn D. Jeter vs. the State a South Carolina, that is Case
22 Number 2015-CP-42-3800. Mr. Neely, I'd be happy to hear from
23 ya, I understand there is an issue in this case that needs to
24 be discussed and potentially resolved.

25 MR. NEELY: Uh, yes, sir, Your Honor. Um, before we

MOTIONS AND MATTERS

1 begin the, uh, post-conviction relief hearing I believe the
2 record in this case needs to be reconstructed, um, I have a
3 letter from, uh, Court Administration letting us know this
4 record was unable to be reconstructed, they're unable to find
5 the tapes to reconstruct the hearing, um, so there is no
6 record of the guilty plea in this case.

7 THE COURT: Okay. Alright, and, Mr. Richey, what's your
8 position, sir?

9 MR. RICHEY: Uh, Your Honor, I would say is my position
10 is that the Applicant should be granted relief, uh, we do have
11 the letter is from Harriet Bennett of Summerville and
12 apparently she was given a tape or responsibility producin'
13 the transcript and could not. Um, Judge, but our our -- this
14 was a case where there's two days of trial and then there was
15 a guilty plea after two days so there was testimony of the
16 victim, officers, that type of stuff, um, it has hampered our
17 ability to prepare some a the issues that he wanted to raise
18 'cause I didn't have the transcript. Apparently this is a CSC
19 with a minor, there was rape kit involved in this particular
20 trial, there's some issues as what was found in the rape kit,
21 what we've -- there was two subs -- two party's DNA from what
22 has been told to me that was found, uh, my client alleged that
23 counsel was ineffective in trying determine or or track down
24 who was the other pers -- other source of DNA, he also said
25 there was some issues with the cross-examination of the victim

MOTIONS AND MATTERS

1 at at the trial, um, and, you know, it it's just that we're
2 just in a position where we're not gonna be able to determine
3 first of all this rape kit deal because he -- his, it's his
4 position that wants the, he's tellin' me wants this rape kit,
5 counsel did not investigate, did not, was not able
6 cross-examine to the other recipient 'cause apparently there
7 was two samples in the the DNA he's tellin' me and he says
8 counsel failed to investigate the other source a that DNA and
9 he says that counsel didn't effective cross-examine the victim
10 and the other issue raises that nobody ever told him that the
11 judge could conceive the cap of 15 years, apparently this plea
12 it was a cap, the agreement was a cap a 15 years, now I
13 understand what the questions the Court typically asks the
14 defendant but he's tellin' me that nobody told that he would
15 get over the cap till he got over the cap, he was surprised by
16 it, but I'm aware of questions that Court asks during a
17 standard guilty plea.

18 THE COURT: Okay. Alright, um, well first and foremost
19 quest -- it it it's my understanding that the, uh, case was
20 ultimately resolved by entering guilty plea, correct, ---

21 MR. RICHEY: Yes, sir.

22 THE COURT: --- so any issues with regard, with regard to
23 the sufficiency of cross-examination during the conduct of the
24 trial that proceeded the guilty plea, um, would would have
25 been waived by entering plea, any, uh, um, other allegations

MOTIONS AND MATTERS

1 regarding the sufficiency of counsel would have been waived by
2 and through the plea in most instances, um, so I'm not
3 necessarily concerned at this point if the, if trial counsel
4 was, uh, sufficient and comported with s -- the standards of
5 practicing attorneys during the conduct of the trial, all I'm
6 really concerned with was whether the plea was free -- freely
7 and voluntarily entered so does he take exception to whether
8 the plea was freely and voluntarily entered and whether all
9 the requisite questions were posed on the record by the, uh,
10 trial judge?

11 MR. RICHEY: Well, that he says that he doesn't remember
12 the questions that the judge pacifically [sic] asked him so, I
13 mean, that's what he's sayin' he don't remember, and I, and I
14 think that's legitimate that he would not remember ---

15 THE COURT: I agree.

16 MR. RICHEY: --- questioning of the judge, um, but I will
17 say the iss -- the issue failure to investigate, I mean, I'll
18 just say Court is that if if you have two samples in in, if
19 you have a DNA sample with two potential suspects and that is
20 not developed and that that's in your trial, that affects your
21 decision-making, ---

22 THE COURT: Okay.

23 MR. RICHEY: --- okay, uh, that the plea could be free
24 and voluntary but at trial you could decide, Hey, the evidence
25 of the DNA was not developed; therefore, I'm stuck in this

MOTIONS AND MATTERS

1 predicament, now I've got, I've gotta plea, so I think that
2 goes, could go toward involuntariness of the plea assumin'
3 counsel, assumin' counsels was ineffective in doin' that,
4 assumin' that.

5 THE COURT: Okay. Alright, well let me ask you this: So
6 if the trial counsel Mr. Hall takes the stand and there's
7 there essentially no, uh, uh, that there's no exception taken
8 to the fact that there were these samples which were
9 introduced into the record, correct?

10 MR. RICHEY: Yes, that's my understanding ---

11 THE COURT: Okay, ---

12 MR. RICHEY: --- from my client.

13 THE COURT: --- so is the question that is being posed by
14 him is whether counsel was, uh, was deficient in analyzing and
15 and objecting to those samples?

16 MR. RICHEY: And investigatin' the ---

17 THE COURT: Okay.

18 MR. RICHEY: --- alternative person and I think that, I'm
19 just tellin' you what you my client said, I don't ---

20 THE COURT: Alright.

21 MR. RICHEY: --- know if that's gonna be in Mr. Hall's
22 file, have no idea.

23 THE COURT: And I I I know you are and I I'm I'm just
24 tryin' to make sure that that I'm very surgical with what the
25 issue is because if what he's talkin' about is not his, a

MOTIONS AND MATTERS

1 specific conduct during the trial of this case but the
2 investigation, uh, the analysis and the questioning of the
3 same then I don't know that we need a record for that because
4 that testimony can be elicited from Mr. Jeter and also from
5 trial counsel as to what the scope and range of that
6 investigation was and what the challenges were to that
7 investigation, I don't know that I necessarily need a a
8 transcript specifically for that.

9 MR. RICHEY: Well, Judge, I'll just say that this is a
10 5-year-old case and and Mr. Jeter's and just talkin' to him
11 Mr. Jeter, from talkin' to him his recollection is really
12 limited and I'll just be frank with the Court, I don't know if
13 he's gonna be able to get up here and and articulate the the,
14 articulate what exactly went on one, two and three and I think
15 that's where he's at a disadvantage in this thing is because
16 he doesn't have the, a transcript that he can prepare and
17 actually know what the exact questions were and and that's the
18 problem we're havin' here is he's gotta get on this witness
19 stand 'cause he's has burden and he's gotta articulate what in
20 fact in this rape kit that he didn't like, didn't investigate
21 and if we had the transcript it be totally different so that's
22 that's the quandrum he's in and I'm just tellin' the Court I
23 don't believe that he's gonna be able to articulate it well
24 enough just by talkin' to him, I just don't think he's gonna
25 be able do it and I, that's just a honest assessment from me,

MOTIONS AND MATTERS

1 Your Honor. Um, I I -- we can do this and the Court can
2 attempt to do it but I just don't believe his testimony would
3 be articulation in detail he's gonna have to do to describe
4 this issue is gonna be sufficient, I just don't think it
5 is ---

6 THE COURT: Yes, sir.

7 MR. RICHEY: --- and I think he's hampered by not having
8 a record, ---

9 THE COURT: Okay.

10 MR. RICHEY: --- thank Your Honor.

11 THE COURT: Well let me, let me just state that I I'm not
12 gonna attempt to reconstruct the record, I I can't, I can't do
13 that, I wasn't the trial judge, the trial judge was Judge
14 Welmaker who's retired at this point, ---

15 MR. RICHEY: Yeah.

16 THE COURT: --- uh, the only people in the courtroom who
17 are able to reconstruct the, uh, record with any notes and
18 with any clarity and it would be helpful to, uh, like a a
19 reconstruction are people who are necessarily adverse to him
20 in the PCR application and that is, um, trial counselor for
21 both the State and the defense, um, so I'm reluctant to
22 reconstruct the effort, the the record and then rely upon that
23 reconstruction in a post-conviction relief application because
24 I think it's fundamentally unfair to him, um, however, having
25 said that what I'm tryin' to determine is if his exception is

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1 to the investigation, his exception is to the challenge,
2 again, I don't know that I need the record for that because he
3 can te -- state what the issue was and then Mr., uh, Hall can
4 take the stand and testify as to what his recollection of the
5 presentation, the challenges, the context and the
6 investigation of the same and that can also be assisted by,
7 uh, the prosecuting attorney as well and this is what I will
8 tell ya: Let's go ahead and proceed and if after the case that
9 I don't think that there's enough information and it, that the
10 transcript would be dispositive, um, by a preponderance of the
11 evidence standard then what I will do is I'll I'll either take
12 it under advisement or I'll grant the post-conviction relief
13 application but again, I wanna state very clearly I'm not
14 gonna attempt to reconstruct the hearing but it may be that by
15 and through testimony I got, I, that I can receive sufficient
16 evidence to make a decision regarding his specific claims of
17 of inefficient, uh, or deficient, uh, trial counsel, okay.
18 Yes, sir.

19 MR. NEELY: And, Your Honor, I just wanna say for the
20 record that, uh, even though the two witnesses that I would
21 call to be the main parts a the reconstruct -- reconstructing
22 a record are in adversarial stance as the, um, prior defense
23 attorney and the solicitor in the case, uh, I do think as
24 officer of the Court they can be relied upon to give accurate
25 and sufficient testimony as to the -- that testimony that was

MOTIONS AND MATTERS

1 given and the questions that were asked the guilty plea
2 proceeding.

3 THE COURT: Yeah, I appreciate that and and, Mr. Neely, I
4 I don't, I wouldn't disparage their, um, their integrity a
5 bit. The problem is not whether I trust them, the problem is
6 whether from the perspective of Mr. Jeter it would be
7 fundamentally fair, um, and it's a matter of perspective, not
8 necessarily a matter of reality, um, so we need to make sure
9 that we are affording Mr. Jeter every consideration in this
10 matter, that's why I won't reconstruct it but I'd be happy to
11 hear their testimony.

