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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

William Jeffrey Young, Circuit Court Judge

BRIAN M. CURTIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001319

APPENDIX

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INDEX

INDEXi

GUILTY PLEA TRANSCRIPT DATED APRIL 4, 2012 1

SENTENCING TRANSCRIPT DATED AUGUST 16, 2012 17

SENTENCING RECONSIDERATION ORDER.....38

APPLICATION FOR POST-CONVICTION RELIEF39

RETURN46

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 20, 2015 51

PLAINTIFF’S EXHIBIT # 1 (DOCTOR BURKE’S REPORT).....94

ORDER OF DISMISSAL 113

REQUEST FOR REPRESENTATION ON APPEAL 119

INDICTMENT 121

1 MS. WILLIAMS: Your Honor, Mr. Curtis is here
2 to plead guilty to indictment 2012-GS-08-0281,
3 criminal sexual conduct in the second degree. We are
4 going to have Mr. Curtis enter his guilty plea today,
5 and we have agreed to defer sentencing to July 23rd
6 at 9:30 a.m., in front of Your Honor in Charleston.

7 The victims are aware of the plea. They're
8 not here today because they understood that he would
9 not be sentenced, but will be there on the 23rd to
10 address the Court.

11 And as you can see on the sheet, Your Honor,
12 the State has agreed to a ten-year cap. And the
13 sentencing range on this charge is zero to 20. We
14 have agreed to zero to ten.

15 THE COURT: You are Brian Michael Curtis?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Curtis, you're here today, you
18 have been indicted by the Berkeley County Grand Jury,
19 indictment 2012-GS-08-0281, criminal sexual conduct
20 with a minor, second degree.

21 You can get up to 20 years in prison for that.
22 I'm told that you want to plead guilty to that
23 indictment. Is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. We have some things

1 that we need to discuss with regards to that.

2 Is that a strike offense?

3 MS. WILLIAMS: It is, Your Honor. It is a
4 serious offense. It's not violent, but it is
5 serious.

6 THE COURT: On your indictment you have
7 16-3-655(2). But it should be (b)(2); is that
8 correct?

9 MS. WILLIAMS: Yes, Your Honor.

10 THE COURT: All right. Any objection to
11 amending the indictment?

12 MS. WILLIAMS: Not from the State.

13 THE COURT: Anything from the defense? Is
14 that all right? It should be -- there is no 655(2),
15 it should either be (a)(2) or (b)(2). I want you to
16 initial that.

17 Any objection from the defense?.

18 MR. BIERING: No, Your Honor.

19 THE COURT: All right. Now, that is in fact a
20 most serious offense. So first of all, let me tell
21 you that this is what we call a strike offense. We
22 have in this state two types of strike offenses.

23 You are familiar with the game of baseball?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And the phrase, three strikes and

1 you're out?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Well, in the criminal justice
4 system they've developed over the years now a system
5 of what they call strike offenses. And if you get so
6 many strike offense convictions in your lifetime,
7 you're out. In other words, you go to jail for the
8 rest of your life without the possibility of parole.

9 South Carolina has two such categories;
10 three-strict offenses and two-strike offenses.
11 Three-strike offenses are called serious offenses.
12 You get two [sic] of those, you go to jail for the
13 rest of your life without the possibility of parole.
14 Yes, three-strike offenses are called serious.

15 Two-strike offenses are called most serious
16 offenses. And if you get two of those, you go to
17 jail for the rest of your live without the
18 possibility of parole.

19 This charge that you are pleading guilty to
20 today is of the two-strike category. In other words,
21 after today you will have one strike against you. If
22 you ever get convicted of another strike offense, you
23 go to jail for the rest of your life without the
24 possibility of parole.

25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you still wish to plead guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: This is also a violent offense.

5 And it is not marked on the sentencing sheet, but I'm
6 marking it on there now. That affects your parole
7 eligibility. Your lawyer can discuss that with you
8 if he hasn't already. But you have to serve more
9 time before you're eligible -- actually, this is a no
10 parole offense.

11 It's a violent as far as classification goes,
12 but it's also no parole. So you're not eligible for
13 parole. Whatever the sentence of the Court is, you
14 have got to serve at least 85 percent of it.

15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You also would have to register as
18 a sex offender. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You'll also have -- this is what
21 has been deemed as a sexually violent offense. So
22 that at the end of your sentence completion, as it
23 nears, a committee will review whether or not they
24 want to try to have you committed as a sexually
25 violent predator.

1 Sexually violent predators are people who have
2 committed a predicate offense which has been deemed
3 to be a sexually violent offense, and they have a
4 mental condition which makes it likely that they
5 would re-offend.

6 You would get -- if you get recommended to go
7 through that system, you get an evaluation done, you
8 also have due process rights which you can actually
9 go and have a jury on the civil side make a
10 determination as to whether or not you are deemed to
11 be a sexually violent offender.

12 The consequence of being deemed to be a
13 sexually violent offender is that if you are
14 classified as that, you go back into the mental
15 health system and you can remain incarcerated until
16 such time, if ever, that you are deemed to be not a
17 sexually violent offender.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. You also would have to
21 register in the child abuse registry and be in the
22 database.

23 Do you understand all that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, today we are just going to

1 take your plea. Sentencing is deferred. I
2 understand your lawyer has requested that you get the
3 opportunity to have an evaluation by Dr. Burke. I
4 would retrain jurisdiction of this case, and would
5 sentence you at a later date.

6 Right now it looks like we're aiming for July
7 23rd as being your sentencing date. Today we are
8 just taking your plea. We will hear from the State.
9 If there are any victims, if they wish to be heard,
10 at that time we will hear from them. Also anything
11 in mitigation that you wish to state at that time
12 would be heard.

13 But today I just need to make sure that you
14 understand that you have some rights that you waive,
15 make a determination that this case is in fact --
16 that you understand those rights, and that you
17 knowingly, intelligently, and voluntarily waive those
18 rights.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. The first right that
22 you have that I want to talk to you about is the
23 right to a jury trial. You give up your right to a
24 jury trial when you plead guilty.

25 If you want a trial, you stop me and we will

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Now, are you under the
3 influence of any drugs or alcohol today?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you need any more time with
6 your lawyer?

7 THE DEFENDANT: No, sir.

8 THE COURT: Are you satisfied with his
9 representation?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any mental, emotional
12 or physical conditions that would affect your ability
13 to understand what you are doing here today?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. When you've talked
16 with your lawyer, he's presented or told you about
17 the evidence that the State has and would be prepared
18 to offer against you at trial?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: He's explained to you about what
21 the elements of the crime are that the State has to
22 prove if they want to charge you with criminal sexual
23 conduct second degree?

24 THE DEFENDANT: Yes, sir

25 THE COURT: Based on those discussions, you

1 decided you did not want to go to trial; is that
2 correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You don't want to put up a
5 defense?

6 THE DEFENDANT: No, sir.

7 THE COURT: You don't want to call witnesses?

8 THE DEFENDANT: No, sir.

9 THE COURT: You don't want to try to have any
10 of the evidence suppressed?

11 THE DEFENDANT: No, sir.

12 THE COURT: You don't want to get up and tell
13 the jury your side of the story?

14 THE DEFENDANT: No, sir.

15 THE COURT: All these are your decision and
16 your decision alone?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Anybody promise you anything or
19 threaten you to get you to plead guilty, other than
20 these conditions on the negotiated plea that I'm
21 about to go over with you?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. First one is that the
24 sentencing will be no more than ten years. I'm going
25 to retain jurisdiction on this. You get to remain

1 out on bond prior to sentencing as long as you
2 satisfy the conditions of your current bond. It will
3 be modified to allow you to have contact with your
4 own children as allowed by the Department of Social
5 Services safety plan and any court orders.

6 And that your contact will be supervised by
7 the Department of Social Services or an approved
8 supervisor. And that between now and the date of
9 sentencing all of those conditions of bond that you
10 were already on will remain in effect.

11 That's what you understand are the conditions
12 of your negotiated plea?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And again, other than that nobody
15 has promised you anything or threatened you to get
16 you to plead guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: How old are you?

19 THE DEFENDANT: 33.

20 THE COURT: How far did you get in school?

21 THE DEFENDANT: I have a four-year college
22 degree.

23 THE COURT: Do you work?

24 THE DEFENDANT: I do. Yes, sir.

25 THE COURT: What do you do?

1 THE DEFENDANT: I'm a civil engineer.
2 Currently I work for the towing company.

3 THE COURT: Are you married?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have any children?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: How old are your children?

8 THE DEFENDANT: 10, 7, 4, 2.

9 THE COURT: Does he understand what he's doing
10 here today?

11 MR. BIERING: He does, Your Honor.

12 THE COURT: I find his plea is freely,
13 voluntarily and intelligently made.

14 Is there anything the State wants to tell me
15 about this case today?

16 MS. WILLIAMS: Your Honor, do you want me to
17 lay a factual basis?

18 THE COURT: Let's go ahead and do that.

19 MS. WILLIAMS: Okay. Just briefly, Your
20 Honor. We will go into more detail on the day of
21 sentencing. But these events occurred at 5941
22 Willard Drive in Hanahan, South Carolina. On October
23 28th, 2011, the 14-year-old victim and her mother
24 went to the Hanahan Police Department to report a
25 sexual assault.

1 The victim disclosed that she had met the
2 defendant online on a website called My Yearbook.
3 What the defendant did was pretend he was a
4 16-year-old boy, started communicating with her. He
5 had the e-mail address . She had the name
6 of

7 They started a conversation. He began to
8 gradually turn the conversation into sexual things.
9 Began to request information from her of a sexual
10 nature. Then began to inquire when her mother
11 worked, whether there were adults in the home, when
12 she would be alone, and then gradually arranged a
13 meeting.

14 Eventually she figured out that he wasn't 16
15 because he sent some pictures and he looked older and
16 he said he was 28. I think actually at the time he
17 was 32. He went over to the victim's apartment and
18 engaged in several different types of sexual battery.
19 He performed oral sex on her. She performed oral sex
20 on him.

21 He attempted penetration and intercourse but
22 did not succeed. He requested taking pictures of
23 her. And then, after that, began to request
24 additional meetings to come back.

25 The only way that this was discovered was

1 because the father of the victim found her phone,
2 started thumbing through her phone and seeing some of
3 these messages and became alarmed. And they pulled
4 the victim in and then she told her parents what had
5 happened.

6 At that time the police traced it back to
7 Mr. Curtis. He was working at an office job at that
8 time, and I believe some of the contact he made was
9 from his desk.

10 She gave a full statement. Mr. Curtis was
11 brought in and he did confess.

12 THE COURT: All right. Well, do you agree to
13 what she just said? Is that what happened?

14 THE DEFENDANT: Primarily.

15 THE COURT: Well, what is it that you disagree
16 with? Anything?

17 MR. BIERING: Your Honor, in this case my
18 client -- as the solicitor said -- my client gave,
19 prior to being represented, really immediately upon
20 being arrested, a very detailed confession. The
21 prosecutor has all of the evidence that was obtained
22 from both his work computer and his home computer.

23 They have got a very detailed account of what
24 transpired. I think that basically his confession is
25 consistent with what he's pleading today to.

1 THE COURT: All right. Well, I find there is
2 a substantial factual basis for the plea and I will
3 accept it.

4 We will defer sentencing right now. We
5 anticipated the 23rd at 9:30. So you agree that you
6 will allow jurisdiction to be in Charleston County
7 for that day. I've ordered you are going to be
8 sentenced in the Charleston County courthouse. I'm
9 not going to be back here anytime soon.

10 MR. BIERING: Yes, sir.

11 THE COURT: Okay. See y'all then.

12 MR. BIERING: Your Honor, I just want to make
13 sure, and I believe Your Honor was reading from this,
14 but we had an exhibit that was attached.

15 THE COURT: Yeah. That's what I was reading
16 from earlier.

17 MR. BIERING: Thank you, Your Honor.

18 THE COURT: Okay.

19 (Whereupon, the proceedings in this matter
20 before the Court were adjourned.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date.

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

Anne Bouley Meyer

Anne Bouley Meyer, RPR

1 (August 16, 2013.)

2 MS. WILLIAMS: Your Honor, this is a case
3 that the defendant has previously pled guilty to. We're
4 here today for sentencing, just to refresh the Court's
5 memory on the facts.

6 THE COURT: All right.

7 MS. WILLIAMS: The defendant was originally
8 charged with solicitation of a minor and criminal sexual
9 conduct with a minor in the second degree. The State has
10 dismissed the solicitation charge and he is pleading to
11 the criminal sexual conduct with a minor in the second
12 degree, and we have capped the sentence at ten years.

13 The victim was 14 years old and met the
14 defendant online on a web site, a chat room, called My
15 Yearbook. At the time the defendant was 32. We later
16 learned that he was contacting various people on this web
17 site from his job at Santee Cooper and from other
18 computers.

19 One of the most egregious things I think
20 about the case is that he was pretending to be 16 years
21 old, so, clearly, he was targeting very young victims.
22 The victim communicated with him for a period of time.
23 He started sending photographs of himself.

24 The texts and the computer communication
25 became very sexual. At one point she guessed that he

1 might not be 16, but he gave a different age and then
2 eventually he arranged to come to her home while her
3 mother was not home. He came into the 14-year-old's home
4 at 5941 Willard Drive in Hanahan in Berkeley County, and
5 he had sexual relations with her.

6 At the time that the parents discovered the
7 phone and this all came to light, he was at that time
8 trying to arrange another time to come over and do it
9 again. He basically had her perform oral sex on him, he
10 performed oral sex on her, and he attempted to have
11 sexual intercourse with her but was unsuccessful.

12 We did get some SLED results back in this
13 case, and they were consistent with saliva on the vaginal
14 swabs and semen on some of the articles that were
15 submitted.

16 Your Honor, this was a young girl, 14 years
17 old, really didn't know what she was getting into. For
18 him to go through with entering her home and then having
19 sex with her is something that, you know, no parent
20 should have to deal with. The parent of this child is
21 here today to address the Court at the appropriate time,
22 as is the detective who worked on the case, Pam Nelson
23 from the Hanahan police department. It is the State's
24 position that ten years is an appropriate sentence.

25 I think that he has already gotten quite a

1 benefit in the bargain in that we have dismissed one
2 charge and we have capped it at ten years, and we would
3 ask the Court to consider the maximum of ten years that
4 we have capped this at.

5 I also would like to just very briefly
6 address a packet that we were given yesterday by defense
7 counsel, and it is a packet that includes some letters
8 from community members and also a report by Dr. Bill
9 Burke. I spoke with Dr. Burke about the report. He was
10 kind enough to illuminate some of the facts that are in
11 it, and I just wanted to bring the Court's attention to
12 just a couple of different factors.

13 On page four of Burke's report, it says that
14 in the sexual history that the defendant has estimated 20
15 different sexual partners that he had met online in these
16 chat rooms, and that is not inconsistent with what the
17 police department found. I think they discovered 14
18 young girls that he had been trying to contact.

19 Unfortunately, we were not able to identify
20 them because the web site was taken down, or his profile
21 was taken down, and we were not able to identify who they
22 were, or there would have been additional charges.

23 The other thing I would like to bring your
24 attention to is on page 15, under the results of the
25 Limestone VSP assessment that the defendant was

1 attracted.-- he had a preference toward adult females and
2 females between the ages of 11 and 13, which is again
3 consistent with this child's age.

4 At the appropriate time, Your Honor, Hanahan
5 police department and the victim's mother would like to
6 address the Court.

7 THE COURT: Okay. Let's hear from them.

8 THE WITNESS: Your Honor, on behalf of the
9 Hanahan police department, we request that the full
10 ten-year sentence be imposed. When looking on to
11 Mr. Curtis's My Yearbook dot com page, I observed that he
12 had 41 friends on his page. They all appeared to be
13 young teenage girls. As Solicitor Williams said, we were
14 unable to identify any of these girls before the page was
15 taken down.

