

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

ANDY BROCK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000999

APPENDIX

ROBERT M. PACHAK
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

ALAN WILSON
Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

RECEIVED
SEP 04 2018
S.C. SUPREME COURT

INDEX

INDEX i

GUILTY PLEA HEARING (Dated August 8, 2016).....1

APPLICATION FOR POST-CONVICTION RELIEF16

RETURN AND MOTION FOR MORE DEFINITE STATEMENT24

POST-CONVICTION RELIEF HEARING TRANSCRIPT (Dated October 27, 2017)29

ORDER OF DISMISSAL52

INDICTMENTS63

State of South Carolina
County of Greenville

Court of General Sessions

State of South Carolina)
)
)
 v.)
)
)
 Andy Lender Brock)
)
)
 Defendant.)

Transcript of Record
2014-GS-23-00101
2014-GS-23-00102

August 8, 2016
Greenville, South Carolina

B E F O R E:

The Honorable Edward Miller, Judge.

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

Lisa Bentley, Assistant Solicitor
Attorney for the State

Dorothy Manigault, Assistant Public Defender
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits.

P R O C E E D I N G S

- - -

MS. BENTLEY: Andy Brock.

(The defendant was personally present, together with counsel.)

MS. BENTLEY: Your Honor, this is 2014-GS-23-101, Andy Brock, indicted for kidnapping, pleading to the same, and it is a true bill.

2014-GS-23-102, indicted for criminal sexual conduct first degree and possession of a weapon during the commission of a violent crime, pleading to the same on both, and it is a true bill.

ANDY BROCK,

having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

THE COURT: You have any jail days?

MS. BENTLEY: Yes, Your Honor. He's got 864 days in jail on this charge. He is currently in the Department of Corrections for some convictions earlier this year.

THE COURT: Okay. All right. Mr. Brock, in the last 24 hours, have you had any drugs, alcohol, or medication?

THE DEFENDANT: Just medication, sir.

1 THE COURT: What do you take?

2 THE DEFENDANT: Remeron and Vistaril.

3 THE COURT: All right. Prescribed by a doctor?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do they -- in the last three days,
6 have you had the right amount?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do they limit your ability to
9 understand what you're doing?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. You're up here on two
12 indictments, one which has two counts.

13 The first one alleges that you did here in
14 Greenville County between September 10 and
15 September 11th of 2013 engage in a sexual battery
16 with **Victim** where you used aggravated
17 force to accomplish the battery. That carries up to
18 30 years in prison.

19 It's a violent offense which impacts parole
20 eligibility. It's a most serious offense. If you
21 get convictions for two or more most serious
22 offenses, you're eligible for life in prison without
23 parole. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The second count of that indictment

1 alleges you did in Greenville County between the
2 10th and 11th days of September of 2013, you
3 possessed or visibly displayed a knife during the
4 commission or attempted commission of that criminal
5 sexual conduct in the first degree, and that carries
6 five years. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The next indictment alleges you did
9 here in Greenville County between the 10th and
10 11 days of September of 2013 unlawfully seize,
11 abduct, confine, inveigle, decoy, or carry away
12 **Victim** without the authority of law. And
13 kidnapping carries up to 30 year in prison. It is
14 also a violent and most serious offense. Do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Understanding the nature of
18 the charges and the maximum possible punishment, how
19 do you want to plead?

20 THE DEFENDANT: Guilty, sir.

21 THE COURT: Is that your free and voluntary
22 decision?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand you'd have an
25 absolute right to a trial by jury where you'd be

1 presumed innocent unless and until the State could
2 prove you guilty beyond any reasonable doubt of each
3 and every element of each offense that you're
4 charged with?

5 You would have a right to confront and
6 cross-examine the witnesses and the evidence put up
7 against you by the State, you would have a right to
8 compel in court all relevant and competent evidence
9 in your own defense, or you can remain silent. Your
10 silence cannot be held against you, and you could
11 never be compelled to incriminate yourself. Do you
12 understand all those rights?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you want to give up all those
15 rights and enter this plea?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you totally and completely
20 satisfied with the representation of your attorney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has she done everything that --
23 done everything that you think is reasonably
24 necessary to adequately prepare your defense in this
25 case?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you have any complaints you
3 want to make about the way you've been treated?

4 THE DEFENDANT: No, sir.

5 THE COURT: And have you had enough time to
6 review the evidence that the State has against you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Please listen while
9 they tell me about it.

10 MS. BENTLEY: May it please the Court, Your
11 Honor?

12 On September 10, 2013, this defendant picked up
13 his girlfriend from her house early in the morning.
14 They spent the day together walking all over the
15 Lake Robinson area of Greenville County, while this
16 defendant was trying to avoid arrest.

17 Late that evening, they ended up at [REDACTED] Becky
18 Gibson Road in Greenville County, the home of one of
19 this defendant's friends.

20 This defendant cut the lock off of his friend's
21 bedroom door because it was the only room in the
22 trailer with air conditioning, and both this
23 defendant and the victim entered that room.

24 The victim would testify that by this point in
25 the day, she was exhausted, dehydrated, and hungry

1 as they had walked all day in the sun without food
2 or water. The couple began bickering, at which time
3 this defendant punched the victim in her face and
4 told her to lay down.

5 When **Victim** resisted, this defendant pulled
6 out a barber-style switchblade and held it to her
7 throat. He then held her down while he cut and
8 ripped her shirt off.

9 This defendant proceeded to sexually assault
10 the victim vaginally, orally, and sodomized her in
11 between all why -- all while hitting her about the
12 face and head.

13 He took her phone at one point and tried to
14 prove she was cheating on him, ultimately breaking
15 part of the phone.

16 At one point, this defendant grew tired of
17 **Victim**'s crying and begging to leave, so he tied
18 her to the bed with straps and a cell phone cord.

19 During the assault, this defendant told her
20 hateful things, including that if she told police he
21 would go to her daughter's school and rape her and
22 that nobody would believe her.

23 Several hours later, the homeowner and a
24 witness, Daniel Yarborough, came home and called out
25 thinking the home was being burglarized.