12 MR. NEELY: Certainly, Your Honor, and I, and just,
13 sorry, one more issue, ---

14 THE COURT: Sure.

15 MR. NEELY: --- um, uh, I did want to mention and
16 obviously if Your Honor decides not to reconstruct the record
17 this might be a moot point, um, but in *State v. Ladson* which
18 is, uh, 373 S.C. 320, ---

19 THE COURT: Yes, sir.

20 MR. NEELY: --- uh, Before a defendant can establish that
21 he's entitled to a new trial on the basis of an inadequate
22 reconstructed record, he must identify a specific appellate
23 claim that this court would be unable to review effectively
24 using the reconstructed record, ---

25 THE COURT: Alright.

MOTIONS AND MATTERS

1 MR. NEELY: --- um, and at least at this point in time I
2 have not heard any specific claim that could be, um, raised on
3 appellate that could be, um, insufficiently and inadequately
4 ruled on by appellate court.

5 THE COURT: Yeah, I, and to your point I I agree, that's
6 why I wanna hear from them first to determine whether it's
7 necessary, we're not nec -- we're not -- and a slight
8 distinction from that case. we're not talking about appellate
9 issues, we're talkin' about post-conviction relief issues, ---

10 MR. RICHEY: Yes.

11 THE COURT: --- okay, um, and and that might be a
12 distinction without much of a difference but we shall see, we
13 shall see, okay, ---

14 MR. NEELY: Thank Your Honor.

15 THE COURT: --- but that that's the very reason why I
16 wanna hear the testimony, put put everything on the record
17 because I don't know whether it's necessary or not and I
18 need make that threshold determination, okay. Alright, Mr.
19 Mr. Richey, you may call your witness.

20 MR. RICHEY: Thank thank, Your Honor. Uh, Your Honor,
21 call Mr. Jeter.

22 THE COURT: Okay. Mr. Jeter, if you'd come forward
23 please, place your left hand on the Bible, raise your right.

24 THE APPLICANT: Alright.

25 (Whereupon, the Applicant came forward.)

1 KESHAUN D. JETER, having been
2 first duly sworn, testified as follows:

3 THE COURT: Okay, you take a seat please, sir, and state
4 your full name for the record if you would.

5 THE APPLICANT: Keshaun Jeter.

6 DIRECT EXAMINATION BY MR. RICHEY:

7 Q. Mr. Jeter, are you in Department a Corrections right now?

8 A. Yes, sir.

9 Q. And and what what are you there for?

10 A. Sexual conduct for a minor.

11 Q. Okay, and were you convicted in Spartanburg County?

12 A. Yes, sir.

13 Q. And who represented you on those charges?

14 A. Robert Hall.

15 Q. And what, did did you receive a sentence for those
16 charges?

17 A. Yes, sir.

18 Q. And what was that sentence?

19 A. Sixteen years and eight months.

20 Q. Okay. And you filed application 'cause you believe that
21 Mr. Hall did not effectively represent you, is that correct?

22 A. Yes, sir.

23 Q. And you, in this particular case you started off at a
24 jury trial, is that correct?

25 A. Yes, sir.

1 Q. And how long did this trial proceed, was it one day, two
2 days, how ---

3 A. Two days.

4 Q. That -- okay, and after the second day how did the case
5 end?

6 A. On a guilty plea.

7 Q. Okay, so so the case was tried for two days and then you
8 ha -- you pled guilty, ---

9 A. Um-hum.

10 Q. --- is that correct, you gotta speak.

11 A. Yes, sir.

12 Q. Okay, and when you pled guilty did you plead guilty on
13 the advice of your attorney?

14 A. Yes, sir.

15 Q. Okay, and at, and at this time you are aware that there's
16 no transcript a your proceedings, correct?

17 A. Yes, sir.

18 Q. And do you believe that that limits your ability to
19 proceed this case?

20 A. Yes, sir.

21 Q. Do do you believe it limits your abil [sic] to recall the
22 facts and circumstances that happened at the trial?

23 A. Yes, sir.

24 Q. Okay, at this trial do you recall who testified?

25 A. No.

1 Q. Do you know whether the victim in the case testified?

2 A. Yeah, yes, sir.

3 Q. She did? Uh, and did your lawyer, Mr. Hall,
4 cross-examine her?

5 A. No, sir.

6 Q. He did not cross-examine her?

7 A. No.

8 Q. He didn't ask her any questions.

9 A. He asked a few questions but he ain't ask any question
10 ever towards me.

11 Q. Okay, he, so he, so let me go back. He did actually,
12 when I said cross-examine her, he ak -- he ask her questions,
13 correct?

14 A. Yeah.

15 Q. Is it your position those questions were
16 insufficient, ---

17 A. Yes, sir.

18 Q. --- not good enough?

19 A. Yes, sir.

20 Q. Do you recall how many questions he asked?

21 A. No, sir, I don't.

22 Q. Do you recall what the questions were?

23 A. No.

24 Q. So if you don't recall -- well well what makes you think
25 the questions were not sufficient?

1 A. 'cause they wasn't.

2 Q. They were not?

3 A. Uh-uh (negative).

4 Q. So you're sayin' was that your feelin' at the time a the
5 trial?

6 A. Yes, sir.

7 Q. But do you know what any -- do you know pacifically [sic]
8 you thought was not a -- not adequate?

9 A. No, I do not remember.

10 Q. Okay, but -- okay. Um, you also, there was a issue of a
11 rape kit in this case, right?

12 A. Yes, sir.

13 Q. And and do you recall any problems with the rape kit?

14 A. Yes. Yes, sir.

15 Q. And did that, did that deal with the DNA found from the
16 rape kit?

17 A. Yes, sir.

18 Q. Okay, and do you recall what that was?

19 A. No, I don't recall, it wa -- it's in my transcript which
20 I don't have.

21 Q. Okay. Do you know whether the, do you know whether
22 counsel cross-examine the the victim about any a source of and
23 I I'm I'm ask you the question but you understand there's some
24 laws that might prevent him from doin' that?

25 A. Um-hum.

1 Q. Um-hum, what?

2 A. Yes, sir.

3 Q. Yes, sir, he questioned her about it or yes, sir, you
4 understand the the law ---

5 A. The laws, I understand the laws.

6 Q. --- that may prevent him from goin' into that?

7 A. Yes, sir.

8 Q. Do you, do you know whether he attempted to to go into
9 that?

10 A. No, sir, he didn't.

11 Q. Um, and and did any a this affect you pleading guilty?

12 A. Yes, sir.

13 Q. And tell me how if you recall.

14 A. Pretty much it just change my whole perspective for my
15 case pretty much how I felt, uh, on what's goin' on.

16 Q. Based off this examination of the victim.

17 A. Yes, sir.

18 Q. Um, and you do not believe that he properly investigated
19 the case, do you?

20 A. Yes, sir.

21 Q. And why is that?

22 A. That man ain't seen me but two days.

23 Q. Okay, and do you believe anything that investigation
24 hampered your ability to have a fair trial?

25 A. Yes, sir.

1 Q. And how'd it do that?

2 A. Man never came to talk to me but one or two times, ain't
3 never said nuttin' about my case period.

4 Q. Did he discuss the issues with this rape kit prior to
5 trial?

6 A. No, sir.

7 Q. So prior to trial you didn't know that there was a, there
8 was another ---

9 A. I didn't know none a that, ---

10 Q. --- 'nother DNA ---

11 A. --- no, sir.

12 Q. --- profile?

13 A. No.

14 Q. Okay, and that is your your testimony there's a second
15 DNA pr file found in this thing is that ---

16 A. Yes, sir.

17 Q. Okay. Um, now when you pled guilty, um, when -- there
18 was an a -- there was an agreement between you and the State,
19 correct?

20 A. Yes, sir.

21 Q. And what was that agreement, do you recall?

22 A. Zero to fifteen cap.

23 Q. Okay. Now were you ever told that that the judge can
24 exceed that cap?

25 A. No, sir.

1 Q. The judge, do you recall whether Judge Welmaker told you
2 that?

3 A. No, I don't recall at all.

4 Q. Okay, you don't -- okay, that Judge Welmaker went through
5 a series of questions, correct?

6 A. Yes, sir.

7 Q. And do you recall what those questions any of 'em were?

8 A. No, I don't.

9 Q. Do you recall him pacifically tellin' you that he could
10 sentence you to the maximum sentence?

11 A. No, sir.

12 Q. Okay, so when I -- that would it, would it surprise you
13 then if this sentencing sheet said that you were pleading
14 without a recommendation?

15 A. Yes, sir.

16 Q. Okay. You're you're, so, uh, you're positive was an
17 agreement 'tween you and the State of a cap 15?

18 A. Yes, sir.

19 Q. And were you ever told that this thing says without
20 recommendation, this sentencin' sheet?

21 A. No, sir, I never found, I didn't find that out till I got
22 my sentencin' sheet.

23 Q. Okay, so so it's your testimony not only there's wasn't a
24 0 to 15 cap, that the S -- that you were pleading without
25 reco -- without recommendation?

1 A. Yes, sir.

2 Q. Okay. Was was the cap was that part a the inducement to
3 get you to plead guilty, meaning was that part of the thing
4 that told you to plead guilty?

5 A. Yes, sir, he came back then told my mother that, um, I
6 can get lesser time if I was to take the plea, the cap plea.

7 Q. Okay, and so so nobody, so you were never told that it
8 was without negotiation by Wel -- by Judge Welmaker,
9 anybody?

10 A. Yes, sir.

11 Q. Okay. Thank you, answer any questions that Attorney
12 General have for ya.

13 MR. NEELY: Thank you.

14 CROSS-EXAMINATION BY MR. NEELY:

15 Q. How ya doin' today, Mr. Jeter?

16 A. I'm alright.

17 Q. Um, just gonna ask you a few questions about some --
18 about the plea deal. Um, when you, when you pled guilty after
19 the trial that wasn't the first time that you'd been in front
20 of a judge to plead guilty, was it?

