

Patrick Schmeckpeper

Attachment (a)

From: Patrick Schmeckpeper
Sent: Monday, August 29, 2016 5:16 PM
To: 'Gravely, Perry H.'
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

Follow Up Flag: Worldox

Judge Gravely,

Just a quick update – Mr. Salas has recently filed a second appeal from his previous PCR raising the same issue he is raising in his successive application. I'm going to wait until that is resolved to submit anything further in this case unless you would prefer otherwise.

Thanks,

Patrick Schmeckpeper
Assistant Attorney General – PCR Division
South Carolina Attorney General's Office
(803) 734-3737

From: Patrick Schmeckpeper
Sent: Monday, August 22, 2016 9:14 AM
To: 'Gravely, Perry H.'
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

Nothing further on my end – I'll go ahead and get everything sent out today to give Mr. Salas plenty of time to respond.

Thanks again, and sorry for the mix-up,

Patrick Schmeckpeper
Assistant Attorney General – PCR Division
South Carolina Attorney General's Office
(803) 734-3737

From: Gravely, Perry H. [<mailto:pgravelyj@sccourts.org>]
Sent: Friday, August 19, 2016 5:47 PM
To: Patrick Schmeckpeper
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

I guess that's ok. Your thoughts?

From: Patrick Schmeckpeper [<mailto:PSchmeckpeper@scag.gov>]
Sent: Tuesday, August 16, 2016 11:19 AM
To: Gravely, Perry H. Law Clerk (Michelle Jones); Gravely, Perry H.
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

Michelle,

Thanks — from what I can tell, it looks like Mr. Salas was originally facing criminal sexual conduct, 1st degree (warrant number I-479542). That charge was dismissed, and the charge of lewd act on a minor was directly presented (Mr. Salas waived presentment to the grand jury). After speaking with the record department over at the clerk's office, I believe Mr. Salas' trial attorney, Scott Robinson, filed the motion to reconsider under the warrant number that had been dismissed rather than the GS number that Mr. Salas actually pled guilty to. As a result, it was never ruled on. My understanding is that because the motion to reconsider was not pending on the charge he actually pled to, it doesn't affect the court's jurisdiction to rule on this PCR application (or to have ruled on his previous application). That being said, I'd appreciate the opportunity to draft an amended return and motion to dismiss and conditional order of dismissal, just to make sure the record is clear and to give Mr. Salas a formal opportunity to respond. I'll be sure to include the relevant documents.

Sorry again for the confusion. I'll mail a copy of this email chain to Mr. Salas to avoid any ex parte communications.

Patrick Schmeckpeper
Assistant Attorney General — PCR Division
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(803) 734-3737

From: Gravely, Perry H. Law Clerk (Michelle Jones) [<mailto:pgravelylc@sccourts.org>]
Sent: Tuesday, August 16, 2016 10:45 AM
To: Patrick Schmeckpeper; Gravely, Perry H.
Subject: RE: Wilfredo Salas (2015-CP-23-0985)

Mr. Schmeckpeper,

I have pulled the proposed order and made a note to hold it until further we receive further information from you.

Michelle

M. Michelle Jones
Law Clerk to the Honorable Perry H. Gravely
Thirteenth Judicial Circuit
P.O. Box 219
Pickens, SC 29671
Pickens Phone: (864) 898-5790
Greenville Phone: (864) 467-8385

From: Patrick Schmeckpeper [<mailto:PSchmeckpeper@scag.gov>]
Sent: Tuesday, August 16, 2016 10:28 AM
To: Gravely, Perry H.; Gravely, Perry H. Law Clerk (Michelle Jones)
Subject: Wilfredo Salas (2015-CP-23-0985)

Judge Gravely,

Sorry to bother you — I recently sent a group of final orders to your office and just caught one of Karen's notes concerning Wilfredo Salas (2015-CP-23-0985). It looks like there might have been an outstanding motion to reconsider his sentence that was never ruled on. Would you mind holding off signing Mr. Salas' order while I check with the clerk's office and try to confirm that? He's currently on his second post-conviction relief application, so this may implicate his first application, as well.

Thanks, and I apologize for the confusion,

Patrick Schmeckpeper
Assistant Attorney General – PCR Division
South Carolina Attorney General's Office
(803) 734-3737

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STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Greenville County  
Edward W. Miller, Circuit Court Judge

---

WILFREDO SALAS

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-00240

---

APPENDIX

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ATTORNEYS FOR RESPONDENT

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| STATE OF SOUTH CAROLINA  | ) | COURT OF GENERAL SESSIONS   |
|                          | ) |                             |
| COUNTY OF GREENVILLE     | ) | Case No(s) : 2011GS2306255A |
|                          | ) |                             |
| State of South Carolina, | ) |                             |
|                          | ) |                             |
| Plaintiff,               | ) |                             |
|                          | ) |                             |
| -VS-                     | ) | TRANSCRIPT OF RECORD        |
|                          | ) |                             |
| Wilfredo Salas,          | ) |                             |
|                          | ) |                             |
| Defendant.               | ) |                             |
|                          | ) |                             |

August 08, 2011  
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

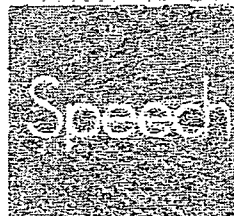
A P P E A R A N C E S:

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Assistant Solicitor

SCOTT ROBINSON, Esquire  
Attorney for the Defendant

**Teresa B. Johnson**  
Certified Verbatim Reporter  
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Greenville, S.C. 29602

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## STATE EXHIBITS

(No exhibits offered.)

## DEFENSE EXHIBITS

(No exhibits offered.)

## COURT EXHIBITS

(No exhibits offered.)

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## P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 8th day of August, 2011 at approximately 11:50 a.m.)

THE CLERK: Your Honor, this is case ~~2011-GS-~~  
~~23-6255~~, the State versus Wilfredo Salas who is  
indicted for Lewd Act upon a Child. He's pleading  
to the same. Your Honor, this is a direct  
presentment.

Please raise your right hand.

(WHEREUPON, the defendant is first duly sworn.)

THE COURT: Mr. Salas, you are here today to  
plead to Lewd Act on a Minor. Is that correct?

MR. SALAS: Yes.

THE COURT: Have you discussed this charge  
with your lawyer?

MR. SALAS: Yes.

THE COURT: Are you happy with what your  
lawyer's done for you?

MR. SALAS: Yes.

THE COURT: Are you under the influence of  
drugs or alcohol here today?

MR. SALAS: Uh, no.

THE COURT: How old are you?

MR. SALAS: 32.

THE COURT: How far did you go in school?

1 MR. SALAS: Uh, ninth grade.

2 THE COURT: And you seem to be understanding  
3 my questions just fine. Is English a second  
4 language for you?

5 MR. SALAS: Uh, yes.

6 THE COURT: You seem like you're  
7 understanding my questions well. But if at any  
8 point you do not understand what I say to you, if  
9 you will, stop me and let me know.

10 MR. SALAS: Oh, okay.

11 THE COURT: Has anyone forced you to plead  
12 guilty to this charge?

13 MR. SALAS: Uh, no.

14 THE COURT: Anyone promised you anything to  
15 get you to plead guilty to this charge?

16 MR. SALAS: Uh, no.

17 THE COURT: You have any complaint to make  
18 against your lawyer, law enforcement or the  
19 Solicitor's office whatsoever?

20 MR. SALAS: Uh, no.

21 THE COURT: When you plead guilty to a  
22 charge, you give up your right to a jury trial on  
23 that charge. You understand that?

24 MR. SALAS: Yes.

25 THE COURT: At that trial, your attorney

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1        could call witnesses for you and cross-examine  
2        witnesses against you. When you plea guilty, you  
3        give up that right. You understand that as well?

4                MR. SALAS:     Uh, yes.

5                THE COURT:     Uh, furthermore, you give up  
6        your right to remain silent about this charge. Do  
7        you understand that?

8                MR. SALAS:     Yes.

9                THE COURT:     And, uh, this charge has not  
10       been before the Greenville County Grand Jury. You  
11       ~~have a right to have the charge go before the~~  
12       Greenville County Grand Jury. You want to give up  
13       that right and go forward and plea guilty today?

14               MR. SALAS:     Uh, yes.

15               THE COURT:     All right. Yes, ma'am.

16               MRS. HODGE:     As Your Honor knows, this was  
17       set for trial this morning. I will read to you  
18       what ~~the State intended to introduce during trial.~~  
19       ~~Between June 2009 and March of 2010,~~ the victim in  
20       this case, Ms. **Victim** **[REDACTED]**, who was four years  
21       old and five years old at the time, disclosed to  
22       her grandmother, who is a **M** **[REDACTED]** **M** **[REDACTED]** and to  
23       her mother, a **V** **[REDACTED]** **S** **[REDACTED]** that this defendant  
24       had been sexually abusing her, at the home that they  
25       lived in at **[REDACTED]** (inaudible) Street in Greenville

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1 County. The defendant is the child's stepfather,  
2 married to V [REDACTED] S [REDACTED]. They had two smaller  
3 younger children together.

4 The victim had told her grandmother M [REDACTED],  
5 back in June or July of 2010 that the defendant had  
6 been rubbing on her chest, kissing her neck, biting  
7 her ears. The child disclosed this at the  
8 grandmother's house and was asking to please not to  
9 have to go back to the home where the defendant was  
10 doing these things to her. The grandmother than  
11 told the child's mother, V [REDACTED], about it. The  
12 mother did not believe the child. She stated to  
13 the grandmother that the child was lying and did  
14 nothing about these disclosures.

15 In October and in November, somewhere in  
16 between that time frame of 2009, so just about  
17 three months later, the child again disclosed to  
18 the grandmother that the defendant was touching her  
19 in places he was not supposed to, referring to her  
20 vaginal and anal area and continued to plead with  
21 the grandmother to not make her go back into the  
22 home where the defendant was doing these things to  
23 her. Again, the grandmother told the child's  
24 mother. The grandmother confronted the defendant  
25 about it. At that time, he denied anything. The

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1 mother again stated that the child was not telling  
2 the truth, that the child was lying and she did not  
3 protect the child.

4 During this time frame, the mother and the  
5 defendant had the child sleeping in the same bed  
6 with them. The mother was working evenings. The  
7 defendant worked as well but he would come home  
8 before the mother would come home. The child would  
9 be in his care or the care of some of his  
10 relatives.

11 Finally, in mid-March of 2010, now we're nine  
12 months after the child initially disclosed, she  
13 again told the grandmother for the third and,  
14 thankfully, final time. The grandmother went to  
15 school to pick her up at school one day, which was  
16 not the norm at this time. The child got in the  
17 car with hysterics saying, "Please don't make me go  
18 back", "I don't want to go back". And the  
19 grandmother started questioning her asking what was  
20 going on. The child described that the defendant  
21 was hurting her in the vaginal and anal area.

22 At this point, the grandmother tells the  
23 mother and the mother appears to possibly believe  
24 and said she was going to take the child to a  
25 pediatrician. Law enforcement wasn't called. DSS

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1        wasn't called by the mother.

2                On March 17th of 2010, the day after the child  
3        disclosed to the grandmother. They took the child  
4        to Dr. Nithya at North Hills Medical. The child  
5        disclosed to the doctor that the defendant was  
6        sexually abusing her and ~~stated he~~ was touching  
7        her, pointing to her vaginal area. The child  
8        complained of having pain or urinating. She was  
9        diagnosed with vaginitis ~~at this time~~. Dr. Nithya,  
10       who would be here to testify explained there were  
11       many causes for this in young children, but for  
12       someone her age, it is consistent with the  
13       allegations that someone had been rubbing or  
14       (X) touching her vaginal area in a sexually abusive  
15       manner.

16               The doctor is the reason we are here today.  
17       Doctors are mandated to report. So she reported to  
18       DSS because the defendant was still in the home  
19       with the child. DSS reported to law enforcement.  
20       DSS then went to the home later that day. The  
21       defendant was to move out immediately and have no  
22       contact while the investigation proceeded.

23               At that point, the child was told to live with  
24       the mother, V [REDACTED], even though she had not fully  
25       protected. Subsequently, two months later, DSS

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1 petitioned Family Court for a non-emergency  
2 removal. The mother was allowing the child to be  
3 around the defendant, the defendant's family and  
4 there were discussions to get the child to recant.  
5 So the child was then placed with her grandmother,  
6 Mrs. M [REDACTED] and Mr. R [REDACTED] M [REDACTED] and is still with  
7 them today.

8 Investigator Henderson was assigned this case.  
9 She interviewed the child. Investigator Henderson  
10 was able to gather that the defendant did touch the  
11 vaginal area of victim with his fingers, putting his  
12 fingers inside of her. She stated it happened at  
13 night while her mom was at work and in her mom's  
14 bed in her mom's bedroom. After, uh, she was  
15 picked up from the relative's home, she stated it  
16 happened a lot.

17 She was referred to the Julie Valentine Center  
18 and a forensic was conducted. Again, she  
19 consistently disclosed that he touched her vaginal  
20 area and she named it the place she go to the  
21 bathroom. He digitally penetrated the area  
22 vaginally and rectally. She stated it happened a  
23 lot of times. He hurt her and it was while her mom  
24 was at work. He'd turn out the lights. She would  
25 be in her mom's room in her bed. She also stated

Guilty Plea

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1 the defendant made her touch his penis.

2 Your Honor, the State -- the charge is

3 Criminal Sexual Conduct in the first degree.

4 However, the State is allowing the defendant to  
5 plead to Lewd Act to a Minor for one reason and one  
6 reason only. That is to save the child from having  
7 to testify or any further trauma. As you well  
8 know, the retelling of sexual abuse makes children  
9 relive the abuse and can be very harmful and  
10 traumatic. The child is in the courthouse. If we  
11 are required to go to trial, we could. But of  
12 course, she is not in the courtroom. You may  
13 recall, we had a prior hearing regarding the child  
14 being present with the defendant during the  
15 testimony and her therapist detailed her fear of  
16 the defendant, her emotional issues about the abuse  
17 itself, but also the emotional damage that the  
18 mother not believing and supporting the child has  
19 done.

20 Sadly, her mother still is not supportive.  
21 Her mother has been helping the defense prepare its  
22 case. She's provided statements to defense counsel  
23 about not believing the child and blaming her own  
24 mother for these allegations, which is ironic  
25 because she has moved in with her mother, utilizing

1 her mother's resources, yet, she's turning against  
2 her mother here today.

3 I say all of this, Your Honor, for this main  
4 reason. The State is asking you to impose the  
5 maximum penalty in this case, the 15 years. He's  
6 clearly gotten a great plea offer. By reducing the  
7 exposure, CSC 1st is 25 years to life. The most he  
8 can get here is 15. We'd ask that you impose that.  
9 Because the mother has been nonprotective, if the  
10 defendant serves his time, when he gets out,  
11 there's a high likelihood he'll be back in that  
12 home. I would ask that Your Honor give the maximum  
13 time to allow **Victim** to grow up, to be able to  
14 protect herself. It's clear that her mother's not  
15 going to do the protecting.

16 The defendant does have a federal charge  
17 currently for unlawfully using a Social Security  
18 card. Those are federal allegations at this time.  
19 I feel certain they are going to deport him. But  
20 I'd ask that you impose the maximum sentence and  
21 then let him deal with those issues after that.  
22 Hopefully, **Victim** will be old enough to take care of  
23 herself on the completion of any sentence.

24 Additionally, Your Honor, we would ask there  
25 be no contact between the defendant or the

1        defendant's family. I know that there are only so  
2        many things that you can do. But these  
3        grandparents and this child have been placed in a  
4        very precarious position. They all live in Greer.  
5        They have had -- all family members have been very  
6        involved in this case, if you will. They would ask  
7        that they not be harassed, have no contact from any  
8        family members, friends, anyone on the defendant's  
9        side. Maybe just a verbal warning for anyone in  
10       the courtroom about that might be helpful as well.  
11       But they are fearful of some sort of retaliation.  
12       Of course, we ask that there be no contact with the  
13       victims directly or indirectly by the defendant.

14                MR. ROBINSON:        We have no issue with that,  
15       Your Honor.

16                MRS. HODGE:        Finally, Your Honor, because  
17       Ms. **Victim** [REDACTED] is not here in the courtroom,  
18       there is a judge's letter that is an age-  
19       appropriate type letter. I would pass that up for  
20       Your Honor's consideration.

21                MR. ROBINSON:        I haven't seen it. (Pause.)

22                I don't see the purpose of this, Your Honor.

23                MRS. HODGE:        She's the victim and she can't  
24       be here to tell her victim's impact statement. So  
25       that's the purpose.

1           THE COURT:     (Reviewing.)

2           All right. Mr. Robinson, you've gone over  
3           with your client that this is mandatory Sex  
4           Offender Registry?

5           MR. ROBINSON:    I have, Your Honor. I have.

6           THE COURT:     Mr. Salas, how do you plead to  
7           this charge?

8           MR. SALAS:     Guilty.

9           THE COURT:     All right. Does he have any  
10          criminal record?

11          MRS. HODGE:    Your Honor, the only thing he  
12          has is a 2005 Failure to Appear, but nothing in  
13          General Sessions.

14          THE COURT:     Anything from the victims?

15          MRS. HODGE:    Your Honor, the grandmother's  
16          here, but she did not wish to address the Court.

17          THE COURT:     Yes, sir.

18          MR. ROBINSON:   Thank you, Your Honor. Your  
19          Honor, I've had the pleasure of representing him.  
20          He has a tremendous amount of support in this case.  
21          We've taken -- we had Dr. Price in Greenville.  
22          Actually obtained him to speak at the last hearing  
23          we had. He's here as well in support of Will.

24          Your Honor, I have with me today Will's wife  
25          standing in court as well. His father and mother

1 are both here. Uh, they've not stopped one time  
2 believing Will. Will has two children of his own.  
3 Two little boys. The little boys have a great  
4 relationship with their dad. Your Honor, also in  
5 the courtroom are a lot of his pastors and  
6 ministers that have come all the way here to  
7 support Will. They believe in Will in this case.

8 I may ask in a few moments for a couple of  
9 them -- please stand up and show -- I want to show  
10 if you are in support of Will. You see, Your  
11 Honor, there's a large number of people in support  
12 of Will. Your Honor, uh, I'm going to have them  
13 speak in just a second.

14 I do want to -- just in response to Mrs.  
15 Hodge's, uh, presentation in this case. I've  
16 looked at the doctor's reports and so forth. There  
17 ~~is no evidence of digital penetration, penal~~  
18 ~~penetration, evidence of any of that.~~ Your Honor,  
19 uh, Will's great with his kids, his two little  
20 boys. The family can testify to that. He actually  
21 has one of his niece's, I believe, here. She's 17  
22 now. 17 or 18 now. She's not afraid of Will. If  
23 I could have a couple of people."

24 THE COURT: Yes.

25 MR. ROBINSON: Identify yourself.

1           UNIDENTIFIED SPEAKER:    This is my brother.  
2           I love him. He's like a second father to me. He's  
3           taken care of us when we were young. He dropped  
4           out of school just to take care of us. He's a  
5           wonderful father. I can't say the least. I admire  
6           him for the person that he is. I can't say the  
7           least. I love him. We miss him. My nephews miss  
8           him. They're not scared of him at all. They ask  
9           when he's going to come home. One actually goes to  
10          see him in jail. He's like, I want to see him,  
11          when is he coming home.

12          MR. ROBINSON:    Your Honor, his dad is here.  
13          He has an interpreter, his daughter Grace.  
14          Identify yourself.

15          UNIDENTIFIED SPEAKER:    (inaudible).

16          THE COURT:    Ma'am, I need to stop you right  
17          there. I want my Court Reporter to be able to see  
18          you and to hear you real clearly. I know you're  
19          going to need to turn to him. Will you turn --  
20          when you speak English, will you turn back to us?

21          UNIDENTIFIED SPEAKER:    Sure, Your Honor.

22          THE COURT:    I appreciate that. Thank you.

23          UNIDENTIFIED SPEAKER:    Will has been in  
24          church ever since he was young. He's always been  
25          in God's way. All the people there here today can

1 tell you. We're not bad people. They are people  
2 that have known us for years. We missed Wilfredo a  
3 lot. He is the one that sings in church. We trust  
4 God. That's all we can say. Thank you, sir.

5 UNIDENTIFIED SPEAKER: (Inaudible.)

6 MR. ROBINSON: I'm going to need you to step  
7 up there closer to the bar.

8 UNIDENTIFIED SPEAKER: I'm 17 years old.  
9 Will, we used to live with him when I was five. I  
10 mean, like, he never done nothing to me. He never  
11 touch me or nothing. I have, like, told the  
12 sisters. They never complained about nothing about  
13 him. I know if you get touch, you will remember  
14 that. It's not like you will forget. He never  
15 touched me or he never touched my sisters. So I  
16 believe in him. That's all I got to say.

