

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Edgefield County

R. Lawton McIntosh, Circuit Court Judge

GEORGE A. JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001000

APPENDIX

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Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
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ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

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Columbia; and Solicitor Donald V. Myers, of
Lexington, for Respondent.

PER CURIAM: George Jones appeals his convictions for first-degree criminal sexual conduct with a minor and lewd act with a minor, arguing the circuit court erred in failing to grant his motion for a directed verdict. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY A. KITCHINOS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
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March 16, 2012

REMITTITUR

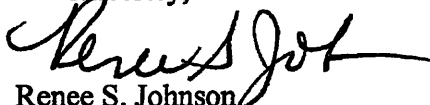
The Honorable Shirley F. Newby
129 Courthouse Square
PO Box 34
Edgefield, SC 29824

Re: The State v. Jones, George
2009-GS-19-00409

Dear Ms. Newby:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,


Renee S. Johnson
Case Specialist II


VAK/rj

cc: Appellate Defender Wanda Carter
Adrian Lee Falgione, Esquire
George Jones, # 254442
Assistant Deputy Attorney General Salley W. Elliott
Ervin Jerome Maye, Esquire

RECEIVED

16

SC OFFICE OF
APPELLATE DEFENSE

FORM 5

FILED @ 8:30 am
 April 18 2012
 Shelly J. Newby C.C.C.P.
 EDGEFIELD COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF Edgefield)

George A. Jones, 254442
 Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2012-CP-19-100

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 fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence General Sessions / Edgefield Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-19-349 Criminal Sexual Conduct (offenses error)
 - (b) 2009-GS-19-409 Criminal Sexual Conduct
 - (c) 2009-GS-19-349 Lewd Act upon a minor (Correct offense)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Criminal Sexual Conduct 30 years, February 5, 2010
 - (b) Lewd Act upon a minor 15 years (Concurrently)

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____ ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. In the Court of Appeals, The State of South Carolina
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 29, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. NA
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) NA
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) Ineffective Assistance of Appellate Counsel
- (c) Denial of Due Process

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

- (a) See Attach Memorandum
- (b) See Attach Memorandum
- (c) See Attach Memorandum

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

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than 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. Direct Appeal
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Dismissed
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. February 29, 2012
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. NA
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
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) These grounds could not be address until my
- (b) Appeal stage was over.
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (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. Adrian L. Falcione, Esquire, County of Eckefield
 - ii. Wanda H. Carter, Deputy Chief Appellate Defender
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Adrian L. Falcione, Trial Counsel
 - ii. Wanda H. Carter, Appellate Counsel
 - iii. _____

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

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

Reverse and Remand Conviction, Vacate Judgment of Trial Court

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X George A Jones

SWORN to and subscribed before me this 16TH
day of April, 2012

[Signature] (L.S.)
Notary Public

My Commission Expires

My Commission Expires: April 1-12, 2015

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

I, , 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.

X *George A. Jones*
Applicant

SWORN or affirmed to and subscribed before me this
16th day of April, 2012.

Donald J. Oiselle
Notary Public

My Commission Expires
August 25, 2015

My Commission Expires: _____

State of South Carolina
County of Edgefield

George A Jones #254442
 Applicant,

v.

State of South Carolina,
Respondent.

In The Court of Common Pleas
 Case No. 2012-CP49-100

Memorandum of law in Support
 of Post Conviction Relief Ap-
 plication

Attached Memorandum of law in Support of Post Conviction
 Relief Application

The Applicant Submits the attached Memorandum of law in support of Pos
 Conviction Relief Application before The Honorable Court of South Carolina Purs
 to the S.C. Rules of Civil Procedure and SC. Code Ann § 17-27-10 et al. to Proix
 demonstrate and prove violation of The laws and ordinances of The State of Sou
 Carolina and of the United States of America.

The Applicant Filed a PCR. with Edgefield Court Clerk of Court alleging That he i
 being held in Custody unlawfully for the Following Reasons:

1. Ineffective Assistance of Counsel.
2. Ineffective Assistance of Appellate Counsel.
3. Denial of Due Process.

The Applicant Amends his PCR. to include The Following allegations
 regarding Counsel's ineffective assistance in violation of The Six Amendments
 and The Mandates set Forth by the U.S. Supreme Court in Strickland v. Washi
ton 466 U.S. 668, 101 S.Ct. 2052 (1984).

The Applicant's Trial attorney was ineffective in failing to Pursue all plausible and affirmative defense to The Crime Charged.

Under the prevailing mandate of Strickland v. Washington The Supreme Court has held that Counsel in a Criminal Trial has duties in which he must conduct reasonable investigation into all reasonable investigation into all reasonable defenses. 466 U.S. at 688. id. Counsel has a duty to investigate "all apparent substantial defenses." Here, Counsel has failed in his representation by way of his preparation for Trial. The Applicant was in the County Jail for 667 days he must have met with Attorney Falcione, Esquire (2) Two to (3) Three Times which Prejudiced me because he did not have sufficient time prior to Trial to investigate and prepare for Trial.

The Applicant's alleged Crime stems from Treatment done at the emergency room by Elizabeth Gordineer in April 2008. The alleged victim **Minor** Jane Complainant with painful urination. She was treated several days later she came back in with a tremendous amount of pain. Elizabeth testified another Test was done and a herpetic lesions or herpes symptom was detected so she did a Culture. For heres and it came back as Type two, which is genital herpes. And then when we got Confirmation that it was we called IDSS. Here, Counsel Failure to Conduct own Test and investigation Prejudiced me in my defense and Counsel improperly Challenge Dr. Elizabeth Gordineer Test and results by way of providing an expert in that field to Confirm Dr. Elizabeth Gordineer Type Two genital herpes as will as perform Tests on the mother and father and there diagnosis as well for Confirmation as to Type Two genital herpes. The outcome of my Conviction would have been different. Counsel's deficient performance have prejudiced me here as to a reasonable probability that but for Counsel unprofessional errors the result would have been different. It is ineffective assistance of Counsel because it is in violation of the Norms of Competent legal Representation for Trial Counsel to fail in pursuing all plausible and affirmative defense, failing to challenge Dr. Elizabeth Gordineer diagnosis by providing the Applicant his own expert in the field, a denial of my due process right.

Applicant's Trial attorney was ineffective in failing to Conduct reasonable pretrial investigations and preparations.

Applicant's Trial Attorney Failed to pursue and obtain favorable information regarding the crime charged. Strickland 466 U.S. at 668, 687-96. The Supreme Court has held in Kimmelman vs. Morrison 477 U.S. 365, 387, 106 S.Ct. 2574, 2584 (1986) That, The Total Failure on The part of defense Counsel to Conduct discovery amounts to ineffective assistance of Counsel. A petitioner must show that but for Counsel's Failure to Conduct pretrial discovery. The result would have been different 477 U.S. at 392 id.

Applicant Trial Attorney Failed to Call Tiara's mother on my behalf because she enfact was interviewed by The DSS Case workers that I live with her in the home and not on and off. Furthermore in taking the stand is not in the Norms of Competent legal Representation and here Counsel can not ascertain why my taking the stand would prove sufficient to my defense at Trial. Here Counsel's deficient performance have prejudiced me as to a reasonable probability that but for Counsel's unprofessional errors the result would have been different. See U.S. v. Litch 169 F.3d 526 (8th Cir 1999) Evidence of a prior crime is always prejudicial to a defendant because it divert the attention of the jury from the question of the defendant's responsibility for the crime charged to improper issue of his bad character.

Applicant's Trial Attorney was ineffective in failing to object to the discovery violation of The Solicitor.