1 At this point, the victim was able to break
2 free and run for help. She grabbed a blanket and
3 reached the home of a neighbor, Joyce Pope, wearing
4 only that blanket that she grabbed from the home.
5 She still had a cell phone cord tied to her wrist
6 when she was treated by EMS and emergency room
7 personnel.

8 DNA was recovered from a rectal swab taken by
9 the same nurses at the hospital. That was the only
10 location sperm was found and was directly
11 contradictory with the defendant's story about what
12 happened that night.

13 He does have quite the criminal history, and
14 the State believes that this is a case that deserves
15 maximum time.

16 THE COURT: All right. Tell me what -- tell me
17 his criminal history.

18 MS. BENTLEY: Your Honor, 1997, criminal
19 domestic violence; 1998, seven counts of fraud
20 check; 1998, domestic violence; 2000, shoplifting,
21 petit larceny; 2002, possession of a controlled
22 substance; 2006, DUS, possession of drug
23 paraphernalia; 2007, habitual traffic offender,
24 possession of meth, resisting arrest; 2012, eight
25 counts of forgery; 2013, PWID meth second offense,

1 possession of controlled substance times two; and
2 2014, distribution of meth.

3 Your Honor, this defendant pled guilty off the
4 trial docket in January of this year to those meth
5 offenses. He was sentenced to ten years, suspended
6 on seven years.

7 And at that time, we did reopen the initial
8 offer on this case, and he refused to plead guilty
9 at that time. We've had to put him on the trial
10 docket for this for him to reach the point that
11 we're at now.

12 THE COURT: All right. So 2014, he had a
13 distrubution of meth?

14 MS. BENTLEY: Yes, Your Honor, and a 2013
15 possession of -- PWID meth second offense. Both of
16 those were convictions in January of this year off
17 the trial docket.

18 THE COURT: Oh, so the conviction was in '16?

19 MS. BENTLEY: Yes, sir, Your Honor.

20 THE COURT: Okay. All right. True and
21 correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Well, I'll accept the
24 plea as being freely and voluntarily and
25 intelligently made with the advice of a very

1 competent attorney with whom he states he's well
2 satisfied and there is a substantial factual basis
3 for the plea.

4 Ms. Manigault, anything?

5 MS. MANIGAULT: Yes, sir. May it please the
6 Court, Your Honor?

7 My client is 44 years old. He is a lifelong
8 resident of Greenville County -- oh, excuse me -- he
9 was living in Spartanburg County.

10 He graduated from Chapman High School in Inman.

11 He served 15 years in the Army. He received an
12 honorable discharge.

13 Your Honor, he has suffered from depression,
14 anxiety, bipolar, sleep disorder, and hearing
15 voices. We had him evaluated at the Department of
16 Mental Health in Columbia, which came back to say he
17 was competent to stand trial.

18 He has worked as a cook and a framer.

19 He is divorced. He has five children, three
20 adults and two minors.

21 Your Honor, he's asked me to ask the Court for
22 a minimum sentence in this case. The offer that the
23 State made him was 15 years, which she reopened
24 at -- on January 11th of 2016.

25 However, in talking with my client and

1 preparing for trial last week, he tells me that he
2 does not recollect me telling him about the 15-year
3 offer, that he would've accepted it if I had told
4 him about it.

5 Your Honor, my notes on the plea offer noted
6 that we did discuss it. I have a date, but he said
7 he does not remember me telling him that and he
8 would've accepted the 15 years if he had known. So,
9 Your Honor, he's asking me to ask the Court for a
10 minimum sentence in this case.

11 As you've heard, his jail time is 864 days. I
12 represented him in January before Judge Hill when he
13 received the ten year suspended to seven, so...

14 THE COURT: Okay. What do you want to tell me?

15 THE DEFENDANT: I'm leaving it up to you, sir.
16 I'm sorry for what I've done, but I can't take it
17 back. I just -- I was on drugs at the time. I
18 don't remember most of it.

19 THE COURT: It's real serious what you did.

20 THE DEFENDANT: Yes, sir.

21 MS. BENTLEY: Your Honor, the victim is
22 present.

23 THE COURT: Oh, does she want to speak?

24 MS. BENTLEY: She does not want to speak.

25 She -- but she is -- she is present. She was

1 prepared to testify today.

2 THE COURT: Okay.

3 MS. BENTLEY: And I just want -- want the Court
4 to know that she was present today.

5 THE COURT: Thirty years; 30 years; 5 years
6 consecutive. The two 30's are concurrent; the 5 is
7 consecutive. Good luck.

8 THE DEFENDANT: Thank you, sir.

9 (The proceedings concluded at 11:19 a.m.)

10 * * * * *

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Greenville County, South Carolina, on the 8th day of August, 2016.

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

February 13, 2017

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)

IN THE COURT OF COMMON PLEAS

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

Andy Brock Prison # (803) 896-2234)

2016-CP-23

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

ENTERED COMPUTER

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Corr. Inst.
2. Name and location of Court which imposed sentence Greenville General Session
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2014-GS-2300102 - 2014-GS-2300101
 - (a) Kidnapping
 - (b) Sex Crime Conduct, First Degree, Poss Weapon
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 8, 2016
 - (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?
NO
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) _____
 - (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective of Assistance of Counsel
- (b)
- (c)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Fail to provide witness
- (b) Fail to investigate case properly
- (c)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i.
- ii.
- iii.

iv. _____
(d) the date of each such disposition:

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

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

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

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. N/A
- iii. N/A

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

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

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) _____ P.C.R. is the proper court
- (b) _____
- (c) _____

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

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

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. _____ Dorthy Mangult
- ii. _____ 305 East North Street
- iii. _____ Greenville, South Carolina 29601

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

- i. _____ guilty Plea
- ii. _____
- iii. _____

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

_____ Time reduceing

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

NO

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Andy Broer, 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.

Andy Broer Oct 6 2016

SWORN to and subscribed before me this 6
day of October, 2016

[Signature] (L.S.)
Notary Public

My Commission Expires: 9/16/2026

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

I, Andy Brock, 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.

Andy Brock
Applicant

Get 62016

SWORN or affirmed to and subscribed before me this
6th day of October, 2016.