16 Also, I worked closely with investigator Doug
17 Luccio with the ICAC unit with the city of Charleston,
18 and he actually recognized one of Mr. Curtis's e-mails as
19 someone that he had chatted with but was unable to obtain
20 enough information to charge him well with on that
21 account.

22 MS. WILLIAMS: And, Your Honor, for
23 clarification, the ICAC unit is the Internet Crimes
24 Against Children unit that deals specifically with
25 Internet predators.

1 THE COURT: Your name, please.

2 THE WITNESS: Melissa Score.

3 THE COURT: All right.

4 THE WITNESS: My daughter was the victim, and
5 it's been -- it's just been interesting. She's doing
6 okay. She's -- we tried to keep -- we did everything
7 that was asked of us with the counselling, and she had to
8 be tested over and over for STDs, and that was -- I mean,
9 for had her, very scary; for us, very eye opening,
10 because, obviously, we didn't have all those kind of
11 knowledge, but she's been doing pretty good, moving on
12 pretty well.

13 We've had an incident where we went out for
14 breakfast one time and our server looked like Mr. Curtis,
15 and we had to switch areas, and it really upset her
16 because it make her upset. It's very difficult because
17 I'm a single mom and I work. My neighbors have really
18 stepped up to watch out when I'm not there. We have
19 taken extra precautions. When I'm not there, she's at
20 her dad's.

21 I did think about moving, you know, for
22 safety factor, because he did enter my home when I wasn't
23 there. In fact, he was there, like, an hour prior to my
24 arrival, so it's a little scary, and I think that the
25 after effect is that she is going to probably, any time

1 she runs into him, approximately have that same
2 experience and probably turn and walk the other way.

3 THE COURT: Thank you. Anything further from
4 the State?

5 MS. WILLIAMS: Nothing from the State, Your
6 Honor.

7 THE COURT: Mr. Biering?

8 MR. BIERING: May it please the Court, Your
9 Honor: I just want to call attention to the packet we've
10 delivered to the Court. In the spirit of which that
11 packet is delivered, that packet is delivered not in
12 mitigation as it relates to what transpired, but as it
13 relates to what we would ask the Court to do from the
14 standpoint of sentencing, to give evidence to the Court,
15 support for the Court in making a decision as to what the
16 Court would do from a sentencing standpoint.

17 Your Honor, I want to focus primarily on two
18 areas. One area is the presentation that is presented by
19 Dr. Burke. The Court is very familiar with Dr. Burke's
20 reports. Our criminal justice system here locally is
21 very familiar with Dr. Burke's work. He provides a
22 substantial amount of sex offender counselling to those
23 that are supervised within the community, and he's well
24 respected for the work that he does, and I think that we
25 all know that he is without equivocation in instances

1 where he believes a person is not a candidate for
2 successful completion of sex offender counselling, and
3 what I would like to do at the beginning, Your Honor, is
4 reference very clearly Dr. Burke's August the 14th, 2012
5 letter updating both the evaluation and the treatment,
6 and I believe that letter is pretty clear as to what he
7 believes possible within this case.

8 It says, Mr. Curtis has exhibited
9 responsibility and accountability for his deviant
10 behavior. We don't stand here suggesting that anything
11 that took place was anything less than deviant behavior.
12 His wife has successfully completed our sex offender
13 chaperone certification program. I'll skip down.

14 Given above as my professional opinion that
15 Mr. Curtis can be safely maintained in the community
16 under the condition that he continues, which evidences
17 the fact he's already begun participation, he continue
18 his participation in group therapy in intensive
19 outpatient program specializing in sexual disorders.

20 Your Honor, I would like to stop at this
21 point and ask, if possible, if Mr. Curtis's wife could
22 briefly address the Court.

23 THE COURT: All right.

24 MR. BIERING: While she's coming up, Your
25 Honor, Mr. Curtis and his wife have four children, ten

1 and under. And they have lived here in the Moncks Corner
2 area since 2004. Miss Curtis?

3 THE WITNESS: My name is Jennifer Curtis.
4 I'm Brian's wife. We've known each other about 11 years.
5 We've been married eight. When we got married, I had a
6 daughter already, and he took her in as his own and has
7 always loved her as his own, and then we had three more
8 children.

9 I've always stayed at home with them because
10 his career allowed it. We were very blessed about that,
11 and he's always been a very loving father. He's always
12 been a loving husband. I know under the circumstances it
13 doesn't seem that way, but that's how it's been. He's
14 been very -- he's doting as a husband and he's always
15 been there for the kids.

16 He's coached their sports teams and went to
17 their -- gone to their schooling events and things like
18 that, helped them with homework. It's been very
19 difficult for our family in the past nine or ten months.
20 DSS did an investigation right after Brian was arrested,
21 and he was told to move out of our home, and our children
22 have had a really hard time with that. I'm sorry.

23 They don't understand why he's not allowed to
24 be around them and not allowed to go to their schooling
25 events and sporting events, and they really, really miss

1 him, and I worry about what's going to happen if he has
2 to serve a ten-year period. He'll miss their whole
3 childhood, and I know what happens statistically when
4 children are raised in a single parent home.

5 Nothing is wrong with that, but I know what
6 happens. And I'm a teacher, and I have to go back to
7 work now, on a teacher's salary isn't very good for five
8 children, or four children, five people, but most of all,
9 I want to see Brian get the help he needs. I want to see
10 him go through therapy and get better and be able to be a
11 good member of society again, and I know that what he did
12 was wrong. I don't condone any of his actions, but I do
13 support him.

14 I do forgive him for what he's done, and,
15 like I said, I just want to see him get better, and he
16 has a good support system. We all love him very much,
17 and I ask that you just please be lenient with him. I
18 would very much like him to be in his children's lives.
19 That's it. Thank you.

20 THE COURT: Thank you.

21 MR. BIERING: Your Honor, I want to take us
22 back to the plea. As the Court knows, Mr. Curtis entered
23 his plea back in April, but his acceptance of his
24 responsibility of his actions in this case really date
25 back to his arrest.

1 Your Honor, he gave what I must say in my 16
2 years of practice of the law was the most detailed
3 account of his wrongdoing at the time of his arrest, and
4 he began at that point desiring to move forward in
5 counselling, and he has done that. Your Honor, I think
6 the report reflects -- and I realize that as we look at
7 that report, what has been pointed out, but I would like
8 to point out that, number one, this group -- and I can't
9 remember the acronym for them, but very familiar with
10 them. They're good at what they do. That's the reality.

11 They're good at what they do, and they had
12 the information in this case, and they brought their
13 case. They brought their case. Just because someone
14 meets someone in a chat room for sexual encounters does
15 not mean that that is criminal in nature, so I would
16 point that out that, that is what Dr. Burke is talking
17 about here, about inappropriate sexual conduct outside of
18 his marriage, but that's not -- unless we go back to the
19 laws of adultery, that's not criminal sexual conduct, as
20 we're dealing with here. Judge, he admitted to what he
21 did, and he began counselling. He began very intensive
22 counselling, and I think he's going to speak to that,
23 that issue.

24 But what I would like to address, Your Honor,
25 I would like us to go through briefly what is going to

1 happen to him without question here today, what we know
2 is going to happen, and address the different tenants and
3 pillars of what we do in the criminal justice system.

4 We've got a punishment component. We've got
5 an incapacitation component. We got a rehabilitative
6 component and our deterrents. The first thing that I
7 think that we can all -- I think we can all agree upon is
8 that the central -- that the sex offender registry, being
9 imposed here, addresses all four of those issues, and
10 addresses them in a very significant way. The threat of
11 civil commitment also addresses all four of those issues
12 in a very significant way.

13 The sex offender registry and the civil
14 commitment statute basically create for sex offenders a
15 prison without walls. It is very closely monitored.
16 There is more from a punishment standpoint for
17 Mr. Curtis. Mr. Curtis was a licensed engineer, through
18 LLR. They're very clear as it relates to their licensing
19 about -- they will not continue licensing for persons
20 convicted of crimes of moral turpitude. He will lose his
21 license as an engineer, period.

22 As it relates to that, he's a graduate, 2002,
23 from Virginia Tech. He's been employed consistently in
24 that arena. He went from being an engineer at a major
25 power utility, manning significant projects, having

1 significant number of people report to him, to being a
2 shop worker, and I ask the Court to look to
3 Mr. McDougall's affidavit that is item number 13 in our
4 submission, about what he was willing to do, and that
5 he -- on bond, worked, even at that point.

6 There is significant punishment that is
7 imposed upon Brian Curtis, irrespective and of what the
8 Court sentences, and we accept that. Mr. Curtis accepts
9 that, knows it's appropriate.

10 As it relates to incapacitation, we believe
11 that the registry and the sex offender counseling with
12 Dr. Burke would continue in this case is incapacitating.
13 They very closely monitor these offenders. They are
14 regularly placed on lie detector tests. They are
15 regularly called to the mat for drug and alcohol issues.
16 They are monitored very closely, and I have been with --
17 standing with a client on the other side of Dr. Burke's
18 recommendations on probation violations, and I know what
19 the Court does.

20 He doesn't mind bringing them back very
21 quickly. The rehabilitation component certainly, Your
22 Honor, would go to what needs to be done with sex
23 offender counselling and what Dr. Burke has already done,
24 and I would ask that the Court look to the conclusions
25 and the last two pages of Dr. Burke's report, and in

1 those -- in those pages, what you see is very clearly,
2 for recommendation standpoint, Dr. Burke's position. I
3 believe Brian Curtis to be safely maintained, that's on
4 the last page, second to last page, safely maintained in
5 the community under the following guidelines, and he
6 outlines the guidelines that he continues to believe are
7 in place.

8 Immediately above that, he explains,
9 Mr. Curtis's level of risk, according to the different
10 groupings of testings that he's done to be in the
11 moderate to low level of risk. We step back even to the
12 third page from the last and his conclusions. I believe
13 that in Dr. Burke's report he addresses some of those
14 concerns as it relates to chronic sexual deviant
15 interests that the solicitor addressed.

16 Judge, here is what we're specifically
17 asking: We are specifically asking that the Court impose
18 the sentence of ten years, suspend it upon the maximum
19 amount of probation that the Court can provide, impose
20 the maximum conditions that this Court could consider for
21 probation, to specifically include those conditions that
22 are outlined in Dr. Burke's report.

23 Probation is to be considered prison without
24 walls, and in this case, we can create a prison without
25 walls. Mr. Curtis has the ability to successfully

1 complete that community supervision. I would ask again
2 that you consider the letters. Those letters outline a
3 support system that is throughout the community,
4 throughout his family, both here in South Carolina and in
5 Virginia. His wife's support, without condemnation of
6 his actions, the statement of his father-in-law that
7 supports the fact that this man is willing to work.

8 His educational background, as we look at one
9 other item as to why I think he could be successful on
10 probation, he could do what the Court would require, I
11 think we have to consider the bond conditions that he's
12 been under and that he has been successful under those
13 bond conditions.

14 I don't think the solicitor would disagree
15 with me in this, and there has not been any suggestion
16 from day one that there have been any bond violations.
17 He has done what he has been asked to do and done what he
18 can do to personally accept responsibility and begin
19 treatment and rehabilitation, since the date of arrest.

20 Your Honor, again, we ask for a ten-year
21 sentence, suspended upon probation with the maximum
22 probation conditions that the Court could allow. Thank
23 you. My client would like to address the Court at the
24 time that you believe appropriate as well.

25 THE COURT: Sure. What would you like to

1 say?

2 THE DEFENDANT: I have a few things I would
3 like to say.

4 I would first like to say thank you for
5 allowing me the opportunity to speak and your
6 deliberation in my sentencing. As Chris mentioned, I'm
7 not here today to try to minimize my actions or condone
8 my actions. Lord knows and everybody in this court knows
9 that they were inappropriate, so I'm here to acknowledge
10 my guilt as referenced by my plea in April, but I'm also
11 here to say I'm willing and ready to accept your judgment
12 against me.

13 I would like to apologize to the victim and
14 her family. I truly am sorry for everything I have put
15 you through, and I can't imagine what you're going
16 through, and I don't sit here and try to pretend that I
17 do, but I'm sorry for what I've done to them and their
18 family and the hurt that it's caused them.

19 I also would like to publicly apologize to my
20 wife and my kids for the hurt and pain that I've put them
21 through. This -- my actions have created a number of
22 victims, and I'm not one of those victims. I would just
23 like to say I'm sorry to all of you, and, last but not
24 least, I would like to apologize to the Court and the
25 State for putting you guys in the position where you have

1 to try cases like these and look at cases like this and
2 the time and financial burdens that are associated with
3 this, and I'm sorry for that. And I've come to a number
4 of realizations over the last nine or ten months since my
5 arrest, and, you know, the major realization is that I
6 need help and I need counselling and I want to get help
7 so that I can become a better member in society and
8 continue to support my family in whatever way that I can.

9 Immediately after I entered my plea in April,
10 I started counselling with Dr. Burke at Southeastern
11 Assessments and I've been in intensive therapy since
12 then. I'm going to therapy for roughly 20 hours a month
13 right now, and I'm there several times a week, trying to
14 better myself, trying to get the help that I need, and I
15 don't deserve kudos for that, but I am trying to move
16 forward in the best ways that I can.

17 One of the major benefits of that counselling
18 and therapy is that, you know, it's forced me and caused
19 me to look at myself from an introspective way and to
20 look at all the distorted thoughts that I had that made
21 me think that what I was doing was okay, and it's not
22 okay, and therapy has allowed me to see a number of
23 things that I shielded myself from. I would like to
24 continue to go to therapy, and I have a great fear that,
25 you know, incarceration will prevent me from continuing

1 to seek therapy for a number of years. Part of the
2 therapy that I'm going through Chris mentioned was
3 chaperone training where I have people who help me be
4 accountable for my actions and who help protect the
5 children around me.

6 I'm not allowed to be around children, even
7 my own children, without my chaperone, without
8 supervision, and, you know, I accept that as a penalty
9 for my actions, and it's appropriate, but I have a very
10 strong support group that is trying to help me get
11 better. They don't condone what I've done. They don't
12 believe what I've done is right or should be -- or I
13 should be held without punishment, but they're helping me
14 on my path to try to get better, and that's an important
15 factor for me in trying to get the help I need.

16 As much as I wish I could undo what I've
17 done, I can't. I wish I could. I truly wish I could,
18 but I can control my actions moving forward, and I'm
19 committed to getting the help that I need. I'm committed
20 to my family, to the victim's family, and to the Court to
21 do the things necessary to make myself a better person
22 and to never be back in this position again.

23 Although I'm prepared for whatever your
24 decision is today against me, you know, I would ask to --
25 I would ask that you be lenient in your decision, that

1 you consider giving me the maximum sentence of ten years
2 and suspend it to probation so that I can continue my
3 therapy.

4 That's all I would like to say. Thank you
5 for your time.

6 THE COURT: All right. Anything else?

7 MR. BIERING: He's got no prior criminal
8 record.

9 THE COURT: Okay. Well, the problem with
10 these crimes is that you prey on people, and I personally
11 find that some of these crimes to be the most offensive
12 because you prey on people that are young, and you take
13 advantage of their youth, that really aren't able to
14 defend themselves, and they don't know what they're
15 getting into. In other words, it's a form of bullying,
16 in my eyes, but what really, I think, bothers me is that
17 clearly there is an element of premeditation that goes on
18 in these crimes that transcends -- a lot of your cases
19 involve murder, which you might have malice aforethought,
20 but it doesn't exist for that long of a period of time.