During the course of the prosecution against the applicant, the prosecution withheld favorable material evidence from the accused. Brady Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1983). Prosecution fail to disclose chain of custody, interview by DSS Case worker on Tiara's mother most. Compelling Applicant Trial Attorney file a Rule 5 Brady motion December 19, 2008 to the Solicitor's office requesting the following please attach exhibit, the applicant Rule 5 Brady motion in its entirety. Thereof. The Applicant's Trial Attorney ineffective in failing to object to the discovery violation of The Solicitor also The Applicant's Trial Attorney didn't provide the Applicant

with any item requested in the attach rule 5 motion as in paragraph (a)(b)(c)(d)(e) and (f) to the preparation of the defense in This Case. The Brady legal Framework is well settled. There are Three essential Components of a True Brady violation: The evidence at issue, must be Favorable to the accused either because it is exculpatory, or because it is impeach evidence must have been suppressed by the state, either willfully or inadvertently, and prejudice must be ensured "Stricker v. Greene, 527 U.S. 281, 19 S.Ct 1948 (1999) Thus to prove a Brady Claim, a party must show Suppression by the prosecution (2) of exculpatory evidence (3) Material to the issue at Trial or sentencing. Kennedy vs. Herring, 54 F.3d 678 also State vs. Bradley 473 U.S. 667, 676, 105 S.Ct. 3375, 3380 (1980). Included in material prong of Brady analysis is a requirement that the defendant show prejudice. The suppression of material evidence justifies a new Trial "irrespective" of the good faith and bad faith of the prosecution. 118 U.S. at 87. The Supreme Court has held, That once the defendant make a Colorful showing of the materiality of his claim regarding prosecutorial misconduct or error, no additional harmless error review is necessary under Kyles vs. Whitley, 514 U.S. 419 S.Ct (1995). The reasonable probability standard of Kyles is The same as Strickland in regards to The error affecting the reasonable outcome of the proceedings. The Applicant ask The prosecution in way of Filing a rule 5/Brady motion of The South Carolina Rules of Criminal Procedure please see attach exhibit. But the prosecution as well as my Trial attorney Fail to disclose said evidence which constitutes a Denial of my Due process right and overt violation of The rules set Forth in Brady and its progeny.

Conclusion

wherefore, having Amended his original application for postconviction relief The applicant request this Court to grant the relief demanded within the

original PCR and, any other relief This Court deem necessary and thus to include the following prayers for relief:

1. Reverse and Remand Conviction.
2. Vacate Judgement of Trial Court.
3. Make specific Finding Regarding Counsel's Ineffective Assistance.

Date This 16th day of April, 2012

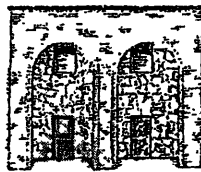
Respectfully Submitted

s/ George A Jones
 George A Jones, 254442
 Broad River Correctional Institution
 4460 Broad River Road
 Columbia, S.C. 29210

Sworn to and subscribed before me
 This 16th day of April 2012.

Donald J. Jones

Notary Public for South Carolina my
 Commission Expires My Commission Expires
August 23, 2015



(Exhibit A)

Law Offices of
Adrian L. Falgione, L.L.C.

December 19, 2008

Ervin J. Maye, Solicitor
Eleventh Circuit Solicitor's Office
187 Saluda Airport Road
Saluda, South Carolina 29138

Officer Lamaz Robinson
Johnston Police Department
500 Mims Ave.
Johnston, South Carolina 29832

In Re: State vs. George A. Jones
Warrant No(s): J-605391; J-605390; J-605389; K-095262

Dear Solicitor Maye and Officer Robinson:

This is to advise you that I have been court appointed to represent George A. Jones in the above referenced charges. Please find enclosed the Brady Motion and Rule 5 Discovery Motion, which I hereby serve upon you.

Sincerely,

Adrian L. Falgione

ALF/bip
Enclosures

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF EDGEFIELD	)	
	)	
THE STATE,	)	
	)	
VS.	)	
	)	BRADY MOTION
GEORGE ALBERT JONES,	)	(WARRANT NOS: J-605389; J-605390;
	)	J-605391; K-095652)
DEFENDANT	)	
_____	)	

**TO: ERVIN MAYE, ASSISTANT SOLICITOR OF EDGEFIELD COUNTY AND
OFFICER LAMAZ ROBINSON, JOHNSTON POLICE DEPARTMENT:**

**MOTION FOR BRADY AND OTHER FAVORABLE MATERIAL AND
INCORPORATED MEMORANDUM OF LAW**

COMES NOW the Defendant, by and through undersigned counsel, and files this Motion for Brady and other favorable material and incorporated Memorandum of Law requiring the production of material to the defendant within thirty days of the receipt of this request or at least ten (10) days prior to trial. As grounds therefore, the undersigned would show as follows:

1. Under the United States Supreme Court decision in Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) the Solicitor has an obligation to produce all Brady material for the Defendant well in advance of the scheduled trial date.

2. Defendant claims under Brady and its progeny, as well as the language and spirit of Giglio v. United States, 405 U.S. 105, 92 S.Ct. 763 (1972); United States v. Tashman, 478 F.2d 129 (5th Cir. 1973); and Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959); Alconta v. Texas, 355 U.S. 28 (1957); Mooney v. Halliham, 294 U.S. 103 (1935); and Moore v. Illinois, 408 U.S. 786 (1962); that he/she is entitled to any and all

records, memoranda and documents, as well as a statement of the Solicitor and all appropriate state, federal and local law agencies to:

a. All statements by the defendant, whether oral or written; if written whether signed or undersigned.

b. All handwritten notes made by police or other investigating officers of their interview or conversation with the defendant or any other witness.

c. Any oral, written or recorded statements made by any person to the Solicitor's Office, Grand Jury or any law enforcement agency in connection with this case.

d. A copy of all tape recordings, audio or video, made by a defendant, witness or any other person in connection with this case. If these tape recordings have been transcribed, then a copy of the transcribed conversation is also requested.

3. Any and all investigation reports, information or material which tends to establish the defendant's innocence, to mitigate punishment, or to impeach, discredit, or contradict the testimony of any witness whom the State will or may call at trial. Giles v. Maryland, 386 U.S. 66, 87 S.Ct. 793 (1967); Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173 (1959); Giglio v. U.S., *supra*.

4. The names and addresses of all witnesses interviewed by the Solicitor's office or any other law enforcement agency who might establish the defendant's innocence, mitigate punishment, or impeach, discredit, or contradict the testimony of any witness of the State whether or not the witness may testify at trial.

5. Any and all photographs taken of the defendant on any portion of his body.
6. Any and all photographs taken at the scene of the alleged crime and/or the alleged victim or prosecuting witness.
7. Any photographs that have been exhibited to any person for the purpose of establishing the identity of the perpetrator of the crime charged and the name and current address of the person or persons to whom the photographs were shown.
8. Any scientific or medical report which tends to establish the defendant's innocence, to mitigate punishment or to impeach, discredit, or contradict the testimony or any witness whom the State will or may call at trial. Ashley v. Texas, 319 F2d 80 (5th Cir.), cert. denied, 375 U.S. 931, 84 S.Ct. 331(1963). This request shall include any reports by or to the State Law Enforcement Division (SLED) criminalistics laboratory, Federal Bureau of Investigations laboratories, County Sheriffs Department laboratory or any other law enforcement laboratory concerning an examination made by said laboratories and/or personnel thereof, any physical, photographic, oral or written evidence concerning the investigation of this case.
9. All reports from the State Law Enforcement Division (SLED), Sheriff's Department, or any other law enforcement agency, including the Federal Bureau of Investigation, concerning fingerprints checked in connection with this case.
10. All records of arrests or criminal convictions of the defendant or any co-defendant and all State's witnesses in relation to this case. Giglio v. U.S., *supra*.

11. All "inconsistent" statements made by a particular witness or between witnesses, whether written or oral, that is known to the Solicitor's Office or any other law enforcement agency.

12. Any statement or admission by a witness for or on behalf of the State with respect to the witness; memory or loss therefore.

13. Whether or not any witness called before the Grand Jury or who has or will give testimony to any investigative agency or at trial has ever been psychiatrically hospitalized or undergone psychiatric treatment, examination, mental status examination or care, and if so, a list of names and addresses of the psychiatrists, hospitals and copies of any and all relevant records and reports.

14. All notes or memoranda by psychiatrists or other medical or mental health examiners of their conversations with the defendant.

15. Any and all plea bargains, promises, rewards, reductions, dismissals, agreements not to bring criminal charges or any other inducements made to any witness herein, whether or not they have testified before any State or Federal Grand Jury, or other investigative agency, and regardless of whether or not they will testify at trial.

16. Any offers or grants of immunity to any witness from loss of property, fine, forfeiture, prosecution or punishment in this case or any other case, related or otherwise.

17. In addition, defendant requests copies of any and all memoranda, reports and correspondence to and from the various law enforcement agencies of the United

States and all state, county, municipal and local law enforcement agencies regarding the investigation herein.