[Signature]
Notary Public

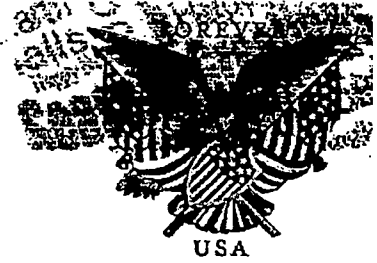
My Commission Expires: 9/1/17

Andy Brock sdc#317746
Broad River CI
4460 Broad River Rd
Columbia SC.
29210

COLUMBIA SC 29203

09 DEC 2016 PM 1 L

2016-CP-23- 07619



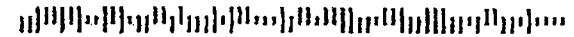
CLERK OF COURT
Greenville County
305 East North Street
Greenville SC 29601

RECEIVED

DEC 07 2016

BRCI
MAILROOM

29601-219099



STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 Andy Brock, #317746,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-7619

**RETURN AND MOTION FOR
 MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on December 28, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In September 2014, the Greenville County Grand Jury indicted Applicant for kidnapping (2014-GS-23-0101), criminal sexual misconduct, first degree, and possession of a weapon during the commission of a violent crime (2014-GS-23-0102). Assistant Public Defender Dorothy Manigault, Esquire represented Applicant. Assistant Solicitor Lisa Bentley, Esquire prosecuted the case. On August 8, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable Edward Miller. Judge Miller sentenced Applicant to imprisonment for concurrent terms of thirty years for kidnapping, thirty years for criminal sexual conduct, first degree, and five years for possession of a weapon during the commission of a violent crime. Applicant did not appeal his conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. Counsel "failed to provide witness"
 - b. Counsel "failed to investigate case properly"

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel 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 [it] 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 v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether 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). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant

such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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), SCRCPP. 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, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

V.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent

requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

June 22, 2017

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	2016-CP-23-7619
COUNTY OF GREENVILLE)	
)	
)	
)	
)	
ANDY L. BROCK,)	
APPLICANT,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
THE STATE OF SOUTH CAROLINA,)	
RESPONDENT.)	
_____)	

October 27, 2017
Greenville, South Carolina

B E F O R E:

THE HONORABLE LETITIA H. VERDIN, JUDGE

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

SUSANNAH C. ROSS, ESQ.
Attorney for the Applicant

DeSHAWN MITCHELL, ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

PAGE

Motion	4
ANDY BROCK:	
Direct Examination by Ms. Ross	5
Cross-Examination by Mr. Mitchell	8
SHAWN SNOW:	
Direct Examination by Ms. Ross	12
Cross-Examination by Mr. Mitchell	14
Applicant Rests	14
DOROTHY MANIGAULT:	
Direct Examination by Mr. Mitchell	15
Cross-Examination by Ms. Ross	19
Respondent Rests	22
Certificate of Reporter	23

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
-----------	--------------------	-----------	------------

There were no exhibits introduced.

P R O C E E D I N G S

1
2
3 (WHEREUPON, proceedings commenced at 10:09 a.m.)

4 MR. MITCHELL: May it please the Court, Your Honor.

5 THE COURT: Yes.

6 MR. MITCHELL: This is 2016-CP-23-7619, Andy Brock
7 vs. The State of South Carolina. The applicant is
8 presently confined to the South Carolina Department of
9 Corrections pursuant to orders of commitment of the
10 Greenville County Clerk of Court. In September 2014, the
11 Greenville County grand jury indicted applicant for
12 kidnapping, criminal sexual conduct first degree, and
13 possession of a weapon during the commission of a violent
14 crime. Ms. Dorothy Manigault represented the applicant.

15 On August 8, 2016, the applicant pled guilty as
16 indicted to all charges before the Honorable Edward
17 Miller. Judge Miller sentenced applicant to imprisonment
18 for concurrent terms of 30 years for kidnapping, 30 years
19 for criminal sexual conduct first degree, and five years
20 for possession of a weapon during the commission of a
21 violent crime.

22 He's present in the courtroom today and represented
23 by Ms. Ross.

24 THE COURT: Ms. Ross?

25 MS. ROSS: Thank you, Your Honor. May it please the

1 Court.

2 Just to give a brief overview, Mr. Brock is alleging,
3 first, request a summary judgment for the defense pursuant
4 to 17-27-70. I make this motion. I understand the AG now
5 requests a leave to extend their time for reply, but the
6 reply should be made within 30 days. This one wasn't. It
7 was done -- the application was in October of 2016 and the
8 reply wasn't until June of 2017, so I would just like to
9 put that on the record that that was not complied with.

10 THE COURT: Anything from the State with regard to
11 that?

12 MR. MITCHELL: Your Honor, the State's position is
13 always that any amendments should be provided to us
14 30 days in advance, so I will leave it to the discretion
15 of the Court and whether they review that amendment and
16 take it into consideration for this hearing.

17 THE COURT: All right. Well, respectfully, your
18 motion is noted for the record, Ms. Ross, and denied.

19 MS. ROSS: Thank you, Judge.

20 THE COURT: Thank you.

21 MS. ROSS: Mr. Brock is alleging ineffective
22 assistance of counsel. He -- apparently, he was
23 sentenced, really, to the maximum with a five-year
24 consecutive after a plea of guilty, which is unusual. He
25 did have a plea offer, apparently. He doesn't remember

1 getting it, so we would allege that there was a failure to
2 investigate or prepare for trial or really to prepare
3 mitigation in this plea and a failure to effectively
4 communicate that plea offer.

5 THE COURT: All right.

6 MS. ROSS: Okay, Mr. Brock, I'm going to call you to
7 the stand.

8 THE CLERK: Mr. Brock, please place your left hand on
9 the Bible and raise your right hand as best you can.

10 WHEREUPON,

11 ANDY BROCK

12 After having been duly sworn, testified as follows:

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

14 Mr. Brock, please state your full name for the
15 record.

16 THE WITNESS: Andy Leander Brock.

17 DIRECT EXAMINATION

18 BY MS. ROSS:

19 Q Okay. Mr. Brock, why have you alleged ineffective
20 assistance of counsel in this case?

21 A Because she didn't call my witnesses, my family,
22 other things that happened in a different county that was
23 not right with the thing. She didn't ---

24 Q Well, let's talk about those briefly. Allegations
25 have been made by the same woman in this case in the past;

1 is that correct?