17 THE COURT: Thank you, ma'am. For being  
18 here.

19 MR. ROBINSON: Your Honor, I have Dr. Price  
20 here if the Court wanted to ask him any questions.

21 THE COURT: If there's something that he'd  
22 like to add. Thank you, sir, for being here.

23 MR. ROBINSON: Your Honor, as Mrs. Hodge  
24 referenced, Will is going to be deported more than  
25 likely. We'd ask the Court for the minimum

1 sentence in this case or a suspended sentence or  
2 something. But he's going to go back to Mexico  
3 anyway. He's a welder by trade. As he told you,  
4 he's 30 ---

5 MR. SALAS: 32.

6 MR. ROBINSON: --- 32. And he'd ask the  
7 Court, Your Honor, for the minimum sentence or a  
8 small sentence in this case. We haven't gone  
9 through the whole process of a trial of putting  
10 everyone up on the witness stand and so forth.  
11 We'd ask the Court for a small sentence, Your  
12 Honor. He's not getting out of jail anyway, Your  
13 Honor. Thank you./

14 THE COURT: Uh, well, I'll accept the plea  
15 as being freely and voluntarily made with the  
16 advice of extremely competent counsel with whom he  
17 says he's satisfied. The plea has a substantial  
18 factual basis. Do you want your client to say  
19 anything?

20 MR. ROBINSON: He does not wish to address  
21 the Court, Your Honor. And thank you for  
22 listening.

23 THE COURT: Well, I'll start by saying this  
24 to the families involved. I'm going to order that  
25 there be no contact between the families. No

1 harassment whatsoever. Whatever anyone's opinion  
2 of what happened is, the simple fact of the matter  
3 is Mr. Salas is here today and he's pled guilty to  
4 the charge. This matter is now closed. In other  
5 words, any contact that you have with the victim's  
6 family, uh, would only serve to make things worse  
7 on everybody. I'm going to order you to have no  
8 contact.

9 Second, I appreciate your words on behalf of  
10 Mr. Salas. It's clear that he has a lot of family  
11 support and he's very lucky in that regard. I  
12 appreciate you being here on his behalf. I think  
13 we all understand he's pled guilty to a very  
14 serious charge and he has to be punished for that.

15 To the grandmother of the victim in this case,  
16 I want to say thank you and thank you for being  
17 there for your granddaughter. I know you've never  
18 done anything but been there for her. But thank  
19 you for being there for her.

20 This is -- and I will say, your attorney has  
21 worked you out a good deal pleading to Lewd Act.  
22 That is certainly a break in a number of ways. You  
23 can thank your attorney for that that he did do  
24 that. However, when I look at the facts of this  
25 case, it is a very egregious case. My sentence is

1           going to be 15 years. I wish you the best of luck.

2           MR. ROBINSON:     Thank you, Your Honor.

3           MRS. HODGE:     Thank you, Your Honor.

4           (WHEREUPON, the proceedings conclude at

5 approximately 12:11 p.m.)

6

7

8

9

## CERTIFICATE

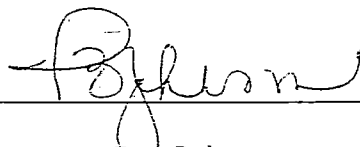
21

App. P.23

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF GREENVILLE     )

I, the undersigned, Teresa B. Johnson, 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 all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 13th day of July, 2012.

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



Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of Greenville, S.C.

IN THE COURT OF COMMON PLEAS

Wilfredo SALAS #347611

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2012-CP-23- 03341

APPLICATION FOR  
POST-CONVICTION RELIEFINSTRUCTIONS B 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 Kershaw Correctional Institution-4848  
Goldmine Hwy, Kershaw, S.C. 29067
2. Name and location of Court which imposed sentence Greenville County Court  
305 East North Street, Greenville, S.C. 29601
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2011-65-23-6255A - 1st D Act on a minor

- (b) None
- (c) None
5. The date upon which sentence was imposed and the terms of the sentence:  
(a) August 8, 2011 - fifteen "15" years - non violent
- (b) None
- (c) None
6. Check whether a finding of guilty was made:  
(a) after a plea of guilty yes = Plead Guilty
- (b) after a plea of not guilty None
- (c) after a plea of nolo contendere None
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
No
8. If you answered Ayes@ to (7), list:  
(a) the name of each Court to which you appealed:  
i. None  
ii. None  
iii. None
- (b) the result in each such Court to which you appealed:  
i. None  
ii. None  
iii. None
- (c) the date of each such result:  
i. None  
ii. None  
iii. None
- (d) if known, citations of any written opinion or orders entered pursuant to such results:  
i. None  
ii. None  
iii. None
9. If you answered Ano@ to (7), state your reasons for not so appealing:  
(a) NOT WAS Told by my LAWYER OR the COURT THAT I

- (b) Could Appeal if I was unhappy with the outcome  
 (c) of my case or sentence.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:  
 (a) "Please See Attached Page"  
 (b) "Please See Attached Page"  
 (c) "Please See Attached Page"
11. State concisely and in the same order the facts which support each of the grounds set out in (10):  
 (a) "Please See Attached Page"  
 (b) "Please See Attached Page"  
 (c) "Please See Attached Page"
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 Ayes@ to any part of (12), list with respect to each petition, motion or application:  
 (a) the specific nature thereof:  
 i. none  
 ii. none  
 iii. none  
 iv. none  
 (b) the name and location of the Court in which each was filed:  
 i. none  
 ii. none  
 iii. none

## Attachment Post Conviction Relief

A. Applicant was denied effective assistance of Counsel guaranteed by (6) Sixth and (14) Fourteenth Amendment to the Constitution. Trial Counsel's act and performance during the entire phase of representation was both unreasonable and Prejudicial. Counsel's act and omission are included, but are not limited to the following:

1. Counsel failed to Produce applicant's rule-5 Discovery.

2. Counsel mislead applicant about the conditions of the plea.

3. Counsel failed to investigate the discrepancies and evidence of which concerns the allegations in this case.

4. Counsel failed to investigate discrepancies of which concerns the date of offense in this case.

5. Because of Counsel's misrepresentation with in this case, applicant entered a guilty plea upon Counsel's advice which was not within the range of competence demanded of attorney's in Criminal Cases. Also due to Counsel's errors, applicant would not have plea guilty but would've insisted on going to trial which is other wise known as ineffective assistance of Counsel.

Wilfredo Salas #347611

Kershaw Corr. Inst.

4848 Goldmine Hwy.

Kershaw, S.C 29067

iv. None

(c) the disposition thereof:

i. none

ii. none

iii. none

iv. none

(d) the date of each such disposition:

i. none

ii. none

iii. none

iv. none

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

i. none

ii. none

iii. none

iv. none

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

no

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

(a) which grounds have been presented:

i. none

ii. none

iii. none

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

i. none

ii. none

iii. none

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) none

(b) none

(c) none

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

(a) your arraignment and plea? yes

(b) your trial, if any? no

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? none

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? none

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

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

i. MR. SCOTT ROBINSON - ATTORNEY AT LAW

ii. none

none

iii. none

none

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

i. GUILTY PLEA HEARING

none

ii. none

none

iii. none

none

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

Sentence vacated

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA )

VERIFICATION

County of Greenville, S.C. )

I, Wilfredo SALAS #347611, 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.

Wilfredo Salas

SWORN to and subscribed before me this 7<sup>th</sup>  
day of May, 2012.

Caroline A. Amos (L.S.)

Notary Public

My Commission Expires: My Commission Expires December 22, 2018

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

I, Wilfredo SALAS #347611, 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.

Wilfredo Salas  
Applicant

SWORN or affirmed to and subscribed before me this  
7<sup>th</sup> day of May, 2012.

Catharine A. Amosa  
Notary Public

My Commission Expires December 22, 2018

My Commission Expires: \_\_\_\_\_

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | C.A. No. 2012-CP-23-3341     |
| COUNTY OF GREENVILLE     | ) |                              |
|                          | ) |                              |
| Wilfredo Salas,          | ) |                              |
| S.C.D.C. No. 347611,     | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) | <b>RETURN</b>                |
| v.                       | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent.              | ) |                              |
| _____                    | ) |                              |

In response to the post-conviction relief application filed May 17, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant waived presentment to the Greenville County Grand Jury for the charge of lewd act on a minor (2011-GS-23-6255A). Scott D. Robinson, Esquire represented the Applicant.

On August 8, 2011, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to fifteen (15) years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the plea transcript, and the Applicant's records from the South Carolina Department of Corrections.

II.

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

1. Ineffective assistance of counsel:
  - a. Failure to obtain discovery.
  - b. "[M]islead applicant about the conditions of the plea."
  - c. "[F]ailed to investigate the discrepancies and evidence of which concerns these allegations in this case."
  - d. "[F]ailed to investigate discrepancies of which concerns the date of offense in this case."
2. Involuntary guilty plea.

### III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v.

State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

The Applicant's assertion that his guilty plea was involuntary 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 pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). 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) (citation omitted). 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 post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of

the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue.

See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON  
Attorney General

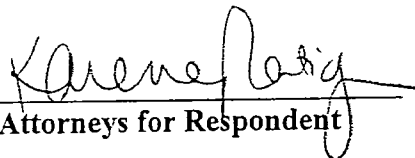
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN  
Assistant Deputy Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for Respondent

August 31, 2012

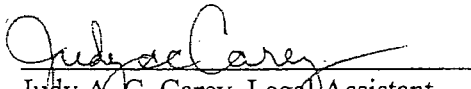
|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) |                              |
|                          | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GREENVILLE     | ) |                              |
|                          | ) | 2012-CP-23-3341              |
|                          | ) |                              |
| WILFREDO SALAS, 347611   | ) |                              |
|                          | ) |                              |
| 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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Wilfredo Salas, 347611  
 Kershaw Correctional Institution  
 4848 Goldmine Highway  
 Kershaw SC 29067

DATED this 31st day of August, 2012.

  
 Judy A. C. Carey, Legal Assistant  
 For Respondent

1     STATE OF SOUTH CAROLINA     )  
2     COUNTY OF GREENVILLE     )     IN THE COURT OF COMMON PLEAS  
3  
4     Wilfredo Salas,             )  
5             Applicant,         )     TRANSCRIPT OF RECORD  
6     -vs-                         )     2012-CP-23-3341  
7     The State,                 )  
8             Respondent,        )     October 23, 2013  
9                                   )     Greenville, South Carolina  
10  
11  
12  
13  
14

11     B E F O R E:

12             HONORABLE EDWARD W. MILLER, JUDGE  
13  
14

15     A P P E A R A N C E S:

16             JOHN G. RECKENBEIL, ESQUIRE  
17             Attorney for the Applicant

18             KAREN C. RATIGAN, ESQUIRE  
19             Attorney for the Respondent  
20  
21  
22

23                     Margaret A. Woods  
24                     Circuit Court Reporter  
25

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WILFREDO SALAS

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Certificate of Reporter

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EXHIBITS

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1 MS. RATIGAN: Thank Your Honor, may it please the Court.  
2 This is the case of Wilfredo Salas vs. the State of South  
3 Carolina, the Docket Number is 2012-CP-23-3341. Applicant  
4 waived presentment to the grand jury on the charge of lewd act  
5 on a minor, he was represented on that charge by Scott  
6 Robinson. On August 8th of 2011 he pled guilty before Judge  
7 Verdin, received a 15-year sentence, he did not file an  
8 appeal. His application was timely filed so the State's ready  
9 to proceed.

10 MR. RECKENBEIL: Thank you, Judge, may it ---

11 THE COURT: Ready?

12 MR. RECKENBEIL: --- please the Court, uh, John  
13 Reckenbeil for Wilfredo Salas here on a post-conviction  
14 relief. Uh, Your Honor, he has asserted in his application  
15 several matters a first subject matter, the Court lacked  
16 subject matter jurisdiction, uh, also fact that his trial  
17 counsel fell below the standard of which has been set forth  
18 by the State, a reasonably objective standard, ineffective  
19 assistance of counsel, uh, Your Honor, and I've I've added to  
20 this issue with the fact that, uh, there is possibly after-  
21 discovered evidence. I realize here we're we're sitting here  
22 in a civil court, uh, standard, uh, and there is an  
23 opportunity for a 29(b) motion to be made in the criminal  
24 setting, uh, for the purposes of today we will be going  
25 forward on the civil matters that we have pending before this

VICTORIA SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL App. P43

1 court on his application. First like to call Victoria Salas  
2 to the stand.

3 THE COURT: Alright.

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

6 VICTORIA SALAS, having been first  
7 duly sworn, testified as follows:

8 THE CLERK: Thank you, please be seated. State your full  
9 name for the record.

10 THE WITNESS: Victoria Salas.

11 DIRECT EXAMINATION BY MR. RECKENBEIL:

12 A. Uh, Victoria, you reside here in Greenville County?

13 Q. Yes.

14 A. You just make sure you speak up loud enough and I might  
15 remind you a couple times just to make sure that Judge Miller  
16 can hear you, ---

17 A. Okay.

18 Q. --- okay, and the court reporter.

19 A. That's fine.

20 Q. Alright. Uh, you were married to the applicant Wilfredo  
21 Salas?

22 A. I still am, yes.

23 Q. Still married.

24 A. Yes.

25 Q. Your daughter is whom?

1 A. Victim ---

2 Q. Victim ? And she was ---

3 A. --- Gonzal ---

4 Q. --- the victim in the matter?

5 A. Yes.

6 Q. Uh, at the time how old was she?

7 A. She was 5.

8 Q. And how old is she now?

9 A. She's 9.

10 Q. Uh, as it stands right now do you have custody of Victim ?

11 A. No.

12 Q. Uh, how did that all play out with the Department of  
13 Social Services?

14 A. Uh, well they decided that it was in the best interest  
15 for her to to stay with my mom.

16 Q. And when was that adjudicated, when did that happen with  
17 the family court?

18 A. Um, date I don't remember but it was, it's been about a  
19 year or two.

20 Q. 'bout a year?

21 A. Yeah.

22 Q. Was it after the court matter that took place when  
23 Wilfredo came ---

24 A. Yeah, ---

25 Q. ---- before the judge ---

1 A. --- it was about a month later I believe.

2 Q. A month after that.

3 A. Um-hum, after.

4 Q. Sometime in 2011?

5 A. Yes.

6 Q. And who received custody of Victim at that time?

7 A. My mom and my dad.

8 Q. And does Victim live with them now?

9 A. Yes.

10 Q. Has there been efforts for you to try to get Victim  
11 back?

12 A. Yes.

13 Q. And where does it stand right now?

14 A. Um, at this time right now my mom has, uh, she's talked  
15 to me and she's told me that if, uh, she's willing to give the  
16 custody back to me.

17 Q. Okay. Uh, back in 2010 when the first accusations came  
18 down of Victim being molested by Wilfredo were you the first  
19 one, uh, to be told of this?

20 A. Yes, by Victim, yes.

21 Q. By Victim?

22 A. Um-hum.

23 Q. And when it originally happened did you take her to a  
24 doctor?

25 A. Yes.

1 Q. Where'd you take her?

2 A. I took her to Dr. Nithya at North Hills.

3 Q. Alright, like an Urgent Care?

4 A. No, that's her primary physician.

5 Q. Primary care pediatrician?

6 A. Um-hum.

7 Q. And she's seen that doctor before?

8 A. Yeah, she's seen her since she was born.

9 Q. And it -- in your kind of opinion as a mother did you  
10 notice any sort of, uh, abnormalities to Victim at that point  
11 in time?

12 A. No.

13 Q. Alright. Uh, Wilfredo hired Scott Robinson to be his  
14 attorney, ---

15 A. Yes.

16 Q. --- uh, did you have any sort of, uh, input as to hiring  
17 Mr. Robinson to be his attorney?

18 A. Uh, yes.

19 Q. Alright. Were you still in close contact with with  
20 Wilfredo at that point in time immediately after it  
21 happened?

22 A. Yes, I was.

23 Q. Uh, did you make any sort of, uh, statements to your  
24 family or to his family as to what you believed or how you  
25 believed back at that point in time when it first happened?

1 A. I mean, me and Will we always, we kept in contact. I  
2 mean, when at first when she first mentioned it I went to him  
3 and I spoke to him about it and he was the primary one who  
4 told me take her to the doctor.

5 Q. 'cause what did, what did Will tell you when ---

6 A. That ---

7 Q. --- you first talked to him?

8 A. --- he had nothing to fear, that he had done nothing  
9 wrong.

10 Q. Okay. Did, uh, that that she's in school at that point  
11 in time back originally when this happens.

12 A. Yes.

13 Q. She's in, like in elementary school?

14 A. Yeah, she was like in K-5.

15 Q. Uh, was there a a point in time back then where you had  
16 to have permission to pick a child up from school?

17 A. Yes.

18 Q. Was there people on a list that were able to pick up the  
19 child from school?

20 A. Um-hum, yes.

21 Q. Do you, do you know who was on that list?

22 A. It was primarily Will, me, my mom, my dad and my sister.

23 Q. Alright. Do you know if Will ever picked her up from  
24 school?

25 A. No.

1 Q. He never picked her up from school.

2 A. No.

3 Q. Alright. When Victim originally accused Will of doing  
4 this, do you know what time of day it was that this  
5 happened?

6 A. It was, it was night. It was at night when she told me  
7 about it.

8 Q. It was at nighttime.

9 A. Um-hum.

10 Q. And was Victim alone with Will at the house?

11 A. No.

12 Q. There was others at the house at the time when ---

13 A. Yes.

14 Q. --- it took place?

15 A. Um-hum.

16 Q. And where did she say that it took place?

17 A. She said it took place in my bedroom.

18 Q. Do you believe that true?

19 A. No.

20 Q. Why's that?

21 A. Because at the time, you know, we had -- well I have two  
22 other boys and, um, I just don't believe that that that  
23 happened and she had her own room of course where she slept in  
24 and as well we had, uh, believe it was his brother who was  
25 living with us upstairs so . . .

1 Q. You just don't find it reasonable that Victim would be in  
2 your bedroom at that ---

3 A. Yes, ---

4 Q. --- point in time.

5 A. --- um-hum.

6 Q. And were there other people in the house that you spoke  
7 to when asked whether or not they saw anything?

8 A. I didn't speak to 'em, speak to them about it but, um,  
9 there were others in the house at at all times, uh, . . .

10 Q. Okay. Now with what you're talking about right now did  
11 you ever communicate that to law enforcement or to Scott  
12 Robinson?

13 A. Yes..

14 Q. Did you give written statements?

15 A. Yes..

16 Q. Are they consistent with what you've talked about now?

17 A. Yes.

18 Q. Do you think that there was any sort of influence that  
19 Victim had upon her as to the reasons why she would accuse Will  
20 of doing this?

21 A. I believe my mom had a big part non-intentionally but by  
22 she would always say, you know, they touch you here, they do  
23 this to you, you need to come tell me or you need to go tell  
24 your mom and, uh, and I I believe that's where she she she  
25 came about that that idea.

1 Q. Has your mother ever given a statement to law enforcement  
2 or to Mr. Robinson, if you know?

3 A. To law enforcement I'm sure but not positive and to Scott  
4 Robinson I don't believe so.

5 Q. Don't believe so?

6 A. Uh-uh.

7 Q. Okay. Uh, when your daughter was going through this  
8 whole judicial process, uh, did you ever have the opportunity  
9 to talk with her alone about it?

10 A. No.

11 Q. 'cause DSS basically stepped in immediately, right, ---

12 A. Yes.

13 Q. --- and your contact was limited ---

14 A. Um-hum.

15 Q. --- with your daughter.

16 A. Yes.

17 Q. Uh, would you say was in a matter of days, weeks, or  
18 months from the accusation that you really kinda lost contact  
19 with your daughter?

20 A. I would say days.

21 Q. Days.

22 A. Um-hum.

23 Q. So you never really had an ability to sit down and talk  
24 with her by ---

25 A. Uh-uh.

1 Q. --- herself and your visitation that the family court  
2 ordered or allowed after, uh, this came out was all  
3 supervised, correct?

4 A. Yes.

5 Q. Your mother had to be around?

6 A. Um, no, uh-uh.

7 Q. Was social workers had to be around ---

8 A. No.

9 Q. --- D ---

10 A. Victim stayed with me up until about I would say a couple  
11 months maybe.

12 Q. Okay. Uh, and you've never had an opportunity to really  
13 sit down and talk with her and ask her whether or not this was  
14 true.

15 A. No.

16 Q. Alright, but you're here today, uh, we've had other  
17 conversations over the phone ---

18 A. Um-hum.

19 Q. --- and in person, you're here today to tell this court  
20 that you don't think this really happened?

21 A. Yes.

22 Q. And is there anything else that you can think of in your  
23 mind that would lead you to come to that conclusion, uh,  
24 besides what you've already talked about?