18. Any and all physical or tangible items in the possession, custody or control of or which could reasonably be brought within the possession, custody or control of the Solicitor's Office, State, Federal or local law enforcement agency.

19. Defendant contends that this Court should specifically direct the Government in the spirit of fairness and equity, seek and produce for the defendant the documents, letters, records and other items sought, irrespective of the State's determination of whether a witness; statement or a particular letter or exhibit can "help" the defendant. The Defendant and his/her attorney, not the Solicitor, should be the judge of his/her defense and the documents relevant thereto and necessary in support of same.

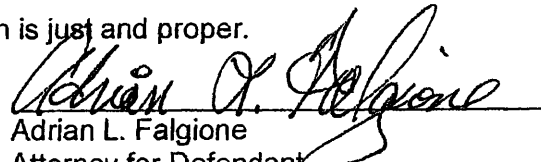
20. To the extent the defendant is specifically required to demonstrate the materiality of the requested information, the defendant submits that this requirement is satisfied in this motion. United States v. Agurs, 427 U.S. 97 (1976).

21. Recognizing that Brady v. Maryland, supra, and other authorities cited require that information favorable to the defendant be made available, and further recognizing that a genuine disagreement may raise as to whether or not a particular item of evidence is favorable, it will be requested that the Court provide for an in camera inspection of the items sought to be discovered should you feel such items are not favorable to the defendant. By permitting the Court to examine the items requested, the legitimate interest of the State will be protected in that no disclosure in excess of Brady, et al. will occur. Further, it will be requested of the Court that said Order will be a

continuing one, and if, prior to or during trial, the prosecution discovers additional evidence or material requested, the prosecution is hereby requested promptly to notify counsel for the defendant of the existence of the additional evidence or material.

It is further requested that the prosecution promptly respond to the within request by notifying counsel for the defendant of the existence and availability of the information requested herein within thirty days of the receipt of this motion and at least ten days prior to trial.

WHEREFORE, the undersigned prays for such Order requiring production of the above listed materials and for that which is just and proper.


Adrian L. Falgione
Attorney for Defendant
113 East Main Street
Post Office Box 277
Lexington, South Carolina 29071

Lexington, South Carolina
December 19, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF EDGEFIELD	)	
	)	
THE STATE,	)	
	)	
VS.	)	
	)	<u>RULE 5 DISCOVERY MOTION</u>
GEORGE ALBERT JONES,	)	(WARRANT NOS: J-605389; J-605390;
	)	J-605391; K-095652)
DEFENDANT	)	
	)	

**TO: ERVIN MAYE, ASSISTANT SOLICITOR OF EDGEFIELD COUNTY AND
OFFICER LAMAZ ROBINSON, JOHNSTON POLICE DEPARTMENT:**

NOW COMES the Defendant, by and through the undersigned counsel of record, pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, and moves prosecution to permit Defendant to inspect and copy or photograph, within thirty days of service of this Motion and at least within ten days prior to trial, including, but not limited to, the following, with the express provision that the duty of disclosure be a continuing one in the event that any such materials come into existence or become available after initial disclosures:

A. Any written or recorded statements made by the Defendant, or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution;

B. The substance of any oral statement which the prosecution intends to offer into evidence at the trial made by the Defendant, whether before or after arrest, in response to interrogation by any person then known to the Defendant to be a prosecution agent;

C. A copy of the Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise by due diligence may become known, to the attorney for the prosecution;

D. All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the prosecution, and which are material to the defense, or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant;

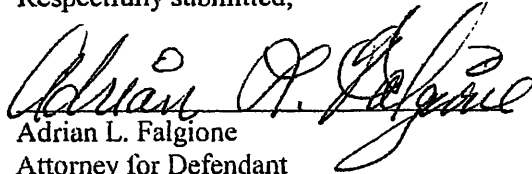
E. All results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for the use by the prosecution as evidence in chief at the trial; and

F. The statement of any witness or prospective prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

The Defendant further moves that compliance with the foregoing request be made within ten (10) from the service of this motion, and upon failure of the prosecution to so comply, the Defendant will move before the Presiding Judge for an Order prohibiting the prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or such Order as the Court in its discretion deems just under the circumstances.

For the purposes of this Motion, the Defendant asserts that any item requested in Paragraphs (a), (b), (c), (d), (e), and (f) above is material to the preparation of the defense in this case.

Respectfully submitted,



Adrian L. Falgione
Attorney for Defendant
113 E. Main Street
Lexington, South Carolina 29071
(803) 957-6543

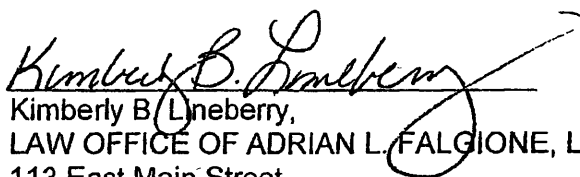
Lexington, South Carolina
December 19, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF EDGEFIELD	)	
	)	
THE STATE,	)	
	)	
VS.	)	
	)	CERTIFICATE OF SERVICE
GEORGE ALBERT JONES,	)	(WARRANT NOS: J-605389; J-605390;
	)	J-605391; K-095652)
DEFENDANT	)	

I, Kimberly B. Lineberry, Legal Assistant to Adrian L. Falgione, attorney for the Defendant, do hereby certify that I have served the foregoing Rule 5 and Brandy Motions by mailing a copy of the same by U.S. Mail, postage prepaid to the following addresses:

Ervin J. Maye, Solicitor
Eleventh Circuit Solicitor's Office
187 Saluda Airport Road
Saluda, South Carolina 29138

Officer Lamaz Robinson
Johnston Police Department
500 Mims Ave.
Johnston, South Carolina 29832


Kimberly B. Lineberry,
LAW OFFICE OF ADRIAN L. FALGIONE, LLC
113 East Main Street
PO Box 277
Lexington, SC 29071
(803) 957-6543

Lexington, South Carolina
December 19, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF EDGEFIELD	)	
	)	
George A. Jones, #254442,	)	Case No. 2012-CP-19-100
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed April 18, 2012 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 Clerk of Court for Edgefield County. The Applicant was indicted at the July 2009 term of the Court of General Sessions for Edgefield County for lewd act with a minor (2009-GS-19-349) and criminal sexual conduct with a minor, first degree (2009-GS-19-409). Adrian L. Falgione, Esquire, represented Applicant. On February 5, 2010 a jury convicted Applicant as indicted. The Honorable William P. Keesley sentenced Applicant to thirty years imprisonment for criminal sexual conduct with a minor, first degree, and to fifteen years imprisonment for lewd act with a minor. The sentences to be served concurrently.

Applicant appealed his convictions and sentences to the South Carolina Court of Appeals and was represented by Wanda Carter, Esquire. On February 29, 2012 the South Carolina Court of Appeals dismissed Applicant's appeal in unpublished opinion No. 2012-UP-120 and the matter was remitted to the lower court on March 16, 2012.

Attached herewith and incorporated herein by reference are the records of the Edgefield County Clerk of Court regarding the subject conviction(s), Applicant's records from the Department of Corrections, and the trial transcript of the proceeding against Applicant, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Counsel
 - a. Counsel failed to "pursue all plausible and affirmative defenses"
 - b. Counsel failed to "conduct reasonable pretrial investigation and preparations"
 - c. Counsel failed to "object to the discovery violation of the solicitor"
2. Ineffective Assistance of Appellate Counsel
3. Denial of Due Process

III.

The Applicant alleges ineffective assistance of trial and appellate counsel. The Respondent contends that the Applicant's trial and appellate counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured 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.

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 cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant raises additional direct appeal allegations. These allegations are not proper matters for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 833 (1975). Therefore, Applicant's direct appeal allegations must be summarily dismissed.

VI.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

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

IX.