21 A. No, sir.

22 Q. So you had been up to the judge to plead guilty right
23 after pretrial, right?

24 A. My prelim.

25 Q. So right after prelim you went to plead guilty?

1 A. No, I told him no.

2 Q. Right, but you went, you went to the plea and then you
3 said, I don't -- you backed out.

4 A. Yes, sir.

5 Q. Okay, um, and the cap a 15 years that was offered to you
6 before the trial started?

7 A. After the 2-day trial.

8 Q. Okay, so you're sayin' it was offered after the 2-day
9 trial.

10 A. Um-hum.

11 Q. Okay, um, and well wasn't there two times that you, that
12 you went up to plead guilty and then you backed out both times
13 before the third time where where actually ---

14 (Indiscernible cross-talk.)

15 A. No, it was just one, sir.

16 Q. Just once?

17 A. Yes, sir.

18 Q. Okay. Do you recall whether the judge asked you the same
19 questions the first time?

20 A. No, I don't recall.

21 Q. Do you recall why you backed out first time?

22 A. No.

23 Q. No? Um, would it be fair to say that you don't remember
24 much about that incident?

25 A. Yeah, yes, sir.

ROBERT HALL - DIRECT EXAMINATION BY MR. RICHEY

1 Q. Okay. Um, that's all the questions I have.

2 THE COURT: Okay. Any redirect, Mr. Richey?

3 MR. RICHEY: No, Your ---

4 THE COURT: Okay.

5 MR. RICHEY: --- Honor,---

6 THE COURT: Alright, ---

7 MR. RICHEY: --- we ---

8 THE COURT: --- Mr. Je ---

9 MR. RICHEY: --- we call Mr. Hall.

10 THE COURT: Alright, thank you, Mr. Jeter, you step, you
11 step back down, I appreciate it.

12 (Whereupon, the Applicant left the stand.)

13 (Whereupon, the witness came forward.)

14 THE COURT: Mr. Hall, if you would place your left hand
15 on the Bible, raise your right.

16 ROBERT HALL, having been
17 first duly sworn, testified as follows:

18 THE COURT: Alright, sir, you may s -- s -- take a seat,
19 please state your full name for the record if you would, ---

20 THE WITNESS: Robert ---

21 THE COURT: --- please.

22 THE WITNESS: --- Hall.

23 DIRECT EXAMINATION BY MR. RICHEY:

24 Q. Mr. Hall, where are you employed?

25 A. Spartanburg County or Seventh Circuit Public Defender's

1 Office, Spartanburg County.

2 Q. And and di -- and durin' the course of employment did you
3 represent Mr. Keshawn Jeter?

4 A. Yes, I did.

5 Q. And you represented him on the the charges that we're
6 here, the CSC charge?

7 A. I did.

8 Q. And do you recall anything about the trial of this case,
9 do do you ---

10 A. Yeah, I have some notes and, um, that ---

11 Q. Okay, well it, would it be correct that this started out
12 as bein' a, that it was goin' through the trial process?

13 A. And what the -- he actually was on the docket in June and
14 he had decided to plea, when we came to plea in fronta Judge
15 Hayes he said, No, I don't wanna plea, I wanna hire James
16 Mullins I think it was and the judge, uh, um, said that he
17 wasn't relieving me unless he hired somebody and, um, I never,
18 I didn't hear anything back from him until the case was on the
19 docket and comin' up in September and when I tracked him down
20 and he at that point wanted to go to trial then said he was
21 gonna plea, uh, when the, think 'bout the time the jury was
22 come in he decided he wanna accept plea offer and then, uh,
23 when Judge Welmaker got to the, um, had gone over the basic
24 facts, went over his rights with him, uh, said, And you wanna
25 plead guilty, and he said yes and are you e -- and said, Are

1 you sh -- and I wrote down are you sure you wanna plead
2 guilty, um, and then he said no and we picked a jury and
3 started the trial, finished it 'cording to my notes at, let's
4 see, um, we did a suppression hearing, um, that before lunch,
5 um, took a lunch break at 1:20, judge came back, denied our
6 motion to suppress the statement and at, uh, 3:25 we started
7 the trial, um, and went till about 5 or a little after 5 and,
8 um, 5:11 and then the next mornin' he decided to plea.

9 Q. Okay. You you s -- was there any testimony that you
10 recall from the victim in this case?

11 A. Yes.

12 Q. And and do you recall the the, do you, do you recall how
13 many questions you asked her by any chance?

14 A. I don't know how many questions I ---

15 Q. Yeah.

16 A. --- asked, I know my emphasis was on the uncle comin' and
17 goin'. The uncle had taken the ant to work at 3:30 in the
18 mornin', the assault allegedly occurred after that, he came
19 back, um, around noon I think, stayed for several hours and
20 then left, um, uh, 'scuse me, he p -- he he came back, uh, and
21 stayed till about noon and then left for about four and a half
22 hours, Keshawn left sometime afternoon and emphasis was if you
23 had just been assaulted why didn't you, uh, re -- tell your
24 uncle this guy, now he's gone, why didn't you tell him and her
25 response was I didn't wanna get my cousin in trouble for

1 sneaking him into the house.

2 Q. Okay, so so this cross-examine there there are actually
3 two other people involved in, kinda involved in what happens:
4 the uncle, um, and s -- you said there was a guy that snuck
5 him into the house?

6 A. The the niece, there, it's her her cousin I think, uh,
7 NeeNee (phonetic) or somethin' like is what she called her,
8 um, s -- snuck him into the house, uh, for some reason, uh,
9 the victim's ant, the mother of the cousin, um, kept her
10 pocketbook in her bed, in the girl's bedroom so at 3:30 she
11 comes to get her; they had planned on how to hide Mr. Jeter
12 when the mother comes in there to get her pocketbook to go to
13 work, I think dad took her to work, comes back at or 7:00, uh,
14 back at there's just, there -- he was in and out some but the,
15 uh, we -- her best opportunity to have reported it to the
16 uncle was, um, after 4:30 when he came back again and, uh,
17 Mr. Jeter had already been gone, um, but there was the cousin,
18 the ant and uncle and the victim in the house along with
19 Mr. Jeter.

20 Q. Do you know whether, uh, any a these people were at trial
21 to testify?

22 A. I I know the victim was and I believe the other people
23 were, um, subpoenaed to be in trial. I don't recall seein'
24 them sittin' there or if they were or not, I I don't recall
25 that but I believe they were, um, listed as potential

1 witnesses for the State.

2 Q. Okay, that there was a rape kit done on this, correct?

3 A. There was.

4 Q. And you heard sumtin' 'bout the source of the, do you
5 know whether there was two DNA profiles in the thing or ---

6 A. What the results were was there was semen from, uh, the
7 um, underwear of the victim that was his, 1 in 510 million,
8 uh, definitely his; from a rectal swab and this was a anal
9 intercourse allegation, uh, there was DNA from at least two
10 people and they were both consistent with Mr. Jeter and the
11 victim in the case, uh, and I guess he's talkin' about the
12 word, uh, um, a "mixture" of at least two individuals: Keshawn
13 Jeter and, uh, Ms. Hillstock cannot be excluded as possible
14 contributors this mixture, the probability of randomly
15 selecting unrelated individuals who would have contributed to
16 this mixture is 1 in 42,000, so there wasn't anything that I
17 saw saying there was another contributor but in any event
18 we had -- I had covered that particularly back in June when I
19 met with him that, um, if a 12-year-old girl is sexually
20 active, if she had had sex with someone else, that is not a
21 defense, uh, and for a minor 'cause a minor can't consent
22 anyway.

23 Q. Right. And do do you recall where there's any testimony
24 'bout the child's, um, hymen or anything?

25 A. I do not recall any testimony goin' into that, no, sir.

1 Q. And and there was a medical examination in the case,
2 correct?

3 A. Yes, I believe so.

4 Q. And that, so that child was examined at the hospital. Do
5 you know, you recall whether that person, um, testified at
6 trial, the medical examiner but ---

7 A. Let's see, I believe there was a nurse, Kelly Silver, who
8 took the s -- the swabs I think but I don't remember if she
9 testified about her hymen, that ---

10 Q. But the child ---

11 A. --- essentially ---

12 Q. I'm sorry, Mr. Hall, ---

13 A. --- but the ---

14 Q. --- excuse me.

15 A. --- allegation in the case was he's attempted vaginal
16 but said no, that won't work and then did anal so I don't, I
17 don't recall, um, anything about, uh, that examination about
18 hymen, no.

19 Q. Okay, and and so at some point there was a guilty plea in
20 the case, can you tell me where there's a recommendation or
21 not?

22 A. Usually in a, once we start a trial there is no
23 recommendation. I had, uh, um, gone over back in June and
24 have notes and details explaining difference between, uh,
25 about recommendations, uh, of a cap, ---

1 Q. Um-hum.

2 A. --- um, negotiated sentence which means ---

3 Q. Yes, sir.

4 A. --- the judge has to accept it or not accept the plea, a
5 straight up plea where a judge decides himself, ---

6 Q. Yes, sir.

7 A. --- uh, or herself, um, and the recommendation, um, in
8 this case I have notes we have a recommendation, the judge can
9 still go over the recommendation or under the recommendation,
10 um, ---

11 Q. Alright, so but in this particular case do you know
12 whether there was a cap recommendation or not?

13 A. There had been a cap when we were, I know when we started
14 to plea I think on Tuesday mornin' I think the the cap was
15 still there at 15 but it, when he decided to plea on the
16 mornin' of the 3rd I don't remember if there was a cap or not
17 at that point, um, the, uh, I do have a note when the plea's 0
18 to 20, uh, most serious and violent, um, but I, actually I
19 don't have any notes whether or not it was still the
20 recommendation.