21 This takes planning, and it appears that you
22 were at it for a long time. As to this young lady, you
23 know, it takes a long time. If ever, they ever get over
24 it, it takes them a long time to trust people again. You
25 violated the sanctity of their home. I just really don't

1 have a lot of sympathy for you and the type of people
2 that do what you do.

3 Your risk of recidivism -- I don't know. You
4 got caught, and if you hadn't have got caught, there is
5 no doubt in my mind you'd be at. It looks like you were
6 at it and have been at it for some time before and
7 probably would still be at it, and the only reason you're
8 not at it now is because you got caught.

9 So we'll see how that plays out. There are
10 people that, you know, judge people like you and your
11 risk for future behavior. It's called the sexually
12 violent predator program, and when you get out of prison,
13 I'm going to put down here I want you to evaluated for
14 that, but for what you did alone, the punishment factor
15 suggests that ten years is certainly an appropriate
16 sentence, and that's what it will be.

17 There's no probation, and I hope you get
18 yourself straightened out, but what you did to this young
19 lady certainly requires that. Good luck to you.

20 - - -

21 (Whereupon, the proceedings were concluded.)

22 - - -

23

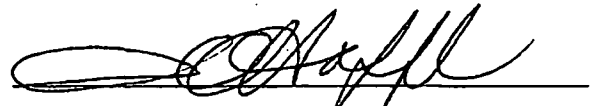
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25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth 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 Circuit Court for Charleston County, South Carolina, on the 16th of August 2012.

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

November 14, 2013

A handwritten signature in cursive script, appearing to read 'A. Haffenden', written over a horizontal line.

Circuit Court Reporter

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF GENERALSESSIONS
NINTH JUDICIAL CIRCUIT
Case: 2012-GS-08-0281

STATE OF SOUTH CAROLINA,)

Plaintiff,)

vs.)

Brian Michael CURTIS,)

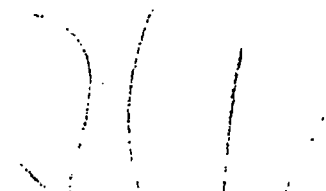
Defendant.)

ORDER

FILED
12 OCT 29 PM 1:10
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter came before the Court on April 4, 2012. Defendant Brian Michael Curtis entered a plea of guilty on the above referenced charges. Sentencing was deferred until August 16, 2012, after evaluation with Dr. Burke, and Defendant received a sentence of ten years. Upon consideration, Defendant's motion to reconsider sentencing is DENIED.

AND IT IS SO ORDERED.



Roger M. Young, Sr.
Circuit Court Judge

October __, 2012

34
10/1/12 10:09/10 100

10/1/12

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 Full name and prison number (if any) of)
 Applicant.)
)
BRIAN M. CURTIS)
(#352072) v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2013-CP-08-1847

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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 MacDougall Correctional Institution
2. Name and location of Court which imposed sentence Berkeley County Court of General Sessions, Moncks Corner, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Case # 2012-GS-08-0281 - Violation of SC Code 16-03-0655
 - (b) Unknown Indictment #
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 16, 2012 - (10 years in State Department of Corrections)
 - (b) N/A

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

2013 AUG 15 PM 12:07

FILED

BMC

(c) N/A

6. Check whether a finding of guilty was made:

(a) after a plea of guilty XX

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

NO

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

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

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) See back of page

(b) N/A

(c) N/A

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

- (a) Ineffective Assistance of Counsel
- (b) Invalid and Conflicting Indictments
- (c) N/A

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

- (a) See back page.
- (b) N/A
- (c) N/A

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

 NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) See back of page.

(c) N/A

(c) N/A

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? N/A
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

- (a) the name and address of each attorney who represented you:
 - i. Christopher P. Biering - 116 South Railroad Avenue, Moncks Corner, SC 29461
 - ii. N/A
 - iii. N/A
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment and Plea - (April 4, 2012)
 - ii. Sentencing - (August 16, 2012)
 - iii. Motion for Reconsideration (Filed August 24, 2012)

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

That the sentence be set aside, vacated or at a minimum be reconsidered and reduced.

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

NO

2013-CP-08-1847

STATE OF SOUTH CAROLINA)

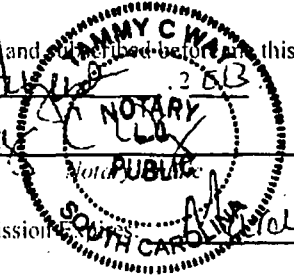
County of Berkeley)

VERIFICATION)

I, **Brian M. Curtis**, 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 attached in this application; and that the matters and allegations therein set forth are true.

[Handwritten signature]

SWORN to and subscribed before me this 13th day of August, 2013 (L.S.)




My Commission Expires 12/9, 2014

TSM
FILED
2013 AUG 15 PM 12:07
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

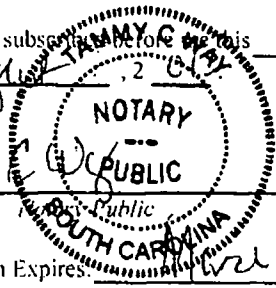
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, **Brian M. Curtis** 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.



 Applicant

SWORN to and subscribed before me this 13th day of August, 2013.

 _____ (L.S.)
 My Commission Expires: June 9, 2014

TSM
 FILED
 2013 AUG 15 PM 12: 07
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
)
)
 Brian M. Curtis, #352072,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

2013-CP-08-1847

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 15, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the February 2012 term of the Berkeley County Grand Jury for criminal sexual conduct with a minor- 2nd degree (2012-GS-08-0281). The Applicant was represented by Christopher Biering, Esquire.

On April 1, 2012, the Applicant pled guilty as indicted. On August 16, 2012, the Applicant was sentenced by the Honorable Roger Young, Sr. to confinement for a period of ten years. The Applicant did not appeal his conviction or sentence.

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

Department of Corrections, and the Applicant's transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
2. Invalid and conflicting indictments.

III.

In this application, the Applicant first alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing

Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges "invalid and conflicting indictments". The Respondent submits this allegation should be dismissed because this claim is too vague for the State to respond. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

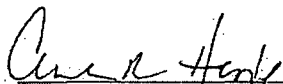
December 29, 2014.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	
)	
Brian M. Curtis, #352072)	2013-CP-08-1847
)	
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:

Rodney D. Davis
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, SC 29405

DATED this 30th day of December , 2014.


 Anne R. Henley, Legal Assistant
 For Respondent

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
CHRISTOPHER BIERING	
Direct Examination by Mr. Davis	9
Cross-Examination by Mr. Thomas	29
BRIAN M. CURTIS	
Direct Examination by Mr. Davis	34
COURT'S RULING	42
CERTIFICATE OF THE COURT REPORTER	43

INDEX TO EXHIBITS

APPLICANT

<u>No.</u>	<u>Description</u>	<u>Marked</u> / <u>Admitted</u>
1	Doctor Burke's report	13 / 42

Brian Curtis v State of S.C.
Proceedings
April 20, 2015

1

PROCEEDINGS

2

THE COURT: All right this is case of Brian M.

3

Curtis versus State of South Carolina under docket number

4

2013-CP-08-1847. Present and appearing is the applicant

5

with his attorney Mr. Rodney D. Davis. The State is

6

present and represented by Mr. Joshua Thomas. Are y'all

7

ready to proceed gentleman?

8

MR. THOMAS: State's ready, Your Honor.

9

MR. DAVIS: Plaintiff's ready, Your Honor, and if I

10

may I'm just going to give you a brief ---

11

THE COURT: --- yes, sir ---

12

MR. DAVIS: --- procedural history of where we're

13

trying to go Judge. Mr. Curtis pled guilty, was

14

represented by Mr. Biering who's in court with us today,

15

pled guilty to a single count in April of 2012. Since he

16

was deferred in front of Judge Roger Young, he pled

17

guilty and in sentencing then was deferred and fell on

18

August 16, 2012. He filed his post conviction relief, I

19

was appointed, we've spoken about the ---

20

THE COURT: --- was it an appeal? ---

21

MR. DAVIS: --- that's correct ---

22

THE COURT: --- was there an appeal in this matter?

23

MR. DAVIS: No there was not ---

24

THE COURT: --- he did not file an appeal?

25

MR. DAVIS: There was not one, that's correct Your

Brian Curtis v State of S.C.
Proceedings
April 20, 2015

1 Honor ---

2 THE COURT: --- all right ---

3 MR. DAVIS: --- forgive me. There was not one Your
4 Honor. This was a -- the plea included a negotiated cap
5 of 10 years. Mr. Curtis was sentenced to 10 years.

6 THE COURT: So the agreement was complied with? Is
7 that correct?

8 MR. DAVIS: Certainly. Obviously Mr. Lucas [sic]
9 would have hoped for something other than cap, but yes,
10 the sentence was within what had been negotiated.

11 THE COURT: Right.

12 MR. DAVIS: When I first met with Mr. Curtis he
13 made it clear that his attorney represented him well up
14 to and including the guilty plea. So, we've got a
15 unique, for me at least, PCR hearing where we would
16 present testimony today and we would present evidence
17 today that the ineffectiveness occurred in the gap
18 between the guilty plea and the sentencing.

19 And we would argue that the outcome would have been
20 different in the sense that the sentence would have been
21 different. I have several that allow -- and so
22 ultimately, Judge, we'd be asking for a specific remedy
23 of being remanded for resentencing with the cap still in
24 place. The specific issue that we have, Your Honor, ---

25 THE COURT: --- well, wait a minute. Whoa, whoa.

Brian Curtis v State of S.C.
Proceedings
April 20, 2015

1 He doesn't get both of them. If it were go to
2 resentencing it would be an open sentence at that point
3 in time.

4 MR. DAVIS: --- well, ---

5 THE COURT: --- if I were to grant his PCR,
6 everything would be off of the table ---

7 MR. DAVIS: --- you don't ---

8 THE COURT: --- why ---

9 MR. DAVIS: --- go ahead ---

10 THE COURT: --- why would he get the benefit of
11 that and then come back to a -- for a lower sentence. I
12 can't reduce the sentence.

13 MR. DAVIS: You can't -- reduce sentence, correct
14 Your Honor. However let me find the exact case here,
15 Judge, Davie D-A-V-I-E v State which is a 2009 Supreme
16 Court Case South Carolina Supreme Court Case. In that
17 case now it's factually different, in that case there was
18 an offer from the State for 15 years that was not
19 communicated to the client.

20 He ultimately does end up pleading guilty and he
21 gets a higher sentence than that. He files a PCR arguing
22 ineffective assistance; I'm going to cut to the very last
23 few sentences. Their remedy in this case, accordingly we
24 vacate the petitioner's sentence and remand for a
25 resentencing hearing. In resentencing the petitioner,

Brian Curtis v State of S.C.
Proceedings
April 20, 2015

1 the Circuit Court shall take into consideration the
2 State's prior offer. We further direct that any
3 sentence the petitioner receives should not exceed the
4 original 25 year sentence which, in fact, he obtained.
5 So, while they can't say give him a lower sentence, they
6 can certainly put back in place the parameters that
7 existed prior to that.

8 THE COURT: Which were the 10 years, is that
9 correct?

10 MR. DAVIS: Cap of 10, Yes, Your Honor.

11 THE COURT: Okay.

12 MR. DAVIS: In the second case, the Jordan case,
13 Jordan v State a 1988 case from South Carolina Supreme
14 Court, in this case the ---

15 THE COURT: --- I get your point. Go back and tell
16 me ---

17 MR. DAVIS: --- yes, sir ---

18 THE COURT: --- why the attorney was ineffective
19 between the time of his guilty plea and the little bit of
20 time before the sentencing.

21 MR. DAVIS: The evidence we present today is that a
22 plea was entered and this is a CSC case, that the plea
23 was entered in April. The State consented and the court
24 consented to a deferral for sentencing, the only thing
25 that occurred -- it's important the thing that occurred

Brian Curtis v State of S.C.
Proceedings
April 20, 2015

1 in that time is Mr. Curtis was evaluated by Doctor Burke.
2 It's a multipage, 19 page report and then came back
3 before Judge Young that was presented both to the
4 Solicitor and the Court and was referenced in the
5 sentencing phase.

6 It would be our position that -- a couple of things,
7 that if that report was to be obtained, it should have
8 been obtained prior to the plea so that negative
9 information -- if it was more negative than positive I
10 believe that Mr. Biering will testify it's more negative
11 than positive; that's the reason why he didn't have
12 Doctor Burke at the sentencing. You sit on it, you don't
13 use it.

14 But, by asking for the deferred sentencing for the
15 purpose of having the report done if you come back in
16 August and we don't have anything to present, Your Honor,
17 you're implying that it's bad news. Or, on the other
18 hand, if you actually present it which they did and the
19 Solicitor and the -- right after she, well, this was only
20 at the sentencing immediately into the State's
21 presentation she goes to the bad things in the report.
22 Mr. Biering had to present it because it was the only
23 reason there was a deferral in sentencing. On the other
24 hand I believe he will testify that it's more bad than
25 good. So, we would argue that it should have either been

Brian Curtis v State of S.C.
Proceedings
April 20, 2015

1 done prior to the plea or not done at all. But, by doing
2 it in the sequence in which he did, he raised more
3 unfavorable information than favorable which he was
4 almost obligated to reveal to the court and the Solicitor
5 because that was the only cause for the delay.

6 THE COURT: All right. Let's take some testimony.

7 MR. DAVIS: Thank you, Your Honor. We would call
8 Mr. Biering to the stand.

9 [Whereupon, Mr. Biering comes forward]

10 [Whereupon, the witness is duly sworn by the Clerk
11 of Court]

12 CLERK OF COURT: State your name into the
13 microphone and spell your last name for the record.

14 THE WITNESS: May it please the court, Your Honor.
15 My name is Christopher Biering. My last name is spelled
16 B-I-E-R-I-N-G.

17

18

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Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 correct?

2 A. Correct.

3 Q. Through your negotiations you were able to obtain a
4 negotiated cap in this case of ten years, is that right?

5 A. That's correct.

6 Q. And Mr. Curtis indicated his willingness to plead
7 based on those negotiations, is that accurate?

8 A. That is accurate. There was some discussion about
9 the timing and how we would proceed in potential steps
10 with this -- with this plea.

11 Q. Ultimately a plea was entered in April on April 4,
12 2012 in Moncks Corner before Judge Roger Young?

13 A. That sounds correct, yes.

14 Q. Of course sentencing wasn't handled at that date.
15 It wasn't handled until August of that year, is that
16 accurate?

17 A. That's -- that is accurate.

18 Q. And in the meantime, the major purpose of that delay
19 was to have an evaluation completed by Doctor William
20 Burke in Summerville?

21 A. That was a component of it, but there were really
22 two other components that accompanied that issue as well.

23 Q. And what were those?

24 A. One, there was and I can't speak to the details of
25 how all this worked, but Doctor Burke engaged in some way

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 with Mr. Curtis' wife and I think she had gone through
2 some chaperoned training. In addition to that, Mr.
3 Curtis actually began counseling.

4 You know, we were asking for -- if I can back up.
5 There was a -- when Mr. Curtis came to me before I was
6 retained and Mr. Curtis is a very educated, articulate
7 man. He had given a very detailed written statement. A
8 statement that quite candidly as I looked at it then and
9 as I look at it now was him accepting responsibility for
10 what had transpired.

11 And we were asking -- these were very serious facts,
12 we were asking for something out of the norm from a
13 sentencing standpoint. We were asking for Mr. Curtis to
14 be maintained on probation and the delay gave us an
15 opportunity, through a bond order, to provide what we
16 believed at the time to be a showing to the court that he
17 could actually perform in a probationary setting because
18 effectively, the bond order turned into a probationary
19 type order.