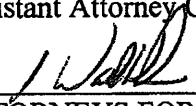
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 28th, 2013

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH CIRCUIT

2012-CP-19-100

George A. Jones, # 254442

Applicant,

vs

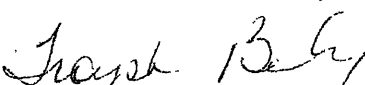
AFFIDAVIT OF SERVICE BY MAIL

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:

Dorothy Holley Hogg, Esquire
Post Office Box 1477
Augusta, GA 30903

DATED this 28th day of March, 2013


Troyeshi Brailey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF EDGEFIELD

COURT OF COMMON PLEAS NONJURY

4 GEORGE JONES,

5 APPLICANT,

6 VS.

7 STATE OF SOUTH CAROLINA,

8 RESPONDENT.

TRANSCRIPT

OF

RECORD

2012-CP-19-100

9
10 November 14th, 2013
11 Lexington, South Carolina
12

13 B E F O R E:

14 THE HONORABLE R. LAWTON MCINTOSH, Judge.

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

16 COURTNEY CLYBURN-POPE
17 ESQ.
18 Attorney for the Applicant

19 WALT WHITMIRE
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the State

22 CAROL THUEME
23 Circuit Court Reporter

24
25 Transcribed by Pamela E. Green, Circuit Court Reporter

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Documents

P R O C E E D I N G S

THE COURT: All right. Mr. Whitmire, you ready?

MR. WHITMIRE: May it please the Court, Your Honor.

The first matter before this Court today is George Jones v. State of South Carolina.

We ask that you bring Mr. Jones around.

THE OFFICER: Sure.

(Pause.)

MR. WHITMIRE: Your Honor, this is Case Number 2012-CP-19-100.

Mr. Jones was indicted for criminal sexual conduct with a minor in the first degree and lewd act. Mr. Jones was tried and convicted February 5th, 2010. He was represented by Mr. Adrian Falgione.

Judge Keesley sentenced Mr. Jones to 30 years -- well, 30 years imprisonment. Fifteen for lewd act to be served concurrently. A Notice of Appeal was filed on Mr. Jones's behalf. That notice was perfected pursuant to Anders v. California by Wanda Carter. The Court of Appeals affirmed Mr. Jones conviction and sentence.

Mr. Jones did file a timely Application for Post-Conviction Relief. In that Application, it has not been amended, Mr. Jones alleges, Your Honor, failure to investigate, to consult an expert, to challenge the ER

1 doctor's diagnosis of herpes on the victim.

2 THE COURT: Say, say that again.

3 Grounds for -- is ineffective for failure to
4 investigate?

5 MR. WHITMIRE: Failure to investigate. Consulting
6 expert.

7 THE COURT: Okay.

8 MR. WHITMIRE: The challenge to the ER's diagnosis of
9 the victim.

10 The second ground --

11 THE COURT: Okay.

12 MR. WHITMIRE: -- failure to consult an expert to
13 determine if Mr. Jones or if his wife, in fact, had herpes.

14 Third ground, prosecutorial misconduct, failure to
15 disclose DSS reports of the victim's mother pursuant to Rule
16 5.

17 The fourth ground, Your Honor --

18 THE COURT: Okay.

19 MR. WHITMIRE: -- failure to advise Applicant not to
20 testify at trial.

21 And, Your Honor, Mr. Jones did make a generic
22 ineffective assistance of appellate counsel claim. However,
23 that was not further expounded upon in his application.

24 THE COURT: Ms. Pope.

25 MS. CLYBURN-POPE: Your Honor, those grounds I can

George Jones - Direct examination
by MS. Clyburn-Pope

1 correct. I think the State has it correct. Those are our
2 four grounds for lack of, of ineffective counsel ground.

3 THE COURT: Okay. Are you ready to proceed then?

4 MS. CLYBURN-POPE: We are ready to proceed, Your Honor.

5 THE COURT: Would you call your first witness please,
6 ma'am?

7 MS. CLYBURN-POPE: Yes, sir, I'd like to call
8 Mr. George Jones to the stand.

9 THE COURT: Come around please, sir.

10 THE CLERK: Raise your right-hand please. Left-hand on
11 the Bible. Raise your right-hand.

12 (WHEREUPON, the Applicant complies.)

13 GEORGE JONES, being first duly
14 sworn, testified as follows:

15 THE CLERK: Have a seat.

16 (WHEREUPON, the Applicant complies.)

17 DIRECT EXAMINATION

18 BY MS. CLYBURN-POPE:

19 Q Good morning, Mr. Jones.

20 A Morning.

21 Q Can you please state your full name for the record?

22 A George Albert Jones.

23 Q George Alfred?

24 A Albert.

25 Q Albert Jones?

George Jones - Direct examination
by Ms. Clyburn-Pope

1 A Uh-huh. (Affirmative).

2 Q Thank you, Mr. Jones.

3 Mr. Jones, you were tried -- you were tried for
4 criminal sexual conduct as well as lewd act upon a minor
5 child.

6 Is that correct?

7 A Yes, ma'am.

8 Q And you were tried back in 2010.

9 Is that correct?

10 A Yes, ma'am.

11 Q Okay. And you were, you were sentenced to 30 years
12 imprisonment.

13 Is that correct?

14 A Yes, ma'am.

15 Q Okay, Mr. Jones. Now, we're here today because we
16 believe that there was ineffective counsel.

17 Is that correct?

18 A Yes, ma'am.

19 Q All right. Can you tell me -- I know that you have
20 some notes, notes prepared.

21 A Uh-huh. (Affirmative).

22 Q Can you tell me, first, if you ever received any
23 discovery from your attorney?

24 A No, only thing I received was the -- that he filed the
25 Brady, but he never gave me anything else.

George Jones - Direct examination
by MS. Clyburn-Pope

1 THE COURT: Say that again please, sir.

2 Q Is that a -- you have to answer.

3 Is that a yes or a no?

4 A Oh, no, I didn't receive anything. Only thing I
5 received from him was that he filed the Brady, but I ain't
6 received no answers.

7 Q Okay. You received -- just to clarify for the Judge.
8 You received the actual copy of the motion.

9 Is that your testimony?

10 A Yes, ma'am.

11 Q Okay. But did you ever receive any discovery?

12 A No.

13 Q Okay. Mr. Jones, did you receive a DVD of the
14 interview of the witnesses?

15 A No.

16 Q All right. Did you receive any photographs?

17 A No.

18 Q Invoices or any medical evaluations?

19 A I receive one that he sent me of -- from Mother's
20 (phonetic) Laboratory. I did receive that one.

21 Q Who was that?

22 The -- who?

23 A Of, of me.

24 Q Of, of your medical evidence?

25 A Uh-huh. (Affirmative).

George Jones - Direct examination
by Ms. Clyburn-Pope

1 Q Is that correct?

2 Did you receive any medical evidence as it pertains to
3 the victim?

4 A No.

5 Q The alleged victim.

6 A No.

7 Q Did you receive any as it pertains to the mother of
8 the, the alleged victim?

9 A No.

10 Q Okay. Now, Mr. Jones, you also -- in your testimony
11 that you did not receive this discovery, why do you think
12 this would have changed the outcome of your case?

13 A Because if I had of known what they said, we could of
14 had a good strategy to go by.

15 Q Okay. Now, you-all did have a strategy.

16 Is that correct?

17 A No, I didn't.

18 Q But did your attorney explain any legal defenses to
19 you?

20 A No.

21 Q Okay. Now, when you were at the trial, do you feel as
22 though this -- the lack of discovery hurt you?

23 A Yes.

24 Q The lack of you seeing the discovery hurt you?

25 A Yes.

George Jones - Direct examination
by MS. Clyburn-Pope

1 Q Okay. Now, Mr. Jones, another question that I'd like
2 to ask you in terms of the ineffective counsel was in
3 regards to the witnesses that were called on your behalf.

4 Did you agree with all of the witnesses that were
5 called on your behalf?

6 A I'll say not all of them.

7 Q Okay. Do you feel as though there were witnesses that
8 should have been called?

9 A Yes, I do.

10 Q Can you tell me the name of one of those witnesses that
11 should have been called?

12 A They should of called my mother, Annie Jones.

13 Q why should they have called your mother?

14 A Because she know that I lived there since
15 February 6th, 2001, and that I took care of them and
16 everything, and I use to bring them over there to see her
17 and my other kin folks.

18 Q And when you say them, are you referring to the
19 children --

20 A Yes, ma'am.

21 Q -- that were involved in this case?

22 A Yes, ma'am.

23 Q Okay. And you believed that your mother would have
24 been a good character witness for you?

25 A Yes, ma'am.

George Jones - Direct examination
by Ms. Clyburn-Pope

1 Q Okay. Do you believe that affected the outcome of your
2 trial?

3 A I do.

4 Q Okay. Now, who else do you believe should have been
5 called, Mr. Jones?

6 A They could have called the narcotic's agent, Roosevelt
7 Young, because he knew where I lived, and he knew my kids as
8 well.