2 A Two times, yes.

3 Q And what had happened with those allegations?

4 A The detectives said she -- nothing, basically, that
5 she didn't do nothing -- I did nothing wrong. They gave
6 me a lie detector test. I passed it. I know they don't
7 hold up, but still, everything -- they said she was lying
8 every time.

9 Q Okay. Now, in this case, there was evidence that
10 certainly sex happened, things went on. What was your
11 defense to that?

12 A That it didn't happen. We did have sex, but I told
13 her that she -- she went crazy, basically. I told her I
14 didn't want to be with her no more. She said, Well, I'll
15 get you back. And that's when I left.

16 Q So was it consensual?

17 A Yes. The sex was consensual.

18 Q And was there role play involved? Was it all just
19 traditional missionary? Was it more than that?

20 A Yeah. Pretty much. Not much, but a little bit.

21 Q Now, how long had y'all been together?

22 A Maybe a year and a half, two years. Off and on since
23 probably in the late 90s.

24 Q Now, in this case, was a lie detector test ever
25 administered?

1 A No, ma'am.

2 Q And was she ever given a lie detector test for
3 anything?

4 A To my knowledge, I do not know.

5 Q Now, let's talk about a plea offer. Do you remember
6 getting a plea offer?

7 A No, ma'am. I do not.

8 Q What do you remember after -- you pled guilty to a
9 drug charge prior to this, correct?

10 A Yes.

11 Q Now, and this is while -- are these -- both these
12 charges pending and you went ahead and pled to a drug
13 charge?

14 A I went ahead and done the drug charge. They
15 sentenced me seven years, which I fell under a new law
16 that dropped it to -- like I was supposed to get out June
17 of last year -- or this year after everything was all said
18 and done.

19 Q So you admitted to the drugs ---

20 A Yes.

21 Q --- that you were using drugs.

22 A Yes.

23 Q Now, with that, did your lawyer tell you that if you
24 went to trial or pled, that that prior conviction for the
25 drug charge would be part of your criminal record?

1 A No.

2 Q And if you had -- so at that point, you never recall
3 saying, Hey, you can plea to this stuff --

4 A No, ma'am.

5 Q -- as well?

6 Okay. And then when was the first time you heard
7 about the 15-year plea offer?

8 A As a matter of fact, it was -- when they brought me
9 back up from SCDC for court on this charge, that -- when I
10 heard about it. She said -- I said, No, you didn't.

11 She said, Yes, I did. And she showed me the
12 paperwork, said I signed it. I don't remember signing
13 nothing or even remember her telling me anything about a
14 15-year plea deal. If she did, I would have took it.

15 MS. ROSS: Okay. All right. I've got no further
16 questions.

17 THE COURT: Any questions for this witness?

18 MR. MITCHELL: Yes, Your Honor. Thank you.

19 CROSS EXAMINATION

20 BY MR. MITCHELL:

21 Q Good morning, Mr. Brock. How are you?

22 A Good morning, sir. How are you?

23 Q I'm doing well.

24 I just have a few questions for you. How many times
25 did you meet with your attorney prior to pleading guilty?

1 A Prior, twice.

2 Q Twice.

3 A That's -- that's pertaining to this case, yes. But
4 beforehand on the other charge, maybe twice on that, too.
5 So four times all together on both charges.

6 Q Do you remember going over discovery in the case?

7 A No. No, sir.

8 Q So she didn't go over discovery in the case with you?

9 A No, sir.

10 Q Okay.

11 A She sent me a copy of discovery, and that was it.

12 Q Okay. Do you recall discussing with her about any
13 possible defenses to your case at all?

14 A No, sir. She asked me if I had any witnesses or
15 anything like that. I said yes. And I mentioned my
16 witnesses and everything like that, and she wrote them
17 down. But by the time she said she could do anything,
18 when she asked for the witnesses, it was like two days
19 before I went to court.

20 Q Okay. And you said there was a plea offer in this
21 case. You said that your signature was on that plea
22 offer?

23 A That's what she said it was, yes. I did not see it,
24 but she told me it was.

25 Q Okay. And you don't recall signing any ---

1 A No, sir. I do not.

2 Q Okay. Do you recall the day of the plea?

3 A No, sir. I do not. Oh, you're talking about the
4 plea of the guilty?

5 Q Yes, sir,

6 A I -- I remember. Yes, sir. I do remember going to
7 court.

8 Q Do you remember the judge asking you how you wished
9 to plead, and you told him you wished to plead guilty to
10 the charges?

11 A Yes, sir. I do.

12 Q Do you remember the judge asking you if you were
13 satisfied with your attorney?

14 A Yes.

15 Q And you remember telling him that you were?

16 A Yes.

17 Q Okay. Do you remember the judge -- or the solicitor,
18 I should say, stating the facts on the record and you
19 agreeing to those facts?

20 A Sir, that's been almost a year and a half ago. I
21 ain't going to lie to you. Yes, probably I do, but I
22 don't remember it as vividly.

23 Q So if you had issues with your attorney prior to
24 pleading guilty, why didn't you state them to the judge
25 during the guilty plea?

1 A To be honest with you, I was scared, I didn't -- I
2 was nervous. I didn't know what to do. At the time I was
3 -- she said more than likely I can get my 15 years that
4 they put in for the plea bargain, and that's what she was
5 shooting for, and that's what I was going on with what she
6 said.

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

9 THE COURT: All right. Any other questions for this
10 witness?

11 MS. ROSS: No, Your Honor.

12 THE COURT: Sir, you can step down.

13 THE WITNESS: Thank you, ma'am.

14 THE COURT: Yes, sir.

15 MS. ROSS: Okay. The applicant would call Shawn
16 Snow.

17 THE CLERK: Please step over to the witness booth and
18 place your left hand on the Bible and raise your right
19 hand.

20 WHEREUPON,

21 SHAWN SNOW

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

23 THE CLERK: Would you please state your full name for
24 the record and spell your first name.

25 THE WITNESS: Shawn Darrell Snow, S-H-A-W-N.

DIRECT EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MS. ROSS:

Q Hey, Mr. Snow.

A Hey.

Q How do you know Andy Brock?

A I've known him ever since I moved into the neighborhood when I was about 16, 17, and I'll be 36 this year.