21 Q. Thank you, sir, no other questions, there's questions the
22 Attorney General have for ya.

23 CROSS-EXAMINATION BY MR. NEELY:

24 Q. When you testified that you went over the differences
25 between a recommendation, negotiation, um, a cap and a

1 straight up plea, do that in June?

2 A. I do that June 16th, I met with Mr. Jeter and his mother
3 for about two hours.

4 Q. Do ya have notes on how many times you met with
5 Mr. Jeter?

6 A. I know we had the prelim, um, in, um, December we, I went
7 over things, I know I've talked with his mother several times,
8 I, um, actually have a good mem -- uh, thought I had the
9 printout of some, uh, notes in our system but, um, the address
10 he gave us and that I confirmed at least one time was, uh,
11 think [REDACTED] South Liberty Street, um, it wasn't until I went
12 out, um, tried to find him when our letters came back when he
13 would come up on a docket, when he came up on one a these
14 dockets that I was able to realize that that's apart company,
15 apartment complex, not a, um, like apartment building but
16 separate buildings around and was able to talk to the, um,
17 manager to get a message to his grandmother who I believe he
18 was living with. Um, I had, uh, uh, ts -- met with, uh, them
19 on June 3rd, um, and went over some the evidence, uh, I know
20 we even at one a those meetings, it may have been June 3rd or
21 16th we actually went through the videos of the confession,
22 we're lookin' to see if they'd alleged that he'd given a
23 written statement denyin' things and the police tore it up,
24 uh, but we went went through that, uh, I know we met on June
25 3rd met, well -- met with him in December for prelim, met June

1 3rd, uh, June 16th, we were together on June 17th, um, and
2 then in August I started, um, tryin' to, he was on the docket
3 and none a the phone numbers were working and the mail came
4 back and I went to the, uh, apartment complex, was able to
5 get, finally get back in touch with him so we could, uh, get
6 prepared, uh, for trial.

7 Q. So would it be fair to say you had trouble keeping in
8 touch with Mr. Jeter?

9 A. Yes, and that, and that's unfortunately not uncommon with
10 our clients, um, that the phone numbers we have aren't good or
11 there's, uh, and sometimes it's something as simple as they
12 don't have a mailbox anymore, the mail comes back but in this
13 case, um, the, uh, think it was in Ju -- probably June 3rd we
14 met, I said it's [REDACTED] South Liberty Street, right, 'cause our
15 mail comes back and that's what, and said yeah, that's the
16 correct address.

17 Q. So that's obviously was relying on information, all your
18 contact information came from Mr. Jeter.

19 A. Yes, or his mother, she knew -- she was there at that
20 meeting and she, think most a the meetings she was there.

21 Q. And do you recall on the second, on the, on the first
22 plea that the judge turned down because he he said no when
23 the judge asked him if he was really guilty, do you recall
24 there's any conversation with you and your client about that?

25 A. Um, he, as I recall he was goin' back to the his idea

1 that the girl had, uh, consented, uh, that she initiated it
2 and I went back into, you know, that's that's not a defense in
3 these cases, uh, but we pretty much after he backed outta that
4 plea that, uh, we pretty much went into picking the jury. Um,
5 I have that we, uh, at 2:55 p.m. on September 2nd we started
6 the jury selection, voir dire and jury selection.

7 Q. Do you recall the specific questions asked by the judge
8 that day?

9 A. Um, with the fir -- attempt to plea on the 2nd, I have
10 actually written down that, um, the judge went over his
11 rights, I didn't go through each of 'em but I did indicate he,
12 uh, he went over his rights and, um, I, uh, uh, then have a
13 note from 9/3 in a different pen and rechecked with a
14 different pen, um, a a note that I assume was for the, um,
15 June 3rd plea, that's my notes I have on that from in black
16 pen, everything I done on June 2nd was blue pen, um, ---

17 Q. Just to clarify it so wha -- what you're saying is as the
18 judge went through his colloquy you checked off to make sure
19 that he went through the full colloquy?

20 A. I have, I've I've checked that, yeah, he he went through
21 his rights, I did not write each thing down but when I've, I
22 wrote it, writes, checked it and then there's a note from I
23 have 9/3, uh, 14, um, there was somethin' about investigating
24 some threats during the plea, the victim, uh's, family tried
25 to say that s -- people had threatened her if she testified,

1 um, and, um, but I have again went back and checked the the
2 facts and that, uh, the judge went over the rights.

3 Q. And it, is it your standard practice to review the
4 sentencing sheet before the plea?

5 A. Yes, we look at it make, kinda make sure it's got the
6 right 'cause we've had problems before if a CDR code is wrong,
7 those type things, uh, if they've checked violent when it's
8 not a violent offense but, uh, went over that it was a most
9 serious and violent offense, um, and I, uh, like I said I,
10 it's unusual to go into a trial such as this and then, uh, it
11 turn into a plea that it's pretty much not e -- it's either
12 not a recommendation, straight up plea or they have raised
13 their cap and I just do not and unfortunately do not have any
14 notes of what, uh, transpired on this but, um, even as a
15 recommendation I'd explained and been very clear to him on
16 June 16th that a recommendation is just that, the judge can go
17 more or he can go less but he understood that he was lookin'
18 at 0 to 20 years.

19 Q. Um, but i -- if I related to you that the the sentencing
20 sheet says no recommendation or negotiation, you woulda
21 reviewed that and checked it for errors before the plea.

22 A. Oh, yes, and I I would have told 'em that, that I said
23 more likely than not, uh, I don't have any, uh, notes about a
24 recommendation when he actually pled on the 3rd, I did, uh,
25 let's see, uh, no, I don't have, it's, uh, have anything 'bout

1 on the 2nd when he pled. I'm not sure if on the 2nd when we
2 started to plea if there was still a recommendation, I I just
3 don't recall, I don't have any notes so it probly was a
4 straight up plea that day and I assume on the 3rd it was
5 too.

6 Q. And so and your your notes do reflect that you wrote down
7 0 to 20 most serious and violent, correct?

8 A. Yes.

9 Q. And that would be a straight up plea to the charge as
10 indicted, correct?

11 A. Well, no I'm talkin' 'bout the the 0 to 20, um, where I
12 explained all that to him was, uh, back in June, um, on the
13 morning of the 2nd, uh, I have a note that he decided to plea
14 just as the jury was comin' in, um, I do not have anything
15 ov -- in those notes that it was, whether it was a
16 recommendation of a cap of 15 or anything, I don't, I, and I
17 assume at that point it was a straight up plea as on the 3rd,
18 uh, 'cause usually I I would put REC and have the note, I
19 don't have it there.

20 Q. Do you recall any of specific questions asked by the
21 judge that day, do you know if he asked him are you really
22 guilty again as he did two days prior?

23 A. I believe that was Judge Welmaker's, uh, like a lotta
24 judges, uh, policy to ask are you, you know, are you pleadin'
25 guilty because you are guilty and then, um, are you sure you

1 are -- you wanna plead guilty, um, ---

2 Q. How many times ya -- had you been in fronta Judge
3 Welmaker?

4 A. I don't recall that and, um, in the past nine years I
5 could not tell you how many times I've appeared in ju --
6 fronta judges for trials or pleas, ---

7 Q. Would it be ---

8 A. --- uh, ---

9 Q. --- fair to say you're, you are, you'd been in fronta
10 judge eleven, Welmaker a number of times and knew his policies
11 and procedures for guilty pleas?

12 A. I can't say that but I can say that when we have a
13 visiting judge like that we do research: we ask other public
14 defender's, defense counsel, uh, about things, um, but, uh, I
15 don't have any notes on the 3rd that he did anything different
16 than, uh, he did on the second with asking questions, all I
17 have is in the same pen I took notes on the second, I have,
18 uh, or the sa -- the same colored pen I have, I've rechecked
19 where went over rights, um, and about the threats, um, and
20 even, uh, what a, I have a note not a defense and I assume
21 that's, uh, uh, going back to the consent is not a defense but
22 I was familiar with Judge Welmaker more by asking, I think
23 we've be -- he's been here before but we we go back and ask
24 people and talk to people in the office that are more familiar
25 with him but I don't have any s -- um, specific, uh, rec --

1 recollection of, uh, everything he did, I was not that
2 familiar with him as I would be with the, um, judges in this
3 circuit, um, and I said on the, I think I may have told you on
4 the 2nd I don't have any notes about 0 to 20 but on the 3rd I
5 do have the note that says 0 to 20 most serious and violent on
6 the, in my notes for the plea.

7 Q. So and that's on the 3rd, ---

8 A. That's on the 3rd, ---

9 Q. --- final plea?

10 A. --- on the final plea, yes, sir.

11 Q. And regardless of which judge you're in front of, uh, is
12 it your practice to follow the judge's colloquy and if he
13 fails to ask one a the regular questions in the judge coll --
14 the plea colloquy to to correct a judge?

15 A. Yes, I I don't hesitate to do that, um, I was a
16 magistrate for fourteen years and I can't tell ya how many
17 pleas I did and I had that down, uh, for courts, uh, doing
18 traffic court or any, or cr -- any criminal court goin' over
19 the rights and making sure people understood their rights and
20 brought 'em up individually and went through the rights so
21 very familiar with it.

22 Q. And you don't have any note that in this case you had to
23 correct Judge Welmaker's colloquy?

24 A. No, I do not.

25 Q. Do you feel like the Applicant understood what he was

1 doing at the guilty plea?

2 A. Yes, I do. He, uh, had been, he told me at one point, I
3 think it was in June, um, that, um, he was getting some advice
4 from his grandfather, uh, who as I understand was doing life
5 for criminal sexual assault, um, and believe it was criminal
6 sexual assault on a minor and, uh, and remember tellin' that's
7 probly not the best person to get legal advice from, uh,
8 'cause he was tellin' him go to trial, go to trial, go to
9 trial ---

10 Q. Um-um.

11 A. --- and, you know, that my gut impression was because the
12 victim had to get on the stand and testify before he decided
13 to finally plea that, you know, he's probly did get a little
14 greater sentence, um, heard judges say I don't penalize
15 somebody for a trial but you do hear a lot more facts that
16 justify more time in a trial usually than you do with a plea
17 and I would assume he got more than what the original
18 recommendation had been, um, 'cause usually judges do know,
19 uh, uh, that it's not, he got almost two years more than that
20 recommendation.