20 He -- it was real clear what our next steps were
21 going to be and Mr. Curtis actually performed very well
22 in those settings. And went through and was in a very
23 intensive counseling and we were able to present that
24 information and the information about his wife, had his
25 wife speak at that hearing and also present what I

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 | believed to be a pretty comprehensive packet of
2 | affidavits that showed that Mr. Curtis had community
3 | support; something that I think is very key if you're
4 | going to be successful on a probationary sentence a very
5 | wide network of community support that extended not just
6 | to family but to people, you know, people that he had
7 | been involved with professionally. So, it was not just
8 | the report.

9 | Q. Okay. Was there another one or do you -- does that
10 | cover the reasons?

11 | A. That covers the reasons.

12 | Q. Now it's true at the time of the guilty plea that
13 | Mr. Curtis was already out on bond, correct?

14 | A. That's correct.

15 | Q. He'd been out on bond for quite some time?

16 | A. He had been out on bond.

17 | Q. And had no law enforcement contact in that time
18 | frame either?

19 | A. No.

20 | Q. Under the same terms and conditions of the bond that
21 | you just spoke about when he started receiving
22 | counseling?

23 | A. Yes. But it didn't involve him receiving intensive
24 | counseling with Doctor Burke at the time.

25 | Q. When Mister Burke -- when Doctor Burke finished the

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 assessment, you received a copy of his report?

2 A. I did.

3 Q. What's your general recollection or opinion of the
4 report?

5 A. The report had a number of very positive things for
6 Mr. Curtis and for our belief as to what should occur
7 from a sentencing standpoint.

8 But, the report had a few items in it that I think
9 opened the door to some less than favorable testimony
10 about Mr. Curtis at his sentencing hearing.

11 Q. Directly, is that the major reason why you did not
12 request Doctor Burke to be at the sentencing hearing for
13 mitigation?

14 A. Yes.

15 MR. DAVIS: Your Honor, if I may have a moment?

16 THE COURT: Yes, sir.

17 [Whereupon, Mr. Davis reviews documents]

18 MR. DAVIS: May I approach the witness, Your Honor?

19 THE COURT: You may.

20 Q. [Mr. Davis] I'm going to show -- and Your Honor, may
21 I -- I'll hand up to you, it's exhibit -- plaintiff's
22 exhibit 1.

23 THE COURT: Thank you.

24 [Whereupon, plaintiff's exhibit number 1 is marked
25 by the court reporter.

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 Q. [Mr. Davis] Mr. Biering, can you take a look at that
2 and see if you recognize what that is?

3 [Whereupon, the witness is shown document]

4 A. It appears to be just a copy of the report that
5 Doctor Burke completed in this matter.

6 MR. DAVIS: And Your Honor, you now have a copy I've
7 provided a copy to the State as well.

8 Q. [Mr. Davis] And so you would have reviewed this
9 prior -- post guilty plea and prior to the sentencing,
10 correct?

11 A. I read it and read it and read it and read it and
12 read it again, yes; post plea pre-sentencing and then
13 post sentencing in preparation for a motion for
14 reconsideration as well.

15 Q. I want to direct you to a few important areas and
16 it's tough to read but on the top left, I believe it
17 shows page number 3. Starts out with assessment
18 instruments objective --

19 A. Yes.

20 Q. On the second paragraph, background information, in
21 there Mr. Curtis admits to Doctor Burke that I had met
22 older females online and met them in person later.

23 Is that correct? Is that accurate; about halfway
24 through that paragraph?

25 A. It started out with people my age and just got

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 younger, is that what you mean?

2 Q. Just before that, but yes.

3 A. Okay. I met older adult females online and met them
4 in person later, yes.

5 Q. Correct. And then two more sentences it started out
6 with people my age and just got younger, correct?

7 A. Yes.

8 Q. Okay. That's not good.

9 A. It's not good from a marital standpoint, but from a
10 standpoint of criminal activity, you know, I don't think
11 adultery had been prosecuted in this state for a very
12 long time. But, it's not good, but it doesn't state that
13 it's specifically going to a level that is criminal...

14 Q. On the ---

15 A. --- but I wasn't excited about it.

16 Q. On the next page under sexual history, Mr. Curtis
17 reported his first sexual experience at the age of 21
18 with a 23 year old female friend.

19 He estimated having approximately 10 different women
20 prior to marriage. He's admitted to having around 20
21 different sexual partners that he met online through
22 chat groups. That was from your client to Mister Burke
23 [sic] and was in the report, correct?

24 A. Yes.

25 Q. Is that your handwritten note to the side there?

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 A. That is not gibberish, yes.

2 Q. Can you decipher this?

3 A. Because I didn't -- it appears that the copy is
4 probably a copy that I provided you this would not have
5 been the copy that was provided to the court that would
6 have had handwritten notes on it. Not criminal contact;
7 not criminal.

8 Q. For the court's purposes, the Solicitor even
9 mentions on the record that law enforcement was concerned
10 about other -- some potential other incidences. Is that
11 accurate, do you recall that?

12 A. I do recall that.

13 Q. No other charge comes up, correct?

14 A. No other charge had been made.

15 Q. The next page on page 5 at the bottom, Mr. Curtis'
16 score on the scale was 19 categorizing him in the highest
17 risk group for problematic internet use. That's
18 something that you would have viewed as bad in this
19 report, correct?

20 A. Yes, but that's not the -- there were other very
21 positive things in this report. Unfortunately -- I mean,
22 I do a lot of domestic work as well and having sexual
23 relations outside of marriage and having problematic
24 internet use unfortunately is a plague on our current
25 society. It's not something that is a basis for someone

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 to be incarcerated for a significant period of time. One
2 of the issues that I needed to be able to show to the
3 sentencing judge, a sentencing judge that I anticipated
4 would be very familiar with Doctor Burke, was that Doctor
5 Burke was able to illicit information that he was
6 comfortable moving forward from a counseling standpoint
7 with Mr. Curtis.

8 And I do think that this report shows that. But,
9 certainly that issue -- that's not a good thing, but I
10 don't think it's something that's damning from a criminal
11 standpoint.

12 Q. On page 16, which in the middle of it has "Z" score
13 "C" score diagram. At the bottom of that page ---

14 A. --- bear with me for a second. The page numbers
15 don't come through here ---

16 Q. --- yes, it says "Z" score.

17 A. Oh, I see it.

18 Q. Okay. So at the bottom of that Burke sexual fantasy
19 scales and then in that paragraph it lists responses from
20 Mr. Curtis about halfway through that last paragraph four
21 different numbered responses.

22 Number two lists among other things, and forgive me
23 if I don't pronounce this correctly, hebephilia as one of
24 the reported behaviors that Mr. Curtis reported. That's
25 listed in that series is it not?

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 A. It is.

2 Q. And that is interest in pubescent females, are you
3 familiar with that term?

4 A. I recall confirming the definition of the terms used
5 and do recall that.

6 Q. And that, again, that matches with what he was
7 charged with and what he pled guilty to, correct?

8 A. Yes.

9 Q. But that's not good that he self admits that?

10 A. I would disagree that it is not good. We had an
11 admitted set of facts here. And we had a very trained
12 professional who provides sex offender counseling.

13 And one of the issues as a gate keeper of that sex
14 offender counseling with Doctor Burke, in my experience
15 with past clients is that they've got to be forthright
16 with information. They have to, basically, open
17 themselves up to Doctor Burke so he actually knows what
18 he has to work on.

19 So, you know, strangely enough it's not good but I
20 do think it, unfortunately on paper, unfortunately
21 because what it admits to, but it goes to the desired end
22 that he could actually complete sex offender counseling
23 with Doctor Burke.

24 So, I think the report speaks to that issue. And I
25 have had experience with a client who we successfully

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 were able to get on a probationary sentence who had an
2 assessment with Doctor Burke. And when the counseling
3 phase began, he was not capable of doing what needed to
4 be done to continue in counseling. The result being that
5 we found ourselves very quickly in front of a judge on a
6 probation violation where full term of his sentence was
7 revoked.

8 So, I think it goes to something -- it was a desired
9 end. His being open with Doctor Burke was a desired end
10 showing that he could be successful with sex offender
11 counseling.

12 Q. Okay, well then help me understand this then. The
13 four or so items I pointed out, the admission of meeting
14 older adult females and then people younger; the
15 admission of 20 different sexual partners through chat
16 rooms after marriage; the high risk score of 19; the
17 hebephilia; in the whole, good report or bad report?

18 A. I think you'd need to -- in my assessment, okay, in
19 my assessment and the assessment that I made at the time
20 when I started looking at this and how we proceeded from
21 a sentencing, you know from a sentencing phase
22 standpoint, you kind of have to go to the conclusions.

23 Not that you erase all of the bases for that
24 conclusion because we've got to live with those. But, in
25 the conclusion, what Doctor Burke suggests is that he is

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 in a moderately low level of risk category -- he's really
2 worried about recidivism and that's the big issue here.
3 And when we look at the recommendations, it's unequivocal
4 what Doctor Burke says. He says I believe Mr. Curtis to
5 be safely maintained in the community under the following
6 guidelines.

7 We had a witness unfortunately, you know, the
8 victim's parents in this case. So, it was a tough set of
9 facts to overcome and I think that -- I'm not usually a
10 fan of caps in the criminal setting, but I thought it was
11 the best that we could do at this case.

12 And it was also an opportunity to close -- close the
13 door to the case. It was in Mr. Curtis' favor to close
14 it.

15 Q. All-in-all a good report or bad report, in your
16 opinion?

17 A. Not bad report. Not a -- there were some openings
18 for some problems in that report.

19 Q. Okay. So, not a bad report so why didn't you have
20 Doctor Burke there because I believe you testified the
21 reason you didn't have him there is this is a bad report
22 and it opens up the door to things.

23 And I pointed out the best I could the most serious
24 ones I could find. If I've not pointed out the biggest
25 reason why you didn't have Doctor Burke there, if you

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 could please point that out to the court?

2 A. In addition, there was a -- we handed up a letter
3 from Doctor Burke that showed a day or so before the
4 sentencing -- showing that he was in counseling and was
5 continuing to do what he was supposed to do.

6 I'd had conversations with Doctor Burke and based on
7 my conversations with Doctor Burke and based on the
8 concerns in the report, I felt like the report being
9 accepted by the court was our best foot forward.

10 I was very concerned about the Solicitor having
11 Doctor Burke on the stand and how that would play out in
12 a sentencing case. You know, and this was a -- arguably
13 the judge's hands had been tied from the sentencing
14 standpoint based on our plea at that point.

15 But I felt like the best foot forward in our case
16 was the report, the paper report not being subject to
17 cross-examination or further examination.

18 Q. And other than the bad points that I pointed out,
19 what other ones caused you not to have Doctor Burke
20 present?

21 A. If you want to give me a second I'll be happy to
22 read through and point out some other concerns that I
23 had. Well, I'll tell you one of my -- I'll go to one of
24 my major concerns and I apologize to the ladies in the
25 room as we discuss this, but the PPG exam if you go to

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 the last -- the third to last page including the
2 signature pages in the pages, Mr. Curtis failed to
3 demonstrate significant sexual arousal to any stimulus
4 set during the PPG exam. The PPG exam is an exam -- if
5 his Honor knows what PPG --

6 THE COURT: --- I do ---

7 A. --- I don't need to explain what it means. It
8 concerned me that there was no sexual arousal to any
9 stimulus on that exam. That concerned me. Let me go
10 back to the front and I'll start from the beginning, but
11 that was one of the biggest concerns ---

12 Q. --- why?

13 A. Because this report documents sexual arousal based
14 on numerous different stimuli and there are some positive
15 things in the report. Some of the tests show a very low
16 to moderate level of risk of recidivism over the years
17 that it gages.

18 And normally the tests show that men are sexually
19 aroused based on various stimuli, especially some of the
20 things unfortunately that Doctor Burke uses. He goes
21 through and tries to find something that somebody is
22 sexually attracted to.

23 That concerned me. Bear with me for a second and
24 I'll go through the other items.

25 [Whereupon, the witness reviews document]

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 A. There wasn't a major discussion about this if you go
2 to page 7, however certain -- it's second full paragraph
3 -- however certain aspects of the profile raised a
4 possibility of denial of problems with drinking or drug
5 use.

6 And again, what I was dealing with was not
7 necessarily the reality unfortunately Mr. Curtis' wife
8 had testimony that Doctor Burke would present based on
9 his evaluation of Mr. Curtis.

10 I had some concerns if you move through the
11 paragraph about self-concept about what Doctor Burke
12 would say the results of Mr. Curtis' focus on his past
13 behaviors.

14 [Whereupon, the witness reviews document]

15 A. Again I had some concerns with the Limestone Test.
16 I think it's inconsistent with some of the other testing.
17 And one of the most -- along with the PPG test and this
18 as we move back issues to be addressed.

19 Doctor Burke suggests in his report, and he puts it
20 in bold, it should be noted that normal heterosexual
21 adult males show objective sexual interest in both
22 adolescent and adult females. Exploration in that area
23 with Doctor Burke on the witness stand, I believe, would
24 be very problematic.

25 Q. Surely like other mitigation and witnesses, you

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 wouldn't have called Doctor Burke to the stand, would
2 you?

3 A. Here's the issue, I didn't think that it was going
4 to be best to have Doctor Burke at this hearing. I spoke
5 to Doctor Burke prior to this hearing and I chose to go
6 with the report.

7 I did not -- I will tell you as you think about the
8 outcomes, it's a very unlikely outcome for the judge to
9 give him a maximum sentence of 10 years with no
10 probationary sentence.

11 I mean, one of the things that quite candidly that
12 we explored was the fact that by giving him lesser a
13 sentence and some probation, it extended the court's
14 opportunity to review and monitor Mr. Curtis.

15 We thought that was avenue that we were going to be
16 able to capitalize on. The result of that would be that
17 we would get less than 10 years.

18 Q. The Solicitor, at the sentencing, focused
19 specifically on the admitted 20 sexual partners that only
20 would -- the only source of that was Doctor Burke's
21 report. Do you recall that during the sentencing phase
22 -- sentencing hearing?

23 A. Yes.

24 Q. And do you recall an officer presenting some
25 information to the court about a separate law enforcement

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 agency recognizing Mr. Curtis' profile, for lack of a
2 better way to describe it?

3 A. Yes.

4 MR. DAVIS: Your Honor, may I have just a moment?

5 THE COURT: Yes, sir.

6 [Whereupon, Mr. Davis confers with his client and
7 reviews document]

8 Q. [Mr. Davis] Can you describe to the court what
9 contact, what conversations you've had with Mr. Curtis
10 between the guilty plea and the sentencing hearing?

11 A. I can't -- I don't have -- I have a scanned file and
12 I don't have a copy of that as far as the logs. But, I'd
13 spoken with him, I can't tell you the frequency and I
14 can't tell you the dates at this time when I spoke to
15 him.

16 Q. Four months between the -- approximately four months
17 between the guilty plea and the sentencing, how many
18 times would you recall that you met in person with Mr.
19 Curtis?

20 A. Probably -- I can't recall specifically. I don't
21 recall it being a great number of times though, I would
22 say that.

23 Q. How many times would you have discussed the case
24 with Doctor Burke?

25 A. I discussed the case with Doctor Burke no less than

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 three times between the plea and the sentencing and
2 talked with his office a number of times other than that
3 as well.

4 Q. In April when the guilty plea was taken and
5 sentencing deferred, it was clear to the State and the
6 court that in the meantime not only was an evaluation
7 done but also this continued counseling with Doctor Burke
8 was going to occur before you came back?

9 A. Yeah. I think we played our hand. I think we --
10 and there's a writing I reviewed in that this morning.
11 It was like a three point writing that we kind of went
12 over before the sentencing. But yes, I think it was very
13 clear.