Q So about 20 years?

A Yep.

Q And have you ever known in his character to be violent?

A No, ma'am.

Q And as far as this allegation, do you know about this allegation? Do you know the woman who made it?

A Yes, ma'am.

Q And how long had they been together?

A I know for over a year. Maybe two. It's been a while.

Q And did you drop them off at the place where they were?

A Yes, ma'am. Yeah.

Q And how was Suzanne -- her name's Suzanne, correct?

A Yeah.

Q How was she when you dropped her and Andy off?

1 A They were fine. I asked them if they -- actually, I
2 asked them if they wanted -- I asked her if she wanted me
3 to take her to her mama's house and Andy come and stay at
4 my house because the house didn't have no power that they
5 were staying at. And they both said no.

6 Q And that wasn't Andy's house or her house.

7 A No. No, ma'am.

8 Q And did you ask them anything else as you pulled off
9 before you left?

10 A Well, I asked him again once we got in the house. I
11 had asked him that prior to going to the house ---

12 Q I got you.

13 A --- because they had told me that their house didn't
14 have any power. But when we got there and I seen how the
15 house was, I asked them both, again, would they want to go
16 somewhere else, and everybody said no.

17 Q Now, was Suzanne being forced or held onto or
18 anything at that point by Mr. Brock?

19 A Oh, no, ma'am. She went willingly. I had picked her
20 up earlier that day, again, with Andy. So that was the
21 second time I had picked her up, both of them up that day.

22 Q Did she appear to be exhausted or tired or forced in
23 any way?

24 A No, ma'am.

25 Q Okay. And just going back to Mr. Brock, do you know

1 him to carry a knife?

2 A No, ma'am. No.

3 MS. ROSS: Okay. I've got no further questions.

4 THE COURT: Any questions for this witness?

5 MR. MITCHELL: Just briefly, Judge.

6 CROSS EXAMINATION

7 BY MR. MITCHELL:

8 Q Mr. Snow, during the time of this alleged incident,
9 were you present at all?

10 A No, sir.

11 Q So you weren't there. You didn't see anything, did
12 you?

13 A No, sir.

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

16 THE COURT: All right. Any other questions for this
17 witness?

18 MS. ROSS: No, Your Honor.

19 THE COURT: Sir, you can step down.

20 THE WITNESS: Thank you, ma'am.

21 MS. ROSS: Beg the Court's indulgence.

22 THE COURT: Oh, certainly.

23 MS. ROSS: Okay. We've got no further testimony,
24 Your Honor.

25 THE COURT: All right.

1 Yes, sir.

2 MR. MITCHELL: Your Honor, the State, would call
3 Ms. Dorothy Manigault to the stand.

4 THE COURT: All right.

5 THE CLERK: Ms. Manigault, please place your left
6 hand on the Bible and raise your right hand.

7 WHEREUPON,

8 DOROTHY MANIGAULT

9 After having been duly sworn, testified as follows:

10 THE CLERK: Thank you. Please state your full name
11 for the record.

12 THE WITNESS: Dorothy Manigault.

13 DIRECT EXAMINATION

14 BY MR. MITCHELL:

15 Q Ms. Manigault, how are you?

16 A Doing good.

17 Q That's good to hear.

18 How long have you practiced criminal law here in
19 South Carolina?

20 A Over 35 years.

21 Q 35 years.

22 So it's fair to say you're pretty well versed in it?

23 A Yes.

24 Q Okay. Were you appointed to this case or were you
25 retained?

1 A Appointed as assistant public defender.

2 Q Okay. And do you recall how the charges arose, the
3 allegations in this case? I know it's been a while.

4 A The allegations were Mr. Brock raped the victim in
5 this case both vaginally, orally and anally.

6 Q Okay. And do you recall meeting with the defendant
7 and discussing the charges with him?

8 A Yes, yes.

9 Q Okay. And did he seem to comprehend the charges and
10 what was going on in the case?

11 A He did.

12 Q Okay. And did you discuss with him potential
13 sentences he would be facing?

14 A I did.

15 Q Okay. Let me ask you this question. Did you do any
16 type of investigation in regards to this case at all?

17 A In talking with Mr. Brock, he did mention that
18 somebody dropped him off, but there was nobody at the
19 house during the times that the victim had alleged that he
20 had raped.

21 Q So is it fair to say this would potentially be a
22 swearing contest if it went to trial?

23 A It was a swearing contest. It was his word against
24 her word.

25 Q Okay. And in your conversations with Mr. Brock, did

1 he ever, I guess, decide or make a decision about whether
2 he wanted to plead guilty or go to trial or ---

3 A Generally, in my conversations with Mr. Brock, he
4 kept denying that anything happened. I went over -- as he
5 said, we sent him a copy of full discovery, and I went
6 over the discovery with him at the jail and pointed out to
7 him that a DNA test was taken and they did find sperm in
8 her rectal area, and that was matched to him. So I
9 pointed out that he kept saying that nothing happened,
10 nothing happened. Then he changed to say it was
11 consensual, it was consensual.

12 So he finally, I think we were appointed to him, it
13 looks like, August 9th. No. I went to see him
14 August 9, 2013, and several times thereafter in '14 and
15 '15. Finally, in June I received this letter. It was
16 postmarked on June 1, 2016, from Columbia where he was
17 serving the sentence for the drug case. And we received
18 it in the Public Defender's Office on June 10, 2016, and
19 he said that he wanted to go ahead and plead guilty.

20 Q So he was already serving time for the drugs?

21 A Yes.

22 Q Okay. All right. Prior to him pleading guilty to
23 the drug charge, was there ever a plea offer that combined
24 both of the charges at all?

25 A There was a plea offer dated on January 8, 2014, from

1 the Solicitor's Office, and it had manufacturing or
2 distribution of meth second, criminal sexual conduct first
3 degree, possession of a weapon during a violent crime, and
4 if he wanted to plead to that, the offer was 15 years.
5 The State would dismiss two possessions of a controlled
6 substance and would also dismiss the kidnapping charge.