21 Q. Is it your practice to recommend to your clients whether
22 they should plead guilty or not?

23 A. Yes.

24 Q. In this case did you recommend that he plead guilty?

25 A. Yes, I did 'cause he he had, he confessed, his confession

1 was, uh, unfortunately encouraged and instigated by his mother
2 tellin' you need to tell them the truth, tell 'em if if you
3 did it, tell 'em you did it and then he confessed and we had a
4 suppression hearing on that and the Court ruled that the
5 statement was valid, it came in.

6 Q. And so your recommendation to him that he should plead
7 guilty when did that occur, was that in June or was after
8 prelim hearing?

9 A. Oh, in June, it, we had, we discussed everything, um,
10 even though he, uh, his grandfather was advisin' him against,
11 like I say, we met in, uh, June 3rd and, uh, went over, uh,
12 everything, um, include, that's when we actually looked at the
13 videos to see if we saw him tearin' up a statement, um, but I
14 believe the city's position was he -- we had an oral statement
15 from him, we never never had a written statement until his
16 mother told him tell the truth and then they reduced it to
17 writing but it was on June 16th that I went back over
18 everything with he and his mother about caps, recommendations,
19 negotiations, straight up and has been my advice from the June
20 3rd time right up until, uh, he said he was hiring another
21 lawyer that, um, on the 17th that he should plea and to take
22 the re -- take the recommendation and we had a, we had some
23 pretty good, decent mitigation in the case, he'd been outta
24 jail for a long time on home detention, he'd not got anymore
25 trouble, he was active in church, he's doin' lotta things he

1 needed to be doin', uh, but ---

2 Q. And ---

3 A. --- they ---

4 Q. --- in ---

5 A. --- they backed out at that point and as far as I knew
6 they were hirin' James Mulletts (phonetic).

7 Q. --- in June that when there was a a cap, cap a 15 was the
8 offer I believe.

9 A. Yes.

10 Q. Okay, that's all the questions I have.

11 THE COURT: Any redirect, sir?

12 MR. RICHEY: No questions.

13 THE COURT: Okay, just just one question, ---

14 THE WITNESS: Yes, sir.

15 THE COURT: --- Mr. Hall. So my understanding the theory
16 of the defense was not that sex didn't occur but that it was
17 consensual?

18 THE WITNESS: That's what his defense was, I kept tellin'
19 him it was not a defense and, um, under our law that's, a
20 12-year-old cannot consent and, uh, I believe when we started
21 to plea on the 2nd that, uh, a judge, uh, Judge Welmaker, uh,
22 even, uh, touched on that, um, 'cause we had as I recall had
23 made the statement that his his def -- he thought that she had
24 consented or ins -- instituted the -- instigated the whole
25 situation, uh, and that was not a defense ---

1 THE COURT: I understand.

2 THE WITNESS: --- so, uh, our defense, uh, was gonna be
3 very complicated because his, the defense he had was not a a
4 valid defense under South Carolina law.

5 THE COURT: Okay, alright, good enough. Thank you, I
6 appreciate it, ---

7 THE WITNESS: Thank you.

8 THE COURT: --- please step down.

9 THE WITNESS: Okay.

10 (Whereupon, the witness left the stand.)

11 THE COURT: Mr. Richey, Applicant ---

12 MR. RICHEY: Well ---

13 THE COURT: --- have any additional witnesses?

14 MR. RICHEY: No, sir.

15 THE COURT: Okay. Alright, does the State have any
16 additional witnesses?

17 MR. NEELY: Uh, State would like to call Lindsey Overby
18 to ---

19 THE COURT: Okay.

20 MR. NEELY: --- the stand.

21 THE COURT: Alright, Ms. Overby, you'd come forward,
22 please.

23 (Whereupon, the witness came forward.)

24 THE COURT: Place your left hand on the Bible, raise your
25 right.

1 LINDSEY OVERBY, having been
2 first duly sworn, testified as follows:

3 THE COURT: Okay, you may have a seat, please, ma'am, if
4 you'd state your full name for the record.

5 THE WITNESS: My name is Lindsey Overby.

6 DIRECT EXAMINATION BY MR. NEELY:

7 Q. Ms. Overby, uh, where you currently work?

8 A. Um, I'm an assistant solicitor in the Seventh Circuit
9 Solicitor's Office.

10 Q. And how long have you worked there?

11 A. About four a half years.

12 Q. Uh, was this your case?

13 A. It was.

14 Q. Um, did you have the case the entirety of its duration?

15 A. I don't actually think I did, I, uh, took over a new
16 caseload in about March or April of 2014 at which point this
17 became mine.

18 Q. Okay. Uh, and did you take notes on the multiple
19 instances of multiple pleas that were tried to go through and
20 failed?

21 A. Yes, I took notes during the timeline of this case.

22 Q. And do you ha -- what notes do you have from the June,
23 the potential or failed June plea?

24 A. I, um, extended a plea offer to Mr. Hall by email on June
25 the 11th of 2014, um, that the case was scheduled on a trial

1 docket at that time in June. Um, I believe Mr. Hall actually
2 indicated to me that the defendant expressed a desire to plead
3 guilty, as we got closer to that trial week he told me that,
4 um, the defendant wanted to fire him and hire another
5 attorney. We went before Judge Hayes on June the 17th of 2014
6 at which time the defendant, uh, wanted to, uh, fire Mr. Hall,
7 uh, as Mr. Hall mentioned, uh, Judge Hayes ruled that he would
8 substitute counsel but he was not going to completely relieve
9 Mr. Hall at that time. At that hearing in June, I did advise
10 everyone that I would be placing this on a trial docket in
11 September. Judge Hayes continued the case from that June
12 docket, um, and I let everyone know on the record that I would
13 be placing it, um, on a docket in September, um, so he did not
14 actually go through the plea colloquy in June.

15 Q. Okay. Um, do you recall what your offer was in June?

16 A. My offer to, uh, Mr. Hall was a cap of 15 years on a
17 criminal sexual conduct with a minor in the second degree.

18 Q. And when -- you have notes on the the first I guess plea
19 colloquy, uh, proceeding that he went through?

20 A. Yes, that as I mentioned the case was scheduled for
21 trial, um, in September, it was actually Labor Day week so
22 we'd be in court on Tuesday of that week which was September
23 the 2nd, um, the defendant attempted to plead guilty on that
24 day, he actually, um, I allowed or I didn't allow, I I, uh,
25 agreed to recommend the cap even on September the 2nd of 2014.

1 Um, during that plea process the defendant, um, when asked
2 about whether he would waive his constitutional rights, uh,
3 did he not, um, answer in the affirmative to those questions
4 and so the plea fell apart so to speak at that point. Uh, we
5 selected a jury, uh, I actually called two witnesses, both the
6 victim and the nurse Kelly Silver, that was at the end of the
7 day on Tuesday September the 2nd of 2014. At the end of that
8 day I moved, uh, before the Court to, um, have Mr. Jeter
9 held in custody, the ca -- uh, the case had begun trial and
10 technically his bond was no longer in effect, he was held in
11 custody overnight. Uh, we came back on Wednesday September
12 the 3rd of 2014 and Mr. Hall actually approached me and
13 indicated that, uh, the defendant wished to plead guilty. I
14 did have a conversation with him letting him know that I would
15 not be renewing that recommendation based on the victim having
16 testified. Um, this was a sexual assault involving an anal
17 penetration, uh, this was just not a situation where I was
18 going to agree to recommend that after this victim came into
19 the court and talked about what happened. Uh, paperwork was,
20 um, passed to Mr. Hall on September the 3rd 2014, um, and
21 he s -- the defendant signed the paperwork, he did plead
22 without any recommendation or negotiation to the charge of CSC
23 with a minor in the second degree.

24 Q. And asking you the same question that I just asked his
25 defense attorney, is it your standard practice to review the

1 sentencing sheet to make sure that it's accurate?

2 A. Yes, I am very meticulous about it, particularly to make
3 sure that the violent and most serious and sex offender, um,
4 i -- if there's a case where a GPS monitor is involved, this
5 one did not, I, um, I check those items very carefully.

6 Q. Alright. Um, and do you have any notes from the plea
7 itself and the the judge's colloquy?

8 A. Uh, I do have, I I know that the, um, I know one of the
9 specific questions that Judge Welmaker asked, um, uh, among
10 many on that day was whether, uh, the defendant had any
11 complaints against his lawyer, he did indicate at that time
12 that he thought, uh, he he did -- he wasn't satisfied with his
13 attorney, that he could have investigated this more. When
14 asked further about what his attorney could have done, the
15 defendant was not able to answer, um, with any, um, specifics
16 regarding what his attorney could have done. Um, the, I
17 remember the basic questions about does he understand what
18 particular rights he's giving up: the right to cross-examine
19 witnesses, the right to, um, testify against himself, all
20 those standard questions were asked as well.

21 Q. And again asking the same questions I asked prior
22 counsel, um, is it your practice to, uh, mention to a judge if
23 any of the colloquy is left out?

24 A. Yes, particularly I I know one thing that I'm very, um,
25 cautious about is to make sure that the advisement about an

1 offense being violent, most serious and 85 percent eligible
2 offense, those things, um, just related to the offense or what
3 I definitely, uh, I tend to point those things out more than,
4 uh, others but, um, Judge Welmaker covered the the colloquy in
5 in great detail.

6 Q. And do you have any prior experience with Judge
7 Welmaker?

8 A. I know who he is, I believe this is the first time I ever
9 appeared in front of him.

10 Q. Okay. There's been some question about, um, there's the
11 DNA results and whether they were investigated properly or
12 fully, um, do you have a copy of the SLED analysis in your
13 file?