25 A. No.

1 Q. Alright. And Will has since day one professed his  
2 innocence?

3 A. Yes.

4 Q. And have you tried at all times to communicate this with  
5 his attorney Scott Robinson?

6 A. Yes, I did.

7 Q. Do you agree with Will pleading guilty to ---

8 A. Um, ---

9 Q. --- what he pled guilty to?

10 A. --- no.

11 Q. Do you know why he pled guilty to that?

12 A. No, I don't.

13 Q. Okay.

14 A. I haven't had the opportunity to to talk to him about  
15 it.

16 Q. And even i -- to this day as we sit here you still  
17 haven't talked with Victim about ---

18 A. No.

19 Q. --- whether or not this is true or not.

20 A. No.

21 Q. Okay. Okay, answer any questions the Attorney General  
22 might have for you.

23 A. Um-hum.

24 CROSS-EXAMINATION BY MS. RATIGAN:

25 Q. I believe you testified on direct that your daughter told

1 you first about having been touched by your husband ---

2 A. Yeah.

3 Q. --- but didn't the State say at the guilty plea hearing  
4 that she first told your mother and that your mother told you  
5 about it?

6 A. The very first accusation ---

7 Q. Yes?

8 A. --- she did.

9 Q. Okay. So in fact the first person she told was your  
10 mother.

11 A. Yes, the very first one, yes.

12 Q. And then your mother told you about it.

13 A. Yes, she sat down with me and Will and she talked about  
14 it.

15 Q. Okay. And you stated you took her, you took, uh, Victim  
16 to the doctor at one point?

17 A. Yes, I took her.

18 Q. ~~How many times had she made an allegation that your~~  
19 husband touched her before you took her to the doctor, do you  
20 remember?

21 A. Twice.

22 Q. Okay. So was it the third time that she went to the  
23 doctor or the second time?

24 A. The second time.

25 Q. Okay. At the plea hearing the State said it was after

1 the third disclosure, is that inaccurate?

2 A. No, it was the second time.

3 Q. And in total the State alleges that, uh, Victim made three  
4 different disclosures to you, is that correct?

5 A. No, there was only two.

6 Q. Only the two? So she made two disclosures to you and  
7 your mother, is that correct?

8 A. Yeah, the first one she told my mom, the second one she  
9 came to me.

10 Q. Okay. And even though she disclosed to you two times she  
11 was being molested, you never asked her about it?

12 A. We talked to her about it. As I told you, my mom sat  
13 down with me and Will and we discussed it.

14 Q. Okay, but did you ever speak to the victim about it?

15 A. Yes, we did.

16 Q. Well I believe you said you never had an opportunity to  
17 ask her if it was true or not.

18 A. That was the first time, first ---

19 Q. Okay.

20 A. --- accusation, the second time I did not.

21 Q. Okay, so you have had an opportunity to ask the victim  
22 whether or not it's true.

23 A. From the first one yes, ---

24 Q. Okay, ---

25 A. --- the second one no.

1 Q. --- and -- okay. And you testified on direct that you  
2 made a statement, did you give a statement to the police or to  
3 Mr. Robinson?

4 A. Uh, Mr. Robinson.

5 Q. And your statement was basically that you did not believe  
6 your daughter?

7 A. Yes.

8 Q. And were you actively helping the defense kinda put  
9 together a case?

10 A. Yes.

11 Q. Okay.

12 MS. RATIGAN: That's all I have, Your Honor.

13 THE COURT: Okay. You can step down, thank you.

14 (Whereupon, the witness left the stand.)

15 MR. RECKENBEIL: Judge, we just ask that she be, uh,  
16 released from her subpoena.

17 THE COURT: Any objection?

18 MS. RATIGAN: No, Your Honor.

19 THE COURT: Okay.

20 MR. RECKENBEIL: Your Honor, we're just providing her her  
21 witness fee that we ---

22 THE COURT: Okay. Well you didn't have to show me.

23 (Whereupon, a discussion was held off the record.)

24 THE COURT: Alright, call your next witness.

25 MR. RECKENBEIL: Uh, the applicant, we're gonna call

1 Scott Robinson.

2 (Whereupon, the witness came forward.)

3 THE CLERK: Mr. Robinson.

4 THE WITNESS: Yes.

5 SCOTT D. ROBINSON, having been  
6 first duly sworn, testified as follows:

7 THE CLERK: Thank you, you may be seated.

8 THE WITNESS: Thank you.

9 THE COURT: Mr. Robinson, you need to keep your decibel  
10 level up.

11 THE WITNESS: Yes, sir.

12 DIRECT EXAMINATION BY MR. RECKENBEIL:

13 Q. Alright, Scott, you practice here in Greenville County?

14 A. I do.

15 Q. Uh, represented Mr. Wilfredo Salas, uh, on the charge of  
16 criminal sexual misconduct with a minor?

17 A. I did.

18 Q. Okay. Uh, do you recall when you first came on board for  
19 the representation in this matter?

20 A. Yes. It would've been, excuse me, woulda been on or  
21 about, uh, April 29th 2010.

22 Q. Back in 2010?

23 A. Um-hum.

24 Q. Okay. I obviously wanna go through your investigation of  
25 the case but I wanna kinda work backwards ---

1 A. Sure.

2 Q. --- basically going from Victoria's, uh, testimony that  
3 she just provided to the Court.

4 A. Um-hum.

5 Q. Uh, did she have an opportunity to tell you what she just  
6 disclosed to the Court before?

7 A. She did. She gave a s -- she gave written statement to  
8 my investigator and she also came in a decent bit to the  
9 office.

10 Q. Uh, did -- was there ever an opportunity, uh, that your  
11 investigator had to talk with either, uh, you or your  
12 investigator had an opportunity talk with Victoria's mother?

13 A. No.

14 Q. Alright. Uh, did Victoria disclose to you that she felt,  
15 uh, that her mother may have provided influence upon Victim to  
16 give these explanations as to what Will did to her?

17 A. Yes.

18 Q. Alright, and that was never, uh, followed up with any  
19 sort of investigation to talk with the grandmother?

20 A. Well the grandmother had custody and the little girl  
21 was with the grandmother, she wanted to be with the  
22 grandmother ---

23 Q. Sure.

24 A. --- and the grandmother I assume would say anything to  
25 keep the child.

1 Q. Okay, so you just answered my next kinda question is that  
2 do you think that there was great, uh, kind of it -- almost  
3 like a carrot hanging out there for the grandmother to provide  
4 this sorta influence to gain custody?

5 A. I think it's, ---

6 Q. --- of the child?

7 A. --- I think it was possible.

8 Q. And history can tell us exac -- exactly what happened,  
9 isn't that true, ---

10 A. Yes.

11 Q. --- that the grandmother actually has custody of the  
12 child?

13 A. She does.

14 Q. Alright. So then the start of the basically the case  
15 he's he's charged with criminal sexual misconduct first  
16 degree, ---

17 A. Um-hum, yes.

18 Q. --- he ultimately pleads to lewd conduct upon a minor.

19 A. Lewd act, yes.

20 Q. Alright. Uh, the difference in sentencing ranges where  
21 criminal sexual first degree is a strike, I ---

22 A. Right.

23 Q. --- 85 percenter, now it's 80 percent, uh, it's a  
24 serious?

25 A. Right.

1 Q. Okay. And then lewd is ---

2 THE COURT: Most serious.

3 MR. RECKENBEIL:

4 Q. Most serious, excuse me, Your Honor, most serious, uh,  
5 and then a lewd is a 15-year cap with the possibility of, uh,  
6 parole or early release.

7 A. Yes, and also the, uh, CSC first would carry 25 to  
8 life.

9 Q. Twenty-five to life.

10 A. Yes.

11 Q. Alright. Now hearing what Victoria has disclosed  
12 here ---

13 A. Um-hum.

14 Q. --- today and knowing everything, why would -- do you  
15 think Wilfredo would have pled guilty?

16 A. I can't get into his mind but I, but I would imagine that  
17 the the risks were there. Uh, you had a risk of a 25 to life  
18 charge which is non-parolable, the strike versus, uh, 0 to 15  
19 lewd act which is parolable, he's actually eligi -- eligible  
20 parole next year in this matter, uh, but I think he may have  
21 thought about that, thought about the the child coming to  
22 court and testifying. Uh, she'd given the same story even at  
23 this, uh, place called North Hills Medical Center which is a  
24 place that, uh, Victoria first took her to. She said the same  
25 thing to that doctor, with that doc, 'bout what had happened

1 that her story was consistent in this and she would testify.

2 Q. Did Victoria testify in open court or was there a motion  
3 to have her testify in chambers?

4 A. Victoria or Victi ---

5 Q. Or excuse me, Victim , excuse me.

6 A. The State made a motion to, uh, to be able to introduce  
7 out of court test -- the testimony of a child.

8 Q. And did that take place?

9 A. We never got to that only because we did not go to trial,  
10 we went, we just plead.

11 Q. Right, but was there a hearing to make a determination as  
12 to whether or not, uh, Victim could testify in chambers as  
13 opposed to ---

14 A. I don't believe so.

15 Q. Okay. Uh, and so the, to the best of your recollection  
16 of your notes, and and please feel free if you need to look  
17 through it, you've never really had an opportunity in open  
18 court to see, uh, Victim provide testimony or in chambers Victim  
19 provide testimony.

20 A. I have not. All I have are -- I have both. I have the  
21 DSS case because I wanted to get information on what she was  
22 talking about: reports, things like that, I also had the

23 criminal case, uh, but she was consistent throughout the whole  
24 time ---

25 Q. Sure.

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. --- in this matter.

2 Q. Okay. Did Victim testify in the family court matter?

3 A. No.

4 Q. It's just a ---

5 A. Allegations.

6 Q. Okay, guardian ad litem or somebody testified?

7 A. Allegations, yes.

8 Q. Okay. Uh, alright. Do you know whether or not your  
9 investigator or your office, uh, received any video of Victim ,  
10 uh, providing, uh, statements to any medical examination or to  
11 the CAC, uh, ---

12 A. We had a, we had a a video at -- from the Julie Valentine  
13 Center where she was interviewed, uh, we had that video, any  
14 statements that, uh, State had they would provide to us.

15 Q. Okay, do -- does your records or anything reflect when  
16 you would've received that video?

17 A. Uh, the State has a -- had an open file policy, let me  
18 see when I received it. We did receive it, we did look at it,  
19 he looked at it, uh, but I can't tell ya, I don't have ind --  
20 an independent recollection of actually when we got it but  
21 when do -- when we did get it we had to sign out, uh, uh, an  
22 order that basically we couldn't start putting outside other  
23 people but we did look at it.

24 Q. Uh, when you receive the video or before you received  
25 that video, would it be fair to say that you would have to

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 sign a protective order?

2 A. Yes, that's what I was meaning.

3 Q. And a protective order would be something where you or  
4 your staff or investigators, uh, or your client could not  
5 disseminate those materials and they would have to be either  
6 returned or destroyed at the end a the case.

7 A. Yes.

8 Q. Alright. Do you know when that protective order was  
9 signed by the judge and entered into the record?

10 A. As far as the day, I do not, I know, we did receive it  
11 though.

12 Q. Okay. Uh, Scott, yeah, go ahead and take your time look  
13 for it.

14 A. Sure.

15 (Pause.)

16 I am not sure the exact date, Mr. Reckenbeil.

17 Q. Okay.

18 A. Actually, no excuse me. We did get a copy of the CD  
19 which would have been July 25th 2011.

20 Q. July 25th 2011?

21 A. Yes.

22 Q. Okay.

23 A. And we have the order that was dated after that. This is  
24 a, this is just a copy of proposed order, a stipulation  
25 order.

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Okay. Do you know when that video, uh, originated? In  
2 other words, do you know when in fact that that video of  
3 Victim , uh, actually was taken?

4 A. Without looking at that CD I couldn't tell you. I would,  
5 I would have to look at the CD and see what the date was and  
6 what the time was.

7 Q. Alright. So we're we're talking July 25th 2011, the plea  
8 was August 9th 2011?

9 A. I I'm gonna take your word for it because not looking at  
10 the transcript but ---

11 Q. Okay. It's -- it was pretty close in proximity ---

12 A. August 8th 2011.

13 Q. Okay, sorry. I'm sorry, I misstated one day. Uh, so  
14 pretty close proximity time frame from when you all received  
15 this video to the time frame that, uh, Wilfredo pled guilty.  
16 Do you know whether or not Wilfredo ever had a chance to  
17 review that video?

18 A. Yes, that he came in my office and rev -- he was out  
19 jail.

20 Q. So at that point in time he was outta jail?

21 A. Um-hum, yes.

22 Q. Do you any notes that reflect when, uh, Wilfredo would  
23 have came by your office to, uh, view the video or any other  
24 evidence that after July 25th?

25 A. He would have as soon as we received it which would have

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1     been the next day, he would come in, he would -- we would call  
2     him and he would come in and view it.

3     Q.    Okay.  Alright, so leading up to August the 8th for the,  
4     for the plea, can you remember in your mind or any notes that  
5     can refresh your recollection that, uh, any imminent  
6     conversations that you're having Wilf -- Wilfredo right before  
7     the plea, uh, any discussions that you can recall in your mind  
8     as to what took place, why he decided to go in fronta Judge  
9     Verdin and plea?

10    A.   Well the first reason I think is because she's a very  
11    good judge, she's a very considerate judge and she's just a  
12    good judge to go in front but; secondly, I think that, uh, he  
13    was, uh, laid out the options, that's what he was led by.

14    Q.    Okay.

15    A.   Option CSC potentially, CSC first 25 years to life, no  
16    parole or the, uh, lewd act 0 to 15 but also too at that time  
17    he also had a federal charge as well for, uh, some sort of  
18    fraudulent document or something like that I believe, so he  
19    had that as well, so he had a pending charge that and he also  
20    was, uh, had an an I.C.E. hold as well potentially.

21    Q.    Potential ---

22    A.    Potentially ---

23    Q.    --- for I.C.E. hold.

24    A.    --- that of ---

25    Q.    Okay.

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1 A. --- course, yeah, ---

2 Q. Alright.

3 A. --- but he was not a citizen at the time.

4 Q. Alright, so was trial that day or that week?

5 A. Woulda ---

6 Q. In other words, if he would have not accepted the  
7 plea, ---

8 A. No.

9 Q. --- he would've gone to trial.

10 A. Yes.

11 Q. Uh, do you know if he pled guilty, uh, before the jury  
12 was even brought in or do you know whether or not that the  
13 jury was just waiting to be picked or was it something where  
14 it was the day before jury selection?

15 A. I have in here the jury voir dire and questions we would  
16 have asked the jury, things like that but that was not used so  
17 I'm assuming it was before the jury was actually even  
18 impaneled.

19 Q. So this is a discussion that is in in very close  
20 proximity to possible trial going?

21 A. Right, correct.

22 Q. Alright. Now I wanna discuss some issues that he has  
23 raised in ---

24 A. Um-hum.

25 Q. --- his application, ---

SCOTT D. ROBINSON - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. Right.

2 Q. --- uh, about subject matter jurisdiction and the lesser  
3 included offense.

4 A. Sure.

5 Q. Uh, to your understanding the lewd act upon a minor is a  
6 lesser included to criminal sexual misconduct first degree?

7 A. It's not, ---

8 Q. Okay.

9 A. --- it's not a less include, less ---

10 Q. It's not a lesser included.

11 A. No, it's not.

12 Q. So then how can that be presented to a court, uh, if it's  
13 not a lesser included offense without a direct indictment?

14 A. They do it, do it through a direct presentment and if the  
15 person also waives presentment that, uh, that addresses the  
16 situation.

17 Q. In your review of the transcript did he waive presentment  
18 or was ---

19 A. Yes, ---

20 Q. --- it direct presentment?

21 A. --- he waived presentment.

22 Q. Okay, so that would take care a that issue.

23 A. Um-hum, yes.

24 Q. Now in the transcript I also wanna draw your attention to  
25 is that, uh, you would agree with me that evidence that the

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1 State wants to present to any hearing they have to disclose to  
2 you, would you agree with that?

3 A. Everything they're going to use at the ---

4 Q. Hearing or trial or anything they would need to disclose  
5 to you. I -- it -- I know it's a stupid question but ---

6 A. It's not, no, it's it's not a stupid question, it's just,  
7 uh, ---

8 Q. This is a basic general rule.

9 A. I don't, I -- it's usually how it would go but, um, ---

10 Q. Did they ever present to you a statement that was given  
11 by the victim or the victim's family that was used at the  
12 sentencing hearing? Do you remember if you saw that  
13 beforehand?

14 A. No, I think if ya, if ya look in the, uh, transcript, I  
15 think I just received it that day and I reviewed it, client  
16 reviewed it I believe, judge looked at it. Um, I think I, I  
17 don't know if I made an objection or not to this, think they  
18 may have entered it, I don't know what I did, but I don't  
19 think that, uh, that they did give it to us that time, ---

20 Q. Sure.

21 A. --- it didn't, woulda been nice to get it earlier but  
22 they present it at that time.

23 Q. Don't you think that they should have given it to you  
24 prior to the hearing, the sentencing hearing?

25 A. Yes, but another side a the coin though, uh, as a defense

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1 attorney you have certain do -- like statements from people  
2 that are saying good things about your client, things like  
3 that that you're gonna present, ---

4 Q. Sure.

5 A. --- the State wouldn't have so . . .

6 Q. And would --- you would agree with me that the proper  
7 recourse would be to state an objection on the record, uh, in  
8 violation of Rule 5 to say that, you know, Judge, we didn't  
9 receive this prior to, uh, the hearing, we didn't have an  
10 opportunity to review and thus rebut anything that might be in  
11 that statement, would you agree that that would be the proper  
12 recourse that state an objection on the record?

13 A. Well I think that, uh, let's see, I think on Page, uh,  
14 ele -- 13, excuse me, uh, she's talks about bringing up this  
15 letter, uh, pass it up, I haven't seen it and I think I said I  
16 have -- don't see the purpose of it, didn't make an an  
17 objection but I said I didn't see the purpose of it. Uh, ---

18 Q. And just to, just to clarify my question you, ---

19 A. Um-hum.

20 Q. --- the proper recourse would be to state an objection on  
21 the record as to a violation of Rule 5 or any other disclosure  
22 requirements to preserve that, would you agree?

23 A. Yes.

24 THE COURT: Well that was a victim impact statement.

25 MR. RECKENBEIL: Yes, sir.

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1 THE COURT: That's not, wasn't admissible at trial, I  
2 don't think that was a trial exhibit.

3 MR. RECKENBEIL: Yes, sir.

4 THE COURT: Okay, go ahead.

5 BY MR. RECKENBEIL:

6 Q. Okay. Uh, was there any other, uh, in reviewing this  
7 this file with the subject matter jurisdiction, was there  
8 anything else that you saw, uh, that the prosecution did that  
9 could have withheld the Court from having jurisdiction over  
10 this case?

11 A. I don't. I I think that they were ethical, considerate  
12 and I don't believe that they did anything inappropriate or  
13 not following the rules.

14 Q. Okay. Uh, you and I have discussed this case  
15 yesterday?

16 A. We have.

17 Q. Okay. You agree kind of with what Victoria has testified  
18 before that ---

19 A. Which part are we talking about?

20 Q. Fact that victim kinda made this up 'bout Will.

21 A. I have always had this idea and that's where we are  
22 coming from in this case is that this grandmother had  
23 something, that there was something that there couldn't fig --  
24 figure out what, put a finger on it but there was something  
25 there 'cause Victoria from the beginning always said it could

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1 not have happened, could not have happened but then you have  
2 the child sitting there from the beginning saying yes it did  
3 happen so . . .

4 Q. But the grandmother was never questioned in any way,  
5 shape, or form.

6 A. She was never questioned. I I have a -- I had a very  
7 good investigator Paul Silvaggio, uh, but I would believe  
8 that, uh, she probly wouldn't have talked to us anyway if we  
9 even tried to 'cause she was pretty adamant about keeping this  
10 kid think.

11 Q. Okay, answer any questions Attorney General has.

12 CROSS-EXAMINATION BY MS. RATIGAN:

13 Q. Did you, pardon me, Mr. Robinson, did you file the usual  
14 discovery motions after you were retained?

15 A. I did.

16 Q. And to the best of your knowledge did you receive full  
17 discovery from the State?

18 A. I did.

19 Q. Did you review those items with your client?

20 A. I did.

21 Q. And, uh, your client told you from beginning that he was  
22 innocent?

23 A. Absolutely, yes.

24 Q. Okay. And would it be fair to say that his wife Victoria  
25 participated in his defense?

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 A. I think she, when she would come in as often as we'd want  
2 her to come in, uh, we had different meetings with different,  
3 uh, individuals to get statements, to find out information, to  
4 find out something that we could use at a trial that could,  
5 uh, potentially be helpful.