14 [Whereupon, the witness reviews document]

15 Q. Mr. Biering, I'm sorry I didn't want to interrupt
16 you if you were looking ---

17 A. --- oh no, I -- I think it was very clear ---

18 Q. --- okay ---

19 A. --- I'll continue to look if you have another
20 question or if that is ---

21 Q. --- just ---

22 A. --- not completely responsive to your question I
23 will continue to look for the writing.

24 Q. It is plenty for me. I didn't want you to ---

25 A. --- okay. Okay. No, I just -- okay.

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 Q. Just a couple of final questions. You've practiced
2 criminal defense how long?

3 A. Since the day I started practicing law in May of
4 1997.

5 Q. Okay. I've got you by a year or so, in your 18th
6 year now?

7 A. I guess so.

8 Q. You've worked with Doctor Burke on previous cases?

9 A. Yes, going back to probably around 2000 in various
10 settings; in the criminal setting, in the Department of
11 Social Services setting and in some Family Court
12 settings.

13 Q. So, based on that experience it caused you to have
14 concerns that you've already testified about whether you
15 had Doctor Burke there or not, is that accurate?

16 A. That's correct.

17 Q. You've reviewed the report for the court today and
18 paraphrased some things, but that's -- you're a lawyer do
19 you have degrees other than that?

20 A. I do not. From an experience standpoint I would say
21 that one of the things that I do think provides me some
22 level experience that I use in my criminal practice, I
23 was a parole agent with the Department of Probation
24 Parole and Pardon Services many years ago and did
25 everything except for my graduate thesis for a master's

Brian Curtis v State of S.C.
Christopher Biering-Direct Examination by Mr. Davis
April 20, 2015

1 degree in criminal justice. So, I use some of that as I
2 kind of go through the theory of criminal cases and try
3 to address sentencing issues and also look at probation
4 cases.

5 Q. Just to go off the checklist, but unlike Doctor
6 Burke, not a psychiatrist. You're not a psychiatrist?

7 A. Absolutely not.

8 Q. Not a neuropsychiatrist?

9 A. Absolutely not.

10 Q. Not a counselor?

11 A. No.

12 Q. Or a Ph.D?

13 A. No.

14 Q. But, because of that -- not only because of that,
15 but that his ability to go in depth with this report
16 again was a major concern for you?

17 A. Major concern.

18 Q. Thank you Mr. Biering, no further questions.

19 THE COURT: Cross-examination?

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Brian Curtis v State of S.C.
Christopher Biering-Cross-Examination by Mr. Thomas
April 20, 2015

1 CROSS-EXAMINATION

2 BY MR. THOMAS:

3 Q. So you're not a doctor or anything of that nature;

4 you're not a psychologist?

5 A. No.

6 Q. That's why you hired Doctor Burke, right?

7 A. That's exactly right.

8 Q. And you talked with Mr. Curtis about hiring Doctor

9 Burke before you hired him?

10 A. We did.

11 Q. And, did you get a chance also to review, I guess,

12 the State's evidence in this case?

13 A. Yes.

14 Q. And he never denied responsibility for this crime?

15 A. Never denied responsibility for this crime. He came

16 to the table, literally came to the table to hire me but

17 had come to the table with the prosecution providing a

18 statement -- from day one he accepted responsibility and

19 was willing to get treatment and move forward in a

20 different way in his life.

21 Q. And he's always accepted that he has a problem with

22 this sort of behavior in your conversations with him?

23 A. He accepted responsibility for what he did. And the

24 report speaks to things that are problematic from a

25 sexual standpoint; they were problematic from his marital

Brian Curtis v State of S.C.
Christopher Biering-Cross-Examination by Mr. Thomas
April 20, 2015

1 standpoint. But, he accepted responsibility for what he
2 did and was willing to enter into treatment. So, I don't
3 think it's a fair characterization to say that, I can't
4 remember exactly how you said it, but I don't think that
5 was a correct statement of what Mr. Curtis said or did.

6 Q. Okay. Yeah, and I -- don't let me mischaracterize
7 his interactions with you in any way, but it's safe to
8 say you wanted this report because you wanted to be able
9 to show that he was going to be able to be out and not
10 get an active sentence.

11 A. Correct.

12 Q. Did you discuss with him deferring the assessment
13 until after the plea was entered?

14 A. Yes. We talked about, you know, about timing and
15 how this could, you know, potentially play out. It kind
16 of worked out almost like a presentencing report in a
17 federal case.

18 Q. So, why did you defer and why didn't you get it done
19 beforehand, I guess is the question here?

20 A. I don't know if I can necessarily answer that as to
21 why we didn't do it beforehand. We had it lined up; we
22 you know we maximized what we thought we could do from a
23 standpoint of minimizing his sentence. And, you know, we
24 went from there. At that point it couldn't get worse
25 than 10 years. This would have been a horrible trial

Brian Curtis v State of S.C.
Christopher Biering-Cross-Examination by Mr. Thomas
April 20, 2015

1 case.

2 Q. Did you ever explain to him at that active time it
3 was still a possibility even with Doctor Burke's report?

4 A. Yes. In fact, my general approach in cases is that
5 I want clients to walk in prepared for the worst. The
6 worst was 10 years.

7 Q. And the report that was issued, you presented that
8 to the judge.

9 A. Yes.

10 Q. You also presented some affidavits?

11 A. Yes.

12 Q. Basically your mitigation presentation was Doctor
13 Burke has basically said he's going to be able to be out
14 and to be intensely supervised but he can be out in the
15 public?

16 A. Yes. And that we had the community support because
17 people don't do well on the planet alone and that he had
18 an expansive community support system that would further
19 enable him -- well, actually enable him to participate
20 successfully in community supervision.

21 Loners don't do well in either sex offender
22 counseling or community supervision. So, I think that we
23 showed that he was not that.

24 Q. And I know we talked about a bunch of bad things in
25 this report, but there's also some good stuff in this

Brian Curtis v State of S.C.
Christopher Biering-Cross-Examination by Mr. Thomas
April 20, 2015

1 report, correct?

2 A. Yes there are.

3 Q. And if you turn to page 6 of the report talking
4 about the CPT 2 Test? That talks about how Mr. Curtis
5 doesn't have any impulse control problems. So that
6 demonstrates that he's capable of sort of conforming his
7 conduct if he needs to?

8 A. Yes.

9 Q. And if you go over to page 11 talking about the
10 static 99, he's in the low-medium risk category?

11 A. Yes.

12 Q. In fact over on page 13 it talks about his
13 recidivism rates, Doctor Burke's predicted recidivism
14 rates. And he puts those anywhere from one percent to
15 seven percent?

16 A. That's correct.

17 Q. And I think ultimately the thing you said was most
18 important was the recommendation that back in that he
19 could be safely maintained in the community?

20 A. Yes.

21 Q. Thank you Mr. Biering that's all I've got.

22 THE COURT: Any redirect?

23 MR. DAVIS: Just a moment, Your Honor.

24 [Whereupon, Mr. Davis confers with his client]

25 MR. DAVIS: No, Your Honor. Thank you, Mr. Biering.

Brian Curtis v State of S.C.
Christopher Biering-Cross-Examination by Mr. Thomas
April 20, 2015

1 No other questions.

2 THE COURT: Any objection to this witness being
3 excused?

4 MR. DAVIS: Not by the plaintiff.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

7 MR. THOMAS: Your Honor, I would hate to --

8 [Whereupon, Mr. Thomas and Mr. Davis confer]

9 MR. THOMAS: Can I just ask him to hang around?

10 THE COURT: Yes, sir.

11 MR. DAVIS: We call Mr. Curtis as the next witness.

12 THE COURT: We've been in here for almost 2 hours;
13 let's take a 10 minute recess.

14 [Whereupon, court is in recess from 12:00 to 12:10
15 p.m.]

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Brian Curtis v State of S.C.
Brian Curtis-Direct Examination by Mr. Davis
April 20, 2015

1 THE COURT: You may now call your witness.
2 MR. DAVIS: Thank you, Your Honor. We would call
3 Mr. Curtis to the stand.
4 THE COURT: Come forward please sir and be sworn.
5 [Whereupon, Mr. Curtis comes forward]
6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]
8 CLERK OF COURT: Go ahead and take a seat. State
9 your name into the microphone and spell your last name
10 for the record.
11 THE WITNESS: Brian Curtis. Curtis is spelled
12 C-U-R-T-I-S.
13 THE COURT: You may proceed.
14 MR. DAVIS: Thank you, Your Honor.
15 - - - - -
16 BRIAN M. CURTIS,
17 Having been first duly sworn,
18 Was examined and testified as follows:
19 DIRECT EXAMINATION
20 BY MR. DAVIS:
21 Q. Mr. Curtis is it accurate that you pled on April 4,
22 2012 to Criminal Sexual Conduct in the Second Degree, is
23 that right?
24 A. Yes, sir.
25 Q. You were represented by Mr. Biering who has just

Brian Curtis v State of S.C.
Brian Curtis-Direct Examination by Mr. Davis
April 20, 2015

1 testified on that case?

2 A. Yes, sir.

3 Q. Do you, today, have any criticism of his conduct up
4 to that date, the guilty plea date?

5 A. No, sir.

6 Q. When you went to court with -- in front of Judge
7 Young in Moncks Corner on the fourth, it was your
8 understanding that you were pleading guilty that day
9 only? Sentencing would not occur that day?

10 A. Yes, sir.

11 Q. Were you incarcerated at the time of the plea or
12 were you out on bond?

13 A. I was out on bond.

14 Q. And do you recall you were arrested on October 29 of
15 2011, do you recall that?

16 A. That sounds correct.

17 Q. Do you recall how many days you spent in jail before
18 you were able to make bond?

19 A. Two or three days.

20 Q. So five months or so before the plea, early November
21 of 2011 you would have gotten out on bond?

22 A. Yes, sir.

23 Q. After the plea sentencing was deferred until a later
24 date with Judge Roger Young, is that correct?

25 A. That's correct.

Brian Curtis v State of S.C.
Brian Curtis-Direct Examination by Mr. Davis
April 20, 2015

1 Q. What was the plan that you and Mr. Biering had in
2 that timeframe?

3 A. Well, as far as I can recall the plan was that I
4 would hire a counselor. At that point I hired Doctor
5 Burke, of Southeastern Assessments I believe, and then I
6 would begin to go through counseling with Doctor Burke
7 and testing to prepare a report for the court at a later
8 date.

9 Q. Had you seen Doctor Burke prior to the guilty plea?

10 A. I can't recall. It's possible that I saw him at the
11 end of March for my first visit.

12 Q. Okay. Would seeing the report refresh your memory
13 on that?

14 A. It may.

15 MR. DAVIS: Your Honor, may I approach?

16 THE COURT: You may.

17 Q. [Mr. Davis] I'm going to show you plaintiff's
18 exhibit number 1. Do you recognize that as a report from
19 Doctor Burke?

20 [Whereupon, the witness reviews the document]

21 A. Yes, sir.

22 Q. Okay. In reviewing that, does that refresh your
23 memory on when you first would have been seen by him?

24 A. No. I was hoping you'd have dates in here of when I
25 started treatment, but I do not see that.

Brian Curtis v State of S.C.
Brian Curtis-Direct Examination by Mr. Davis
April 20, 2015

1 Q. I'll direct you to the top portion of that
2 underneath the client name.

3 A. Okay, yes, I see it. March 22, 2012 was the initial
4 assessment date.

5 Q. Is that -- can you describe that as an intake? Is
6 that the initial assessment or was that the full on
7 evaluation?

8 A. It was the initial assessment. The assessment took
9 place in for lack of better term, phases.

10 Q. Was there any discussion with your attorney prior to
11 agreeing to plead guilty about doing this evaluation?

12 A. There was some discussion as Mr. Biering referenced
13 as to the timing of when the report, you know maybe most
14 benefited me.

15 Q. Was it discussed by you and Mr. Biering for you to
16 begin the assessment, the evaluation, and the counseling
17 well ahead of April to be finished by the guilty plea
18 date? Was there any discussion of that?

19 A. No.

20 Q. Following the guilty plea, but before the sentencing
21 how much contact did you have with your attorney?

22 A. Could you repeat that one more time?

23 Q. Following the guilty plea, but prior to sentencing
24 how much contact did you have with your attorney?

25 A. I would say I probably met with him maybe four or

Brian Curtis v State of S.C.
Brian Curtis-Direct Examination by Mr. Davis
April 20, 2015

1 five times in person and talked to him on the phone maybe
2 that many times as well, maybe. He was very difficult to
3 get in touch with after that. You know, it took repeated
4 phone calls to get a return phone call.

5 Q. All that time, the four months between the guilty
6 plea and the sentencing hearing, how often were you
7 meeting with Doctor Burke?

8 A. I was meeting with Doctor Burke initially, I believe
9 it was once a week every week -- it may have been twice a
10 week, I can't recall. It was at least once a week.

11 Q. And were you aware that he'd be sharing the
12 information with your attorney about your meetings?

13 A. Yes, sir.

14 Q. Did you understand whether this would be shared with
15 anyone else other than your attorney?

16 A. Yes, sir.

17 Q. And what was your understanding of that?

18 A. My understanding was that it would be shared with
19 the judge and the prosecution.

20 Q. What was your understanding about what type of
21 presentation would be made at the sentencing hearing?

22 A. It was my understanding that we would try to have
23 Doctor Burke present because it would help supplement the
24 report. And I would say that was one of the issues that
25 I had was not being able to get concrete information from

Brian Curtis v State of S.C.
Brian Curtis-Direct Examination by Mr. Davis
April 20, 2015

1 Mr. Biering that Mr. Burke would or would not be present.

2 Q. Who else did you expect to be present at the
3 sentencing hearing?

4 A. The other people that I had present and -- were my
5 family and a couple of friends as well that had helped
6 support and provide affidavits for me -- character
7 witness affidavits.

8 Q. Was there anyone that provided an affidavit that was
9 not there?

10 A. Yes.

11 Q. Was that your understanding that they'd provide that
12 in lieu of being present or not?

13 A. No. There were several people from out of state
14 that provided affidavits that knew me well that I spent
15 significant amounts of time with.

16 Q. Did you arrange setting up -- did you arrange the
17 providing of the affidavits to Mr. Biering from those
18 folks?

19 A. Yes.

20 Q. Could you have done that prior to the guilty plea?

21 A. Yes.

22 Q. What discussions did you have with your attorney
23 about the negotiated cap of 10 years?

24 A. There were several discussions that we had and I
25 would say that Mr. Biering was very up front that, you

Brian Curtis v State of S.C.
Brian Curtis-Direct Examination by Mr. Davis
April 20, 2015

1 know, it was an open plea and that I had could face, you
2 know, up to 10 years like you said earlier. You know, to
3 expect the worst or prepare for the worst and hope for
4 the best.

5 Q. Those discussions with Mr. Biering and vicariously
6 with the Solicitor's office occurred prior to the April
7 date, is that accurate?

8 A. Yes.

9 Q. At some time prior to the April date you had told
10 Mr. Biering your intention to accept that deal, is that
11 correct?

12 A. Yes.

13 Q. Do you recall when you originally hired Mr. Biering?

14 A. I don't recall the exact date, but it was early to
15 mid November 2011.

16 Q. Soon enough for you to make bond?

17 A. Yes, sir.

18 Q. Did you and Mr. Biering have discussions about going
19 to trial on this case?

20 A. No, sir. You know, as he mentioned, you know, I was
21 up front and accepted responsibility for my actions
22 pretty much right out the gate and a trial wasn't
23 something that I was interested in pursuing.

24 Q. You had given statements to law enforcement after
25 arrest, correct?

Brian Curtis v State of S.C.
Brian Curtis-Direct Examination by Mr. Davis
April 20, 2015

1 A. Yes, sir.

2 Q. Is it fair to say -- well, I'll let you testify.
3 What was your intention after finding out in November of
4 2011 about whether you intended to try this case or to
5 plead guilty on this case?