14 A. I do, ---

15 Q. Um, Your Honor, may I approach?

16 THE COURT: Yes, sir.

17 A. --- once I can find it.

18 Q. And I believe, um, counsel already testified but do you
19 recall what the two pieces of of DNA analysis were in that
20 case?

21 A. The two main items in as to the CSC kit in this case
22 were, um, a cutting made from the victim's underwear, actually
23 believe it may have been the rear area of the victim's
24 underwear and a rectal swab that was collected from the victim
25 as part of the CSC, um, examination protocol, that was

1 compared with, uh, buccal swabs that were submitted from the
2 victim and the defendant.

3 Q. Okay, and so do you recognize this (indicating)?

4 A. Yes.

5 Q. And what is that?

6 A. This is the serology report from SLED.

7 MR. NEELY: Your Honor, I'd ask that be made an
8 exhibit in this case just to clarify the for purposes of
9 investigation.

10 MR. RICHEY: Hold on, I'm gonna object to that as
11 relevancy and his, uh, ---

12 THE COURT: Okay, I I'm going to, uh, uh, I I'm going to,
13 uh, sustain the objection, I I don't think it's necessary for
14 my purposes in coming to a determination in this case, um, I
15 don't know that it's relevant to the claims of, uh,
16 ineffective assistance of counsel.

17 BY MR. NEELY:

18 Q. Okay, but just just going back over what the d -- what
19 the the two pieces of DNA were, the two identifications were,
20 um, the semen in her bi -- well in her underwear was the
21 Applicant's, is that correct?

22 A. That there was a DNA profile developed from the semen
23 that was found in the victim's underwear that matched the
24 profile of the defendant to the exclusion of 1 in 510 million
25 people.

1 Q. Okay, and then the second DNA analysis, what was that?

2 A. Uh, the the, again, there was a DNA profile that was
3 developed from the sperm portion of the rectal swab, it was a
4 mixture of at least two individuals, uh, the victim and the
5 defendant couldn't be excluded as the contributors to the
6 mixture.

7 Q. Okay, so, I mean, in in plain English, it was two people
8 but it could have been the victim and the defendant.

9 A. Yes, um, and now the -- this isn't my area of expertise
10 but that is my understanding of that, that would probly be a
11 better question for someone in SLED but . . .

12 Q. Sorry. Uh, thank you, that's all the questions I have.

13 CROSS-EXAMINATION BY MR. RICHEY:

14 Q. Ma'am, um, you you don't have any idea what Mr. Hall done
15 in terms of investigation on this case, do you?

16 A. What I know from Mr. Hall is based on my conversations
17 with him, I don't know what he may have done to ---

18 Q. But you don't know whether he investigated it, researched
19 that, anything, right?

20 A. Researched what?

21 Q. The case, whether he just read incident reports,
22 anything, do you know whether he done any a that?

23 A. I don't.

24 Q. Okay, and you did make a cap, offer of cap of 15,
25 correct?

1 A. I did.

2 Q. And you you are not aware at the time a this plea the
3 conversations between Mr. Hall and Mr. Jeter, you're not aware
4 of those conversation, correct?

5 A. I know from conversations with Mr. Hall that he had had
6 some difficulty finding the defendant but ---

7 Q. That's ---

8 A. --- I don't, ---

9 Q. --- not my ---

10 A. --- you know, ---

11 Q. --- question. My question is at the time of the trial
12 and the day of the guilty plea when he pled guilty, right, he
13 plead guilty durin' this trial, correct?

14 A. He did.

15 Q. Okay. Prior to him pleading guilty you were not present
16 during the conversations Mr. Hall, Mr. Jeter had about this
17 plea, correct?

18 A. No, sir, I was not present for those meetings.

19 Q. So you're not able to testify whether he was offered a
20 cap of 5 through his conversation with his lawyer or not,
21 correct?

22 A. I can tell you that I offered a recommendation of a cap a
23 15 years on ---

24 Q. I'm ---

25 A. --- September ---

1 Q. --- I'm ---

2 A. --- the 2nd.

3 Q. --- not talkin' about what you done, ---

4 A. Uh-huh.

5 Q. --- I'm talkin' about the conversation between him and
6 his lawyer, you cannot testify whether a cap a 15 was
7 presented to him at that time, correct?

8 A. I know that he signed a sentencing sheet, that's all I
9 can say regarding, uh, the the sentencing sheet reflected my
10 offer and I know that he signed up ---

11 Q. That ---

12 A. --- before those attempts, ---

13 Q. --- let ---

14 A. --- that's all I can say about ---

15 Q. --- let ---

16 A. --- what was ---

17 (Indiscernible cross-talk.)

18 Q. --- let me ask this way: Were you present during the
19 conversation between Mr. Hall, Mr. Jeter at the time of right
20 before the guilty plea on the day a the trial, were you
21 present ---

22 (Indiscernible cross-talk.)

23 A. No, I was not.

24 Q. Okay, so you don't have any information about that,
25 correct?

1 A. I don't know what was conveyed to the, ---

2 Q. Okay, ---

3 A. --- to the defendant ---

4 Q. --- alright.

5 A. --- by, uh, ---

6 Q. Okay, but you, but you don't dispute at some point you
7 did make an offer, correct?

8 A. Yes, sir, I did.

9 Q. Okay, and and you you will not dispute at the ti -- well,
10 I don't know, do you remember -- you don't remember exactly
11 what Judge Welmaker said, correct?

12 A. Said when?

13 Q. During the guilty plea clod -- col -- colliloquy [sic],
14 you don't know exactly what he said, correct?

15 A. I can't tell you exactly what he said ---

16 Q. Right, ---

17 A. --- but to me I've, I mean, I've done s -- lots ---

18 Q. --- but ---

19 A. --- of pleas and it was the same ---

20 Q. --- right, ---

21 A. --- format.

22 Q. --- okay, and so because you don't know exactly what he
23 said -- okay, thank you.

24 THE COURT: Re -- redirect, sir?

25 MR. NEELY: Just just briefly.

1 REDIRECT EXAMINATION BY MR. NEELY:

2 Q. Um, can you say with certainty that Judge Welmaker did
3 not tell the defendant there's a a cap 15 years on the final
4 plea?

5 A. I'm sorry, I didn't understand your question.

6 Q. Can you s -- can you say with a certainty whether or not
7 Ju -- Judge Welmaker told the defendant there was a cap of 15
8 years in place in the final ---

9 MR. RICHEY: I'm gonna object to that, she just testified
10 she couldn't say what he said pacifically [sic] at the guilty
11 plea.

12 THE COURT: Alright, um, I'll let you ask the question,
13 uh, uh, you might wanna rephrase it though and I think it may
14 be somethin' you already testified but I'll let ya ask it.

15 BY MR. NEELY:

16 Q. Yeah, i -- if Judge Welmaker offered a c -- offered or
17 told the defendant that the recommendation was a cap of 15,
18 would you have corrected him on the final plea?

19 MR. RICHEY: I'm I'm gonna object to that 'cause I don't
20 think she can testify what she was -- Your Honor, I think
21 testimony's clear, she testified, Hey, no, I don't know
22 pacifically [sic] what he said.

23 THE COURT: She can testify if she would have corrected
24 that hearing, that ---

25 MR. RICHEY: Thank Your Honor.

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1 THE COURT: Go ahead.

2 A. I would have corrected that. I know we did have a
3 conversation with him in chambers prior to the plea where he
4 was made aware of, Judge Welmaker was made aware of what the
5 plea was gonna be to.

6 Q. And it was a straight up plea?

7 A. Yes.

8 MR. NEELY: That's all the questions I have.

9 THE COURT: Okay. Alright, thank you, I appreciate it.

10 THE WITNESS: Thank you.

11 (Whereupon, the witness left the stand.)

12 THE COURT: Alright, anything further from the State?

13 MR. NEELY: Not from the State, Your Honor.

14 THE COURT: Okay, argument from the Applicant?

15 MR. RICHEY: Thank Your Honor, may it please the Court.

16 Your Honor, it's it's our position that, uh, Mr. Jeter should
17 be entitled to a new trial, um, I I think the transcript, that
18 the the, think the only question in this that the transcript
19 would clear up a crystal ball that nobody here today could
20 clear up is whether he was offered 15-year cap and and and
21 there's reason to believe this gentleman had had had really
22 steadfast to put I'm not pleading guilty, now whether that's
23 reasonable or whatever, we've all done these cases and we know
24 sometimes reasonable's not there but he did go into the
25 courtroom my count twice sayin', I'm not pleadin' guilty, then

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1 they go through these two witnesses, then there was somethin'
2 to induce him to plead, we we -- 'cause 'cause from everyone,
3 everybody said in here he was a difficult guy, he was a guy
4 that wasn't gonna plea, all this, that's what the testimony
5 is, so so there was some inducement that he was, 'cause
6 counsel went in and told him somethin', I mean, and he pled.
7 Mr. Jeter's version of that is, I was told that I was gonna
8 get a cap of 15, and I don't think that's unreasonable 'cause
9 the prosecutor testified that she had presented that offer
10 some two or three weeks prior to this so that cap of 15 is not
11 a number that's been thrown outta the sky, there was an offer
12 in place. Mr. Jeter's position is, Counsel came in and told
13 me the cap of 15 was still there. Now seein' that what I've
14 heard in relations to the evidence is re -- relations I've
15 seen to the evidence I don't think it's unreasonable to say,
16 Hey, man, I think you're gonna get the whole 20, here's a cap
17 a 20, here's a cap a 15, and so the inducement is is the cap a
18 15, well well what we run into, the problem is we don't have
19 the transcript to know whether Judge W -- 'cause nobody can
20 testify in here whether Judge Welmaker told him, Sir, I don't
21 have to accept this 15-year cap, I don't have to, okay, I can
22 go over the cap, there's there's nothin' in there that says
23 that, also, there's Mr. Hall's testimony is there's nothin'
24 that he advised him on that day that there was a cap a 15 and
25 the judge go over it so that that question of the inducement

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1 of the plea, was the cap a 15 the inducement of the plea, if
2 that's the inducement of a plea and Mr. Jeter wa -- was
3 expectin' that, I think no evidence that counsel went over
4 that with him prior to him doin' it, also, uh, the sentencin'
5 sheets reflectin' there was no recommendation, that can't be
6 cleared up other than with the transcript with what the judge
7 advised him as to the plea because we don't know what he was
8 advised 'cause nobody can tell us, you know, and and and
9 standard practice, you know, with all due respect to court,
10 the Court ---

11 THE COURT: Sure.

12 MR. RICHEY: --- sometimes, you know, don't ask all the
13 qu -- sometimes you might miss over there's a recommendation
14 so I just think that the transcript can only thing clear this
15 up ---

16 THE COURT: Okay.

17 MR. RICHEY: --- and, Your Honor, and as to the other I,
18 and and I will say this, I will, I spent most a my time on I
19 think my primary issue, I'm not waiving these other ones
20 but I'm ---

21 THE COURT: Sure, ---

22 MR. RICHEY: --- not gonna stand up in fronta the Court
23 and go on and on about.

24 THE COURT: --- I understand, ---

25 MR. RICHEY: Thank Your Honor.

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1 THE COURT: --- I understand. Alright, okay, Mr. Neely
2 any arguments like to be presented from the State?