6 Q. But she was clearly going to support her husband instead  
7 of the victim, that be fair to say?

8 A. I believe so.

9 Q. Okay. And did she give you a, any kind of a written  
10 statement?

11 A. She did.

12 Q. And was that in fact that she did not believe the  
13 victim's allegations?

14 A. Yes.

15 Q. Okay. And I believe you testified the victim was always  
16 consistent in her story.

17 A. She was.

18 Q. Was that true even when you watch the forensic interview  
19 videotape, was she also ---

20 A. Yes.

21 Q. --- consistent there?

22 A. Yes.

23 Q. Okay. And wasn't there medical evidence to corroborate  
24 potential abuse? I believe the State said the doctor found,  
25 uh, she had vaginitis, do you recall that?

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 A. I think she had some, uh, some, uh, physical issues but  
2 there was no evidence that I I I can recall this, there was no  
3 evidence of, I didn't believe there's any evidence of  
4 penetration or anything really. Lotta things could be related  
5 to the age of the child, different things a that nature.  
6 There was no co -- I don't think there was conclusive proof of  
7 it either way.

8 Q. But there some kind of medical finding that she had some  
9 kind of infection, that be fair to say?

10 A. Take a look at my notes or the doctor's notes.

11 THE COURT: Those -- the transcript speaks to that.

12 MS. RATIGAN: Okay, well then I'll move on.

13 BY MS. RATIGAN:

14 Q. Uh, you explained to Mr. Salas the minimum and maximum  
15 sentence for first degree CSC with a minor?

16 A. Yes.

17 Q. And also for lewd act?

18 A. Yes.

19 Q. Did -- when did the State approach you about the offer to  
20 kind of let the CSC go and let him, uh, waive presentment to  
21 lewd act instead?

22 A. It would have been probly probly a day or two before this  
23 'cause I think I had a conversation with Ms. Hodge on the, on  
24 the cell phone about this at nighttime.

25 Q. But the case was still on the trial docket?

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 A. It was.

2 Q. Okay. When did your client decide to go ahead and waive  
3 presentment and plead, would it have been that day or prior to  
4 that day?

5 A. When I conveyed to him the offer, this offer that they  
6 were going to tr -- they were potentially going to let him  
7 plead down to a lewd act, I think he started thinking about it  
8 at that point.

9 Q. So when did he make the final decision, would it have  
10 been that day?

11 A. I don't know when he made the final decision, I just  
12 know, I just know that at some point during that day he  
13 entered a plea before Judge Verdin.

14 Q. Did you explain to him what it would mean to waive  
15 presentment to the charge?

16 A. Yes.

17 Q. Okay. I believe it's on the record but in light of  
18 recent case law let me just verify for sure, did you advise  
19 him that pleading guilty to this would expose him to  
20 potentially being deported?

21 A. Yes.

22 Q. Okay.

23 A. He already, I think he already had an I.C.E. hold on him  
24 and he had a federal, uh, federal charge as well for, uh,  
25 unlawfully using a Social Security card.

SCOTT D. ROBINSON - CROSS-EXAMINATION BY MS. RATIGAN

1 MS. RATIGAN: That's all I have, Your Honor.

2 THE COURT: Okay, you can step down.

3 THE WITNESS: Thank you, Judge.

4 (Whereupon, the witness left the stand.)

5 MS. RATIGAN: May Mr. Robinson be released, Your Honor?

6 THE COURT: Fine with me, okay. Okay, got anything else?

7 MR. RECKENBEIL: Yes, Your Honor, we call Wilfredo  
8 Salas.

9 THE COURT: Alright.

10 (Whereupon, the applicant came forward.)

11 THE CLERK: Mr. Salas, please place your left hand on the  
12 Bible, raise your right hand best you can.

13 WILFREDO SALAS, having been  
14 first duly sworn, testified as follows:

15 THE CLERK: Thank you, you may be seated.

16 THE APPLICANT: I forgot my my notes.

17 MR. RECKENBEIL: Sure. If I may approach witness, Your  
18 Honor.

19 THE COURT: Yeah, that's fine. Have a seat.

20 THE CLERK: Please state your full name for the record.

21 THE APPLICANT: Wilfredo Salas.

22 THE CLERK: Thank you.

23 MR. RECKENBEIL: Thank you, Judge.

24 (Whereupon, counsel handed documents to the applicant.)

25 DIRECT EXAMINATION BY MR. RECKENBEIL:

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Wilfredo, you're being housed in Kershaw?

2 A. Yes.

3 Q. Okay. Mr. Robinson was your attorney on the case for  
4 criminal sexual misconduct?

5 A. Yes.

6 Q. Alright. Uh, you had opportunity to hear, uh, Victoria  
7 testify?

8 A. Yes.

9 Q. Uh, has she ever told you what she said before, has she  
10 ever told you this? In other words, ---

11 A. No, ac -- actually I was -- she did tell me that not to  
12 go plead guilty but when all this came about I was already  
13 arrested on on June 22nd if I believe so whenever Mr. Scott  
14 Robinson say came out with a video I never had a chance to  
15 actually see it 'cause I was already on on custody of, uh,  
16 county, the, uh, Greenville Detention Center, uh, ---

17 Q. Okay.

18 A. --- uh, for the immigration hold that he speak about and,  
19 uh, and she told me not to plead guilty but Mr. Scott Robinson  
20 when he came and offered me a plea, he only brought out a, a  
21 piece of paper saying they they was gonna drop the charges and  
22 so he say they was only going to deport me so I went and  
23 signed it and then Sunday night he came to see me on the  
24 county and tell me that I have to plea 'cause I don't sign the  
25 plea, the plea bargain and, uh, at that point he stated that

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 there was nothing else to do.

2 Q. Okay, I wanna, can I stop, I wanna stop you there 'cause  
3 you brought up about five different issues that I wanna  
4 dissect and go through. First off, Victoria said basically  
5 she thinks that Victim made this up, okay, ---

6 A. Yeah.

7 Q. --- I understand that, had she ever told you that before?  
8 Did Victoria ever told -- tell you that she thinks Victim made  
9 this up?

10 A. Uh, no, but when with ---

11 Q. Right, ---

12 A. --- Scott Robinson, yeah.

13 Q. --- just --- okay, so this the first time that you've  
14 really heard it coming out of her mouth, right?

15 A. Yeah, yeah.

16 Q. Okay. Uh, now the other thing was is that you were  
17 apprehended on June 27th 2011.

18 A. Yes.

19 MR. RECKENBEIL: And if I may approach the witness, Your  
20 Honor.

21 THE COURT: Yeah.

22 BY MR. RECKENBEIL:

23 Q. This (indicating) is a document, if you would just i --  
24 kind of identify that and then I need to show the Attorney  
25 General a copy a that. What is that?

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. Uh, this is when I got a booking on, uh, Greenville  
2 Detention Center ---

3 Q. And ---

4 A. --- for immigration hold.

5 Q. Immigration hold?

6 A. Yeah.

7 MR. RECKENBEIL: Your Honor, this is off of a, if we  
8 could make this an exhibit, uh, ---

9 THE COURT: He's offering it, do you object?

10 MS. RATIGAN: No.

11 THE COURT: Okay.

12 (Booking sheet marked Applicant's Exhibit No. 1 for  
13 identification and admitted into evidence.)

14 BY MR. RECKENBEIL:

15 Q. Wilfredo, looking at that a bond was not set on that,  
16 correct?

17 A. Yeah.

18 Q. And so June 27th until you came to court here in  
19 Greenville County you woulda been in custody, right?

20 A. Yeah, I was in custody.

21 Q. Okay. And during that time frame, how much, uh, how many  
22 times did you have visitation from, uh, your attorney?

23 A. Well the the first time when I was arrested?

24 Q. No, that, after that time.

25 A. After that time I think he only came to see me three

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 times.

2 Q. Did you ever have an opportunity to see the forensic  
3 video of Victim , uh, that he spoke, that Mr. Robinson spoke  
4 about that he received on on July 25th 2011?

5 A. No.

6 Q. And the video of Victim did Mr. Robinson ever discuss  
7 about what was on that video?

8 A. Well he just told me that it was a lot of tears and that  
9 that if I was going to go to trial then the jury was gonna  
10 believe just 'cause a child was crying in this so-called video  
11 videotape.

12 Q. Alright. You've you've heard the term "I.C.E. hold" and  
13 kinda deportation, right?

14 A. Yeah.

15 Q. The communication that you had with Ms. [sic] Robinson  
16 was it was either promised or was it his thought that if you  
17 pled guilty you would just be deported?

18 A. Well it it was his claim to signing the paper that he say  
19 if I sign it I wasn't gonna be deported and I was gonna get no  
20 time and he say that anyways you already got a I.C.E. hold so  
21 they still gonna deport you.

22 Q. Okay, and was that the reason why you plead guilty?

23 A. No, 'cause the reason why I signed the paper was to my  
24 best a my knowledge on immigration rules and regulations once  
25 that you're married to a U.S. citizen and been here more than

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1       ten years and got childs so when he told me that they was  
2       gonna drop the charges my belief was that I was gonna be clean  
3       for this charge so that's why I sign it and the Sunday night  
4       when he came to the common in person he, I think it was about  
5       7, 7:30 and then that's when he say that it was a plea bargain  
6       and there was nothing to do, that it was on his best interest  
7       to have me plead guilty 'cause he didn't want to see me going  
8       to jail for the rest a my days for something I didn't  
9       commit.

10      Q.    Now you use the word "drop" the charges, what do you mean  
11      by, what what do you mean by "drop" the charges?

12      A.    Uh, well I believe that they was gonna dismiss the  
13      case.

14      Q.    Or was there a reduction in the the charges or was it the  
15      fact that they were gonna dismiss the charges?

16      A.    Well dismiss the charges at the beginning when before I,  
17      when I sign the paper it it means that they was going immune  
18      the, dismiss the whole charge and I was gonna be clean on any  
19      record.

20      Q.    Alright, and that was communicated to you when you were  
21      in jail after you're picked up in June of 2011?

22      A.    Yes.

23      Q.    And you're saying that that was communicated to you by  
24      Ms. Robinson?

25      A.    Scott Robinson.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Alright. And your understanding of immigration rules at  
2 that point in time is that you could have stayed in the  
3 country because the fact that you were married to an American  
4 citizen.

5 A. Not only that because I was gonna be free of the  
6 charge.

7 Q. Alright. Then what changed? In other words, what what  
8 happened with the fact that you came to court?

9 A. Well everything changed the Sunday night as I repeat when  
10 he came to see me and tell me that I had to plead guilty  
11 'cause I already sign the paper and there was no other way  
12 out.

13 Q. And what paper do you remember signing?

14 A. Uh, I remem -- I don't really recall the paper, I just  
15 went and and signed it and then he he, as as I signed it he  
16 went and also signed himself and then he left and that was  
17 actually on a Thursday when he -- when I sign the paper on on  
18 the common.

19 Q. Okay, so he signed a piece a paper and you signed a piece  
20 a paper?

21 A. I signed it and then he went and signed.

22 Q. Did you ever see that piece a paper again?

23 A. No.

24 Q. Do you know whether or not it was a guilty plea sheet?

25 A. Well I came to find out after I've been incarcerated for

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 this whole time when I received discovery that's when I,  
2 that's the first time that I ever saw that it was a plea.

3 Q. Okay. And was that what you signed that day in jail?

4 A. Yeah.

5 MR. RECKENBEIL: May I approach the witness, Your  
6 Honor?

7 THE COURT: (No audible response.)

8 BY MR. RECKENBEIL:

9 Q. Does that (indicating) look like what you signed when you  
10 were in jail after the pick up in June of 2011?

11 A. I really don't recall if that's exac -- exactly same  
12 paper that I signed but, I mean, I know I did sign something  
13 but I just don't recall what paper it was.

14 Q. Okay. Now the -- did you know whether or not that there  
15 was a possibility you were gonna go to a jury trial that week  
16 in August?

17 A. Yeah, I I knew 'cause we had a a prime hearing on June  
18 23rd which he say we needed to see that, uh, if the victim was  
19 able to testify on on on another courtroom and I was gonna be  
20 represented by him and the, and the Court's appointed another  
21 counsel so he can speak with me and he was gonna be in the  
22 other courtroom with the victim through video conference and,  
23 uh, we were set to go to trial except for after the day when

24 he made me sign the paper that's when everything changed.

25 Q. So what what you were actually describing you're saying

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 that in June of two thousand ---

2 A. '10.

3 Q. --- in in 2011 ---

4 A. 2011.

5 Q. Um-hum.

6 A. 2011.

7 Q. --- there was a hearing to determine whether or not Victim  
8 would have to testify in open court or whether or not she had  
9 to testify in the judge's chambers or by video conference, you  
10 remember that?

11 A. Yes.

12 Q. And you're saying that you were present and Mr. Robinson  
13 was present?

14 A. Everyone present.

15 Q. And was there another counsel appointed for you?

16 A. Not at that, not at that time but he also came and see me  
17 in the county when I was arrested told me that there's a  
18 counselor that was appointed and I recall his name was, uh,  
19 Will, uh, Goo (phonetic), Will something, I just don't recall  
20 it.

21 Q. Okay. And at that hearing was there a ruling as to  
22 whether or not Victoria, or sorry Victim , would testify in open  
23 court or in the judge's chambers or by video conferencing?

24 A. It was by video conference.?

25 Q. Did you have an opportunity to observe Victim testify that

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 day?

2 A. No.

3 Q. Who who all testified at that hearing?

4 A. On that hearing the on -- the grandma was the only one  
5 that testified and, uh, and the Cris, uh, the lady from the  
6 Cris, uh, Rape ---

7 Q. Crisis Center.

8 A. --- Center.

9 Q. Alright. Did you have an ability to ask the grandmother  
10 questions that day?

11 A. No.

12 Q. Alright. Did anybody on your behalf have an opportunity  
13 to ask questions that day?

14 A. No.

15 Q. Uh, was ---

16 A. Well ---

17 Q. Go ahead, I'm sorry.

18 A. --- uh, did in fact, uh, Scott did but Mr. Scott did but  
19 he als -- he only ask questions to, uh, that, uh,  
20 professional, is a doctor or or therapist, whatever she was,  
21 he asked her a couple of questions.

22 Q. Okay. Uh, did you ever ask, uh, Mr. Robinson or this  
23 other attorney who you said was appointed to you, uh, to get  
24 that transcript of that hearing for you to review?

25 A. Um, unless or really not 'cause 'cause to my knowledge I

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 really never knew what a Rule 5 was or what a transcript mean  
2 'cause I was, I know it is no excuse but, I mean, you know,  
3 you only learn your lesson after you fall.

4 Q. And at that point in time you don't recall whether or not  
5 the grandmother provided testimony as to whether or not she  
6 coerced her or not coerced her.

7 A. No.

8 Q. And you don't recall whether or not Mr. Robinson or any  
9 other attorney asked her questions on the record that day.

10 A. No.

11 Q. Uh, to your, uh, knowledge did you ever review the case  
12 file or what we call "discovery", did you ever review that?

13 A. No.

14 Q. Okay. Uh, when you and I have discussed this over the  
15 last period of 18 months or so, uh, I showed you some letters,  
16 uh, that were mailed by Mr. Robinson, uh, were the addresses  
17 the proper address as to when those letters were coming out  
18 with discovery?

19 A. No.

20 Q. Okay, and why's that?

21 A. 'cause I I didn't supposed to have contact with the  
22 victim when she was staying, residing in the address with with  
23 my wife at the time.

24 Q. Okay, so the, so the letters that contained the discovery  
25 for you to review that you observed, uh, were sent to your old

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 house ---

2 A. Yes.

3 Q. --- and that was where Victim the victim lived?

4 A. Yes.

5 Q. And you were ordered by the Court that you could not  
6 be ---

7 A. I ---

8 Q. --- there.

9 A. --- could not be or trespass or be near that that  
10 address.

11 Q. Okay. And you were residing ---

12 A. On my ---

13 Q. --- where at that point in time?

14 A. I was staying with my mother, uh, 13 Blass -- 13 Bragg  
15 (phonetic) Street ---

16 Q. Okay.

17 A. --- it's in Greenville, South Carolina.

18 Q. Do you know whether or not that that, uh, discovery  
19 materials were ever forward on to you, uh, at your new address  
20 that was sent to the old address?

21 A. No.

22 Q. And so you're saying here under oath today that you never  
23 had an opportunity to review the entire case file that we now  
24 know is what you call discovery.

25 A. No.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. Okay. Do you recall how many times you had the  
2 opportunity to, uh, speak with Mr. Robinson over the course a  
3 representation in this matter?

4 A. I mean, I spoke with him couple a times but we actually  
5 never had a time to sit down and go through the, through the  
6 discovery. Every time I go to the office it just be to give  
7 him money and and me I was asking for receipts of how how much  
8 money that I still owe him or or that I need to stop paying  
9 him or there was but I I really never ask him about discovery  
10 'cause at that point I really have no money so . . .

11 Q. Okay, alright. Now you you wanted to submit an amended,  
12 uh, PCR ---

13 A. Yes, sir.

14 Q. --- application, okay, ---

15 A. Yes.

16 Q. --- you have that with you today?

17 A. Yes.

18 Q. Okay. Is there additional allegations or anything that  
19 you would like to submit?

20 A. This -- I'm not gonna speak of all the claims but I do  
21 wanna submit it, I just wanna speak of the claims that I  
22 believe, uh, Will made.

23 Q. Okay. Well understand, Wilfredo, this is your one bite  
24 at the apple so I want you to have the opportunity. Is there  
25 anything else that we have not discussed that is in your

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 amended application that you would like to set forth to the  
2 Court?

3 A. Yes.

4 Q. Go ahead.

5 A. I'm gonna do the claims that I think I might wanna let  
6 you, let you ---

7 Q. I -- well we've had discussions about this back and  
8 forth, uh, and ---

9 A. Of course, I I want, uh, Your Honor, if I can address  
10 Your Honor that my Eng -- my reading English and my English is  
11 not very good so, uh, if I can have somebody to read for  
12 me ---

13 Q. I I would be happy ---

14 A. --- of course.

15 Q. --- to.

16 A. And I wanna s -- this . . .

17 Q. So you're, first off, you would agree with me that what  
18 you've already discussed the fact that your trial counsel  
19 failed to disclose to you discovery materials that you didn't  
20 have the opportunity to review.

21 A. Yes.

22 Q. Okay. Uh, and the fact that, uh, you didn't have the  
23 opportunity to review the videotape of Victim when she provided  
24 testimony or however else it was her evaluations you never had  
25 a chance to review that.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 A. No, but I think I also have a a a motion where he  
2 submitted on on May, May, uh, si -- May May 5th that, uh, no  
3 judge rule or or ruled on an order for him to get the video so  
4 I don't see how it's supposed to go for him to get the video  
5 without without a judge order.

6 Q. So what you're saying is is that the clerk a court's file  
7 at, uh, here ---

8 A. He file a motion ---

9 Q. Bear with me a second. You're saying that the clerk a  
10 court's file is deficient of a signed order of the protective  
11 order allowing your counsel to get that video, is that what  
12 you're claiming?

13 A. Yes.

14 Q. Okay, alright. And you're also saying that the clerk a  
15 court's file is -- doesn't contain your discovery motion filed  
16 by your attorney?

17 A. Yes.

18 Q. It doesn't contain the filings from the solicitor's  
19 office as to the notice of alibi?

20 A. Yes.

21 Q. And is it also, uh, deficient and does not contain the  
22 motion filed by the State for your counsel to turn over any  
23 other information pertinent?

24 A. Yes.

25 Q. Okay. Okay. Understand the fact that we've had prior

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 discussions, uh, during previous testimony about the lesser  
2 cluded [sic] infla -- offense but you wanted to make it ---

3 A. Put it, ---

4 Q. --- on the record ---

5 A. --- put it on the record ---

6 Q. --- about the fact that you don't think that the Court  
7 had jurisdiction over your plea with the lesser cluded  
8 offense.

9 A. Yes.

10 Q. We've also had discussions of the victim impact  
11 statement.

12 A. Can can you read what what I say on on my paperwork so it  
13 be on the record or or will you want me to ---

14 Q. Uh, ---

15 A. --- read it?

16 Q. --- what I'm gonna do is can I make this part a the  
17 record, Your Honor, afterwards?

18 THE COURT: Yeah, you got any objection to it? I  
19 mean, ---

20 MS. RATIGAN: I ---

21 THE COURT --- it's certainly not timely.

22 MS. RATIGAN: --- I was gonna object first of all it's  
23 not timely and second of all this is getting into hybrid  
24 representation and, you know, he has ---

25 THE COURT: Yeah.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 MS. RATIGAN: --- an attorney who can file legal  
2 documents for him.