7 Q Okay. And did you present that offer to him?

8 A Yes.

9 Q Okay. And what was his response?

10 A On -- he did not want the offer. He said that on a
11 jail visit, and that was 3/5/15, my jail visit with him at
12 LEC, Greenville County. He did not want the offer. He
13 said nothing happened. In spite of the discovery being
14 reviewed, he said nothing happened.

15 Q And, I guess, since the offers were combined at this
16 point, he didn't want to plead to all of them at one time,
17 did he? Sorry. Go ahead.

18 A That is correct. He said he would only plead guilty
19 to the drug charge. He would not plead to the CSC and the
20 weapon charge. And, of course, that offer expired on
21 July 2, 2014. And I explained that to him, that we had
22 gotten an extension on the offer, but that extension would
23 be running out when I discussed that with him on
24 March 5, 2015.

25 Q And after the offer expired and he pled guilty to the

1 drug charge, were there ever any further discussions or
2 any additional negotiations in respect to ---

3 A I tried to get the 15-year back, but Ms. Bentley
4 would not reinstate the offer. She had already extended
5 it for a good bit of time and she would not reinstate it.
6 Of course, I was hoping to get less than the maximum on
7 this sentence, but did not.

8 Q Is it fair for me to say that it was the defendant's
9 decision to reject the combined plea offer initially?

10 A Yes.

11 MR. MITCHELL: Okay. Judge, that's all the questions
12 I have for this witness.

13 THE COURT: All right. Thank you.

14 Ms. Ross?

15 MS. ROSS: Thank you.

16 CROSS EXAMINATION

17 BY MS. ROSS:

18 Q Now, it was referenced, did Mr. Brock sign anything
19 to the effect of I reject this plea offer? He had
20 mentioned in his testimony about ---

21 A Yeah. I can't find it in the file. When he said
22 that, I flipped quickly through it. I didn't see anything
23 that he had signed. Generally, I ask them to sign
24 something.

25 Q Okay. But in this case, you didn't see anything?

1 A Not in the file.

2 Q Now, as far as meeting with Mr. Brock, did you meet
3 with him four times as he said? Or how many times did you
4 meet with him?

5 A My file notation, I met with him, the notes in the
6 file, approximately seven times. But I think I met with
7 him more than that, but it's not noted in the file.

8 Q Okay. And as far as -- and your notes reflect you
9 gave him a copy of the discovery since you said you did.

10 A Yes, yes.

11 Q Now, did you tell him that it was with a plea, he's
12 more likely to get the plea offer of 15 years?

13 A Yes.

14 Q And as far as presenting mitigating evidence, did you
15 call or present -- call his mother in the case or family
16 members to be there during the plea?

17 A No, I did not. As far as presenting mitigating
18 evidence, we didn't have anything to present that would
19 mitigate because there was nobody there during the alleged
20 incident.

21 Q Okay. Isn't it true that the owner of the house came
22 in and was there during the incident or afterwards?

23 A No. The owner of the house came in after the
24 incident, after the rape. And that's when the victim
25 jumped up, grabbed a blanket and ran out of the house, ran

1 to a neighbor's house with no clothing. So when the
2 police got to the neighbor's house, the victim was naked
3 sitting on the neighbor's couch with a blanket wrapped
4 around her.

5 Q Okay. Now, as far as investigating, did you go talk
6 to this neighbor or talk to anybody in the case?

7 A No. I did not talk to the neighbor.

8 Q Okay. And when you pled Mr. Brock to the first
9 charge, did you advise him that that would be part of his
10 record if he ever pled to the other charge?

11 A Yes.

12 Q Did you advise him that it would make him more
13 impeachable if you went to trial as, I guess, he intended
14 to do, that he could be questioned about that prior guilty
15 plea?

16 A Yes. That was something that he wanted to do.
17 Generally, I try to make sure that all the cases stay
18 together so, you know, we'd have something to negotiate
19 with and deal with, but that was something that he wanted
20 to do.

21 MS. ROSS: Okay. I've got nothing further.

22 THE COURT: All right.

23 MR. MITCHELL: No further questions, Your Honor.

24 THE COURT: All right, ma'am. You can step down.

25 Anything else from the State?

1 MR. MITCHELL: No further witnesses, Your Honor.

2 THE COURT: Well, I'm going to take this matter under
3 advisement. I want to look at the transcript and other
4 things that have been provided to me and all of my notes
5 on your testimony. I'll send you a decision, I would
6 anticipate, within two weeks. Thank you.

7 MS. ROSS: Thank you, Your Honor.

8 (WHEREUPON, proceedings concluded at 10:31 a.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 27th day of October, 2017.

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

January 26, 2018

Cheryl A. Smith

Cheryl A. Smith, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 Andy Brock, 317746)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-7619

ORDER OF DISMISSAL

ENTERED COMPUTER

18 MAY 17 PM 3:04
 Paul Wickensmer-CDC SULL SC

This matter comes before the Court by way of an application for post-conviction relief filed on December 28, 2016 by Andy Brock (Applicant). Respondent made its Return on or about June 22, 2017. An evidentiary hearing into the matter was convened on October 27, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Susannah C. Ross, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Plea Counsel Dorothy Manigault, Esquire also testified as did Shawn Snow, a friend of Applicant. This Court had before it a copy of the records of the Greenville County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's guilty plea, the PCR application, Respondent's Return and Applicant's records from the Department of Corrections. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Greenville County Clerk of Court. In September 2014, the Greenville County Grand Jury indicted Applicant for kidnapping (2014-GS-23-0101), criminal

sexual misconduct, first degree, and possession of a weapon during the commission of a violent crime (2014-GS-23-0102). Assistant Public Defender Dorothy Manigault, Esquire represented Applicant. Assistant Solicitor Lisa Bentley, Esquire prosecuted the case. On August 8, 2016, Applicant pleaded guilty as indicted to all charges before the Honorable Edward Miller. Judge Miller sentenced Applicant to imprisonment for concurrent terms of thirty years for kidnapping, thirty years for criminal sexual conduct, first degree, and five years for possession of a weapon during the commission of a violent crime. Applicant did not appeal his conviction or sentence.