3 MR. NEELY: Your Honor, I would just say that, uh, I
4 don't think there's been any evidence presented that anything
5 other than the standard plea procedure was went through.
6 Um, defendant testified that he didn't remember any a the
7 questions the judge asked and didn't have a a good
8 recollection of that day at all, um, certainly was un -- was
9 unable to say that Judge Welmaker didn't ask or did ask a
10 certain question whereas we have, uh, notes from two attorneys
11 that pretty extensively, uh, about the trial and about the
12 guilty plea proceedings and a number of guilty proceedings
13 that he went through, uh, it seems pretty obvious that he
14 understood his constitutional rights considering that, um,
15 when the judge asked him the first time he backed out, uh,
16 when the judge went over his constitutional rights with him
17 and then, uh, following the second time, uh, there was no
18 issue and went through with the, with a guilty plea,
19 understood exactly what he was doin', uh, I think it's, again,
20 I don't think there's any evidence the contrary.

21 Um, as to failure to investigate claim, uh, the only
22 allegation that I heard was that he failed to try to find a,
23 uh, third party, um, on a, on a criminal sexual conduct case
24 with a 12-year-old where his semen was found in her underwear
25 and the DNA mixture was unable to be, um, ade -- again,

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1 identified to, um, the high degree of certainty that DNA is
2 norm -- normally able to; however, it was unable unable to be
3 ruled out that it was the victim and the defendant which of
4 course makes the most sense in this case, uh, considering that
5 it was his semen in her underwear, uh, to a very high degree
6 of certainty, uh, that it doesn't seem that there's any
7 question or anything to investigate so I I would argue that
8 counsel didn't fail to do anything in that case and that to
9 the extent that he didn't meet with his client as much as his
10 client would have liked, uh, it was his client's fault for
11 failing to provide improper information and contact
12 information.

13 THE COURT: Okay, alright. Alright, threshold issue that
14 I have to determine in this case is whether in fact the record
15 would be dispositive and whether it is necessary for me to
16 make a determination in this case, um, I've, uh, after having
17 heard the case it sounds like the substantive claim, uh, of
18 the defendant is or, excuse me, of the Applicant is that the
19 plea was not free and voluntarily but voluntary because there
20 was a representation to him that there was a cap of 15 years.
21 Now with respect to the other issues, that is, failure to
22 investigate and the handling at trial of the rape kit, I find
23 that that's not relevant because that would have been, uh,
24 waived by and through a guilty plea, um, that is, any issues
25 with re -- respect to the propriety of the, propriety of the

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1 kit and/or, uh, the, uh, exercise of or extension of rights,
2 um, I'll also, uh, state that their, the theory of the defense
3 was that it was consensual sex, um, that would suggest as well
4 that the rape kit would be irrelevant if in fact the
5 representation from the defendant was that he had sex with the
6 the, with the victim but it was consensual, the fact that that
7 evidence would, uh, would, uh, be relevant and he admitted
8 would be, uh, would be acknowledged by him although I
9 recognize that under the theory a the case ultimately that the
10 defense would have to proffer, it couldn't necessarily, uh,
11 claim consent because it was a minor, um, but I recognize
12 again that it was never his position apparently by through,
13 uh, uh, representation as to counsel and to, uh, law
14 enforcement that the sex had never occurred, uh, but again, I
15 just, that's an aside s -- and I say, and I only put that on
16 the record for purposes of of explaining fully to the
17 Applicant what my thought process is, um, so it is the burden
18 of the Applicant to demonstrate by a preponderance of the
19 evidence that counsel's performance was deficient. Now in
20 this case it's unfortunate that we don't have the actual
21 transcript of record but again, the representation from the
22 defendant is that he was not advised that the judge could
23 sentence up to the maximum possible penalty, um, that's his
24 representation to the Court that he still thought he had a
25 cap, um, but upon questioning his testimony was that he

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1 doesn't remember any of the colloquy therefore he hasn't put
2 any evidence into the record as to the deficiency of the
3 colloquy, um, and the contemporaneous notes taken by trial
4 counsel indicate that the standard questions were proffered by
5 the judge on the record, um, the judge advised, uh, the, uh,
6 defendant of the maximum possible penalty by and through the
7 colloquy, now the the transcript of record doesn't demonstrate
8 that but the testimony of counsel demonstrates that very
9 clearly, also the notes demonstrate that the, uh, that trial
10 counsel, Mr. Hall, had a discussion with the defendant about
11 the maximum possible penalty and also also discussed with him
12 the ramifications and the meaning of a recommendation as
13 opposed to a negotiated sentence and it is axiomatic and I can
14 take judicial notice that a recommendation suggest that the
15 Court does not have to go along with the recommended cap from
16 the State so notwithstanding whether the defendant having pled
17 to a cap, uh, or recommended cap in June or had pled to a
18 recommended cap at the, at the beginning of trial, that the
19 the trial judge is not required to accept that cap, um, so
20 necessarily in context with a recommended plea the defendant
21 must know what the maximum possible penalty is and there's no
22 evidence in the record proffered by the defendant that he
23 didn't understand clearly the maximum possible penalty. The
24 the paper record that we have in this case is the sentencing
25 sheet and the sentencing sheet is very clear by omission and

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1 there's no recommendation, it is marked on the sentencing
2 sheet. If there were a cap, there would be a, uh, a checked
3 recommendation, uh, it may or may not have said cap of 15
4 years but there definitely would been a recommendation checked
5 on there, it isn't checked on there, also, simply by function,
6 of understanding the system if a victim testifies, generally
7 speaking the State almost ten times out of ten is gonna
8 withdraw any, uh, recommendation that they had had pretrial,
9 um, otherwise the State doesn't really have any tools for
10 incentivizing the defendant to te -- to enter a plea of guilty
11 before forcing the victim to take the stand, all of that makes
12 perfect sense, now that's not, that does not go to, that does
13 not go to say and not to mean that I accept what the State
14 says at face value, I don't, but when I look at that testimony
15 in light of the defendant's testimony or, excuse me, the
16 Applicant's testimony that he doesn't remember what happened
17 well then there's no evidence to to the contrary but that the
18 judge asked all the questions and that the recommendation had
19 been removed, the only testimony from Applicant is that he
20 doesn't remember and every other piece of evidence in the
21 record to include the only documentary piece of evidence in
22 the record suggests to the contrary. Um, it's unfortunate
23 that, it it is unfortunate that we don't have a transcrip --
24 script of record but based on the Applicant's position in this
25 case it's not necessarily -- necessary that I have it because

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1 the Applicant hasn't proffered any evidence which which would
2 suggest that he's even remotely close to meeting the burden of
3 proof that trial counsel was deficient in his representation,
4 for all of those reasons I will, uh, respectfully, uh, deny
5 the Applicant's application based on the fact that he's failed
6 to meet, uh, his burden of proving beyond a, excuse me, by a
7 preponderance of the evidence that trial counsel's performance
8 was deficient or that he was prejudiced by the same. Alright,
9 thank you very much.

1 CERTIFICATE OF REPORTER

2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on March 22, 2017 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 3 through 59, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 April 11, 2018

14
15 Margaret A. Woods

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
19
20
21
22
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25

Exhibit #5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
Keshaun D. Jeter, #361267,	)	
Applicant,	)	Case No.: 2015-CP-42-3800
v.	)	ORDER OF DISMISSAL
State of South Carolina,	)	
Respondent.	)	

The above-captioned matter is before the court based on a post-conviction relief (PCR) application filed by Keshaun Jeter, on August 10, 2015. This Court convened an evidentiary hearing into this matter on March 22, 2017 at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Rodney Richey, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent. Applicant's plea counsel was Robert B. Hall (Counsel), Esquire, who was present and testified. The prosecuting Assistant Solicitor, Lindsey H. Overby (the solicitor), Esquire, was also present and testified. This Court had the opportunity to listen to the testimony and assess the credibility of Applicant, Counsel, and the solicitor. This Court had before it the records of the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant was indicted at the January 2013 term of the Spartanburg County Grand Jury for Criminal Sexual Conduct with a Minor, Second Degree (2013-GS-42-0027). On September 9, 2014, after two days of trial, Applicant pleaded guilty as indicted before the Honorable G.

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Edward Welmaker. Judge Welmaker sentenced Applicant to 200 months imprisonment for criminal sexual conduct with a minor - victim 11 to 14 years of age, second degree.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed Applicant's petition in an Order dated December 3, 2014. State v. Keshawn Donte Jeter, Op. No. 2014-001929 (S.C. Ct. App. filed September 18, 2014). The Remittitur was issued on December 23, 2014.

The court reporter lost the tape for the trial and the following plea proceeding. Consequently, there was no guilty plea transcript from Applicant's proceeding. Further, Judge Welmaker passed away and would be unavailable to help reconstruct the record.