9 Q Okay. And how would that witness have changed the
10 outcome of your trial, Mr. Jones?

11 A Because they was saying that, that I didn't live there,
12 that I just came there off and on.

13 Q Do you think you living there and assisting the
14 children would have helped your, your, your chances at a
15 trial?

16 A Yes, I do.

17 Q What do you think that would of proven, Mr. Jones?

18 A It would have proven that, if I was gonna do something,
19 I would have done it while we was there alone. Not when my
20 girlfriend went to sleep cause they allege that I done it
21 when she went to sleep. I had plenty of opportunities to do
22 something when she was even not there, when I was
23 baby-sitting.

24 Q Thank you, Mr. Jones.

25 Is there -- are there any other witnesses that you feel

George Jones - Direct examination
by Ms. Clyburn-Pope

1 should have been called on your behalf?

2 A They should of called her grandmothers.

3 Q The, the alleged victim's grandmother?

4 A Uh-huh. (Affirmative).

5 Yes. Yes.

6 Q Okay.

7 A Uh-huh. (Affirmative).

8 Ms. Georgia Greer.

9 Q Can you please tell the courtroom why her testimony
10 would have been helpful to you?

11 A Because she lived right across the street from us.

12 Q Yes, sir.

13 How would that have been helpful?

14 A And she know that I lived there since February 6th,
15 and she know that I took care of my kids. I even kept her
16 kids at time, you know, and then I use to give her other
17 grandkids money because they daddy wasn't doing anything for
18 them, you know, and I cut their hair free and everything,
19 you know, took them places.

20 Q Yes, sir.

21 So, you believe that she would have been a good
22 character witness --

23 A Yes.

24 Q -- in your defense?

25 A Yes.

George Jones - Direct examination
by Ms. Clyburn-Pope

1 Q And you think you were hurt because she was not called.
2 Is that correct?

3 A Yes.

4 Q Is there another witness, Mr. Jones?

5 Is Larry Culbreath a witness?

6 A Yes, could have called him, yeah, because like when I
7 got, got -- just one of the guys that she use to mess around
8 with.

9 Q Who is she?

10 We, we need to be specific because the Judge is not---

11 A Well, Shannon Grim, the mother.

12 Q Okay. And that would have been important to your
13 defense why, Mr. Jones?

14 A Because he had assets of going here and out the house
15 when I wasn't there, you know, like that, and that he knew
16 that I lived there, you know, and everything, but I went to
17 work during the daytime. I worked ten hours a day four days
18 a week.

19 Q Yes, sir.

20 So, you believe that Mr. Culbreath potentially could
21 have helped in your defense?

22 A Yes, I do because he came to talk for my behalf, but
23 they wouldn't put him on the stand.

24 Q Okay. Mr. Culbreath did volunteer as a witness for
25 you?

George Jones - Direct examination
by MS. Clyburn-Pope

1 A Yes.

2 Q Okay. Are there any other people that you feel as
3 though would have helped your defense that your attorney did
4 not call?

5 A Yeah, my sister was there, Virginia Jones. My brother.

6 Q How, how would, how would Ms. Jones have been able to
7 assist in your defense?

8 A Cause I use to take the kids over to her house as well.

9 Q So, she would have been a good character witness?

10 A Yes.

11 Q Okay. Did your attorney explain to you why he did not
12 call these witnesses?

13 A Only one he explained that he didn't call was Shannon
14 Grim.

15 Q And who is Shannon Grim?

16 A The mother.

17 Q Okay. And did he -- can you tell us what his
18 explanation was?

19 A Only thing he told me that he didn't want to degrade
20 her.

21 Q Okay. And you felt as though she would have, have
22 helped to exonerate you?

23 A Yes.

24 THE COURT: That's the victim's mother?

25 MS. CLYBURN-POPE: Yes, Your Honor.

George Jones - Direct examination
by Ms. Clyburn-Pope

1 Q Did you request that Ms. Grim or any of these other
2 witnesses be called on your behalf?

3 A No, I was going by what he was telling me, that he
4 wasn't gonna call them.

5 Q Okay. Now, you did mention Larry Culbreath and, and
6 your family members.

7 Were there any other witnesses that potentially would
8 have helped to show your -- prove your innocence?

9 A Yeah, Gerald Burton, my cousin.

10 Q How would Mr. Burton have helped you specifically,
11 Mr. Jones?

12 A Cause he use to come over to the house, you know.

13 Q So, he would of been a good character witness?

14 A Yes, ma'am.

15 Q Okay. All right. Mr. Jones, I want to ask you -- you
16 also allege that Mr. Falgione failed to advise you not to
17 testify at trial.

18 Is that one of your allegations in your Application?

19 A Say, say, say that again now?

20 Q In your Application --

21 A Uh-huh. (Affirmative).

22 Q -- did you state that he failed to advise you not to
23 take the trial?

24 A Yes.

25 Q Excuse me. Not to take the stand.

George Jones - Direct examination
by MS. Clyburn-Pope

1 A Uh-huh. (Affirmative).

2 Q Okay. Can you explain that to the Judge?

3 A Well, well, I put it this way. All this was totally
4 new to me, you know. I didn't have -- didn't know what to
5 say. Didn't have no strategy. He never gave me anything to
6 say. We never went over anything. I never -- didn't know
7 what questions was gonna be asked so how to make a defense
8 or anything. I ain't know nothing.

9 Q Okay. Mr. Jones, is it your testimony that you-all did
10 not prepare adequately for the trial?

11 A Yes.

12 Q Okay. I'd like to explore that point some.

13 Can you tell me how many times Mr. Falgione came to
14 visit you when you were incarcerated?

15 A I seen him about two or three times.

16 Q Two or three times?

17 A Uh-huh. (Affirmative).

18 Q And during those two or three visits, how long were
19 those visits?

20 A About 30 to 40 minutes at the most.

21 Q Yes, sir.

22 Did you meet with anyone else on Mr. Falgione's team?

23 A The investigator.

24 Q Yes, sir.

25 Can you tell me how times you met with the

George Jones - Direct examination
by MS. Clyburn-Pope

1 investigator?

2 A About two to three times.

3 Q And how long, an estimate, did you meet with the
4 investigator?

5 A About 25 to 30 minutes.

6 Q Okay. Do you feel as though his team adequately
7 prepared you?

8 A No, I don't.

9 Q Okay. Did you-all go over trial testimony?

10 A No.

11 Q Did he discuss with you what evidence he would be
12 presenting at the trial?

13 A No.

14 Q Okay. And, Mr. Jones, do you feel as though your lack
15 of preparation for the trial had an outcome -- had, had a
16 say in the outcome of your trial?

17 A Yes, I do.

18 Q Do you think that you would of had a better result had
19 you been more prepared?

20 A Yes, I do.

21 Q Okay. Mr. Jones, you also took issue with the expert
22 witness.

23 Is that correct?

24 A Uh-huh. (Affirmative).

25 Q Now, at the trial, the expert witness testified to

George Jones - Direct examination
by Ms. Clyburn-Pope

1 some, to some medical evidence.

2 Is that correct?

3 A Yes.

4 Q Can you tell me briefly what that, that witness
5 testified to?

6 A well, which one of them you talking about?

7 Q I'm sorry.

8 A They're several.

9 Q I'm sorry. The, the one in -- the one who determined
10 the, the lab test for herpes.

11 A You talking about Doctor Gardner?

12 Q Yes, sir.

13 A well, to me, she was saying that you could have had
14 herpes and would not even knew it, you know, for a long
15 period of time because I never had any symptoms. The mother
16 never had any symptoms. And they did not -- and the tests
17 that they gave couldn't tell whether it's the same type that
18 the victim suppose to have.