3 MR. RECKENBEIL: And, Your Honor, while I I I would agree  
4 with that, uh, I think everything has been discussed but of  
5 course given him his obviously one time opportunity ---

6 THE COURT: Yeah, go ahead, just read it in.

7 MR. RECKENBEIL: I'll be happy to read it to the Court if  
8 that's okay.

9 THE COURT: Well I don't want -- just paraphrase, ---

10 MR. RECKENBEIL: I don't mind paraph ---

11 THE COURT: --- I don't wanna ---

12 MR. RECKENBEIL: And, Your Honor, I am paraphrasing it,  
13 I'm already to Claim Number 6, uh, ---

14 THE COURT: Outta how many?

15 MR. RECKENBEIL: Uh, I believe six outta six, ---

16 THE COURT: Okay.

17 MR. RECKENBEIL: --- so 'cause I think that they've been  
18 discussed, uh, but of course I wanted him to have every  
19 opportunity to talk about, uh, each claim.

20 THE COURT: Well he's pretty much talked about everything  
21 we've talked about so far.

22 BY MR. RECKENBEIL:

23 Q. And the victim, the thing that I was wanting to talk  
24 about was the victim impact statement, ---

25 A. Yeah.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. --- that you feel that, uh, Mr. Robinson should have  
2 objected to that.

3 A. Objected to it's under that, uh, rules that everybodys  
4 who have the chance to review, to review, uh, the paperwork  
5 before going into into court which I never had a chance to  
6 review and that you see in the transcript there's no record  
7 where he als -- where he review it, he just went and say I  
8 have not seen it and I don't know what the purpose of it and  
9 he he really -- I really know why -- I really don't what the  
10 letter contained.

11 Q. Alright. And the objection or the claim that you have as  
12 to whether or not of no contact direct or indirect what do you  
13 wanna state to the Court about that? Did that hamper the  
14 investigation?

15 A. What claim would you say it be?

16 Q. Uh, Number 6.

17 A. Number 6. Uh, it's a crime, a a crime defendant entering  
18 a guilty plea must be aware of the nature concerning elements  
19 of of the offense the maximum and the minimum mandatory  
20 penalties, that's, uh, *Pittman vs. State* ---

21 Q. Okay, ---

22 A. --- which ---

23 Q. --- and you're saying that the record is deficient of  
24 that?

25 A. Uh, yes.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. In other words, during your guilty plea that there was  
2 no, uh, advisement of yours as to what the possibility of  
3 sentencing could be?

4 A. Yes.

5 Q. Okay. We've already discussed the fact of the notice of  
6 alibi claim that you didn't receive, correct?

7 A. Yes.

8 Q. And you would agree with me that a lot of your, uh,  
9 amendment to your PCR goes to the big discrepancies and facts  
10 of ---

11 A. Discrepancies ---

12 Q. --- in the, in in the investigation?

13 A. Well not only the discrepancies of the allegations itself  
14 but dates and time vary from from the very beginning 'cause  
15 this that the victim keeps cha -- keep changing the story from  
16 from the doctors to the, to to the, uh, police, to the  
17 sheriff's department to the Cris Centers and to the forensic  
18 the event -- the dates and and allegations varyin' which is  
19 not consistent.

20 Q. And bear with me on this question, Wilfredo, these  
21 things that you've alleged in this ---

22 A. Yes.

23 Q. --- PCR amendment are things that you've learned from the  
24 discovery that I provided you after your conviction?

25 A. Yes.

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 Q. And these are discrepancies that you've noted, correct?

2 A. Yes.

3 Q. Alright.

4 A. Also have ---

5 Q. And ---

6 A. --- a ch ---

7 Q. --- which which gets to Claim Number 7, is that your  
8 claim that your guilty plea was not voluntarily and it was  
9 involuntarily made.

10 A. Yes.

11 Q. Do you base that upon the fact of lack of knowledge ---

12 A. Yes.

13 Q. --- of the, of the case file and reviewing it with your  
14 attorney that you didn't really know what you were being  
15 accused of and then all the discrepancies that you were noting  
16 in the file?

17 A. Yes, yes, but also like I say not knowing the maximum and  
18 the minimum mandatory but either either, uh, charge.

19 Q. I know that you've got one claim here that without  
20 negotiations or recommendations but you realize is that the  
21 sentencing range is up to a judge when you ---

22 A. I u ---

23 Q. --- good go in front of a judge for a plea, correct?

24 A. Yeah, I understand that but it's also the solicitor  
25 promised not to recommend and she should not recommend a

WILFREDO SALAS - DIRECT EXAMINATION BY MR. RECKENBEIL

1 specific sentence in court when she already promised not to  
2 recommend a specific sentence.

3 Q. And and you're saying that the -- there was no objection  
4 noted by your counsel when the prosecution, uh, ---

5 A. Scott didn't do it.

6 Q. --- asked for the maximum amount of time?

7 A. Yes.

8 Q. And what i -- the last one what is your argument as to  
9 the motion to quash the indictment?

10 A. Well the last one, the last one I had a a known, uh,  
11 constitute how to file a motion to squash the indictment  
12 before coercing me into pleading guilty to to due to the fact  
13 that there is a varies as to this offense. Every indi --  
14 every indictment should be deemed and judged sufficient as  
15 good in the law which is additional to allegations as to time  
16 and place as required by the laws.

17 Q. Okay. Wilfredo, one kind of final question to wrap  
18 everything up. Everything that you've had a chance now to  
19 review: hearing Victoria come forth before this court and  
20 testifying, if you would have known this before you went to  
21 court August 8th 2011 would you have pled guilty?

22 A. No.

23 Q. And do you think that, uh, you should have known these  
24 facts, uh, based upon hiring your attorney?

25 A. Yes.

## WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 Q. Okay. Please answer any questions that the, uh, Attorney  
2 General might have for you.

3 CROSS-EXAMINATION BY MS. RATIGAN:

4 Q. So you're testifying you've never looked at any of the  
5 evidence in the case?

6 A. Yes.

7 Q. You didn't look at any police reports?

8 A. No.

9 Q. The report from the medical doctor?

10 A. The medical doctor I never just actually saw a report.  
11 The only thing that I heard from my wife it was that the  
12 doctor said it was only a rash for -- from, uh, not wiping or  
13 or or not cleaning her, uh, ---

14 Q. Okay.

15 A. --- herself.

16 Q. You never saw any statements from the victim?

17 A. No.

18 Q. You never saw anything at all?

19 A. No.

20 Q. Okay. Did you review the criminal sexual conduct with a  
21 minor first degree charge with Mr. Robinson, did he tell you  
22 kinda what that charge was and what it meant?

23 A. Uh, not, not.

24 Q. Okay. Well why did you tell the judge that day that you  
25 had discussed the charge with him?

## WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 A. He, the judge addressed the lewd act ---

2 Q. Okay, so you did ---

3 A. --- and ---

4 Q. --- discuss ---

5 A. --- that he only a ---

6 Q. I'm sorry.

7 A. --- he only asked me if I wo -- if he talked to me about  
8 the sex registration.

9 Q. Okay, so Mr. Robinson explained lewd act to you?

10 A. Lewd act at ---

11 Q. Yes.

12 A. --- at the point not, all he told me that I was just  
13 gonna be deported, at that time that's all I knew.

14 Q. So he never explained lewd act to you?

15 A. No.

16 Q. He never explained to you the sentence you could  
17 receive?

18 A. Uh, he did, he say, he say it was 0 to 15 but he never, I  
19 mean, I I -- he kept telling me that I was just gonna be  
20 deported.

21 Q. Okay. Well well I'll ask you then why did you tell Judge  
22 Verdin that, uh, why did you agree with her when she said

23 that, uh, you know, asked you if you had discussed the lewd  
24 act charge with Mr. Robinson, why did you say you discussed  
25 it?

## WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 A. The lewd act?

2 Q. Yeah.

3 A. 'cause that's all he told me on the lewd act that it was  
4 only, uh, 0 to 15 and that was it but to discuss a lewd act we  
5 never got to discuss a lewd act, all I know it was 0 to 15.

6 Q. Okay. And you told Mr. Robinson you didn't, uh, touch  
7 the victim, you didn't do it?

8 A. Yes.

9 Q. And you're saying today you didn't know your wife was  
10 going to assist your defense?

11 A. Yes.

12 Q. How is that possible?

13 A. 'cause, uh, after that I wasn't able to be with my wife.  
14 She was living with my two kids herself and I would only talk  
15 to her every now and then to go see my kids.

16 Q. So you never talked to her about the case at all?

17 A. Actually not but she was over by my side but we never  
18 discuss no case 'cause I really never review no no evidence so  
19 it was really nothing to talk about.

20 Q. And you didn't know that she'd given Mr. Robinson a  
21 statement?

22 A. Uh, at that point not 'cause I was already incarcerated  
23 on, uh, Greenville County which I said that I never got to see  
24 it.

25 Q. Okay. So today is the first time you're hearing that she

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 thought the victim was lying.

2 A. Yes.

3 Q. Okay. When were you arrested on this charge?

4 A. On this charge it was, uh, April the 27th ---

5 Q. And that ---

6 A. --- of ---

7 Q. --- was what year?

8 A. --- 2010.

9 Q. Okay. And did you make bond?

10 A. Yes.

11 Q. And did you end up being arrested again?

12 A. Yes.

13 Q. When was that?

14 A. That was, uh, June June 27th of 2011.

15 Q. Okay. Why were you arrested again?

16 A. Uh, 'cause, uh, somebody call immigration and say that I  
17 was sellin' drugs.

18 Q. Okay. When did Mr. Robinson tell you the State was not  
19 gonna go forward with the criminal sexual conduct charge and  
20 instead it be lewd act, when did he tell you that?

21 A. That was, uh, actually four days prior to that to  
22 August 8.

23 Q. Okay. When you pled guilty that day, were you satisfied  
24 with the work that Mr. Robinson had done for you?

25 A. Um, I know that I say yes but now that I know the facts

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 the, uh, answer woulda been different.

2 Q. Okay, so you were satisfied at the time but now you've  
3 had some time to think about it you're not satisfied anymore.

4 A. Now that I reviews my case myself, yes.

5 Q. Why didn't you tell the judge that day that the facts  
6 were wrong and that you weren't guilty?

7 A. Well, 'cause on on my mind like I say it was that I was  
8 gonna get deported, that I was gonna get no time. If I woulda  
9 been deported then, I mean, even though I wasn't gonna be able  
10 to come back to the U.S. anymore I would still make a life in  
11 in my hometown in Mexico.

12 Q. So you believed if you went ahead and pled guilty you'd  
13 get deported and get no time and not have to serve any kind of  
14 sentence for this charge?

15 A. Yes.

16 Q. Okay. And is that something Mr. Robinson told you or  
17 just something you believed would happen?

18 A. That's something Mr. Robinson told me.

19 Q. He told you if you pled guilty you'd serve no time.

20 A. N -- well not time but he say that I was gonna be  
21 deported.

22 Q. Okay. So he didn't tell you you'd serve no time, he just  
23 told you you'd be deported.

24 A. That well matter of fact the quote is no time 'cause I  
25 wo -- I already had, uh, the immigration hold which they was

WILFREDO SALAS - CROSS-EXAMINATION BY MS. RATIGAN

1 gonna deport me for the same month 'cause I was gonna go to  
2 court on the federal charges and they was gonna give me time  
3 served so as soon as they give me time served that they were  
4 just gonna deport me.

5 MS. RATIGAN: That's all I have, Your Honor.

6 THE COURT: You know if you win this you come back, start  
7 over and you're lookin' at 25 to life, you know that?

8 THE APPLICANT: Yes.

9 THE COURT: Okay. You can step down, thank you.

10 (Whereupon the applicant left the stand.)

11 MR. RECKENBEIL: That would be the applicant's showing,  
12 Your Honor.

13 THE COURT: Alright, anything from the State?

14 MS. RATIGAN: We rest on the record, Your Honor.

15 THE COURT: Okay.

16 MR. RECKENBEIL: Your Honor, if I could just have one 30  
17 second, uh, ---

18 THE COURT: Yeah, go ahead.

19 MR. RECKENBEIL: *State vs. Hyman*, Your Honor, I think  
20 it's been something that has brought out, uh, about videotapes  
21 and undercover informants and confidential re -- ref --  
22 formants [sic] and when the Court looked at that it basically  
23 said, You know what, if your trial counsel is looking at the  
24 drug buys and they see that you're on the videotape and then  
25 they review that with the defendant, the defendant has the

## MOTIONS AND MATTERS

1 opportunity to review that videotape then we're gonna say it's  
2 okay. It's a -- the relying upon *State vs. Hyman* with a  
3 little bit of a stretch I think it might be analogous in this  
4 matter. If if he's locked up, doesn't have the opportunity to  
5 view that videotape of the the person that's really gonna be  
6 the accuser 'cause if I think throughout the course of this  
7 PCR we've learned that really Victim never ever has been viewed  
8 in coming forth and testifying and so in reliance upon *State*  
9 *vs. Hyman* I think that that videotape is key, giving him the  
10 opportunity to view that videotape would see his accuser, I  
11 don't think he ever had that opportunity to do that. In light  
12 of that I think his guilty plea then would have been  
13 involuntary and then be ineffective assist of counsel  
14 underneath the objective standard.

15 THE COURT: So you're saying that nobody ever viewed the  
16 videotape.

17 MR. RECKENBEIL: Well saying that Mr. Robinson's  
18 testimony obviously he said that he view -- viewed the  
19 videotape.

20 THE COURT: Yeah, well it concerns the Court that he  
21 said that your client came to his office and viewed the  
22 videotape ---

23 MR. RECKENBEIL: Yes, sir.

24 THE COURT: --- when clearly that was impossible.

25 MR. RECKENBEIL: Yes, sir. Yes, sir, Your Honor, and and

## MOTIONS AND MATTERS

1 that's the Court's conclusion and ---

2 THE COURT: That is a fiction that just is very  
3 disturbing ---

4 MR. RECKENBEIL: Uh, so ---

5 THE COURT: --- but ---

6 MR. RECKENBEIL: Thank you. Yes, Your Honor, uh, in in  
7 light of that that's where we feel that there is . . .

8 THE COURT: Well, State anything you want to, anything  
9 you got?

10 MS. RATIGAN: He needs to be able to prove prejudice,  
11 Your Honor, there's been nothing brought here today about any  
12 of the allegations. The victim impact statement we don't know  
13 how prejudicial it was 'cause we didn't see it, obviously it's  
14 not discovery so that kinda knocks that out. This transcript  
15 about a prior hearing the question was asked, Did any of your  
16 attorneys ask for the transcript, well it hasn't been produced  
17 today so we can't speculate as to its potential prejudicial  
18 nature. The videotape hasn't been produced today, again, we  
19 can't speculate again to its prejudicial nature and and I  
20 think this argument of, ya know, no one's ever seen her  
21 testify, I I don't really see ---

22 THE COURT: Well ---

23 MS. RATIGAN: --- that that ---

24 THE COURT: --- it would carry some weight if he went to  
25 trial but he pled guilty, when he did that he gave up all his

## MOTIONS AND MATTERS

1 rights, uh, and I I agree with the State that there's been no  
2 prejudice here. I mean, he he dodged a a serious, uh, to to  
3 you not -- he "dodged a bullet" to use a a little phrase, uh,  
4 when he got the "reduction" in the charge and so I'm I'm not  
5 gonna grant his application but I am really concerned about  
6 testimony from an officer of the Court that clearly couldn't  
7 have happened, so in any event I deny it, ask you to prepare  
8 an order.

9 MS. RATIGAN: Thank Your Honor.  
10  
11  
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## CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 23, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 65, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

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

May 21, 2014

Margaret A. Woods

Margaret A. Woods, Court Reporter  
in and for the State of South Carolina at Large.

**Greenville County Government**  
online.**Detentio**  
Inmate

Home | Employment | Incarcerated Inmates | Mail | Medical | Money | Mission Stmt. | Notices | Operations | Org. Chart | Psychological | Telepho

**Inmate Search: Details****Inmate Description and Location:**

Name / ID Number: SALAS-HERNANDEZ, WILFREDO / 0221

Gender: MALE

Race: HISPANIC

Date of Birth: [REDACTED]

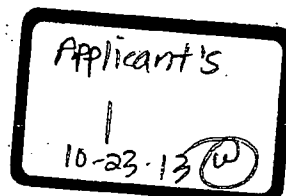
Hair Color: BLACK

Eye Color: BROWN

Height: 5' 09"

Weight: 201 lb

Picture Date: 6/27/11

Housing Unit: M2 (Building Two)**Inmate Charges:****THE CHARGE IS AS FOLLOWS:****Charge 1 : PRISONER IN TRANSIT: FEDERAL Charge Date: 6/27/11 Warrant: DUSM****Arresting Agency: FEDERAL GOVERNMENT Trial Judge: FEDERAL Committing Judge: FEDERA****Sentence: 06/27/2011 - No Bond set by Judge**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Wilfredo Salas, )  
 S.C.D.C. No. 347611, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-23-3341

ORDER OF DISMISSAL

**RECEIVED**

FEB 05 2014

**SC Court of Appeals**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
 2014 JUN 8 PM 4:20

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 17, 2012. The Respondent made its return on August 31, 2012. An evidentiary hearing into the matter was convened on October 23, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by John G. Reckenbeil, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Victoria Salas and the Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

#### PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant waived presentment to the Greenville County Grand Jury for the charge of lewd act on a minor (2011-

1  


GS-23-6255A). Scott D. Robinson, Esquire represented the Applicant.

On August 8, 2011, the Applicant pled guilty. The Honorable Letitia H. Verdin sentenced the Applicant to fifteen years imprisonment. The Applicant did not appeal.

### **ALLEGATIONS**

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

1. Ineffective assistance of counsel:
  - a. Failure to obtain discovery.
  - b. "[M]islead applicant about the conditions of the plea."
  - c. "[F]ailed to investigate the discrepancies and evidence of which concerns these allegations in this case."
  - d. "[F]ailed to investigate discrepancies of which concerns the date of offense in this case."
2. Involuntary guilty plea.

At the PCR hearing, the Applicant's attorney stated they were proceeding solely upon issues of ineffective assistance of counsel, lack of subject matter jurisdiction, and after-discovered evidence.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

#### **Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action,

"[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The Applicant stated he met with plea counsel three times while he was in jail and never reviewed any of the evidence (including the victim's videotaped interview) in his case. The Applicant stated he told plea counsel he was innocent and counsel said he had to plead guilty. The Applicant stated he believed the State would dismiss the case when he pled guilty. The Applicant stated plea counsel said he would be deported and not serve any time. The Applicant stated plea counsel should have filed a motion to quash the indictment. The Applicant stated plea counsel should have objected to the victim impact statement being introduced at the plea hearing. The Applicant stated plea counsel should have objected when the State asked for the maximum sentence because there was no recommendation in this case. The Applicant admitted he told the plea judge that he was satisfied with plea counsel's performance, but said that - after he has reviewed his case - he has decided he is unsatisfied. The Applicant also admitted that he did not dispute the State's version of the facts at the plea hearing, but said it was because he

believed he was being deported.

Plea counsel testified he filed discovery motions after he was retained. Plea counsel testified he reviewed the discovery materials with the Applicant and the Applicant said he was innocent. Plea counsel testified they reviewed the sentence ranges for both first-degree criminal sexual conduct with a minor and lewd act upon a child. Plea counsel testified he and the Applicant watched the videotape of the victim's forensic interview while he was out on bond. Plea counsel testified the Applicant also had a pending federal charge and a potential ICE hold and that he knew there was a possibility he would be deported. Plea counsel testified he received the victim's impact statement the day of the plea hearing and that the Applicant and plea judge looked at it. Plea counsel testified he did not object to the statement because he did not see the purpose of it and did not believe the State did anything inappropriate.