FACTUAL HISTORY

On September 10, 2013, Applicant picked up his girlfriend from her house early in the morning. They spent the day together walking all over the Lake Robinson area of Greenville County, while Applicant was trying to avoid arrest. Late that evening, they ended up at the home of one of Applicant's friends. Applicant cut the lock off of his friend's bedroom door because it was the only room in the trailer with air conditioning, and both Applicant and the victim entered that room. The victim would testify that by this point in the day, she was exhausted, dehydrated, and hungry as they had walked all day in the sun without food or water. (GP. Tr. pg.8-10)

The couple began bickering, at which time Applicant punched the victim in her face and told her to lay down. When the victim resisted, Applicant pulled out a barber-style switchblade and held it to her throat. He then held her down while he cut and ripped her shirt off. Applicant proceeded to sexually assault the victim vaginally, orally, and sodomized her in between, all while hitting her on the face and head. Applicant took her phone at one point and tried to prove she was cheating on him, ultimately breaking part of the phone. At one point, Applicant grew tired of the victim's crying and begging to leave, so he tied her to the bed with straps and a cell phone cord. During the assault, Applicant told her hateful things, including that if she told police

he would go to her daughter's school and rape her and that nobody would believe her. Several hours later, the homeowner and a witness, came home and called police thinking the home was being burglarized. (GP. Tr. pg.8-10)

At this point, the victim was able to break free and run for help. She grabbed a blanket and reached the home of a neighbor, wearing only that blanket that she grabbed from the home. She still had a cell phone cord tied to her wrist when she was treated by EMS and emergency room personnel. DNA was recovered from a rectal swab taken by the same nurses at the hospital. That was the only location sperm was found and was directly contradictory with the Applicant's story about what happened that night. (GP. Tr. pg.8-10)

ALLEGATIONS

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons (quoted verbatim):

1. "Ineffective Assistance of Counsel"
 - a. Counsel "failed to provide witness"
 - b. Counsel "failed to investigate case properly"

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

Applicant testified Plea Counsel did not talk to any of his witnesses or his family while representing him. He testified the victim had made similar allegations of sexual abuse and assault by him in the past and it was proven that she lied about those incidents. Applicant testified in his case he had consensual sex with the victim but when he told her did not want to be with her anymore, she became irate and said to him she would get him back. He testified he had been in a relationship with the victim for a year and a half almost two and that the relationship had been off and on since the late 1990's. Applicant testified he did not remember receiving a plea offer in

his case. He testified he pled guilty to a drug charge prior to pleading guilty to kidnapping, criminal sexual conduct, first degree, and possession of a weapon during the commission of a violent crime. Applicant testified he was sentenced to seven years for the drug charges. He testified Plea Counsel did not tell him the conviction for the drug charge would be a part of his criminal record if he went to trial over pleading guilty to the other charges. He testified there was a fifteen year plea offer that was never communicated to him and had it been he would have taken it.

On cross-examination, Applicant testified he met with Plea Counsel twice prior to pleading guilty. He testified Plea Counsel did not go over the discovery with him in his case but she sent him a copy of it. Applicant testified Plea Counsel did not go over any possible defenses with him but he provided her with possible witnesses to talk to concerning his cases. He testified there was a plea offer in his case that had his signature on it but he did not remember signing it.

Shawn Snow's Testimony

Mr. Snow testified he had known Applicant for about twenty years since he moved in the same neighborhood when he was 16 or 17. He testified he had never known Applicant to be violent. Mr. Snow testified he knew the victim in this case and that she and Applicant had been together for over a year maybe two. He testified he dropped both of them off the day of the incident and the victim seemed to be fine during that time. Mr. Snow testified he asked the victim if she wanted him to drop her off at her mother's house because the house they were going to did not have any power. He testified she said no. Mr. Snow testified during this time the victim did not appear to be exhausted, tired or forced in any way by Applicant. He testified he did not know Applicant to carry a knife.

On cross-examination, Mr. Snow testified he was not present during the time of the

assault of the victim by Applicant and that he did not see anything.

Plea Counsel's Testimony

Plea Counsel testified she has practiced law for over thirty-five years. She testified she was appointed to represent Applicant. Plea Counsel testified Applicant was accused of raping the victim in this case both vaginally, orally and anally. She testified she met with Applicant and discussed his charges with him and he understood what was going on in his case. Plea Counsel testified she also discussed the potential sentences Applicant would be facing. She testified she talked with Applicant and he mentioned someone dropped him and the victim off at the home but no one beyond them were at the home when the incident took place. Plea Counsel testified if the case had went to trial it would have been potentially a swearing contest. She testified in her conversations with Applicant, he kept denying that anything happened. Plea Counsel testified she sent him a full copy of discovery and went over the discovery with him at the jail. She testified she pointed out to Applicant that a DNA test was taken and they did find sperm in the victim's rectal area that was matched to him. Plea Counsel testified she pointed that out to Applicant because he kept saying that nothing happened. She testified Applicant then changed his story to say it was consensual.

Plea Counsel testified she went to see Applicant several times. She testified she received a letter from Applicant on June 10, 2016 that had been postmarked June 1, 2016, from Columbia where Applicant was serving the sentence for the drug case in which he said that he wanted to go ahead and plead guilty to his other charges. Plea Counsel testified prior to Applicant pleading guilty to the drug charge she received a plea offer dated January 8, 2014, from the Solicitor's Office for Applicant to plead guilty to manufacturing or distribution of meth second, criminal sexual conduct first degree, possession of a weapon during a violent crime, and the offer was

fifteen years. She testified the State would have dismissed two counts of possession of a controlled substance and would also have dismissed the kidnapping charge. Plea Counsel testified she presented the plea offer to Applicant and he indicated he did not want to take the offer. She testified Applicant continued to tell her nothing happened in spite of the discovery they had reviewed. Plea Counsel testified Applicant told her he would only plead guilty to the drug charge. She testified after the plea offer had expired and Applicant had pled guilty to the drug charge, she tried to get the fifteen year offer back but the solicitor would not reinstate the offer. Plea Counsel testified it was Applicant's decision to reject the combined plea offer.