19 Q Okay. Now, this is the test on you. I want to be
20 specific.

21 The testing in regards to you --

22 A uh-huh. (Affirmative).

23 Q -- what did that testing say?

24 A It didn't say -- it could be one or it could be two.

25 Q And that is Type I Herpes or Type II Herpes?

George Jones - Direct examination
by Ms. Clyburn-Pope

1 A It say it could be one or two.

2 Q Yes, sir.

3 A But they ain't had no specific answer.

4 Q Yes, sir.

5 Now, the alleged victim did have a specific answer?

6 A Yeah, Type II.

7 Q Type II.

8 A Uh-huh. (Affirmative).

9 Q Now, is -- do you believe that you not being given a
10 specific type hindered your defense?

11 A Yes, cause they say that 90 percent of the people have
12 Type I.

13 Q Okay. Now, that being said, Mr. Jones, it was not
14 determined what specific type of herpes you had.

15 Is that correct?

16 A No, it wasn't.

17 Q And you believe that, if it had been determined, that
18 you may have been eliminated as a suspect.

19 Is that correct?

20 A Yes, I do.

21 Q Did your attorney tell you why he did not do -- ask for
22 the specific testing?

23 A No, he did not.

24 Q Okay. Did you ask for an explanation on that?

25 A No, I ain't ask.

George Jones - Direct examination
by Ms. Clyburn-Pope

1 Q Okay. And tell me why you did not ask.

2 A Because I was letting him handle everything at the time
3 because I thought what he was doing was suppose to had of
4 been right.

5 Q Yes, sir.

6 So, you trusted Mr. Falgione.

7 Is that correct?

8 A Yes, I did because all that was new to me.

9 Q Mr. Jones, to your knowledge, was the mother of the
10 child ever tested for herpes?

11 A Yes, she was.

12 Q And do you have the results of that, that herpes---

13 A No.

14 Q To this day, do you know the results of that herpes
15 test?

16 A Well, she said she was---

17 MR. WHITMIRE: Objection. Hearsay.

18 THE COURT: Overruled.

19 A She say she was positive.

20 Q Hold on. Hold on. I can't---

21 A So---

22 Q well, go ahead. Go ahead.

23 A Yes, she said, in the DSS hearing, that she was
24 positive.

25 Q And the DSS hearing was a separate---

George Jones - Direct examination
by Ms. Clyburn-Pope

1 A It was a separate---

2 Q ---case?

3 A Uh-huh. (Affirmative).

4 Q That was prior testimony.

5 Is that correct?

6 A Yes.

7 Q Was that presented at your trial, Mr. Jones?

8 A No.

9 Q And can you tell me why your attorney decided not to do
10 that?

11 A No, I couldn't tell you.

12 Q Did you-all discuss that?

13 A I told him about it. I told him to get the, the
14 transcript that prove that she said this, but I never
15 received that either.

16 Q Yes, sir.

17 Was it presented at the trial?

18 A No.

19 Q And do you believe that that hurt your chance at a not
20 guilty verdict?

21 A Yes, I do.

22 Q Mr. Jones, is there anything else that you would like
23 the Judge to know in regards to Mr. Falgione's
24 representation?

25 A If I can read this here briefly?

George Jones - Direct examination
by Ms. Clyburn-Pope

1 My attorney was ineffective in failing to object to
2 discovery violation of the Solicitor Office and law
3 enforcement agency, a due process violation.

4 Adrian -- Mr. -- Attorney Adrian L. Falgione served a
5 Rule 5 discovery motion on the Solicitor Office December the
6 19th, 2008, but he never went over the Brady with me. In
7 fact, I was in the county jail for 667 days, and must have
8 met with him only two or three times.

9 My attorney was ineffective in failing to object to
10 discovery violation of the solicitors which did not disclose
11 the required documents listed within my Brady motion ten
12 days prior to trial.

13 No expert witness called on my behalf. Under Hicks
14 versus State, the Supreme Court held that evidence is
15 relevant if it tends to establish or make more or less
16 probable some matters at issue upon which it directly or
17 indirectly beared (sic). The same could be said of calling
18 an expert witness in the Petitioner's case. Calling witness
19 and/or presenting evidence to refute claims of the
20 prosecution upon a direct importance where a defendant faces
21 the possibility of spending years in prison.

22 Failure to bring forth an expert witness to refute
23 prosecutorial (sic) claims in addition to other witnesses or
24 evidence was unreasonable by trial counsel.

25 Failure to move to suppress evidence. The DVD, the

George Jones - Direct examination
by Ms. Clyburn-Pope

1 photograph.

2 THE COURT: Hang on. Hang on.

3 How many pages you got there?

4 You have four?

5 THE WITNESS: Uh-huh. (Affirmative).

6 THE COURT: Let's do this. Instead of you reading it
7 all, let's make that a, a Court Exhibit, and I'll read it.
8 That way you don't have to go through the whole thing.

9 THE WITNESS: Okay.

10 THE COURT: Okay?

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Do you need a -- you want to
13 keep a copy of that?

14 We can make a copy and make it a Court Exhibit.

15 THE WITNESS: Yeah.

16 THE COURT: Could you do that?

17 THE WITNESS: Yes, sir.

18 THE COURT: Would you mind making a copy for him, and
19 we'll just put the copy in evidence, and I will read that.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. But go ahead.

22 MS. CLYBURN-POPE: Thank you, Your Honor.

23 THE COURT: Yes, ma'am.

24 Q Mr. Jones, you do understand he, he will read the
25 document?

George Jones - Direct examination
by MS. Clyburn-Pope

1 A Yes, sir.

2 Q Okay. Now, Mr. Jones, anything outside of that
3 document -- is there anything that you would like the Judge
4 to know in regards to Mr. Falgione's representation of you?

5 A Well, I think he should of really talked to the Doctor
6 Gardner more, Mrs. Elizabeth, because she already had made a
7 wrong diagnose, diagnose (sic) from the start. And so she
8 could of been making a wrong one again.

9 Q Okay. Mr. Jones, did your, did your attorney seek any
10 other expert witnesses to your knowledge?

11 A Not that I know of.

12 Q And you believe that was important why?

13 A Because, you know, if they saying that you can have
14 this for years and not even know it. That could of came at
15 birth.

16 Q You mean passed from the mother to the child?

17 Is that---

18 A Yes, ma'am.

19 Q And you believe that would of been a defense?

20 A Yes, ma'am, cause then I think that he should of asked
21 her, when she examined, was any evidence of penetration or
22 anything because, on the DVD, she told specifically it no, I
23 did not.

24 Q She did not indicate any evidence of penetration?

25 A Yes, ma'am.

George Jones - Direct examination
by Ms. Clyburn-Pope

1 Q Okay. Mr. Jones, is, is that all that you would like
2 for the Judge to know?

3 A Yes, ma'am.

4 MS. CLYBURN-POPE: Those are all the questions that I
5 have, Your Honor.

6 THE COURT: Thank you, ma'am.

7 Cross-examination, Mr. Whitmire.

8 MR. WHITMIRE: May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. WHITMIRE:

12 Q Good morning, Mr. Jones.

13 A How are you?

14 Q It's your contention here today that you think Doctor
15 Gardner might have misdiagnosed your daughter?

16 A Yes.

17 MR. WHITMIRE: Now, turn to Page 118, Your Honor.

18 Didn't Doctor Gardner say this is a very common general
19 ulcers on your, on your daughter?

20 A Do what now?

21 Q Didn't, didn't Doctor Gardner say that your daughter
22 had a very common genital ulcers when she examined her?

23 A I, I don't know. It might of been on there.

24 MR. WHITMIRE: On Page 119, Your Honor.

25 Didn't Doctor Gardner take a culture from those

George Jones - Cross-examination
by Mr. Whitmire

1 lesions?

2 A Yeah, they said they did.

3 Q And didn't that culture come back as General Herpes
4 Simplex II?

5 A That's what she said.

6 Q Now, you've also alleged that counsel should have hired
7 an expert to test you.

8 Is that correct?

9 A Uh-huh. (Affirmative).

10 Q Now, prior to trial, didn't the State file a motion to
11 get your blood?

12 A At first I went to the, to the clinic. They took me
13 there and they said they don't see anything wrong. So, they
14 say get -- that it wasn't necessary for me to have a test at
15 the clinic.