The Applicant told the plea judge he wanted to plead guilty and did not dispute the State's factual recitation. (Plea transcript, p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.4-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly prepare the case. This Court finds the Applicant and plea counsel had meetings about the case while the Applicant was in jail. This Court finds the Applicant told plea counsel he was innocent of the charges. This Court finds the Applicant clearly changed his mind and decided to plead guilty because the plea transcript in this case is evidence that the Applicant entered a free and voluntary guilty plea. There is no credible evidence to support the Applicant's contention that plea counsel told him he would merely be deported if he pled guilty. The Applicant was, in fact, advised of the potential sentence he could receive – the Applicant testified plea counsel

informed him that he faced a sentence of 0-15 years.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have moved to quash the indictment. The Applicant has failed to articulate a valid basis upon which plea counsel could have made such a motion.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected at the plea hearing to both the victim impact statement and the State's request for the maximum sentence. While the victim was in the courthouse, she was not in the courtroom during the guilty plea hearing. The State passed up an "age-appropriate type letter" to the plea judge as a victim impact statement. (Plea transcript, pp.13-14). This Court finds there was no valid reason for plea counsel to have objected to the submission of this statement from the minor victim. The State also requested the plea judge levy the maximum sentence. (Plea transcript, p.12). This Court finds the Applicant has failed to articulate a valid reason for trial counsel to have objected to the State's request, as the Applicant was pleading guilty without a sentence recommendation from the State.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

### Subject Matter Jurisdiction

Plea counsel testified the Applicant was originally charged with first-degree criminal sexual conduct with a minor but that the State eventually agreed to drop this charge if the Applicant would waive presentment (and plead guilty to) the charge of lewd act upon a child. The Applicant admitted plea counsel told him a few days before the plea hearing that the State was dropping one charge and he would plead guilty to another.

This Court finds the Applicant has failed to meet his burden of proving the plea court lacked subject matter jurisdiction. It is clear the Applicant pled guilty to lewd act upon a child as a new charge – not as a lesser-included offense of the original charge. (Plea transcript, p.11). The Applicant waived presentment of the lewd act charge to the Greenville County Grand Jury. (Plea transcript, p.6). The Applicant knew he was pleading guilty to lewd act upon a child instead of first-degree criminal sexual conduct with a minor several days before he pled guilty and the waiver of presentment and the indictment were clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005).

### After-Discovered Evidence

The Applicant's wife, Victoria Salas,<sup>1</sup> stated the victim was five years old at the time of the incident. Salas stated the victim made two disclosures of abuse (and that she first disclosed to the grandmother) and that she took the victim to the doctor after the second disclosure. Salas stated the Applicant never picked the victim up from school and that there were other people in the house at the time the abuse would have occurred. Salas stated she made a statement to this effect to plea counsel. Salas stated she did not believe any abuse happened and that she never

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<sup>1</sup> This witness is also the victim's mother.

had an opportunity to speak to the victim about the abuse. Salas admitted she was assisting the defense team before the plea hearing.

The Applicant stated he did not know Salas had been helping the defense in his case. The Applicant stated he did not know until the day of the PCR hearing that Salas believed the victim was lying.

Plea counsel confirmed Salas had given a statement to him that she did not believe the victim. Plea counsel testified Salas said she believed her mother may have influenced the victim. Plea counsel also confirmed Salas had been assisting in the Applicant's defense.

This Court finds Victoria Salas's testimony does not constitute after-discovered evidence. See Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Most importantly, Salas's opinion (that the victim was lying and had been influenced by her mother) was known to the defense before the Applicant pled guilty. It is clear the parties both knew Salas was assisting the Applicant with his defense – Salas admitted this in her testimony and the assistant solicitor also pointed it out to the plea judge. (Plea transcript, p.11). As such, Salas's testimony cannot be considered to be after-discovered evidence. This Court further finds both Salas and the Applicant are not credible on this issue. Salas stated she never discussed the abuse with the victim (her five-year-old daughter) and the Applicant stated he did not know Salas was assisting in his defense. This Court finds this testimony to be patently unbelievable. See State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("The credibility of newly-discovered evidence is for the trial court to determine.").

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#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

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present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

### CONCLUSION

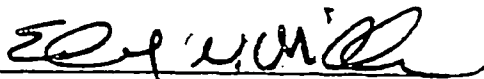
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

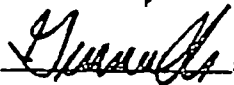
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

### **IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 7 day of January, 2014.

  
Edward W. Miller  
Presiding Judge  
Thirteenth Judicial Circuit

, South Carolina.

**WITNESSES**

Lorraine Henderson

Greenville County Sheriffs Office

DOA: 4/27/2010 H/M DOB: [REDACTED]

SSN: [REDACTED]

**ARREST WARRANT NUMBER  
DIRECT PRESENTMENT**

**ACTION OF GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury  
Date:*

DOCKET NO. 2011-GS-23- 6255A

KBF

The State of South Carolina,

County of Greenville

**COURT OF GENERAL SESSIONS**

S-8-11

TERM 2011

**THE STATE**

vs.

**WILFREDO SALAS**

Indictment for

✓  
2468

**LEWD ACT UPON A CHILD**

**VIOLATION § 16-15-0140**

STATE OF SOUTH CAROLINA     )  
                                              )  
COUNTY OF GREENVILLE     )

INDICTMENT FOR  
LEWD ACT UPON A CHILD

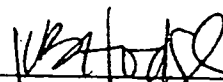
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That WILFREDO SALAS did in Greenville County, between the 2nd day of July, 2009 and the 19th day of March, 2010, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of D.G., a child who was less than eleven years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the defendant or such child. This is in violation of §16-15-0140 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.

  
SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON

Wilfredo Salas, #347611,  
 Applicant,

Case No.: 2012-cp-23-3341

v.

State of South Carolina,  
 respondent

MOTION TO VACATE JUDGMENT  
 PURSUANT TO SCRCP Rule 60(b)  
 (4), (5)

Comes Now Wilfredo Salas, the Applicant in the aboved  
 captioned matter respectfully moving this Honorable Court on  
 a motion to vacate judgment pursuant to SCRCP Rule 60(b), (4), (5).  
 Applicant would show this Court the following:

PROCEDURAL BACKGROUND

The Applicant plead guilty in Greenville County August  
 8, 2011, to Lewd Act on a minor. See Enl The Applicant received  
 a maximum sentence of fifteen (15) years. (2011-GS-23-6255).  
 Scott D. Robinson, Esquire represented the applicant. On August  
 17, 20011 Counsel filed a timely "post-trial" motion to  
"Reconsider the sentence" See Attachment (A) ( Motion for  
 Reconsideration of sentence). As to this date an Order has  
 not been issued concerning this motion. See Attachment (B)  
 (Letter from Clerk of Court dated January 5, 2015)

On May 17, 2012 Applicant filed a post-conviction relief  
 application and on August 31, 2012 the State made its return.

---

Enl The Applicant was originally charged with criminal sexual conduct with  
 a minor less than ten years of age. The State agreed to reduce the charge  
 in exchange for Lewd Act on a minor.

An evidentiary hearing into the matter was convened on October 23, 2013 at the Greenville County Courthouse. The Honorable Edward W. Miller issued an Order dated January 7, 2014 filed January 8, 2014. Before the time expired to perfect an appeal PCR Counsel filed a Notice with intent to Appeal. Wifredo Salas v. State, Appellate Case No.: 2014-000240. The South Carolina Supreme Court dismissed the appealed by way of an Order filed December 10, 2014.

Applicant has filed a second post-conviction relief application dated January 16, 2015. Wilfredo Salas v. State of South Carolina, Case No.: 2015-cp-23-00985

#### ARGUMENT

Applicant hereby asserts that the judgment issued in this case is void ab initio as a matter of law and no longer equitable that the judgment should have prospective application because this court was without subject matter jurisdiction and the authority to issue an order in the instant case where applicant's guilty plea counsel filed a motion for "Reconsideration of Sentence" on his behalf under Rule 29(a) S.Cr.Crimp which is still pending at this current time. See Attachment (B) (Letter from Clerk of Court) Therefore, the court of common pleas was without the authority and subject matter jurisdiction to issue an order pursuant to S.C.R.Civ.Proc. Rule 71.1 (b) "Time and form of application" (An application for post-conviction relief "[c]annot" be made while an appeal from conviction or sentence is pending or "during the time in which an appeal may be perfected". Al-Shabazz, 527 S.E.2d

747 (S.C.2000)(Holding Applicant may not bring a PCR action while a direct appeal is pending.Rule 71.1(b),the focus usually is upon alleged errors made by trial or plea counsel.)

Its Clear Applicants application was filed and Ruled upon during which time an appeal may be perfected. The PCR Court order could impact upon applicant's rights to adjudicate his ineffective assistance of plea counsel claims on PCR after the ruling on the motion to Reconsider his sentence and impact his jurisdictional claims in the Appellate court once the motion to Reconsider the sentence is finalize in the General Sessions court..See Fn2 Therefore, the judgment should <sup>be</sup> vacated as it is no longer equitable that the judgment should have prospective application where the court was without subject matter jurisdiction pursuant to Rule 71.1(b)-Al-Shabazz, supra. Linda McCompany Inc. V. Shore, (S.C. App.2007) 375 S.C. 432,653 S.E.2d 279 (The definition of "void under voidness provision of relief from judgment rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction); Saro Investments v. Ocean Holiday Partnership, (S.C. APP.1994) 314 S.C. 116,441 S.E.2d 835 (Generally, standard to be applied in determining whether an order or judgment has prospective application, within meaning of rule providing for relief from judgment on ground that it is no longer equitable that judgment have prospective application, is whether it is executory or involves supervision of changing conduct or condition by court.)

---

Fn2 A timely motion to Reconsider sentence toll time to file an appeal.Rule 203(b),(2) Wilder State,696 S.E.2d 587 (2010)

CONCLUSION

It is respectfully asked that this Honorable Court vacate its judgment as a matter of law due to applicant's motion to Reconsider sentence is still pending in the General Sessions court and could impact upon his rights to seek and appeal and post-conviction relief application.

This 10th Day of July, 2015

Wilfredo Salas

Wilfredo Salas, #347611

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON

Wilfredo Salas, #347611, )

Case No.: 2012-cp-23-3341

Applicant, )

v. )

State of South Carolina )

Certificate of service

Respondent )

I, Wilfredo Salas the applicant in the aboved captioned matter hereby certify that I did serve his motion to vacate judgment on:

Attorney General Office

Allen Wilson

P.O. Box 11549

Columbia, South Carolina 29211

by depositing a copy in the U.S. mail with sufficient funds

this 10<sup>th</sup> day of July, 2015

Wilfredo Salas

Wilfredo Salas, #347611

(Attachment (A))

App. P.121

STATE OF SOUTH CAROLINA )

IN THE GENERAL SESSIONS

COUNTY OF GREENVILLE )

C.A. NO.: I-479542

State of South Carolina, )

vs. )

Wilfredo Salas, )

Defendant. )

FILED-CLERK OF COURT  
PAUL B. JOHNSON  
CANTONMENT, SC

2011 AUG 17 PM 4:22

### MOTION FOR RECONSIDERATION OF SENTENCE

The defendant, by and through undersigned attorney, moves the Court to reconsider his sentence in the above-mentioned matter. On August 8, 2011, the defendant pled guilty to the crime of Lewd Act on a Minor and received the maximum sentence of fifteen (15) years. The defendant believes that the sentence is harsh and unfair considering the following:

1. Contrary to what the State seemed to allege at the hearing, there was no record of any penetration either penile or digital;
2. Contrary to what the State seemed to allege at the hearing, there was no record of "vaginitis; "
3. Contrary to what the State seemed to allege at the hearing, there was no record of the child being affected negatively by any action allegedly taken by the defendant. In fact, the documents filled out by the maternal grandmother indicated no depression, acting out or talk of sex by the minor child;
4. The interests of justice and fairness would be served if the court were to reconsider her sentence and convene a hearing on the matter;

5. The criminal record of the defendant is minor; and
6. The defendant is the father of two minor children with the mother of the child that made the allegation against him.

Respectfully submitted,



Scott D. Robinson (SC Bar ID # 65351)  
9 East Avenue  
Greenville, SC 29601  
ATTORNEY FOR DEFENDANT

Dated: 8/17/11



Office of the Clerk of Court  
Greenville, South Carolina  
Paul B. Wickensimer  
Clerk of Court

App. P.123

Circuit Court Division  
Greenville County Courthouse  
305 East North Street  
Greenville, South Carolina 29601  
(864) 467-8551 FAX (864) 467-8540

*Attachment (b)*

January 5, 2015

Wilfredo Salas #347611  
Kershaw C.I.  
4848 Goldmine Hwy  
Kershaw, SC 29067

Re: I479542

Dear Mr. Salas:

Your letter postmarked 12-31-2014 was received 1/2/2015. As of today's date, no order in relation to the Motion for Reconsideration of Sentence filed 8/17/2011 has been filed with the Clerk of Court for the above referenced charge.

Sincerely,  
Clerk of Court  
Greenville County General Sessions

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

Wilfredo Salas, #347611  
Petitioner,

v.

State of South Carolina  
Respondent.

IN THE COURT OF COMMON PLEAS

C/A 2012-cp-23-3341

NOTION FOR SUMMARY JUDGMENT PURSUANT  
TO RULE 56(c) ,SCRPC

Comes Now Wilfredo Salas, the Petitioner in the above caption matter respectfully moving this Honorable Court on a motion for summary judgment pursuant to Rule 56(c), SCRPC. Petitioner will show unto this Court the following:

FACTUAL/PROCEDURAL BACKGROUND

Petitioner plead guilty in Greenville County on August 8, 2011, to lewd act on a minor. See Fn1 The Petitioner received fifteen years of imprisonment without negotiations or recommendation. (2011-GS-23-6255A). On August 17, 2011, Counsel Scott D. Robinson, Esquire filed a timely post-trial motion to reconsider sentence. See Attachment (a) (Motion for reconsideration of sentence).

On May 17, 2012, Petitioner filed a post-conviction relief application raising several grounds of ineffective assistance of counsel. The Respondent made it return on August 31, 2012. An evidentiary hearing into the matter was convened October 23, 2013 at the Greenville County Courthouse. The Honorable Edward W. Miller issued an Order dated January 7, 2014, filed January 8, 2014. PCR Counsel filed a Notice with intent to appeal. Wilfredo v. State, Appellate Case No.: 2014-000240. The South Carolina Supreme Court dismissed the appealed by way of an order filed December 10, 2014. See Fn2

Fn1 Petitioner was originally indicted for criminal sexual conduct with a minor less than ten years of age.

Fn2 Petitioner filed a Motion to Vacate PCR judgment dated July 10, 2015. The Respondent has not responded to the motion to vacate judgment.

Petitioner has a second PCR application pending. Wilfredo Salas v. State, Case No.:2015-cp-23-00985.

### ARGUMENT

In the instant case Petitioner plea counsel filed a timely post-trial motion to reconsider Petitioner's sentence. See Attachment (a), supra. However, at the time the PCR Court issue its Order in Petitioner's first PCR application the Court of General Sessions had not issued an order adjudicating the motion for reconsideration of sentence. See Attachment (b), (c) (Letters from the Clerk of Court). Pursuant to Rule 203(b), (2)/SCRAC and Rule 71.1(b) the PCR Court was without the authority and jurisdiction over the subject matter and Petitioner because jurisdiction still belonged to general sessions. Rule 71.1(b) provide in relevant part:

AN APPLICATION FOR POST-CONVICTION RELIEF CANNOT BE MADE WHILE AN APPEAL FROM THE CONVICTION OR SENTENCE IS PENDING OR **DURING THE TIME AN APPEAL NAT BE PERFECTED.**

It is clear Petitioner's application was ruled upon during the time an appeal could have been perfected. In Wilder v. State, 696 S.E.2d 587 (2010) the Court held "a motion to reconsider sentence toll time to file an appeal. Rule 203(b), (2)". Therefore, the judgment in Petitioner's **first PCR** is void ab initio and should be vacated. Linda McCompany Inc. v. Shore, 375 S.C. 432, 653 S.E.2d 279 (S.C.App.2007) (The definition of void under voidness provision of relief from judgment rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction).

### **Summary Judgment Standard**

Rule 56 of the South Carolina Rules of Civil Procedure states, as to a party who has moved for summary judgment:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions of file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 56(c). A fact is "material" if proof of its existence would affect disposition of the case under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242/248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the nonmovant. *Id.* at 257. When determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. United States v. Diebold, Inc., 369 U.S. 654/655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the court that there is no genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317/323 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings. *Id.* at 324. Rather, the non-moving party must demonstrate specific, material facts exist that give rise to a genuine issue. *Id.* Under this standard, the existence of a mere scintilla of evidence in support of the non-movant's position is insufficient to withstand the summary judgment motion. Anderson, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude granting the summary judgment motion. Ross v. Commc'ns Corp., 759 F.2d 355, 365 (4th Cir.1985). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted". Anderson, 477 U.S. at 248.

Petitioner has shown via the record that summary judgment is proper in the instant case because no genuine issue as to any material fact existed and he

is entitled to judgment as a matter of law. Rules 56 Civ.Proc. Sloan v. Friends of Hunley, Inc, 369 S.C. 20,630 S.E.2d 474 (S.C.2006).

CONCLUSION

Wherefore, based upon the foregoing, the Petitioner's motion for summary judgment be granted and the Motion to Vacate Judgment be granted.

Respectfully Submitted

Wilfredo Salas, 347611  
4848 Goldmine Hwy  
Kershaw, South Carolina 29067

This 23, June 2016

Wilfredo Salas

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Wilfredo Salas, #347611,

Petitioner,

C/A No.: 2012-cp-23-3341

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas, the Petitioner in the above caption matter hereby certify that I did serve motion for summary judgment on:

South Carolina Attorney General Office

Alan Wilson

P.O. Box 11549

Columbia, South Carolina 29211

by depositing a copy in the mail with sufficient funds on this 23 day of June 2016.

Wilfredo Salas

Wilfredo Salas, #347611

4848 Goldmine Hwy

Kershaw, South Carolina 29067

Attachment (A)

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

State of South Carolina, )

vs. )

Wilfredo Salas, )

Defendant. )

IN THE GENERAL SESSIONS

C.A. NO.: I-479542

FILED IN BANK OF COURT  
WILLIAMSON  
COURT HOUSE  
COLUMBIA, SC

2011 AUG 17 PM 4:22

### MOTION FOR RECONSIDERATION OF SENTENCE

The defendant, by and through undersigned attorney, moves the Court to reconsider his sentence in the above-mentioned matter. On August 8, 2011, the defendant pled guilty to the crime of Lewd Act on a Minor and received the maximum sentence of fifteen (15) years. The defendant believes that the sentence is harsh and unfair considering the following:

1. Contrary to what the State seemed to allege at the hearing, there was no record of any penetration either penile or digital;
2. Contrary to what the State seemed to allege at the hearing, there was no record of "vaginitis; "
3. Contrary to what the State seemed to allege at the hearing, there was no record of the child being affected negatively by any action allegedly taken by the defendant. In fact, the documents filled out by the maternal grandmother indicated no depression, acting out or talk of sex by the minor child;
4. The interests of justice and fairness would be served if the court were to reconsider her sentence and convene a hearing on the matter;

5. The criminal record of the defendant is minor; and
6. The defendant is the father of two minor children with the mother of the child that made the allegation against him.

Respectfully submitted,



Scott D. Robinson (SC Bar ID # 65351)  
9 East Avenue  
Greenville, SC 29601  
ATTORNEY FOR DEFENDANT

Dated: 8/17/11



Office of the Clerk of Court  
Greenville, South Carolina  
Paul B. Wickensimer  
Clerk of Court

App. P.131

Circuit Court Division  
Greenville County Courthouse  
305 East North Street  
Greenville, South Carolina 29601  
(864) 467-8551 FAX (864) 467-8540

Attachment (b)

January 5, 2015

Wilfredo Salas #347611  
Kershaw C.I.  
4848 Goldmine Hwy  
Kershaw, SC 29067

Re: I479542

Dear Mr. Salas:

Your letter postmarked 12-31-2014 was received 1/2/2015. As of today's date, no order in relation to the Motion for Reconsideration of Sentence filed 8/17/2011 has been filed with the Clerk of Court for the above referenced charge.

Sincerely,  
Clerk of Court  
Greenville County General Sessions



Office of the Clerk of Court  
Greenville, South Carolina

App. P.132

Paul B. Wickensimer  
Clerk of Court

Circuit Court Division  
Greenville County Courthouse  
305 East North Street  
Greenville, South Carolina 29601  
(864) 467-8551 FAX (864) 467-8540

Attachment (C)

April 21, 2016

Wilfredo Salas #347611  
Kershaw Correctional Inst.  
4848 Goldmine Highway  
Kershaw, SC 29067

Dear Mr. Salas:

Your letter postmarked 3/18/2016 was received 3/29/2016. We are unable to fulfill your request for copies. No order ruling on the "Motion of Reconsideration of Sentence" filed 8/17/2011 was filed with the Clerk of Court for the warrant/indictment numbers you provided.

Sincerely,  
Clerk of Court  
Greenville County General Sessions

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FORM GREENVILLE  
COURT OF COMMON PLEAS  
STILWELL ROBIN PRESIDING JUDGE  
CASE NO. 2012-CP-23-3341

WILFREDO SALAS,

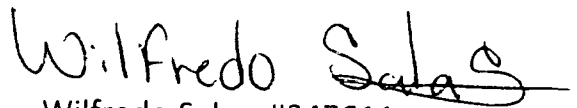
PETITIONER,

Vs

STATE OF SOUTH CAROLINA RESPONDENT.