II. ALLEGATIONS

In his PCR application, Applicant alleged he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to investigate
 - b. Involuntary guilty plea

III. SUMMARY OF TESTIMONY

Applicant testified he pleaded guilty as advised by his attorney on the second day of trial. Applicant did not recall who testified, how many questions were asked, or what those questions were. Applicant testified he remembered the judge asking him a series of questions and he answered them, but could not recall what those questions were. Applicant testified he did not remember much from the trial or plea proceeding.

Counsel had notes on the trial to which he referred. Counsel testified Applicant changed his mind on whether to plead guilty or not before the trial. Counsel testified, after pre-trial, Applicant wanted to plead guilty. Counsel testified the judge went over Applicant's rights during

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the plea proceeding following the pre-trial. During that proceeding, Applicant said he wanted to plead guilty, but when the Judge asked if Applicant was sure he wanted to plead guilty Applicant said no. The trial then began. Counsel testified the trial judge denied his motion to suppress the rape kit. Counsel further testified Applicant's only defense was consent, which was not a defense due to the victim's age. Counsel testified the victim and medical examiner testified. The rape kit that contained Applicant's DNA was admitted as evidence. Counsel also testified Applicant gave a video statement confessing to the crime. Counsel testified, based on his notes, there was a recommendation of a cap of fifteen years' incarceration when Applicant attempted to plead guilty after the pre-trial proceedings. Counsel testified he advised Applicant the judge was not required to follow the State's recommendations. Counsel testified there was no recommendation by the State when Applicant pleaded after the victim testified. Counsel testified he had noted where the plea judge went over each of Applicant's rights and made a check for each right. Counsel testified he used a different color pen on Applicant's final plea than the plea attempt that occurred following the pre-trial proceedings. Counsel testified he went over the evidence and explained plea consequences with Applicant.

The solicitor took extensive notes from the trial and plea proceedings. She testified there was originally a recommendation of a cap of fifteen years. However, there was no recommendation for the Applicant's plea, because the victim had testified at that point. The solicitor reiterated the same proceeding history delineated by Counsel. She also testified the colloquy was complete and she would have drawn any deficiency in the colloquy to the court's attention.

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H. J. MOORE
CLERK

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court reviewed the record in its entirety, listened to the testimony given, and heard the arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. This Court finds Counsel and the solicitor's testimony was credible and persuasive and Applicant's lack of ability to recall the trial or plea was also credible. Therefore, this Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Plea Counsel

This Court finds the record fully supports the knowing and voluntary nature of Applicant's guilty plea. 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). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Thus, an applicant must show both error and prejudice to win relief in a PCR proceeding." Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

The court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. The Applicant

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must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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 (1985).

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 v. Allison, 431 U.S. 63, 73-74 (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. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir. 1985)). 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. For the reasons set out below, this Court finds the record and credible testimony support Applicant's full understanding of the charges and consequences of his guilty plea:

1. Involuntary Guilty Plea

Applicant asserts his guilty plea was entered involuntarily as the result of ineffective assistance of counsel. 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 his 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 Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford, 519 F.2d at 350. Applicant presented nothing to show the court's plea colloquy was incomplete and Counsel and the solicitor testified it was complete. Counsel and the solicitor also testified no recommendations were made by the State in this case. Therefore, Applicant has failed 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 there is a reasonable probability, but for trial counsel's errors, he would not have pleaded guilty, but would have insisted on going to trial instead. See Roscoe, 345 S.C. at 20, 546 S.E.2d at 419. 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.

An applicant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy, 339 S.C. at 34, 528 S.E.2d at 421. "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." Dalton, 376

S.C. at 138, 654 S.E.2d at 874. Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874.

Having reviewed the pleadings, considered the applicable law, and reflected upon the testimony provided at the evidentiary hearing, this Court finds Applicant's allegation that his guilty plea was involuntary to be meritless. Applicant failed to present any evidence that Counsel's performance or advice was deficient or that he was prejudiced by the deficiency.

Further, the evidence against Applicant was overwhelming. Applicant admitted his guilt in a video-taped statement. Applicant's DNA was found by the rape kit performed on the 12-year-old victim. The victim testified Applicant perpetrated the sexual abuse. Based on the testimony, this Court also finds the evidence against Applicant was overwhelming and any error of Counsel would not have prejudiced Applicant. Therefore, Applicant cannot prove prejudice where the evidence against her was overwhelming. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008).

This Court finds Counsel's advice was well within the range of competence required of defense attorneys. This Court also finds Applicant's guilty plea was voluntarily, intelligently, and knowingly made. Therefore, this Court denies and dismisses this allegation.

2. Failure to Investigate

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant's assertion Counsel should have investigated further is purely speculative. Applicant did not present what Counsel would have found if he had hired an investigator sooner or done further investigation. Notwithstanding the fact this Court does not find Counsel deficient for failing to investigate, a court need not first determine whether

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M. J. P. CLARK

counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant. This Court finds Applicant failed to prove he was prejudiced by any lack of investigation by Counsel.

Additionally, as discussed above, the evidence against Applicant was overwhelming. Based on the testimony, this Court also finds the evidence against Applicant was overwhelming and any alleged error of Counsel would not have prejudiced Applicant. Any assertion by Applicant that had his Counsel investigated more thoroughly, Applicant would not have pled guilty, but instead insisted on going to trial is unreasonable and not credible. Hill v. Lockhart, 474 U.S. 52 (1985). Therefore, Applicant cannot prove prejudice where the evidence against him was overwhelming. See Harris, 377 S.C. at 79, 659 S.E.2d at 147.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel's lack of investigation such that there was a reasonable probability Applicant would have insisted on trial rather than plead guilty. Accordingly, this Court denies and dismisses this allegation.

IV. CONCLUSION

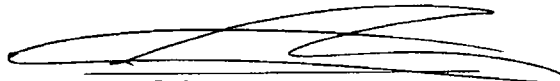
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 3rd day of January, 2018.



ROBIN B. STILWELL
Presiding Judge
7th Judicial Circuit

662-1111, South Carolina



State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Robin B. Stilwell
Judge

Greenville County Courthouse
305 East North Street, Suite 315
Greenville, SC 29601-2113
Phone: (864) 467-8406
Fax: (864) 235-3625
rstilwellj@sccourts.org

January 3, 2018

The Honorable Hope Blackley
Spartanburg County Clerk of Court
180 Magnolia Street, Suite 500
Spartanburg, SC 29306

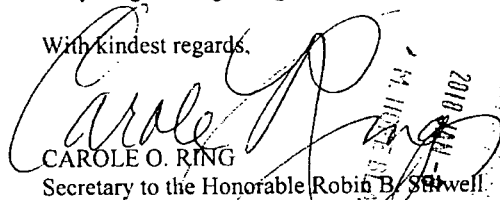
RE: Keshawn D. Jeter vs. State of South Carolina
2015-CP-42-3800

Dear Ms. Blackley:

Enclosed herewith please find an Order of Dismissal in the above-referenced matter. Judge Stilwell has asked that I send it to you for filing and for distribution to all interested parties.

Please let me know if you should need anything else regarding this matter.

With kindest regards,


CAROLE O. RING
Secretary to the Honorable Robin B. Stilwell

cor
Enclosure

2018 JAN -
PH 3:28
H. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
Fax (864) 596-2239



M. Hope Blackley
Clerk of Court

January 9, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Keshawn D. Peter
Applicant # 361267

7TH JUDICIAL CIRCUIT

CASE # *2015-CP-42-3800*

VS
Stall
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the

In this action dated *1-3*, *2018* on *Ced. of Business* *1-9-18*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Valerie Giordano
Kimberly McCoy
Dorothy Richey

1-9-18
(Date)

Christie Gray
(Signature)

Exhibit #6

WITNESSES

Spartanburg Public Safety Department

1. SUBSCRIBER

2. REPORTED BY

3. CHARGE

4. OFFENSE

5. ARRESTED BY

6. ARRESTED ON

7. ARRESTED AT

ARREST WARRANT NUMBER

2012A4210200551

ACTION OF GRAND JURY

JAN 18 2013

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

13-GS-42-0027

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 28 2013

TERM

THE STATE

vs.

Keshaun Donte Jeter

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR, SECOND DEGREE

SC Code: 16-03-655 (B) (1)

CDR Code: 0396

Class FEL/C

FILED
JAN 23 2013

2013 JAN 23 AM 10:24

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 18 2013

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That the Defendant, Keshawn Donte Jeter, did in Spartanburg County, on or between the dates of September 28, 2012 and September 29, 2012, commit the crime of Criminal Sexual Conduct with a minor in the Second Degree in that the Defendant did engage in a sexual battery upon the minor, _____, who was fourteen (14) years of age or less, but at least eleven (11) years of age at the time of the battery. Said incident occurred in Spartanburg County, South Carolina, in violation of Section 16-03-655 (B) (1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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

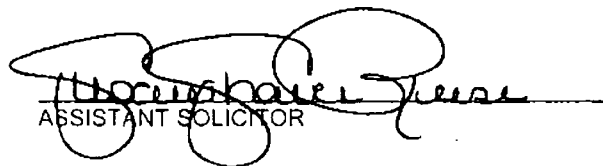

ASSISTANT SOLICITOR

Exhibit #7

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Keshaun Donte Jeter

AKA:

Race: BLACK Sex: M Age: 19

DOB: SS#

Address:

City, State:

DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

FO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg. (0-20 years)

in violation of § 16-03-0655(B)(1); 16-03-0 of the S.C. Code of Laws, bearing CDR Code # 0396

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

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

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

ATTEST:

Lindsey H. Overby

29869 x Keshaun Jeter

B. J. [Signature]

2596

OVERBY, LINDSEY H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, [] County Detention Center,
for a determinate term of 2.00 days/months/years or [] under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

[] CONCURRENT or [] CONSECUTIVE to sentence on:

[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. NOT TO INCLUDE BOND E.M.

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

[] Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL:		\$ 133.90

_____ days/hours Public Service Employment

Obtain GED []

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling []

Random Drug/Alcohol testing []

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2/37

9/3/14