16 Q Now, wasn't your blood taken to be tested in Augusta?

17 A That was taken in Edgefield.

18 MR. WHITMIRE: Now, referring to Page 238 and 194, Your
19 Honor.

20 Didn't---

21 THE COURT: 238 and 194?

22 MR. WHITMIRE: Uh-huh. (Affirmative).

23 It's two different places. The same thing.

24 THE COURT: Okay.

25 Q Now, didn't you screen under the IGG test for herpes?

George Jones - Cross-examination
by Mr. Whitmire

1 A Now what now?

2 Q Didn't you screen positive for having herpes?

3 A They didn't say what type.

4 Q And didn't your attorney bring this out multiple times
5 during the course of the trial?

6 A Yeah, he said -- he mentioned that.

7 Q Now, Mr. Jones, do you recall talking to the police
8 after you were arrested?

9 A After I was arrested?

10 Q For this, for this crime.

11 A Yeah, I talked to investigator.

12 MR. WHITMIRE: Turn to Page 158, Your Honor.

13 And when you spoke with the investigator, didn't he ask
14 you if you, in fact, had herpes?

15 A Yes.

16 Q Do you recall your answer?

17 A No.

18 Q Your answer was I don't know.

19 Does that sound correct?

20 A I said no.

21 Q And didn't Judge Keesley find that you gave that answer
22 voluntarily?

23 A I guess.

24 Q And didn't your attorney still keep that statement out
25 under relevancy during the course of trial?

George Jones - Cross-examination
by Mr. Whitmire

- 1 A I don't know.
- 2 Q And didn't your attorney keep out the fact that you're
3 HIV positive during the course of trial?
- 4 A Yes.
- 5 Q Do you recall your attorney meeting with the victim's
6 mother in this case by her truck?
- 7 A No, I'm, I'm in jail.
8 How I suppose to know?
- 9 Q He didn't---
- 10 A I'm in jail.
- 11 Q He didn't tell you that he had interviewed her as a
12 potential trial witness?
- 13 A No.
- 14 Q Did the investigator tell you that?
- 15 A No.
- 16 Q Now, did Mr. Falgione tell you why he didn't want to
17 call her as a witness?
- 18 A Well, he told me that he didn't want to degrade her.
- 19 Q In the pretrial motions for the DSS hearings, didn't
20 the victim's mother tell authorities that she, in fact, got
21 genital herpes from you?
- 22 A No.
- 23 Q She had no other sexual partners to get it from?
- 24 A No, she didn't say that.
- 25 Q And didn't she testify against you --?

George Jones - Cross-examination
by Mr. Whitmire

1 A Nah, she, she ain't even take the stand. So, she---

2 Q I'm talking about the pretrial motions, the DSS
3 hearings. Not, not during the course of the trial.

4 A Oh, oh, that. Oh, okay. Okay. Okay. Okay.

5 Q So, she could of hurt you in your trial potentially?

6 A That's why the witness was there that we was gonna call
7 her. That's why Larry Culbreath was gonna be called.

8 That's why Gerald Burton was gonna be called. That's why---

9 Q Now, Mr. Jones---

10 A ---Roland Matthews was gonna be called.

11 Q You refer to those four or five people.

12 Are any of those people here today to testify on your
13 behalf?

14 A No.

15 Q And, Mr. Jones, weren't you convicted in 1994 for the
16 delinquency of a minor?

17 A Yes.

18 Q And that conviction stemmed from an incident where you
19 got the victim's mother pregnant when she was 14.

20 Is that correct?

21 A She wasn't pregnant at that time, no. She was not.

22 Q And it came from a CSC related trial?
23 Criminal sexual conduct.

24 A Uh-huh. (Affirmative).

25 Q Your attorney kept that out during the course of trial.

George Jones - Cross-examination
by Mr. Whitmire

1 Is that correct?

2 A Yeah, because the, the judge kept it out really because
3 he says such, such -- so long ago, wasn't no need to bring
4 it up.

5 Q Now, you were also charged with the infliction of the
6 AIDS virus on a victim, weren't you?

7 A No.

8 Q But didn't your attorney get that charge dismissed at
9 the very beginning of trial?

10 A Yeah, because no sign of penetration.

11 So, how you suppose to have sex when you ain't no
12 penetration?

13 Q Do you recall Doctor Gardner, on Page 121, Your Honor,
14 testified that the herpes virus, general herpes virus, is
15 transferred through nerve endings and touching?

16 A She may have. I don't know. She may have.

17 Q On Page 217, the State's epidemiologist, disease
18 specialist, didn't he testify that it's from viral shedding,
19 can come from skin to skin rubbing?

20 A May have. I don't know.

21 Q And didn't your attorney really try hard, on
22 cross-examination of those witnesses, to, to argue third
23 party ulterior reasons, reasons that the victim could of
24 gotten this herpes infection?

25 A Yes, he did.

George Jones - Cross-examination
by Mr. Whitmire

1 Q Do you recall, recall Doctor Renner say that the herpes
2 infection will break out within two to twelve days on
3 incubation?

4 A I don't know.

5 MR. WHITMIRE: Take you to Page 256, Your Honor.

6 And you're the only person the victim had sex, had
7 contact with or sexual contact.

8 Is that correct?

9 A Uh-huh. (Affirmative).

10 Q And didn't your attorney try to impeach her credibility
11 at your trial?

12 A Impeach credibility?

13 Q Well, he tried to, he tried to maybe show she wasn't
14 being honest.

15 A He brung up a few, a few witnesses, but he didn't go
16 all out.

17 Q Didn't he call the foster mother?

18 A Yes.

19 Q And didn't your attorney call a local appliance man on
20 your behalf?

21 A Yes.

22 Q Now, do you recall what that appliance man testified to
23 at -- during your trial?

24 A He testified that all the things that I bought went to
25 that address.

George Jones - Cross-examination
by Mr. Whitmire

1 MR. WHITMIRE: Page 380, Your Honor.

2 So, your attorney tried to argue that you were just
3 being a good father?

4 A Well, he had said that.

5 Q Now, regarding your allegation for a discovery
6 violation, did your attorney explain to you that those DSS
7 records aren't in the custody of the solicitor's Office?

8 A No.

9 Q But didn't your attorney bring those DSS people into
10 trial from the very beginning?

11 A It was testified for the State.

12 Q Not, not to testify, but to get the records.

13 A No, we ain't get no record.

14 MR. WHITMIRE: Page, Page 10, Your Honor.

15 A We suppose to have got it---

16 THE COURT: Page what?

17 A ---ten days before trial.

18 THE COURT: What page?

19 MR. WHITMIRE: Page 10, Your Honor.

20 I apologize, Mr. Jones.

21 But your attorney made a motion for the DSS workers --
22 well, he compelled them to get those records.

23 Is that correct?

24 A They got it during the trial.

25 Q And Judge Keesley ordered those records turned over.

George Jones - Cross-examination
by Mr. Whitmire

1 Is that correct?

2 A Judge who?

3 Q Judge Keesley. Your trial judge.

4 A I don't know. If he did, I ain't get nothing. I
5 suppose to have seen something. I never saw anything.

6 Q So, in fact -- well, your attorney, in fact, got those
7 records that you're alleging he never got today.

8 Is that correct?

9 A I don't know if he got them or not. I never seen
10 anything.

11 Q Now, didn't your attorney and the investigator go over
12 every piece of discovery with you?

13 A No.

14 Q Never did?

15 A No, only they came, they just came to ask me questions.

16 Q So, how did your attorney know who to present during
17 your defense if he, if he never talked to you about these
18 things?

19 A I guess that's who he brung there.

20 Q So, he just guessed that I'm gonna call the appliance
21 man cause he might---

22 A Oh, I mentioned that to him that, you know, that I
23 bought things, and he delivered to the house because they
24 were trying to discredit me saying I didn't do anything and
25 I was a dead beat dad. I came in and out and that's a lie.

George Jones - Cross-examination
by Mr. Whitmire

1 Totally a lie.

2 Q But didn't your daughter testify that you were in and
3 out?

4 A They told her to say that because they took her from
5 the mother.

6 Q And did the mother also tell the DSS workers the same
7 thing?

8 A No, hu huh. (Negative).

9 Q So, that's just a credibility -- well, that's just a --
10 two different stories for the jury to consider.

11 Is that correct?

12 A Yes.

13 Q Now, on, on your last allegation, failure to advise to
14 testify at trial, did you ever tell your attorney that you
15 wanted to testify during the course of your trial?

16 A Nah, I asked him what should I do.

17 Q So, for the year plus leading up to trial, did you ever
18 indicate that I would, in fact, like to testify?

19 A No.

20 Q Wasn't it your, your position that you weren't gonna
21 testify during your trial?

22 A He never told me anything. So, what nothing -- the
23 investigator said that he, he wasn't gonna put me on the
24 stand. The investigators told me.

25 Q Now, so, your attorney advised you you shouldn't

George Jones - Cross-examination
by Mr. Whitmire

1 testify?