On cross-examination, Plea Counsel testified she did not have anything in her files that Applicant signed rejecting the plea offer. She testified her file indicated she met with Applicant seven times but she thought she may have met with him more times than that. Plea Counsel testified in terms of mitigation evidence, she did not have anything to present that would have mitigated Applicant's case because there was nobody there during the time of the incident. She testified the owner of the home came back after the incident had occurred and that's when the victim jumped up, grabbed a blanket and ran out of the house to a neighbor's house with no clothing. Plea Counsel testified when the police got to the neighbor's house, the victim was naked sitting on the neighbor's couch with a blanket wrapped around her. She testified she did not talk to the neighbor concerning Applicant's case. Plea Counsel testified she advised Applicant when he pled guilty to the drug charge it would be a part of his record if he ever pled to other charges. She testified she advised him that it would make him more impeachable if he went to trial. Plea Counsel testified generally she tries to make sure that all the cases or charges stay together so she will have something to negotiate with and deal with but that was pleading guilty to the drug charge was something Applicant wanted to do.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

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

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

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

Failure to Investigate or Prepare

Applicant failed to present any evidence in support of this allegation or than the testimony of a witness who was not present during the incident. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) (“Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.”). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Counsel done more investigation. Even so, Counsel testified credibly that she reviewed all of the discovery with Applicant. This Court finds Counsel’s investigation was beyond reasonable. Therefore, Applicant has failed to meet his burden to prove Plea Counsel was ineffective. This allegation is denied and dismissed with prejudice.

Failure to convey plea offer

Applicant further alleges Plea Counsel was ineffective in failing to convey a plea offer. This Court finds Applicant has failed to prove Plea Counsel was ineffective in any regard. To be successful on an allegation of an un-conveyed plea offer, Petitioner must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Petitioner was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted the original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). Generally, failure to convey a plea offer constitutes deficient performance, although the existence of prejudice needs to be evaluated on a case-by-case basis. Id. at 613, 675 S.E.2d at 422. To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law. Missouri v. Frye 566 U.S. 133 (2012).

Here, Plea Counsel's testimony is persuasive on all issues. Plea Counsel testified prior to Applicant pleading guilty to the drug charge she received a plea offer dated January 8, 2014, from the Solicitor's Office for Applicant to plead guilty to manufacturing or distribution of meth second, criminal sexual conduct first degree, possession of a weapon during a violent crime, and the offer was fifteen years. She testified the State would have dismissed two counts of possession of a controlled substance and would also have dismissed the kidnapping charge. Plea Counsel testified she presented the plea offer to Applicant and he indicated he did not want to take the

offer. She testified Applicant continued to tell her nothing happened in spite of the discovery they had reviewed. This Court finds Plea Counsel properly conveyed the plea offer to Applicant. Applicant had the opportunity to accept the plea and chose to decline the offer. This Court sees no need to reach a prejudice analysis because it is clear that Plea Counsel not only communicated the offer to Applicant, but fully advised him of the offer. Therefore, Applicant has failed to meet his burden to prove Plea Counsel was ineffective. This allegation is denied and dismissed with prejudice.

Failure to present mitigation evidence

Applicant alleges Plea Counsel was ineffective for failing to present mitigation evidence. Plea Counsel testified in terms of mitigation evidence, she did not have anything to present that would have mitigated Applicant's case because there was nobody there during the time of the incident. "Strickland does not require counsel investigate every conceivable line of mitigating evidence or require the submission of such evidence in every case." Wiggins v. Smith, 539 U.S. 510, 533 (2003). This Court finds Applicant failed to present any information that could have been offered as mitigation to reduce his sentence issued by the plea judge. Therefore, Applicant has failed to meet his burden to prove Plea Counsel was ineffective. This allegation is denied and dismissed with prejudice.

CONCLUSION

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


This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate

appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCF. Reffer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

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

AND IT IS SO ORDERED this 15 day of May, 2018.



 LETITIA H. VERDIN
 Presiding Judge
 Thirteenth Judicial Circuit

Greenville, South Carolina

000101

DOCKET NO. 2014-GS-23-
LAB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2014

THE STATE

vs.

ANDY LEANDER BROCK

WITNESSES

Thomas Motes

Greenville County Sheriffs Office

9/13/2013

ARREST WARRANT NUMBER

2013A2310100518

**ACTION OF GRAND JURY
TRUE BILL**



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

Foreperson of Petit Jury

Date:



FILED

JAN 22 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on **SEP 16 2014** the Grand Jurors of Greenville
County present upon their oath:

That ANDY LEANDER BROCK did in Greenville County, between the 10th day of September 2013, and the
11th day of September 2013, unlawfully seize, abduct, confine, inveigle, decoy or carry away
S [REDACTED] S [REDACTED], without the authority of law. This is in violation of §16-3-910 of the South Carolina
Code of Laws (1976) as amended.

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

David Bentley

SOLICITOR

WITNESSES

Thomas Motes

Greenville County Sheriffs Office

9/13/2013

DOCKET NO. 2014-GS-23-
LAB

000102

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September

TERM 2014

THE STATE

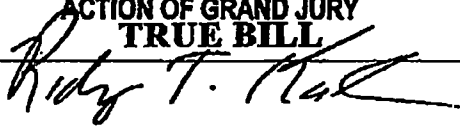
vs.

ANDY LEANDER BROCK

ARREST WARRANT NUMBER

2013A2310100517 and 2013A2310100519

**ACTION OF GRAND JURY
TRUE BILL**



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

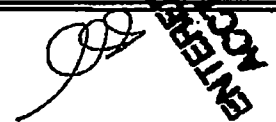
0160 and 0549

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

and

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

VIOLETION § 16-03-0652 and § 16-23-0490



FILED

JAN 22 2014

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 CRIMINAL SEXUAL CONDUCT FIRST DEGREE

At a Court of General Sessions, convened on **SEP 16 2014** the Grand Jurors of Greenville
 County present upon their oath:

COUNT I - CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That ANDY LEANDER BROCK did in Greenville County, between the 10th day of September 2013, and the 11th day of September 2013, engage in sexual battery, with S [REDACTED] S [REDACTED], and used aggravated force to accomplish this sexual battery. This is in violation of South Carolina Code of Laws Section 16-03-0652 of the South Carolina Code of Laws (1976) as amended.

**COUNT II - POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME**

That ANDY LEANDER BROCK did in Greenville County, between the 10th day of September 2013, and the 11th day of September 2013, possess or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Criminal Sexual Conduct - First Degree. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

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

Lisa Bentley
 SOLICITOR