6 A. My intentions were not to go to trial and my
7 intentions were to -- to hire a lawyer to help me most
8 successfully mitigate my actions and to minimize the
9 amount of time served so that I could get the help that I
10 needed through counseling.

11 Q. Did you explain those intentions to your attorney?

12 A. Yes, sir.

13 MR. DAVIS: That's all the questions I have, Your
14 Honor.

15 THE COURT: Any cross-examination?

16 MR. THOMAS: No cross-examination from the State.

17 THE COURT: Thank you. You may step down.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 MR. DAVIS: Your Honor, that would be the
21 plaintiff's presentation.

22 THE COURT: Okay. Anything from the defense?

23 MR. THOMAS: Nothing from the State, Your Honor. I
24 guess we will release Mr. Biering now.

25

Brian Curtis v State of S.C.
Court's Ruling
April 20, 2015

1 COURT'S RULING
2 THE COURT: This from what I hear, Mr. Biering may
3 want to hear this; but I simply do not find that his
4 performance was deficient. Having found that there's no
5 need for me to go on to step two and the PCR request is
6 hereby denied. Thank you.
7 MR. DAVIS: Thank you, Your Honor.
8 MR. THOMAS: Thank you, Judge.
9 THE COURT: Yes, sir. Have a good day.
10 MR. DAVIS: Judge, if I didn't I would ask that the
11 report be admitted as evidence in this case ---
12 THE COURT: --- absolutely ---
13 MR. DAVIS: --- certainly ---
14 THE COURT: --- I thought it was ---
15 MR. DAVIS: --- I apologize I didn't move it ---
16 THE COURT: --- the way we were talking about it.
17 MR. DAVIS: Thank you, Your Honor.
18 [Whereupon, plaintiff's exhibit number 1 is entered
19 into evidence by the court]
20 *****END OF TRANSCRIPT OF RECORD*****
21
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Brian Curtis v State of S.C.
Certificate-Court Reporter
April 20, 2015

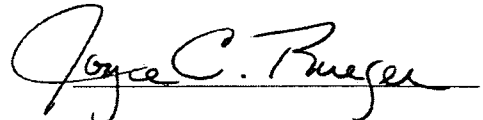
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Berkeley County, South
Carolina on the 20th day of April, 2015.

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

August 15, 2015



Joyce C. Rueger, CVR-M
Court Reporter

Brian Curtis Evaluation



South Eastern Assessments, Inc.

709 Old Trolley Road, Summerville, SC 29485
Office: (843) 821-2124 Fax: (843) 875-3149

Psychosexual Evaluation Report
PRIVATE

Client: Brian Curtis

Evaluator: William Burke, Ph.D.

Date of Assessment: March 27, 2012

Revised on May 2, 2012

Date of Birth: December 3, 1978

Waiver of Confidentiality

Prior to the beginning of this assessment Mr. Curtis was fully informed that anything he discussed during this consultation could be reported in the following summary to his attorney Mr. Biering. He understood this as demonstrated by his ability to repeat back the conditions of this consultation as described above. He also signed a release of records, so this consultation could be advanced to his attorney Mr. Biering. This report contains personal information pertaining to Mr. Curtis, and as such, it should be treated with utmost confidentiality, and should not be advanced forward without the written consent of Mr. Curtis.

Warning Regarding the Release of Information

This psychosexual evaluation should not be released to the evaluatee other than under the supervision of a mental health practitioner, because the information in this summary may be detrimental to the evaluatee's emotional health.

Warning Regarding the Limitations of this Summary

This evaluation relied upon direct information from the patient, and collateral information provided by the patient and other sources. The validity of the information provided has not been established; therefore, the accuracy of this report is limited to the accuracy of the information provided. If additional information is provided, subsequent to this report, we may reach different conclusions. Under these circumstances, we reserve the right to change our

**PLAINTIFF'S
EXHIBIT**

13.e.p.08
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opinions. Given this and other limitations of the evaluation process, we are unable to determine an individual's past behavior or to predict an individual's future behavior with absolute certainty.

Rationale Regarding This Sex Offender Risk Assessment

The following risk assessment is designed to meet the Standards of Care as established by the Association for the Treatment of Sexual Abusers (ATSA). Per ATSA guidelines, an assessment should focus on a client's risk factors, clinical needs, strengths, risk management strategies, and the connections between these risks and needs. Additionally, a comprehensive assessment should include an evaluation of a client's abusive and non-abusive sexual behavior.

According to the ATSA guidelines, the following categories of information should be investigated:

- a) Developmental History & Family Background
- b) Education & Employment Histories
- c) Medical & Mental Health Histories
- d) Peer & Romantic Relationship Histories
- e) Level of Cognitive Functioning
- f) Antisocial Behavior
- g) History of Aggression or Violence
- h) Official & Unreported History of Sexual & Nonsexual Crimes
- i) Psychopathy Assessment
- j) Relevant Personality Traits (Empathy, Hostility, Risk Taking, & Impulsivity)
- k) Sexual Fantasies, Urges, & Behaviors
- l) Sexually Abusive Behavior (Details about victim, tactics, & circumstances in which the abuse occurred)
- m) Substance Abuse
- n) Use of Sexually Arousing Materials
- o) Access to the Internet
- p) Collateral Interviews (if available)
- q) Relevant Psychological Testing
- r) Psychophysiological Testing
- s) Review of Official Documents

Assessment Instruments & Objective Measures:

Static 99

Stable 2007

Acute 2007

Hare Psychopathy Checklist-Revised

Abel Assessment for Sexual Interests: Version 2

Limestone Preftest Penile Plethysmograph

Mini Mental State Evaluation (MMSE)

Personality Assessment Inventory (PAI)

Burke Sexual Fantasy Scales

Conners Continuous Performance Test II

Michigan Alcohol Screening Test (MAST)

CAGE Alcohol Screening Test (CAGE)

Rapid Alcohol Problems Screen (RAPS4)

Internet Sex Screening Test (ISST)

Background Information: Mr. Curtis is a 33-year-old Caucasian male referred by his attorney subsequent to being charged with Criminal Sexual Conduct with a minor second degree and Criminal Solicitation of a Minor. He stated, "I met this 14 year old girl on My Yearbook, a social networking site. I had met older adult females on line and met them in person later. There has been a progression of me being interested in younger people. It started out with people my age and just gotten younger. She had posted something that made it clear she was interested in sex. After two weeks of chatting on line I made arrangements to meet her at her house. Her parents were gone. When I got there, there was little small talk and very quickly got to it. I performed oral sex on her and she on me." When asked how the event was discovered he reported that he believed her parents found information on her cell phone.

Historical Information: Mr. Curtis was born in Petoskey, MI and is the middle child with an older brother and younger sister. His father was in the Coast Guard and subsequently the family moved multiple times. Around the age of two, he and his family moved to Minnesota for two years and then to Virginia. He remained in Virginia until he was 9 when the family moved back to Michigan for six months. They then moved to New York City for 3 ½ years before moving back to Gloucester, VA. He graduated from Gloucester High School in 1997 where he was on the Honor Society, Beta Club, Cross Country, and Track Team. He attended and graduated from Virginia Tech with a degree in Civil Engineering 2002.

Brian Curtis Evaluation

He then went to work in Williamsburg, VA for two years for MBP a construction management firm. He then moved to Summerville, SC and continued to work for MBP until 2005 when he went to work for Siatra Land Development Company and worked there until 2008. He then went to work for Santee Cooper in Moncks Corner, SC where he worked until his arrest in October of 2011. He presently works for Hurry Up Towing in Summerville, SC.

In 2004, Mr. Curtis married Jennifer McDougal (age 32). Together they have four children, three female and one male. He stated that his wife is supporting him and wants him to get help. Mr. Curtis was asked to live outside his home as a condition of his bond and has supervised visits with his children daily. His wife supervises the visitations.

Criminal History: Mr. Curtis reported that the index offense is his only arrest.

Sexual History: Mr. Curtis reported that his first sexual experience was at the age of 21 with a 23 year old female friend. He estimated having approximately 10 different women prior to marriage. He estimated having around 20 different sexual partners that he met on line through chat rooms.

Use of Sexually Arousing Materials

Mr. Curtis reported that he has used the following sexually arousing materials during his lifetime: pornographic magazines, internet pornography, and videotaped media. He reported that in 1997 he began viewing pornography on line when he attended college. "I feel that is where the majority of my problems started. I began to look at all sorts of adult oriented legal porn and progressed to "Barely Legal" and "Almost Teen". I then started chatting with women and meeting them to have sex." He estimated having sexual contact with approximately twenty different women."

*not
criminal
contact*

Medical History: Mr. Curtis denied a history of seizure, head trauma, or surgery. In 2009 he had a hernia repair surgery.

Mental Status: Mr. Curtis presented with a flat affect that brightened on approach. He appeared open with the assessment procedure and was methodical in his approach to the process. He appeared oriented to all four spheres. He reported no difficulty falling and/or staying asleep. He stated that his appetite was within normal limits. He denied suicidal ideation. He denied homicidal thoughts. He denied symptoms of depression. He denied delusional thought. He denied auditory and/or visual hallucinations.

Mini Mental State Evaluation (MMSE): The MMSE is a brief screening test that quantitatively assesses the severity of cognitive impairment and can be used to document cognitive changes over time if necessary. The MMSE assesses Orientation (10 items), Registration (3 items), Attention & Calculation (1 item), Recall (3 items), and Language (9 items). Raw scores are corrected for age. A score of 23 or lower is indicative of cognitive impairment. Mr. Curtis scored 30 on this instrument, suggesting that he does not suffer from any type of cognitive impairment.

Alcohol & Substance Abuse Screening:

Michigan Alcohol Screening Test (MAST)

CAGE Alcohol Screening Test (CAGE)

Rapid Alcohol Problems Screen (RAPS4)

The three screening tests listed above were utilized to facilitate with assessing potential alcohol or drug problems. Mr. Curtis scored 0 on all three screening. This is an indication that he does not suffer from any type of alcohol or substance abuse issue. He denied illicit or prescription drug abuse. Mr. Curtis reported he began drinking alcohol at the age of 12. He stated that he has about 2 or 3 drinks a year. He has never tried illicit drugs.

Level of Cognitive Functioning

Mr. Curtis demonstrated no difficulty in understanding the assessment process. He demonstrated no difficulty understanding the items in each test or the purpose of each test.

Internet Sex Screening Test (ISST): The ISST is a nationally normed test designed to screen individuals for problematic online sexual behavior. The risk classification levels are as follows:

Score of 1 to 8 = **Low Risk Group.** One may or may not have a problem with sexual behavior online.

Score of 9 to 18 = **At-Risk Group.** One is "at-risk" for internet sexual behavior to interfere with significant areas of one's life. At this level of risk, one probably has had experienced consequences for on-line behavior:

Score of 19+ = **Highest Risk Group.** On line behavior may interfere and jeopardize important areas of one's life.

Mr. Curtis's score on this scale was 19, categorizing him in the Highest Risk Group for problematic internet use.

Conner's Continuous Performance Test (CPTII): The CPTII is an objective computer operated, nationally normed psychological test designed to assist in the diagnosis of inattention difficulties. The Confidence Index generated by the program is utilized to quantify the validity of the assessment. Mr. Curtis's Confidence Index was 49.26%. The CPT discriminant function indicates that the results better match a clinical than non-clinical profile. The confidence index can be described in the following way: The chances are 50.74 out of 100 that a clinically significant problem does not exist associated with inattention and impulsivity.

The CPT-II performs a self-diagnostic check of the accuracy of the timing of each CPT administration. There was no indication of any timing difficulties or respondent non-compliance, and the current administration should be considered valid. Overall the CPT-II results suggest that Mr. Curtis does not suffer from significant impulse control or inattention problems.

The Hare Psychopathy Checklist-Revised (PCL-R) combines information from a clinical interview and other records. Data from these sources are used to rate 20 items, from which 3 scores are derived. The Total Score indicates overall level of psychopathy, a personality disorder describing individuals who are callous, lack empathy, and engage in destructive behaviors with apparently no concern for the rights or welfare of others. Mr. Curtis's total score was 14. This score is below the clinical cut-off score of 30 (which indicates the presence of psychopathy) and was in the 21.4th percentile, indicating that 78.6 percent of the male inmates on whom this instrument was normed achieved higher scores than Mr. Curtis. The Factor 1 score is derived from those items that assess a manipulative interpersonal style. Mr. Curtis's score on this factor was 7 and fell at the 44.1st percentile, indicating that he scored above 44.1% of the norming sample. The Factor 2 score is derived from those items that indicate serious behavioral problems. Mr. Curtis' score on this factor was 6, which fell in the 17.3rd percentile again indicating that he scored lower than 82.7 percent of the norming population. Mr. Curtis does not appear to have a diagnosis of psychopathy.

Personality Assessment Inventory (PAI): The PAI is a self-report designed for the clinical assessment of psychopathology and personality. The PAI provides a number of validity indices that are designed to provide an assessment of factors that could distort the results of testing. Such factors could include failure to complete test items properly, carelessness, reading difficulties, confusion, exaggeration, malingering, or defensiveness. For this protocol, the number of uncompleted items is within acceptable limits.

Also evaluated is the extent to which Mr. Curtis attended appropriately and responded consistently to the content of test items. Mr. Curtis's scores suggest that he did attend appropriately to item content and responded in a consistent fashion to similar items.

The degree to which response styles may have affected or distorted the report of symptomatology on the inventory is also assessed. Certain of these indicators fall outside of the normal range, suggesting that Mr. Curtis may not have answered in a completely forthright manner; the nature of his responses might lead the evaluator to form a somewhat inaccurate impression of the client based upon the style of responding described below. With respect to positive impression management, there is no evidence to suggest that Mr. Curtis was generally motivated to portray himself as being relatively free of common shortcomings or minor faults. However, certain aspects of the profile raise the possibility of denial of problems with drinking or drug use, as individuals with similar personality characteristics typically report greater involvement with alcohol or drugs than was described by this client. Interpretive hypotheses in this report regarding the abuse of these substances should be reviewed with caution.

With respect to negative impression management, there is no evidence to suggest that Mr. Curtis was motivated to portray himself in a more negative or pathological light than the clinical picture would warrant.

Clinical Features

The PAI clinical profile reveals no elevations that should be considered to indicate the presence of clinical psychopathology. The pattern suggests a person who is experiencing some turmoil in his life that might be the source of some stress for him, but not to the point where prominent symptoms are observed. He may feel unhappy or tense at times, but, in general, his self-esteem is intact and he reports that the stress is having little impact on his ability to function.

The PAI clinical profile is entirely within normal limits. There are no indications of significant psychopathology in the areas that are tapped by the individual clinical scales.

According to Mr. Curtis' self-report, he describes no significant problems in the following areas: unusual thoughts or peculiar experiences; antisocial behavior; problems with empathy; undue suspiciousness or hostility; extreme moodiness and impulsivity; unhappiness and depression; unusually elevated mood or heightened activity; marked anxiety; problematic behaviors used to manage anxiety; difficulties with health or physical functioning. Also, he reports no significant problems with alcohol or drug abuse or dependence. However, attention should be

paid to the possibility of denial of problems with drinking or drug use, as Mr. Curtis described certain personality characteristics that are often associated with involvement with alcohol or drugs.

Self-Concept

The self-concept of Mr. Curtis appears to involve a fixed, rather negative self-evaluation. He is likely to be self-critical and to focus upon past failures and lost opportunities. He may be more troubled inwardly by self-doubt and misgivings about his adequacy than is apparent to others. He may tend to play down his successes as a result, dismissing such accomplishments as either good fortune or the result of the efforts of others.