NOTICE OF APPEAL

Wilfredo Salas, appeals the order of Honorable Stilwell Robin  
Dated 7-1-2016 which denied Petitioner's Rule 60(b), (4) and (6)  
Motion and Motion for Summary Judgment Pursuant to Rule  
56(c). Petitioner received this Form 4 on July 8, 2016

  
Wilfredo Salas, #347611

Other counsel of record:

4848 Goldmine Hwy

Alan Wilson

Kershaw, S.C 29067

Attorney General Office

P.O. Box 11549

Columbia, S.C 29211.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE  
COURT OF COMMON PLEAS  
STILWELL ROBIN PRESIDING JUDGE  
CASE No. 2012-CP-23-3341

Wilfredo Salas,

Petitioner,

Vs

State of South Carolina

Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas the applicant in the above captioned matter hereby  
certify that I did serve his Motion of Notice of Appeal on:

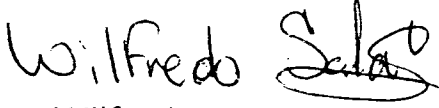
Attorney General Office

Alan Wilson

P.O. Box 11549

Columbia, S.C 29211

By depositing a copy in the U.S. mail with sufficient funds this 13<sup>th</sup>  
Day of July, 2016

  
Wilfredo Salas

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

Wilfredo Salas, #347611

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2017CP2303341

State of South Carolina

ENTERED COMPUTER

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

The Petitioner's Motion to Vacate Judgment Pursuant to Rule 60(b), (4), and (6) and Motion for Summary Judgment Pursuant to Rule 56(c) are respectfully denied for failure to comply with the South Carolina Rules of Civil Procedure and for lack of merit.

This order ☒ ends ☐ does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

  
Circuit Court Judge

2158

Judge Code

7/1/2016

Date

For Clerk of Court Office Use Only

7-1-16  
This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows: 7-1-16

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of  
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Re: Salas V. State

Appellate Case No.2016-001479

Dear Clerk Mr. Shearouse:

Please find enclosed a Motion to Vacate Form 4 and to remand to lower Court to issue a Properly file final order I am filing with the Court.  
The opposing counsel has been served.

Respectfully Submitted,

Wilfredo Salas  
Wilfredo Salas, #347611.

August 18<sup>th</sup>, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

App.P138

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
STILWELL ROBIN, PRESIDING JUDGE

APPELLATE CASE No.2016-001479.

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

Motion to Vacate Form 4 and Remand to Lower  
Court to issue a Properly Filed Final Order

Comes Now, Wilfredo Salas, the petitioner in the above caption matter respectfully moving in this Honorable Court on a Motion to Remand to Lower Court to Issue a Proper Final Order. Petitioner will show unto this Honorable Court the following:

I.

The petitioner filed a Rule 60(b)(4)(5), SCRC Motion to Vacate his PCR Judgment in Wilfredo Salas Vs. State, (2012-CP-23-03341). See Attachment (A) (Rule 60(b) Motion). Petitioner filed a Motion For Summary Judgment Pursuant to Rule 56 (c), SCRC. See Attachment (b).

However, on July 1, 2016 petitioner recieved a "Form 4" indicating his Rule 60(b) and Motion For Summary Judgment was denied because he failed to comply with the South Carolina Rules of Civil Procedure and for lack of Merits.

This "Form 4" does not show the "Respondent neither the petitioner" being served with the Suppose to be Order. The Honorable Judge who denied petitioner's Motions name are not legible and does not make Specific finding of Fact and Conclusion of Law. See Attachment (c) It is argved by petitioner this From 4 is not A Properly Filed Final Order. Therefore, this Court should Vacate the From 4 Order and issue a order directing the lower Court to issue a properly file final appealable order. Finally, is asked that all briefing be held in abeyance until this motion is adjudicated.

Respectfully Submitted,

Wilfredo Salas  
Wilfredo Salas, #347611.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
STILWELL ROBIN, PRESIDING JUDGE

Appellate Case No.2016-001479

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

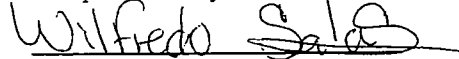
CERTIFICATE OF SERVICE

I, Wilfredo Salas, hereby certify that I did serve Petitioner's Motion to Vacate Form 4 and to remand to lower Court to issue a Properly file Final Order on:

Attorney Genera Office  
John B. Aplin, Esquire  
P.O. BOX 11549  
Columbia, S.C 29211

by depositing a copy in the mail with sufficient funds on this 18th day of August, 2016.

Respectfully Submitted,



Wilfredo Salas, #347611.  
Kershaw Correctional Inst.  
4848 Goldmine Hwy.  
Kershaw, S.C 29067.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE  
COURT OF COMMON PLRAS  
ROBIN B. STILWELL, PRESIDING JUDGE  
Case No. 2016-001479

App.P.140

App. P. 140

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Attorney General Office  
Patrick Schmeckpeper, Esquire  
Post Office Box 11549  
Columbia, S.C 29211.

Wilfredo Salas, #347611  
Ker. Corr. Inst. MAh. B-49  
4848 Goldmine Hwy.  
Kershaw, S.C 29067.

## STATEMENT OF THE CASE

App.P141

The petitioner plead guilty in Greenville County August 8, 2011, to Lewd Act on a minor. See Fnl The Petitioner received a maximum sentence of fifteen years of imprisonment. (2011-GS-23-6255). Scott D. Robinson, Esquire represented the Petitioner. On August 17, 2011, counsel filed a "timely post-trial motion" to "reconsider the sentence". See Appendix page 121, 129. As to this date no "[o]rder" has been issued adjudicating this motion on the merits. See Appendix pages 123, 132.

On May 17, 2012, Petitioner filed a post-conviction relief application. See Appendix page 24-32. The State made its return on August 31, 2012. See Appendix page 33-38. An evidentiary hearing into the matter was convened on October 23, 2013, at the Greenville County Courthouse. The Honorable Edward W. Miller issued an order dated January 7, 2014, filed January 8, 2014, dismissing the PCR with prejudice. See Appendix page 106-113.

On October 10th, 2015, the Petitioner filed a Rule 60(b), (4), (5), SCRCP motion alleging his PCR judgment in [2012-cp-23-3341] were void and should no longer have prospective application and no longer should <sup>b/c</sup> equitable because the Court of Common Pleas were without jurisdiction due to Petitioner's timely post-trial motion pending during the time the PRC Court issued its order. See Appendix pages 116-123.

On June 23, 2016, the Petitioner filed a motion for summary judgment pursuant to Rule 56(c), SCRCP. The Court denied Petitioner's Motion to Vacate Judgment pursuant to Rule 60(b), (4) (5) and Motion for Summary Judgment pursuant to Rule 56(c) finding:

(1) Petitioner failed to comply with the South Carolina Rules of Civil Procedure and

(2) Lack of merit.

See Appendix page 135.

---

Fnl The Petitioner was origannly charged with criminal sexual conduct with a minor less than ten years of age. The State agreed to reduce the charge to Lewd Act on a minor.

App. P142  
However, after the lower Court issued its order denying  
Petitioner's motions the Respondent in several emails addressed  
to judge Gravely admits there is an outstanding post-trial motion  
pending but nevertheless effected the court's jurisdiction  
because his counsel filed it under his original warrant  
number and not the indictment number in which he plead to. See  
Attachment (a) (Patrick Schmeckpeper emails addressed to judge  
Gravely).

STATEMENT OF THE GROUNDS ON APPEAL

(1) Whether the Lower Court abused its discretion and committed error of law when it found Petitioner's Motion to vacate judgment pursuant to Rule 60(b) and Motion for Summary Judgment pursuant to South Carolina Rules of Civil Procedure lack merits?

(2) Whether the Lower Court abused its discretion and committed error of law when it found Petitioner's Motion to vacate judgment and Motion for Summary judgment should be dismissed because he failed to comply with the South Carolina Rules of Civil Procedure?

ARGUMENT

The Lower Court abused its discretion and committed error of law when it found Petitioner's Motion for to Vacate Judgment pursuant to Rule 60(b) and Motion for Summary Judgment pursuant to Rule 56(c) SCRPC lack merits

APP. P. 14

143 The Petitioner asserts the Lower Court committed error of law and abused his discretion when he found Petitioner's Motions should be dismissed because they lack merits. See Appendix page 135. In the instant case the Petitioner's guilty plea counsel filed a "[t]imely post-trial" motion pursuant to Rule 29(a), South Carolina Rules of Criminal Procedures. See Fnl Petitioner Retained an attorney to represent him on post-conviction. See Appendix page 106 (John G. Reckenbeil represented Petitioner). The PCR Court issued an order denying Petitioner's PCR Application during a time in which he had a "[t]imely post trial" motion pending in the Court of General Sessions. See Appendix page 121 and 106.

Judgment

Petitioner asserts the PCR Court, in (2012-cp-23-3341) is a nullity and void ab initio as a matter of law and should not have prospective application and no longer equitable because the court could not exercise its authority because the Court lacked jurisdiction pursuant to S.C.R.Civ.Proc Rule 71.1(b) "Time and Form of Application" (An application for post-conviction relief "[c]annot" be made while an appeal from conviction or sentence is pending or during the time in which an appeal may be perfected". See Al-Shabazz, 527 S.E.2d 747 (S.C.2000) (Applicant may not bring a PCR action while a direct appeal is pending. Rule 71.1(b), the focus usually is upon alleged errors made by trial or plea counsel), Rule 203(2), SCACR. It's clear Petitioner's PCR application were filed during which time an appeal could be perfected. Therefore, the lower court erred when it found Petitioner's motions should be dismissed and denied for lack of merits.

Fnl Petitioner's guilty plea counsel filed this post-trial motion to reconsider his sentence under his original arrest warrant number I-479542. See Appendix page 121 and were properly before the court.

The lower Court abused its discretion and committed error of law when it found Petitioner's motion to vacate judgment and Motion for Summary Judgment should be dismissed because he failed to comply with the South Carolina Rules of Civil Procedure

The Petitioner asserts the lower court erred when it found Petitioner failed to comply with the South Carolina Rules of Civil Procedure. See Appendix page 136. In the instant case Petitioner sent copies of his motions to the opposing counsel and properly signed them according to the Rules of Court. See South Carolina Rules of Civil Procedure. See Pnl

Pnl The lower court does not identify which Rule Petitioner failed to comply with.

Therefore, the lower court erred and the order should be reversed.

#### CONCLUSION

I am respectfully asking that the Court grant Writ of Certiorari and appoint counsel.

This 3<sup>rd</sup> Day of October, 2016

Wilfredo Salas  
Wilfredo Salas, #347611

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE  
COURT OF COMMON PLEAS  
ROBIN B. STILWELL, PRESIDING JUDGE  
Case No. 2016-001479

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas, hereby certify that I did serve petitioner's Writ of Certiorari on:

Attorney General Office  
Patrick Schmeckpeper, Esquire  
Post Office Box 11549  
Columbia, S.C 29211-.

by depositing a copy in the U.S mail with sufficient funds  
this 3rd day of October, 2016.

Wilfredo Salas  
Wilfredo Salas, #347611



App.P147

ALAN WILSON  
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737  
PCR FACSIMILE: 803.734.4113

November 17, 2016

***Via Hand Delivery***

Honorable Daniel E. Shearouse  
Clerk of the Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

**RE: Wilfredo Salas v. State of South Carolina  
Circuit Court Case No: 2012-CP-23-3341  
Appellate Case No.: 2016-001479**

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Return to the Petition for Writ of Certiorari in the above matter for filing in your office. By copy of this letter I am serving opposing counsel with this return today.

Sincerely,

Patrick L. Schmeckpeper  
Assistant Attorney General

PLS/aam  
Enclosures

cc: Wilfredo Salas, SCDC No. 347611, Esquire (w/enclosure)

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County  
Court of Common Pleas  
Robin B. Stilwell, Circuit Court Judge

2012-CP-23-3341  
Appellate Case No. 2016-001479

WILFREDO SALAS,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**RETURN TO PETITION FOR WRIT OF CERTIORARI**

ALAN WILSON  
Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General  
Bar No. 102100

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

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11/1/77

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**QUESTIONS PRESENTED**

- I. Is certiorari warranted to review the lower court's denial of Petitioner's post-trial motions where Petitioner's argument that the denial of his PCR application is void for lacked jurisdiction is without merit?
- 
-

### STATEMENT OF THE CASE

The Petitioner is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Petitioner was originally charged with criminal sexual conduct, 1<sup>st</sup> degree (warrant number I-479542). Pursuant to plea negotiations, that charge was dismissed. Thereafter, the Petitioner waived presentment to the Greenville County Grand Jury for the charge of lewd act on a minor (2011-GS-23-6255A). Scott D. Robinson, Esquire represented the Petitioner.

On August 8, 2011, the Petitioner pled guilty. The Honorable Letitia H. Verdin sentenced the Petitioner to fifteen years imprisonment. The Petitioner did not appeal.

---

The Petitioner filed a PCR application on May 17, 2012 (2012-CP-23-3341). The Petitioner raised the following issues:

1. Ineffective assistance of counsel:
  - a. Failure to obtain discovery.
  - b. "[M]islead applicant about the conditions of the plea."
  - c. "[F]ailed to investigate the discrepancies and evidence of which concerns these allegations in this case."
  - d. "[F]ailed to investigate discrepancies of which concerns the date of offense in this case."
2. Involuntary guilty plea.

An evidentiary hearing was convened on October 23, 2013 at the Greenville County Courthouse. John G. Reckenbeil, Esquire represented the Petitioner. At the PCR hearing, Mr. Reckenbeil stated they would proceed solely upon issues of ineffective assistance of counsel, subject matter jurisdiction, and after-discovered evidence. The Honorable Edward W. Miller denied and dismissed the PCR application by order filed January 8, 2014.

App. P152

The Petitioner filed a notice of appeal. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of a Johnson<sup>1</sup> petition. The South Carolina Supreme Court denied the petition for writ of certiorari on December 10, 2014. The remittitur was sent on December 30, 2014.

Petitioner then filed post-trial motions arguing because there was an outstanding motion to reconsider his original sentence in general sessions court, the PCR Court was without jurisdiction to hear his case. App. p. 116-132. Those motions were denied by Judge Stilwell in an order filed July 1, 2016. This appeal follows.

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<sup>1</sup> Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

**STANDARD OF REVIEW**

Whether to grant or deny a motion under SCRCP 60(b) is within the sound discretion of the judge. Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 16 (1992). Reviewing courts are limited to determining whether the lower court abused its discretion. Saro Investments v. Ocean Holiday Partnership, 314 S.C. 116, 124, 441 S.E.2d 835, 840 (Ct. App. 1994).

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## ARGUMENT

- I. Certiorari is not warranted to review the lower court's denial of Petitioner's post-trial motions where Petitioner's argument that the denial of his PCR application is void for lack of jurisdiction is without merit.**

The PCR Court correctly concluded Petitioner was not entitled to relief pursuant to Rule 60(b), SCRPC. Rule 60(b) provides, in part, that

[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to ~~move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the~~ judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Petitioner argues the judgment is void due to what he argues is a lack of jurisdiction in the lower court. This argument appears to stem from the fact that his plea counsel filed a post-trial motion to reconsider under his arrest warrant number I-479542, which was never ruled upon. This warrant number refers to the charge of criminal sexual conduct (CSC) with a minor, where the victim is under the age of 11 years old, first degree. Supp. App. p. 1.

The problem with Petitioner's argument is that the CSC 1<sup>st</sup> degree charge was ultimately dismissed.<sup>2</sup> Petitioner then pled guilty and was sentenced on a different charge, lewd act on a minor, which was directly presented with no warrant number.<sup>3</sup> App. p. 6-20. Petitioner's plea

<sup>2</sup> A General Sessions Tracking Sheet, filed with the Greenville County Clerk of Court on August 12, 2011, indicates that the charge was dismissed because Petitioner "pled to other." Supp. App., p. 5.

<sup>3</sup> Petitioner waived presentment to the Grand Jury on the Lewd Act Charge. App. p. 8.

counsel then filed a motion to reconsider sentence under the warrant number *on the dismissed charge*. App. p. 121.<sup>4</sup>

The lewd act, which Petitioner pled guilty to, and the CSC 1<sup>st</sup>, which was dismissed, were distinct charges, requiring separate indictments. Committing a lewd act on a minor is not a lesser included offense of first degree criminal sexual conduct with a minor. See State v. Norton, 286 S.C. 95, 96-97, 332 S.E.2d 531, 532 (1985).<sup>5</sup> A motion to reconsider sentence was never filed on the charge Petitioner actually pled guilty to.

Because there was no pending motion to reconsider on the charge or sentence Petitioner was actually contesting in his PCR application and at the evidentiary hearing, there were no jurisdictional defects in his prior post-conviction relief proceedings. Accordingly, the PCR Judge appropriately dismissed Petitioner's Rule 60(b) motion to alter or amend the judgment. Further, Petitioner's motion for Summary Judgment was properly denied as he was not entitled to relief as a matter of law.

---

<sup>4</sup> Respondent notes that the issue on appeal is not whether counsel was ineffective in improperly filing a motion to reconsider sentence. Rather, Petitioner argues he is entitled to relief due to the PCR Court's lack of jurisdiction to hear his case.

<sup>5</sup> This appears to be the basis for one of Petitioner's claims on his initial application for post-conviction relief. App. p. 109. Petitioner argued the circuit court lacked subject matter jurisdiction to enter his guilty plea. Id. The PCR Court concluded that it was clear Petitioner "pled guilty to lewd act upon a child as a new charge – not as a lesser included offense of the original charge." Id.

**CONCLUSION**

For the foregoing reasons, the Petition should be denied. Should this Court grant the Petition for Writ of Certiorari, Respondent requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON  
Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General  
Bar No. 102100

---

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

November 17, 2016

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

CERTIORARI TO GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Robin B. Stillwell, Circuit Court Judge

---

Circuit Case No.: 2012-CP-23-3341  
Appellate Case No.: 2016-000240

---

WILFREDO SALAS,

Petitioner,

---

v.

---

STATE OF SOUTH CAROLINA,

Respondent.

---

**CERTIFICATE OF SERVICE**

---

The undersigned hereby certifies that a true copies of the Return to the Petition for Writ of Certiorari was served upon Respondent by depositing the same in the United States mail, postage prepaid, addressed to Wilfredo Salas, SCDC 347611, Kershaw Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, on this the 17<sup>th</sup> day of November, 2016.



Anne A. Mueller  
Legal Assistant for Respondent



App.P158

ALAN WILSON  
ATTORNEY GENERAL

PCR DIVISION: 803.734.3737  
PCR FACSIMILE: 803.734.4113

November 17, 2016

*Via Hand Delivery*

Honorable Daniel E. Shearouse  
Clerk of the Supreme Court of South Carolina  
~~Post Office Box 11330~~  
Columbia, South Carolina 29211

RE: Wilfredo Salas v. State of South Carolina  
Circuit Court Case No: 2012-CP-23-3341  
Appellate Case No.: 2016-001479

Dear Mr. Shearouse:

Enclosed please find the original and six (6) copies of the Motion to File Supplemental Appendix and an original and one (1) copy of the proposed Supplemental Appendix in the above matter for filing in your office. By copy of this letter I am serving Appellant with this motion and supplemental appendix today.

Sincerely,

Patrick L. Schmeckpeper  
Assistant Attorney General

PLS/aam  
Enclosures

cc: Wilfredo Salas, SCDC No. 347611 (w/Motion and proposed Supplemental Appendix)

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

CERTIORARI TO GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Robin Stilwell, Circuit Court Judge

---

Appellate Case No. 2016-001479

---

WILFREDO SALAS, ..... Petitioner,

---

STATE OF SOUTH CAROLINA, ..... Respondent.

---

---

**MOTION TO SUPPLEMENT APPENDIX**

---

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, counsel for Respondent moves to supplement the Appendix in this case. In support of this motion, Respondent would present the following facts:

1. Petitioner was indicted for criminal sexual conduct with a minor under the age of 11, first degree (2010-GS-23-7222; warrant number I479542) in September, 2008. That charge was subsequently dismissed, and Petitioner waived presentment and pled guilty to the separate charge of lewd act with a minor (2011-GS-23-6255A).

3. Petitioner filed an application for post-conviction relief (2012-CP-23-3341), which was denied after an evidentiary hearing by the Honorable Edward Miller following in a written order filed January 8, 2014.

4. A timely Notice of Appeal was filed, and appeal was perfected pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The South Carolina Supreme Court denied certiorari on December 10, 2014. The remittitur was issued on December 30, 2014.