Interpersonal and Social Environment

Mr. Curtis's interpersonal style seems best characterized as withdrawn and introverted. He may appear to others as if he has little interest in socializing, and his passive style in relationships probably does not invite social interaction with others. Although he may desire a more extensive social network, his perceived lack of success in such interactions seem to preclude a more active pursuit of social contacts. He is likely to be rather passive and distant in those relationships that are maintained.

In considering the social environment of Mr. Curtis with respect to perceived stressors and the availability of social supports with which to deal with these stressors, his responses indicate that he is likely to be experiencing a mild degree of stress as a result of difficulties in some major life area. He reports that he has a number of supportive relationships that appears to have served as an effective buffer against the effects of this stress. The relatively intact social support system is a favorable prognostic sign for future adjustment.

Treatment Considerations

Treatment considerations involve issues that can be important elements in case management and treatment planning. Interpretation is provided for three general areas relevant to treatment: behaviors that may serve as potential treatment complications, motivation for treatment, and aspects of Mr. Curtis's clinical picture that may complicate treatment efforts. With respect to suicidal ideation, Mr. Curtis is not reporting distress from thoughts of self-harm. With respect to anger management, Mr. Curtis describes his temper as within the normal range, and as fairly well-controlled without apparent difficulty. Mr. Curtis's interest in and motivation for treatment is typical of individuals being seen in treatment settings, and he appears more motivated for treatment than adults who are not being seen in a therapeutic setting. His responses suggest an acknowledgement of important

problems and the perception of a need for help in dealing with these problems. He reports a positive attitude towards the possibility of personal change, the value of therapy, and the importance of personal responsibility. In addition, he reports a number of other strengths that are positive indications for a relatively smooth treatment process and a reasonably good prognosis.

Limestone Penile Plethysmograph: The Limestone Prefest Penile Plethysmograph is designed to measure sexual responsiveness to a variety of stimulus material across gender, age, and sexual activity. Simultaneously with his penile response, the subject's Galvanic Skin Response (GSR), body movement as detected by the Stingray Pneumatic Pad, and Respiration traces are monitored to attempt to detect faking. Penile tumescence is measured by a strain gauge that detects minute changes in penile engorgement. The assessment was conducted using the Limestone Prefest Plethysmograph system. Prior to the assessment, the instrument was calibrated using a "four step cone" between 80 mm and 120 mm utilizing an Indium-Gallium gauge.

The standardized stimulus material utilized with this examination was the Real Child Voices Stimulus set. The Limestone PPG test provides data across five age ranges, male and female categories, with persuasive and coercive presentations that utilizes same age and gender actors for each age and gender category. Additionally there are two neutral non-sexual stimuli to facilitate validity determination. The purpose of a physiological assessment for sexual interests was explained to Mr. Curtis and a voluntary participation consent form was signed. Mr. Curtis said his primary fantasies are about adult females. He stated he had not consumed any illegal drugs. He denied consuming alcohol within the past 24 hours before taking the PPG exam. He denied having a sexually transmittable disease.

The results of the PPG exam indicated that Mr. Curtis did not reach the minimum level of significance (5mm of stretch) for a valid profile. There was no indication of response interference.

Real Child Voices Stimulus Set

Trial Name	Max - Base	Z(Max- Base)
Introduction Female	2.42	1.39
Adult Female Challenge	1.08	-0.07
Adult Male Challenge	0.00	-1.25
Child Male Exhibitionism	1.48	0.37
Grammar School Female Coercive	0.67	-0.52
Adult Male Coercive	1.34	0.22
Neutral Buildings 2	0.26	-0.96
Preschool Female Coercive	1.08	-0.07
Child Female Violence	0.67	-0.52
Infant Female	0.81	-0.36
Adult Female Coercive	1.61	0.51
Grammar School Female Persuasive	3.09	2.13
Teen Female Persuasive	3.47	2.54
Grammar School Male Coercive	0.94	-0.22
Adult Female Exhibitionism	1.47	0.36
Infant Male	1.48	0.37
Adult Male Persuasive	1.21	0.07
Preschool Female Persuasive	0.13	-1.11
Neutral Buildings	0.40	-0.81
Adult Female Persuasion	0.26	-0.96
Preschool Male Persuasive	0.00	-1.25
Teen Female Coercive	2.96	1.98
Grammar School Male Persuasive	0.94	-0.22
Teen Male Persuasive	0.67	-0.52
Neutral Chairs	0.68	-0.51
Preschool Male Coercive	0.67	-0.52
Teen Male Coercive	1.07	-0.08

Actuarial Instruments:

As a baseline level of risk, the Static 99 actuarial risk assessment instrument will be utilized to assign a general level of risk from which information and collected data will be utilized to determine whether Mr. Curtis' dynamic risk factors would suggest that he be classified as a higher or lower (or same) level of risk as the baseline established by the Static 99.

Stable and acute variables are dynamic (i.e. subject to change) and directly impact recidivism rates. Stable Variables are factors such as Intimacy Deficits, Social Influences, Attitudes Supportive of Sexual Assault, Sexual Self Regulation, and

General Self Regulation. Acute Variables are factors such as substance Abuse, Negative Mood, Anger/ Hostility, and Opportunities for Victim Access.

Static 99: The STATIC-99 is an instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders. This risk assessment instrument was developed by Hanson and Thornton (1999) based on follow-up studies from Canada and the United Kingdom with a total sample size of 1,301 sexual offenders. The STATIC-99 consists of 10 items and produces estimates of future risk based upon the number of risk factors present in any one individual. The risk factors included in the risk assessment instrument are the presence of prior sexual offences, having committed a current non-sexual violent offence, having a history of non-sexual violence, the number of previous sentencing dates, age less than 25 years old; having male victims, having never lived with a lover for two continuous years, having a history of non-contact sex offences, having unrelated victims, and having stranger victims. The STATIC-99 is a valid instrument to be utilized with individuals who have been charged with a sexual crime and have no prior charges or convictions.

The recidivism estimates provided by the STATIC-99 are group estimates based upon reconvictions and were derived from groups of individuals with these characteristics. As such, these estimates do not directly correspond to the recidivism risk of an individual offender. The offender's risk may be higher or lower than the probabilities estimated in the STATIC-99 depending on other risk factors not measured by this instrument. This instrument should not be used with Young Offenders (those less than 18 years of age) or women.

Mr. Curtis scored a 1 on this risk assessment instrument. Individuals with these characteristics, on average, sexually reoffend at 7% over 15 years. The rate for any violent recidivism (including sexual) for individuals with these characteristics is, on average, 15% over fifteen years. Based upon the STATIC-99 score, this places Mr. Curtis in the Low Medium risk category relative to other adult male sex offenders.

Based on a review of other risk factors in this case I believe that this STATIC-99 score accurately represents Mr. Curtis's risk at this time. This predictive score does not take into account dynamic factors like the effect of treatment and supervision.

Translating STATIC-99 Scores into Risk Categories

Score	Label for Risk Category	15 year Reoffense Rate
0,1	Low	.13 & .07
2,3	Medium-Low	.16 & .19
4,5	Medium-High	.36 & .40
6 plus	High	.52

Translating STATIC-99 Scores into Risk Categories for Violent Crime and Sexual Recidivism:

0,1	Low	.13 & .15
2,3	Medium-Low	.16 & .30
4, 5	Medium-High	.36 & .52
6 plus	High	.59

Stable 2007: The STABLE-2007 was developed to assess change in intermediate-term risk status, assess treatment needs, and help predict recidivism in sexual offenders. Hanson and Harris (2000, 2007) developed this risk assessment instrument based on a large prospective study from Canada and the states of Alaska and Iowa with a total sample size of 997 sexual offenders. The STABLE-2007 consists of 13 items and produces estimates of stable dynamic risk based upon the number of stable dynamic risk factors present in any one individual. The risk factors included are the presence or absence of significant social influences, capacity for relationship stability, emotional identification with children, hostility toward women, general social rejection, lack of concern for others, impulsivity, poor problem solving skills, negative emotionality, sex drive and preoccupation, sex as coping, deviant sexual preference and co-operation with supervision.

Mr. Curtis scored a 12 out of a possible 26 points on the STABLE-2007 and this places him as high needs on this assessment instrument. Men without a child sexual victim are scored out of 24 possible points. The STATIC-99 and the STABLE-2007 are then combined into a composite score. As Mr. Curtis scored as a low risk on the STATIC-99 this score is combined with Mr. Curtis's STABLE-2007 score of high needs to produce estimates of sexual recidivism, violent recidivism, and any criminal recidivism at one, to four years. The complete profile such matching Mr. Curtis's has been seen to recidivate sexually at 3.7% over 2 years and 4.3% over 4 years placing him in the moderate-low nominal risk category for sexual recidivism. Men with the same risk profile as Mr. Curtis have

been seen to recidivate violently at 8.8% over 2 years and 12.6% over 4 years placing him in the moderate-low nominal risk category for violent recidivism. This combined STATIC-99/STABLE-2007 assessment places Mr. Curtis in the in the range of the 36th or the 63rd percentile of risk in comparison to the samples of origin.

Acute 2007: The ACUTE-2007 was developed to assess change in short-term risk status and help predict recidivism in sexual offenders. This risk assessment instrument was developed by Hanson and Harris (2000, 2007) based upon a large prospective study from Canada and the states of Alaska and Iowa with a total sample size of 997 sexual offenders. The ACUTE-2007 consists of seven items and produces an estimate of risk for sexual and violent recidivism and a second risk of estimate for general recidivism. Estimates of acute dynamic risk are based upon the number of opportunities for victim access, hostility, sexual preoccupation, and rejection of supervision (four items) to produce an estimate of sexual and violent recidivism and then adding emotional collapse, collapse of social supports, and substance abuse for an estimate (seven items) of general recidivism risk. Mr. Curtis scored as a low priority for sexual and violent recidivism and as a low priority for general recidivism. Combining Mr. Curtis's STATIC-99/STABLE-2007 and ACUTE-2007 scores places Mr. Curtis as a low Current Risk Priority for sexual and violent recidivism and low for general criminal recidivism.

The recidivism estimates provided by the STATIC-99/STABLE-2007 and ACUTE-2007 are group estimates based upon charges, reconvictions and breaches of conditional release derived from groups of individuals with these risk characteristics. As such, these estimates are based upon a group of offenders with the same risk profile as Mr. Curtis. Mr. Curtis's risk may be higher or lower than the estimated probabilities depending on other risk factors not measured by this instrument. This instrument should not be used with Young Offenders (those less than 18 years of age) or women.

Review of Static 99, Stable 2007, and Acute 2007 Actuarial Results:

Static 99 Predicts Re-Offense Rates Over 15 years:

Mr. Curtis Static 99 predicted recidivism rate is 7%.

Stable 2007 Predicts Re-Offense Rates over the next 365 Days:

Mr. Curtis Stable 2007 predicted recidivism rate is 2.2%.

Acute 2007 Predicts Re-Offense Rates over the next 45 Days:

Mr. Curtis Acute 2007 predicted recidivism rate is 1.0%.

Abel Screen Assessment:

The test results on the Abel Assessment fall into three categories:

Ia. Objective measures taken beyond the client's awareness of sexual interest in 22 slide categories depicting children, teens, and adults, Caucasian and African-American, plus depiction of various deviant sexual behaviors.

Ib. For comparison, the client also self-reports his ratings of sexual arousal to these same slides.

II. Sex-offender specific questionnaire

III. Probability Values

ISSUES TO BE ADDRESSED

There are two main issues that this test might assess using its three test result categories. The first is whether Mr. Curtis appears to have a sustained sexual interest in children. The second is whether he has an interest in sadistic behavior. Objective measures taken beyond the client's awareness of sexual interest in 22 slide categories. Mr. Curtis's objective measures taken beyond his awareness to 22-slide categories show: His significant sexual interests include **Adult Caucasian Females and Adolescent Caucasian Females**. He does not show an interest in sadistic behavior.

[It should be noted that normal heterosexual adult males show objective sexual interest in both adolescent and adult females.]

I. For comparison, client also self-reports his ratings of sexual interest to these same slides. For comparison to his objective measures, Mr. Curtis' self-reported ratings of sexual arousal to 22 slide categories were congruent with objective measures. He did report arousal adult and adolescent female stimulus sets.

II. Sex-offender specific questionnaire.

On Mr. Curtis's self-report of sexual behavior on the Abel sex-offender-specific questionnaire for men, he admitted he engaged in deviant sexual behavior. Mr. Curtis' score on the Cognitive Distortion Scale indicated that he does not utilize cognitive distortions in this thinking processes regarding sexual behavior. Mr. Curtis' score on the Social Desirability Scale was 45, which indicated a moderate attempt to respond to the test questions.

III. Probability Values: The Probability of Past (PAST) Child Sexual Abuse (CSA) Behavior is not applicable to this case since Mr. Curtis is admitting to his behavior.

Objective measures, beyond the client's awareness, showed Mr. Curtis's greatest sexual interest to be in **Adult and Adolescent Caucasian Females**. In reference to the three main questions addressed by this assessment, Mr. Curtis:

- 1) Does not appear to have a persistent sexual attraction to children.
- 2) Does not appear to have an interest in sadistic/masochistic sexual behavior.
- 3) Probability of PAST CSA Behavior is moot.

Limestone Visual Sexual Preference Assessment (VSP): The Limestone VSP is an objective measure instrument designed to provide a rank order and quantitative comparison of sexual interests. The Limestone VSP test provides viewing time data across five age ranges, male and female categories, with Caucasian and African American models. The Limestone VSP also provides the following related information:

- 1) Client's ipsative z-score comparisons of VSP data.
- 2) Client's profile as compared to known offender groups.
- 3) Client's endorsement of his or hers sexual interests.
- 4) Client's endorsements of cognitive distortions.
- 5) Client's endorsements regarding alcohol and drug abuse.
- 6) Client's endorsements on a Peer Relations Scale.
- 7) Two Lie Scales for validity assessment.