5. Petitioner then filed motions pursuant to Rule 60(b), and Rule 59(c), arguing his PCR Court order should be vacated because the judgment was void due to lack of jurisdiction. That motion was denied.

---

~~6. Petitioner subsequently filed a petition for writ of certiorari and appendix~~

---

challenging the lower court's denial of his post-trial motions. The Appendix, however, does not contain the clerk's records, including the warrant, indictment, and notice of disposition for the charge of criminal sexual conduct with a minor under the age of 11, first degree

7. Inasmuch as these documents are relevant and pertinent material under Rule 243(f), SCACR that should be included in the Appendix, counsel respectfully requests to include the same in a Supplemental Appendix.

WHEREFORE, as the Appendix is incomplete, counsel for Respondent requests  
this Court grant the motion to supplement the Appendix.

Respectfully submitted,

ALAN WILSON  
Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General  
S.C. Bar # 102100

Post Office Box 11549

~~Columbia, S.C. 29211~~

~~(803) 734-3737~~

By: 

ATTORNEYS FOR RESPONDENT

November 17, 2016.

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Robin Stilwell, Circuit Court Judge

---

Appellate Case No. 2016-001479

---

Wilfredo Salas, .....Petitioner,

v.

State of South Carolina, .....Respondent.

---

**SUPPLEMENTAL APPENDIX**

---

WILFREDO SALAS  
Kershaw Correctional Institute  
South Carolina Department of Corrections

APPEARING *PRO SE*

ALAN WILSON  
Attorney General

PATRICK SCHMECKPEPER  
Assistant Attorney General  
S.C. Bar. # 102100  
Post Office Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

ATTORNEY FOR RESPONDENT

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## ARREST WARRANT

1-479542

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

10-47281

against

Wilfredo Salas

Address: Ymca St

Greenville, SC 29611-

Phone (864)444-2926

SSN

Sex M

Race H

Height 5

Weight 165

DL State SC

DL #

DOB

Agency ORI #

SC0230000

Prosecuting Agency

Greenville County Sheriffs Office

Prosecuting Officer

Lorraine Henderson - 0166

Offense Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

Offense Code

0385

Code/Ordinance Sec

16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date

## RETURN

A copy of this arrest warrant was delivered to defendant on

W Salas

4-27-10

M. JENKINS 516/818

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

Greenville General Sessions

305 E. North Street

Greenville County Courthouse

Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant Lorraine Henderson

who

being duly sworn deposes and says that defendant Wilfredo Salas

did within this county and state on or about 06/01/2009

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Greenville

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

AFFIANT HAS A STATEMENT FROM THE VICTIM, WHO IS A 5-YEAR OLD FEMALE IMPLICATING THE DEFENDANT IN THE ABOVE SAID OFFENSE. THE VICTIM STATES DURING THE TIME FRAME OF HER BEING 5 YEARS OF AGE, (7/20/09 - 3/09/10) THE DEFENDANT DID INSERT HIS FINGER INTO HER VAGINA AND ALSO HIS PENIS ON HER VAGINA. THE VICTIM STATES THESE INCIDENTS OCCURRED A LOT OF TIMES WHILE HER MOTHER WAS AT WORK. INVESTIGATION REVEALED THESE INCIDENTS OCCURRED WITHIN THE BOUNDARIES OF GREENVILLE COUNTY SEE CASE #10-047281.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 4 McGee Street

Greenville, SC 29601-

Affiant's Telephone (864)467-4121

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/1/2009

defendant Wilfredo Salas

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of Greenville

) as set forth below

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/27/2010

Signature of Issuing Judge

James L. Hudson

Judge Code 5031

(L.S.)

Judge's Address 4 McGee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 518

App. P164

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

INDICTMENT FOR  
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

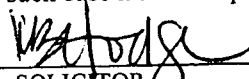
At a Court of General Sessions, convened on **SEP 21 2010**

the Grand Jurors of Greenville

County present upon their oath:

That WILFREDO SALAS did in Greenville County, between the 2nd day of July 2009 and the 9th day of March 2010, commit a sexual battery on D.G., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] 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.

  
SOLICITOR

WITNESSES

App. P166

Lorraine Henderson



Greenville County Sheriffs Office

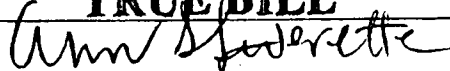
4/27/2010

ARREST WARRANT NUMBER

1479542

ACTION OF GRAND JURY

**TRUE BILL**



**FOREMAN GRAND JURY**

*Foreperson of Grand Jury*

VERDICT

*Foreperson of Petit Jury*

*Date:*

DOCKET NO. 2010-GS-23-  
KBF

007222

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2010

THE STATE

vs.

WILFREDO SALAS

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

BAIL set by

Judge Sid G. Goss  
 on 4/27/10  
 Type and Amount: NO BOND  
 Name of Surety: \_\_\_\_\_

PRELIMINARY HEARING held by

Judge \_\_\_\_\_  
 on \_\_\_\_\_  
 Defendant Attorney: \_\_\_\_\_  
 Decision: \_\_\_\_\_

DISPOSITION before

Judge \_\_\_\_\_  
 on \_\_\_\_\_  
 by \_\_\_\_\_  
 (indicate jury trial, bench trial, plea, nol. pros., etc.)  
 Disposition: \_\_\_\_\_  
 Sentence: \_\_\_\_\_

JURORS

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

WITNESSES

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

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Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_

CODEFENDANTS

\_\_\_\_\_  
 \_\_\_\_\_

**General Sessions Tracking Sheet**  
**Indictment # 0000GS23**

Name: Salas, Wilfredo  
 AKA:  
 Addr: /Ymca St  
 Greenville, SC 29611

Warrant/Ticket # I479542  
 Date of Arrest: 04/27/2010  
 Date of Offense: 06/01/2009  
 Date Rev by Clerk 04/29/2010  
 Magistrate: Hudson, James E.  
 Counts: Code: 0385/Sex-/ Criminal sexual conduct  
 with minor - victim under 11 yrs of age - First  
 degree

SSN#  
 Sex: M Race: H  
 DOB:  
 DL#

Indictment # <sup>2010</sup> 0000GS23 7222

**Disposition Information**

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: **AUG 12 2011**  
8/8/11

- Disposition**
- ☐ 1. Guilty plea
  - ☐ 2. Trial -- guilty
  - ☐ 3. Trial -- not guilty
  - ☒ 4. Dism/Not Pros/Pros Ended
  - ☐ 5. Judicial Commitment
  - ☐ 6. Judicial Dismissal
  - ☐ 7. Remanded
  - ☐ 8. Dismissed at Prelim
  - ☐ 8. No Bill
  - ☐ 9. Failure to Appear
  - ☐ 10. Other

Explain: pled to other  
 Explain: \_\_\_\_\_  
 Explain: \_\_\_\_\_  
 Explain: \_\_\_\_\_  
 Explain: \_\_\_\_\_

Judge: \_\_\_\_\_  
 Defense Atty: Scott Robinson  
 Counts: \_\_\_\_\_ Code: \_\_\_\_\_  
 Sentence: \_\_\_\_\_

Court Reporter: \_\_\_\_\_  
 Solicitor: KRIS Hodge

STATE OF SOUTH CAROLINA  
In The Supreme Court

---

CERTIORARI TO GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Robin B. Stillwell, Circuit Court Judge

---

Circuit Case No.: 2012-CP-23-3341  
Appellate Case No.:

---

WILFREDO SALAS,

Petitioner,

---

v.

---

STATE OF SOUTH CAROLINA,

Respondent.

---

CERTIFICATE OF SERVICE

---

The undersigned hereby certifies that a true copy of the Motion to Supplement the Appendix and proposed Supplemental Appendix were served upon Appellant by depositing the same in the United States mail, postage prepaid, addressed to Wilfredo Salas, SCDC No. 347611, Kershaw Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, on this the 17<sup>th</sup> day of November, 2016.



Anne A. Mueller  
Legal Assistant for Respondent

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
ROBIN B. STILWELL, CIRCUIT COURT JUDGE

2012-CP-23-3341  
Appellate Case No.:2016-001479

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

REspondent.

PETITIONER'S REPLY TO PETITION FOR WRIT OF CERTIORARI

South Carolina Attorney General Office  
Patrick L. Schmepeper,  
P.O.BOX 11549  
Columbia, S.C 29211

Wilfredo Salas #347611  
Ker.Corr.Inst.(Mag.b-49)  
4848 Goldmine Hwy.  
Kershaw, S.C 29067.

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STATEMENT OF THE GROUNDS ON APPEAL

(1) Whether the Lower Court abused its discretion and committed error of law when it found Petitioner's Motion to Vacate Judgment pursuant to Rule 60(b) and Motion for Summary Judgment pursuant to South Carolina Rules of Civil Procedure -e lack merits?

(2) Whether the lower Court abused its discretion and committed error of law when it found Petitioner's Motion to Vacate Judgment and Motion for Summary Judgment -t should be dismissed because he failed to comply with the South Carolina Rules of Civil Procedure?

STATEMENT OF THE CASE

— The petitioner plead guilty in Greenville County August 8, 2011, to Lewd Act on a minor. See Fn1. The petitioner received a maximum sentence of fifteen years of imprisonment. (2011-GS-23-6255). Scott D. Robinson, Esquire represented the petitioner. On August 17, 2011, counsel filed a "timely post-trial motion" to "Reconsider the Sentence". See Appendix page 121, 129. As to this date no "order" has been issued adjudicating this motion on the merits. See Appendix pages 123, 132. On May 17, 2012, Petitioner filed a post-~~Conviction~~ Relief application. See Appendix pages 24-32. The State made its return on August 31, 2012. See Appendix pages 33-38. An evidentiary hearing into the matter was convened on October 23, 2013, at the Greenville County Courthouse. The Honorable Edward W. Miller issued an order dated January 7, 2014, filed January 8, 2014, dismissing the PCR with pre-judice. See Appendix pages 106-113. On October 10th, 2015, the Petitioner filed a Rule 60(b), (4), (5), SCRPC Motion alleging his PCR judgment in (2012-CP-23-334 1) were void and should no longer have prospective application and no longer should equitable because the Court of Common Pleas were without jurisdiction due to Petitioner's timely post-trial motion pending during the time the PCR Court issued its order. See Appendix pages 116-123.

On June 23, 2016, the petitioner filed a motion for Summary Judgment pursuant to Rule 56(c) SCRPC. The Court denied Petitioner's Motion to Vacate Judgment pursuant to Rule 60(b), (4), (5) and Motion for Summary Judgment pursuant to Rule 56(c) finding:

(1) Petitioner failed to comply with the South Carolina Rules of Civil Procedure and

(2) Lack of merit.

See Appendix pages 135.

---

Fn1. The Petitioner was originally charged with criminal sexual conduct with a minor less than ten years of age. The State agreed to reduce the charge to Lewd Act on a minor.

However, after the lower Court Issued its order denying Petitioner's motion the Respondent in several emails addressed to judge Gravely admits there is an outstanding post-trial motion pending but never theless effected the Court's jurisdiction because his counsel filed it under his original warrant number and not the indictment number in which he plead to. See Attachment (a) (Patrick Schmeckpeper emails addressed to judge Gravely).

ARGUMENT

Certiorari is warranted to review the lower Court's denial of Petitioner's post-trial motion where Petitioner's argument that the denial of his P.C.R application is void for lack of jurisdiction does have merit.

The PCR Court did not correctly conclude Petitioner was not entitled to relief Pursuant to Rule 60(b), SCRPC. The respondent alleges because petitioner's plea counsel filed the Motion to Reconsider his Sentence under his original Arrest Warrant Number I-479542, which was never rule upon. This warrant number refers to his original charge that of criminal sexual conduct (CSC) with a minor, where the victim is under the age of 11 years old, first degree. Supp.P.1, that the lower court was correct in finding petitioner's motions lack merits.

The problem with Respondent's argument is the Fact, petitioner's plea counsel did in fact file a timely post-trial motion to Reconsider his Sentence and place his original arrest warrant number for (CSC), but the "body and language" of the timely post-trial motion plea counsel file "Specifically" addresses the "Lewd Act charge" to which petitioner pled to. See Appendix pages 121 and 122. See Fn1

Inasmuch, the Respondent are relying on the fact Petitioner's plea counsel placed the warrant number at the "Caption" of the Motion instead of Petitioner's Indictment number to which petitioner pled to is totally a frivolous argument in an attempt to uphold the PCR Judgment, a sham to the Judicial System, a waste of time and resources and Outright lame because the Plea Court "Had not" made such a ruling stating it dismissed the motion on the above procedural argument asserted by respondent.

Fn1 Petitioner argue that plea counsel action of placing the original warrant number instead of the indictment number to which petitioner pled is a scrivener error because plea counsel aim was to have the Court to Reconsider the Sentence Petitioner pled to rather than a charge that was dismissed because there was no sentence on the (CSC) charge. State V. Guillebeaux, 607 S.E.2d 99, 101 n.1(ct.App.2004)(Holding although Guillebeaux's issue on appeal referred to a motion for mistrial instead of a motion for a new trial, the Court treated the references to mistrial in his appellate brief as a scrivener error because the substance of the appate argument focused on the failure of the trial Judge to grant a new trial under the circumstances).

And to make matters worse, the plea Court still have not made a ruling on the Timely post-trial Motion as of today's date and if so petitioner hadn't been made aware of it. See Fn2

Therefore, regardless whether plea counsel placed petitioner's original Arrest Warrant number at the "Caption" of the post-trial Motion to Reconsider petitioner Sentence, the Motion was filed Timely Pursuant to Rule 29(a), SCRCriP and the language therein addressed the "Lewd Act" charge to which petitioner pled to and until the plea Court make a Ruling adjudicating the Timely post-trial motion whether on the merits and or on procedural grounds the PCR Court did not have the authority to exercise its jurisdiction and issue an order on petitioner PCR application. Al-Shabazz V. State, 527 S.E.2d 742 (S.C. 2000), Rule 203(b)(2), SCACR, S.C. Code Ann § 17-27-45(A) (Supp. 2011).

#### CONCLUSION

It is respectfully asked that this Court grant the petition for Writ of Certiorari and appoint counsel to fully brief his issues.

This 12 day of December, 2016

Wilfredo Salas  
Wilfredo Salas, #347611

---

Fn2 The respondent suggest that petitioner's proper argument would have been ineffective assistance of counsel for improperly filing a Motion to Reconsider Sentence. The problem with that statement is the fact, the plea Court has not made such a ruling that the timely post-trial motion was improperly filed because of the warrant number, therefore, under the two prong Strickland Vs. Washington, 104 S.Ct 2052 (1984) test this argument must fail. However, if the plea Court do make such a ruling in the future petitioner will have one year from that date to file a PCR application on that ground because its obvious the ground could not have been raised in the first PCR. See, Foxworth V. State, Talley V. State, 640 S.E.2d 878 (2007).

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
CERTIORARI TO GRENNVILLE COUNTY  
COURT OF COMMON PLEAS  
ROBIN B. STILWELL, CIRCUIT COURT JUDGE  
2012-Cp-23-3341  
Appellate Case No; 2016-001479

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas, hereby certify that I did serve Prtitioner's Reply to  
Petitioner for Writ of Certiorari on;

Patrick L. Schmeckpeper  
P.O. Box 11549  
Columbia, S.C. 29211

by depositing a copy in the U.S mail wiyh sufficient postage  
this 12 day of December 2016.

s/ Wilfredo Salas  
Wilfredo Salas, #347611  
Ker. Corr. Inst. (Mag. b-49)  
4848 Goldmine Hwy.  
Kershaw, S.C. 29067.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE  
COURT OF COMMON PLAS  
ROBIN B. STILWELL, PRESIDING JUDGE  
Case No. 2016-001479

RECEIVED

MAR 14 2018

S.C. SUPREME COURT

Wilfredo Salas,

Petitioner,

RECEIVED

MAR 14 2018

SC Court of Appeals

Vs.

State of South Carolina,

Respondent.

PETITION FOR REHEARING 221, SCARC

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Statement of the ground on appeal

Whether the Court of Appeals reviewed Petitioner's Appeal under the wrong standard of review, where the Order states the Court deny Petitioner's appeal from a "[p]ost-conviction relief" instead of appeal from a Rule 60(b) motion?

STATEMENT OF THE CASE

App.P180

The petitioner plead guilty in Greenville County August 8, 2011, to Lewd Act on a minor. See Enl The Petitioner received a maximum sentence of fifteen years of imprisonment. (2011-GS-23-6255). Scott D. Robinson, Esquire represented the Petitioner. On August 17, 2011, counsel filed a "timely post-trial motion" to "reconsider the sentence". See Appendix page 121, 129. As to this date no "[o]rder" has been issued adjudicating this motion on the merits. See Appendix pages 123, 132.

On May 17, 2012, Petitioner filed a post-conviction relief application. See Appendix page 24-32. The State made its return on August 31, 2012. See Appendix page 33-38. An evidentiary hearing into the matter was convened on October 23, 2013, at the Greenville County Courthouse. The Honorable Edward W. Miller issued an order dated January 7, 2014, filed January 8, 2014, dismissing the PCR with prejudice. See Appendix page 106-113.

On October 10th, 2015, the Petitioner filed a Rule 60(b), (4), (5), SCRCPP motion alleging his PCR judgment in [2012-cp-23-3341] were void and should no longer have prospective application and no longer should equitable because the Court of Common Pleas were without jurisdiction due to Petitioner's timely post-trial motion pending during the time the PRC Court issued its order. See Appendix pages 116-123.

On June 23, 2016, the Petitioner filed a motion for summary judgment pursuant to Rule 56(c), SCRCPP. The Court denied Petitioner's Motion to Vacate Judgment pursuant to Rule 60(b), (4) (5) and Motion for Summary Judgment pursuant to Rule 56(c) findings:

(1) Petitioner failed to comply with the South Carolina Rules of Civil Procedure and

(2) Lack of merit.

See Appendix page 135.

---

Enl The Petitioner was originally charged with criminal sexual conduct with a minor less than ten years of age. The State agreed to reduce the charge to Lewd Act on a minor.

However, after the lower Court issued its order denying Petitioner's motions the Respondent in several emails addressed to judge Gravely admits there is an outstanding post-trial motion pending but never theless effected the court's jurisdiction because his counsel filed it under his original warrant number and not the indictment number in which he plead to. See Attachment (a) (Patrick Schmeckpeper emails addressed to judge Gravely).

Argument

The Court of Appeals reviewed Petitioner's appeal under the wrong standard of review where the Order states the Court deny Petitioner's appeal from a "[p]ost-conviction relief instead of appeal from a Rule 60(b) motion

In this case the Court states it deny Petitioner's petition for writ of certiorari following the denial of his application for post-conviction relief. Petitioner asserts the Court has reviewed his appeal under the wrong standard of review. On certiorari in a PCR action, the court applies the "any evidence" standard. Accordingly, this Court will affirm if any evidence of probative value in the record exists to support the findings of the PCR Court. Terry v. State, 394 S.C. 62,66, 714 S.E.2d 326,328 (2011).

In the instant case Petitioner did not appeal an PCR order but instead an "[o]rder denying Petitioner's Rule 60(b) motion". ROA page 135. The decision to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial court. Lanier v. Lanier, 364 S.C. 211,215-16,612 S.E.2d 456 (Ct.App.2005), therefore, the decision can be reversed only if the lower court abused its discretion. Raby Constr, L.L.P v. Orr, 358 S.C. 10,18,594 S.E.2d 478,482 (2004). An abuse of discretion occurs when the judge issuing the order was controlled by an error of law or the order is based on factual conclusions that are without evidentiary support. BB&T v. Taylor, 633 S.E.2d 501,503 (2006). In the instant appeal Petitioner argued to the Court that the lower court abused its discretion and commit error of law when it denied Petitioner's motion to vacate judgment pursuant to the South Carolina Rules of Civil Procedure and on the merits. Therefore, in the interest of justice this court should grant rehearing and decide Petitioner's appeal under the proper standard of review.

Conclusion

It is therefore respectfully asked that this Court grant rehearing in the interest of justice.

Respectfully Submitted

Wilfredo Salas

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
APPEAL FROM GREENVILLE  
COURT OF COMMON PLEAS  
ROBIN B. STILWELL, PRESIDING JUDGE  
Case No. 2016-001479

App. P183

Wilfredo Salas,

Petitioner,

Vs.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Wilfredo Salas, hereby certify that I did serve petitioner  
's ~~Writ of Certiorari on:~~  
*Petition for Rehearing on:*

Attorney General Office  
Patrick Schmeckpeper, Esquire  
Post Office Box 11549  
Columbia, S.C 29211-.

by depositing a copy in the U.S mail with sufficient funds  
this ~~3rd~~ day of ~~October~~, 2016.

20

March, 2018.

Wilfredo Salas

Wilfredo Salas, #34