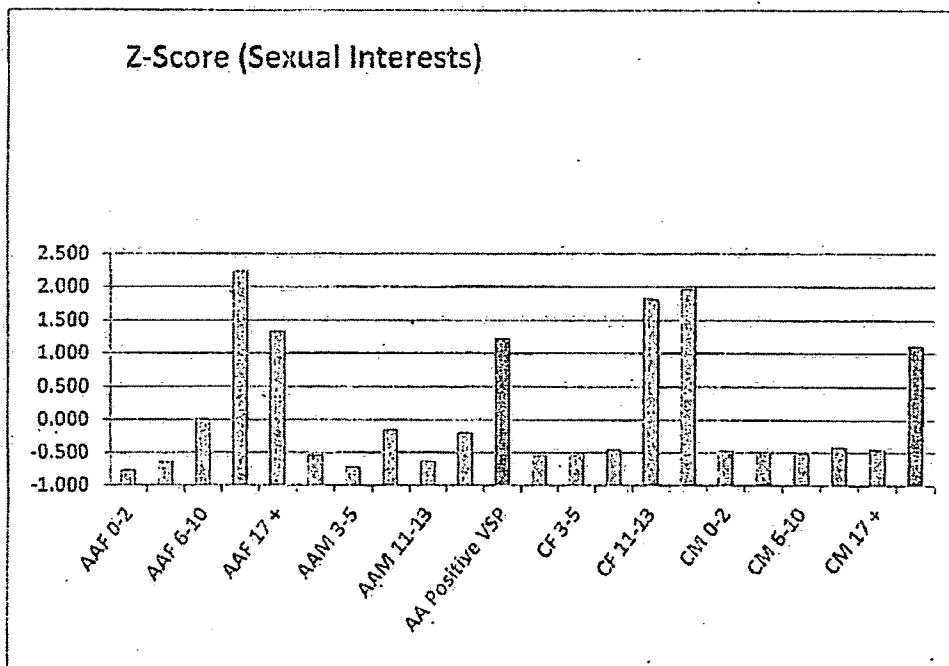
The results from the Limestone VSP Assessment provided the following information:

- A) Mr. Curtis was admitting to all aspects of the allegations against him.
- B) Mr. Curtis demonstrated significant visual sexual preference toward the **Adult Female** and **11 to 13 year old Female stimulus presentations**.
- C) Mr. Curtis' **Pedophilic Approximation Quotient was +0.22** which weakly matches his profile with known nonexclusive pedophile profiles. The Pedophilic Approximation Quotient is derived from an algorithm that suggests whether a client is attracted or not to a younger morphology. That is to suggest that the client's profile as generated by the VSP correlates more toward a pedophilic exclusive profile, toward a nonexclusive profile, or non-pedophilic profile. Caution should be taken in interpreting these findings until further independent validation occurs. As with any test, the VSP should

Brian Curtis Evaluation

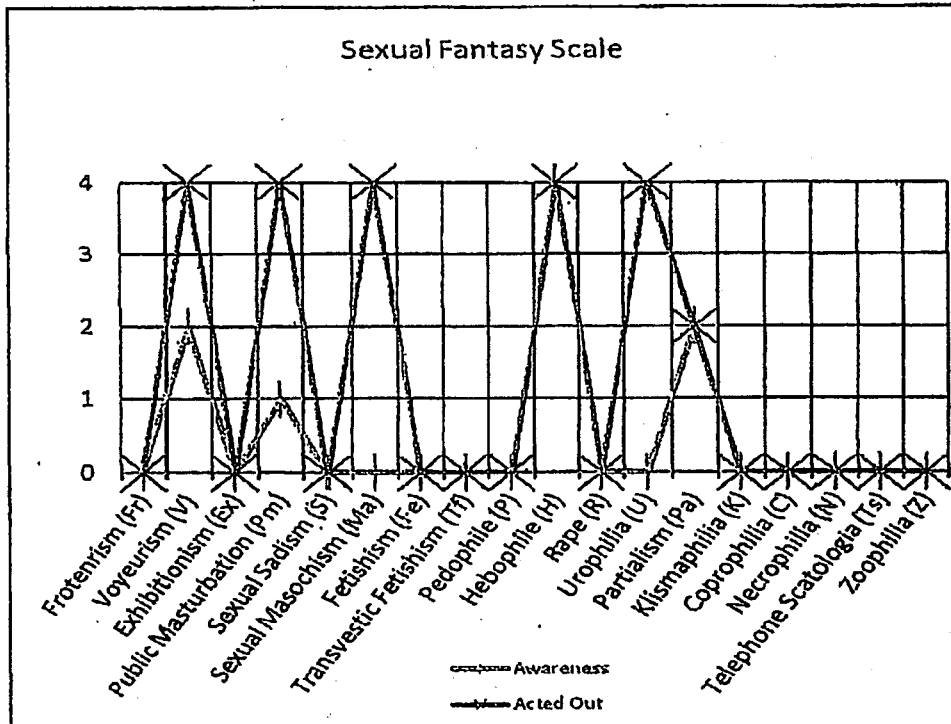
never be utilized as a stand-alone test to facilitate the determination of sexual interests and/or level of risk.

- D) Mr. Curtis endorsed that he preferred sexual behavior with adult females in a consensual relationship and is presently in a committed sexual relationship with an adult close to his age.
- E) Mr. Curtis did not endorse any cognitive distortions.
- F) Mr. Curtis maintained that he does not suffer from any type of alcohol or substance abuse problem.



Burke Sexual Fantasy Scales (BSFS): The BSFS is a nationally normed instrument designed to quantify the thoughts, fantasies, fantasy & masturbation, and acting out categories of paraphilic behavior. The client's response to the test questions provide information regarding their thought and fantasy processes as it relates to paraphilic behavior. There are two validity scales to assist with determining truthfulness in responding along with the 18 paraphilia scales. Mr. Curtis's responses provided the following information: 1) He was admitting to the behavior that he is being evaluated for; 2) He endorsed past experiences with Voyeurism, Public Masturbation, Sexual Masochism, Hebephilia, and Urophilia (Mr. Curtis reported later that the Urophilia endorsement was an error); 3) He endorsed sexual fantasies regarding Voyeurism and Partialism; & 4) His

overall Awareness Quotient was 0.4, indicating a lack of awareness between his sexual fantasy processes and behavior, or denial of the same.



Evaluations of sexual interest and sexual arousal are designed to determine the client's treatment needs and risk level. **OBJECTIVE SEXUAL RESPONSE PATTERNS CANNOT AND SHOULD NOT BE INTERPETED AS INDICATIONS OF GUILT OR INNOCENCE REGARDING ANY SPECIFIC SEXUAL ACT.**

Conclusions: Mr. Curtis does not appear to have chronic sexual interest in deviant sexual stimuli, as evidenced by his Abel Assessment VRT results. His Limestone VSP results indicated sexual interest in Adult Females and 11 to 13 year old females. Mr. Curtis failed to demonstrate significant sexual arousal to any stimulus set during the PPG exam. There was no evidence of response interference during the PPG exam.

Brian Curtis Evaluation


Mr. Curtis's test results on the PAI suggested some anxiety and adjustment disorder components. Mr. Curtis's test results for the Hare PCL-R were within normal limits. His CPT-II results suggested that he does not suffer from ADHD or Organic Brain Damage. Mr. Curtis's level of risk according to the Static 99, Stable 2007, and Acute 2007 were group classified in the moderate- low level of risk category.

Recommendations: I believe Mr. Curtis to be safely maintained in the community, under the following guidelines:

- 1) He should be placed on GPS monitoring.
- 2) He should enter an Intensive Outpatient Program specializing in sexual disorders. He would need to receive the following interventions:
 - a. Psychiatric Medication Monitoring: to reduce sexual drive and distorted thinking.
 - b. Aversion Therapy: to reduce deviant sexual arousal.
 - c. Covert Sensitization: to pair deviant thoughts with aversive consequences.
 - d. Integrated Relapse Prevention
 - e. Satiation Therapy: to reduce deviant sexual arousal.
 - f. Cognitive Restructuring
 - g. Empathy Training
 - h. Maintenance Polygraphy
 - i. Impulse Control Therapy.
 - j. Sex Offender Chaperone Training for his family

Multiaxial Assessment:

Axis I	Paraphilia NOS Protracted Promiscuity Disorder Paraphilia NOS Ephebophilia, nonexclusive
Axis II	N/A
Axis III	Post Hernia Repair Surgery 2009
Axis IV	Severe; Legal Difficulties
Axis V	55 past year 75

 Brian Curtis Evaluation

Respectfully submitted;



William Burke, Ph.D. LPC
President & Clinical Director of SEA
Assistant Clinical Professor of Neuropsychiatry & Behavioral Sciences
Medical University of South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Brian M. Curtis, #352072,)
Applicant,)

Case No. 2013-CP-08-1847

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

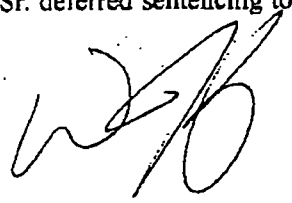
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CLERK OF COURT
BERKELEY COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed August 15, 2013. Respondent made a timely Return on or about December 30, 2014. The Court convened an evidentiary hearing into the matter on April 20, 2015, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Christopher P. Biering, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Berkeley County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the pleadings in this matter, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. In February 2012, the Berkeley County Grand Jury indicted Applicant for second degree criminal sexual conduct with a minor (2012-GS-08-0281). Christopher P. Biering, Esquire ("plea counsel") represented Applicant. On April 1, 2012, Applicant pled guilty as indicted. The Honorable Roger Young Sr. deferred sentencing to August 16,



2012, at which time he sentenced Applicant ten years imprisonment. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

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

1. "Ineffective Assistance of Counsel"
2. "Invalid and Conflicting Indictments"

At the evidentiary hearing, Applicant proceeded on only an allegation of ineffective assistance of plea counsel for waiting until after Applicant pled to have him evaluated and for presenting an unfavorable evaluation report at Applicant's sentencing hearing. Applicant seeks a new sentencing proceeding.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The 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).

A. Summary of Testimony

Plea counsel testified Applicant was honest about his conduct that led to this charge and accepted responsibility for his actions. He testified the State never made any plea offers. Instead, he recalled Applicant agreeing to enter a plea early on. Plea counsel testified he discussed with Applicant the possibility of entering a plea and deferring sentencing to get an evaluation from Dr. Burke. Plea counsel testified Dr. Burke is well respected in the local legal community. He believed an evaluation from Dr. Burke indicating Applicant could safely remain in the community with supervision and treatment may persuade the judge to issue a probationary sentence instead of incarceration. However,

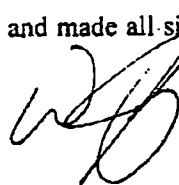
plea counsel testified he advised Applicant there was no guarantee the judge would not issue an active sentence. Plea counsel testified Dr. Burke's report contained several areas that reflected poorly on Applicant's suitability to remain in the community. However, he testified there were also several positive areas on the report. Plea counsel testified the important part of the report was the conclusion, which stated Applicant could be safely maintained in the community under conditions similar to those he has successfully completed while out on bond. Plea counsel also recalled presenting affidavits from Applicant's wife and friends to show he had community support.

Applicant testified he met with plea counsel several times before his plea. He testified he admitted responsibility and did not want a trial on the charge. He recalled formulating a strategy of entering the plea and deferring sentencing to get evaluated by Dr. Burke. Applicant testified the conditions of his bond were similar to the conditions recommended by Dr. Burke in the evaluation. Applicant testified he had several discussions with plea counsel about the possible sentence, and plea counsel advised him the judge could still give him an active sentence.

B. Ineffective Assistance of Plea Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of plea counsel as a ground for relief, Applicant must prove plea counsel's "conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether plea counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes plea counsel rendered adequate assistance and made all significant decisions in the



exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the Court measures plea counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, plea counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. Because Applicant pled guilty, he must show there is a reasonable probability that, but for plea counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The Court finds Applicant failed to meet his burden to show plea counsel ineffective. Where plea counsel articulates an objectively strategic reason for employing certain strategy, the Court will not find plea counsel's performance deficient. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable[.]" Strickland, 466 U.S. at 690; see also Meyer v. Branker, 506 F.3d 358, 374 (4th Cir. 2007) ("[L]egal judgments based on thorough investigation are virtually unassailable on collateral review."). Here, the record reflects Applicant immediately accepted responsibility for his actions. Based on Applicant's admissions and desire for a resolution to his charges, plea counsel undertook a strategy of presenting mitigating evidence to the sentencing judge. The Court finds this strategy of conceding guilt and focusing on mitigation is a reasonable one. See Young v. Catoe, 205 F.3d 750, 760 (4th Cir. 2000) ("[O]n occasion, it is best to risk losing the battle in the hope of winning the war.").



Furthermore, plea counsel's implementation of this strategy was reasonable under the circumstances. Although Dr. Burke's report contains some negative evaluations of Applicant, it also contains several positive evaluations. Most importantly, the report demonstrates Applicant can be maintained in the community under conditions very similar to those he was successfully complying with while out on bond. Dr. Burke's report, coupled with the other evidence presented at the sentencing hearing, demonstrates plea counsel prepared a thorough and compelling mitigation presentation. Unfortunately for Applicant, the sentencing judge still chose to impose an active sentence. However, the sentencing judge's decision does not render plea counsel's performance deficient. Plea counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Because plea counsel's actions were within the wide range of acceptable professional norms, the Court finds Applicant failed to meet his burden under the first prong of the Strickland test.

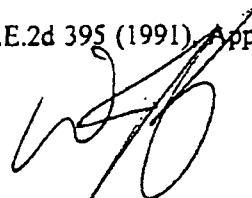
C. All Other Allegations

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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

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

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to



appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.


IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12 day of May, 2015.



THE HONORABLE W. JEFFREY YOUNG
Presiding Judge



Sumter

South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
)
 BRIAN M. CURTIS,)
) Applicant.)
)
) -versus-)
)
) STATE OF SOUTH CAROLINA,)
)
) Respondent.)

IN THE SUPREME COURT OF SOUTH CAROLINA

RECEIVED

Case No.: 2013-CP-08-19847

JUN 22 2015

S.C. SUPREME COURT

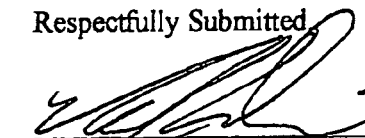
REQUEST FOR REPRESENTATION ON APPEAL

On behalf of the request of the above-named Applicant, to be represented by the South Carolina Commission of Indigent Defense, Appellate Division (SCCID), the undersigned attorney would show unto this Honorable Court that:

1. He is the attorney for the Applicant-Appellant in the above captioned case. The Applicant-Appellant was in custody during and taken into custody immediately following the Post Conviction Relief (PCR) hearing and was not available to personally sign this request;
2. The Applicant-Appellant was represented by the undersigned attorney as an indigent, pursuant to a contract with the SCCID;
3. The Applicant-Appellant has been informed that he may request assistance from the SCCID Appellate Division in perfecting his appeal;
4. A timely Notice of Intent to Appeal has been filed on the Applicant-Appellant's behalf;
5. The Applicant-Appellant has been informed that nothing requires SCCID Appellate Division to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the Applicant-Appellant requests the aid of the SCCID Appellate Division in perfecting his appeal to the South Carolina Court of Appeals.

Respectfully Submitted,


 Rodney D. Davis
 South Carolina Bar #: 12396

MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC


TS
 2015 JUN 18 AM 11:30

FILED

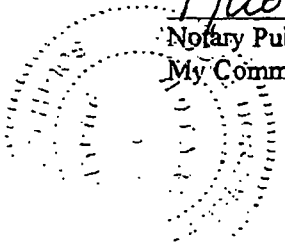
6/18, 2015
 Charleston, South Carolina.

STATE OF SOUTH CAROLINA)
) VERIFICATION
 COUNTY OF BERKELEY)

PERSONALLY appeared before me, Rodney D. Davis, being first duly sworn,
 deposes and says that he has read the foregoing *Request for Representation on Appeal* and
 the same is true of his knowledge except those matters alleged on information and belief, and
 as to those matters, he believes them to be true.


 Rodney D. Davis
 South Carolina Bar #: 12396

SWORN to and subscribed to me
 this 17th day of June 2015.
Nicole Dorweiler
 Notary Public for South Carolina
 My Commission expires ~~My Commission Expires~~ June 21, 2023



FSM
 2015 JUN 18 AM 11:37
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC
 FILED

AMW2011-11-01551

WITNESSES

Hanahan Police Department

Det. D. Nelson

AGENCY CASE NUMBER

2011028341

ARREST WARRANT NUMBER

K398440

DATE OF ARREST

October 29, 2011

ACTION OF GRAND JURY

[Signature]
person of Grand Jury

Date: *2/22/12*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012-GS-08-0281

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term 2012

THE STATE

Vs

BRIAN MICHAEL CURTIS

DOB:

W/M

Indictment for

Criminal Sexual Conduct with a Minor,
Second Degree

FILED
CLERK OF COURT
BERKELEY COUNTY, SC

12 FEB 22 PM 2:32

FILED

[Handwritten initials]

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

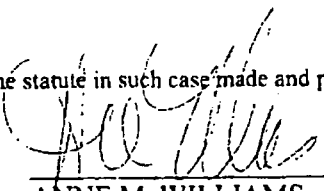
At a Court of General Sessions, convened on February 22, 2012 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, Second Degree

That Brian Michael Curtis did in Berkeley County, South Carolina, October 28, 2011, commit a sexual battery upon a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: felatio, upon Jane Doe date of birth _____, in violation of Section 16-3-655(2), S.C. Code of Laws, 1976, as amended.

(D)
RY

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



ANNE M. WILLIAMS
ASSISTANT SOLICITOR