2 A No, see the investigator said he wasn't gonna put me on
3 the stand, but he didn't tell me nothing.

4 Q And Judge Keesley asked you a bunch of questions about
5 your right to testify or not testify.

6 Is that correct?

7 A Yes.

8 Q And towards the end of trial, you decided, in fact, you
9 wanted to testify?

10 A Cause I asked him what should I do.

11 Q And he gave you your options.

12 Is that correct?

13 A Yeah, he say you can go up on the stand.

14 Q Now, didn't Mr. Falgione's investigator really work
15 hard to try to get you ready to testify?

16 A Well, he came and asked me some questions, but for what
17 he was telling me, and what took place at the trial, that's
18 totally different.

19 Q Did he explain to you that solicitor Maye was gonna try
20 to discredit your credibility and show that you lied?

21 A Nah, he said he was gonna come at me with both barrels.

22 Q And didn't your attorney argue, in the opening
23 statement, that this was really gonna come down to
24 credibility?

25 A No.

George Jones - Cross-examination
by Mr. Whitmire

1 Q You don't recall that?

2 A Hu huh. (Negative).

3 Q Do you recall your testimony at trial?

4 A Some of it.

5 Q Do you recall Solicitor Maye asking you why you left
6 the house when the DSS workers informed your family that the
7 victim had been diagnosed with general herpes?

8 A I think I told her I was going to let my mother know.

9 MR. WHITMIRE: Page 394, Your Honor.

10 But didn't you testify that you had no idea that she
11 was diagnosed with a sexually transmitted disease?

12 A Sir?

13 Q Didn't you---

14 A Excuse me---

15 Q ---testify, at that point, that you had no idea that
16 she had been diagnosed with a sexually transmitted disease?

17 A I didn't know until I got to the house.

18 Q So, you decided---

19 A I, I was, I was just getting off from work.

20 Q So, you just thought it was an infection or you had no,
21 no clue?

22 A Hu huh. (Negative).

23 Not until I got off from work that day and they was at
24 the house cause they already had taken her to see the
25 doctor. The doctor made another diagnose (sic).

George Jones - Cross-examination
by Mr. Whitmire

1 Q And didn't Solicitor Maye ask you some questions about
2 a conversation you had had with your former employer right
3 after this occurrence?

4 A Yes.

5 Q And that was outside the presence of the jury?

6 A I think so.

7 Q Do you recall telling Solicitor Maye that yes, you told
8 your employer that you had herpes, and that they were
9 accusing you of giving it to your daughter?

10 A Yes, I told him that.

11 Q And they brought the jury out after that.

12 Is that correct?

13 A Uh-huh. (Affirmative).

14 Q He asked you the same question again, didn't he?

15 A Uh-huh. (Affirmative).

16 Q And didn't you deny making the statement that yes, I
17 have herpes?

18 A No, I still don't think I got no herpes. Still don't
19 think I got it. I say I told my boss man that, and I
20 explained to my lawyer why I had told him that cause I went
21 there that night to borrow some money.

22 Q But you would not testify to that again in front of the
23 jury.

24 Is that correct?

25 You wouldn't tell them that you had told the boss man

George Jones - Cross-examination
by Mr. Whitmire

1 that you had herpes?

2 A No, I told him -- I think I did. I think I did. That
3 they would -- they alleged that I had, but I didn't say I
4 had it. They saying that I did.

5 MR. WHITMIRE: Page 406, Your Honor.

6 A I still don't think I got it cause I ain't got no
7 symptoms. Never had none.

8 Q Now---

9 A Never been treated for nothing.

10 Q Thank you. Thank you, Mr. Jones.

11 Now, that testimony was played for the jury, wasn't
12 it---

13 A I think so.

14 Q ---after---

15 A Uh-huh. (Affirmative).

16 Q ---where you, in fact, said I told someone I had
17 herpes?

18 A I went and told my boss man.

19 Q But you wouldn't tell that to the jury when they
20 brought them back in?

21 You wouldn't answer his questions?

22 A I had to answer the questions. They asked. I had to
23 answer.

24 Q Do you recall your attorney or the investigator telling
25 you that it would really hurt your case if you weren't

George Jones - Cross-examination
by Mr. Whitmire

1 honest and testified?

2 A No.

3 Q Didn't Judge Keesley advise you that what you said
4 would be or could be used against you during jury
5 deliberations?

6 A Yes.

7 Q So, Ervin Maye caught you in a lie at Page 420?

8 A Caught me in a lie?

9 Q You wouldn't give him the same answer ten minutes later
10 that you gave him previously.

11 A Anybody could say something with a slip up, but I'm
12 going on facts.

13 Q But didn't, didn't---

14 A You got to go on facts.

15 Q But didn't the Solicitor---

16 A Not hearsay. Not did -- we got to go upon facts, sir.

17 Q And you told the Judge the same thing, but didn't the
18 Solicitor give you multiple opportunities just to give the
19 same answer again?

20 A No, Ervin Maye was trying to trip people up. Same
21 thing that you trying to do. That's what he try to do.

22 Q But didn't you---

23 A Well, I want to go on facts and truth.

24 Q But didn't your attorney explain to you that that's
25 what Ervin Maye was gonna do?

George Jones - Cross-examination
by Mr. Whitmire

1 A Yeah, he say he would come at me with both barrels. He
2 said that.

3 Q Okay.

4 A But if he knew I wasn't prepared, he should of never
5 told me to take the stand. He should of advised me not to.

6 Q And that's what he had been advising you of for a year
7 and a half.

8 Is that correct?

9 A No, he never said anything.

10 Q Now -- beg the Court's indulgence.

11 (Pause.)

12 Q But your attorney did call an expert in to talk about
13 the herpes diagnosis.

14 Is that correct?

15 A Now who?

16 Say that again now.

17 Q An expert in to talk about the herpes diagnosis of you.
18 Your diagnosis.

19 A I think he use -- he would use one of theirs who was
20 testifying for the State. He asked them questions.

21 Q Okay.

22 A But he ain't had nobody of his own.

23 Q But on Page 371, didn't that same laboratory technician
24 say we could of tested for the Herpes Simplex II virus had
25 we been asked?

George Jones - Cross-examination
by Mr. Whitmire

1 A Yeah.

2 Q So, you really caught a break and your attorney
3 exploited that at trial?

4 A How I, how I caught a break?

5 Q Because the State didn't use the most accurate test it
6 could have.

7 A They should have used it.

8 Q But that helps you out?

9 A How it help me out?

10 Thirty years, that help me?

11 I don't need that kind of help.

12 Q But you -- and you, and you say you would want the
13 victim's mother to testify.

14 Is that correct?

15 A Yes.

16 Q But would you, would you want the jury to hear her
17 testify about---

18 A Yes, sir, I would.

19 Q ---about Mr. Jones gave me herpes, genital herpes?

20 A No, I wanted her to tell the truth because all them
21 other guys gonna testify too.

22 MR. WHITMIRE: Nothing further, Your Honor.

23 THE COURT: Redirect, Ms. Pope?

24 MS. CLYBURN-POPE: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

George Jones - Redirect examination
by Ms. Clyburn-Pope

1 BY MS. CLYBURN-POPE:

2 Q Mr. Jones, the cross-examination of the minor child,
3 the alleged victim, what specific questions do you think Mr.
4 Falgione should of asked her on cross-examination?

5 A He should of asked her something like---

6 MR. WHITMIRE: Objection, Your Honor. Outside the
7 scope of direct.

8 THE COURT: Overruled.

9 Go ahead.

10 A He should of asked her did I get on top of her? Did I
11 pull my pants down? Did I penetrate her? Did I do anything
12 like that? And -- but some of that was said on the DVD tape
13 cause they asked her did anything went -- get on you,
14 anything. She say no. She was telling them no.

15 Q Yes. Yes, Mr. Jones.

16 But you believe that had he done a more thorough
17 cross-examination, what would of been the result of your
18 trial?

19 A I wouldn't of got all this time here.

20 Q Thank you, Mr. Jones.

21 Those are all the questions I have.

22 THE COURT: All right. Thank you.

23 Mr. Jones, you may step down.

24 Ms. Pope, do you have any other witnesses?

25 MS. CLYBURN-POPE: Yes, Your Honor. I'd just like to

Adrian Falgione - Direct examination
by Ms. Clyburn-Pope

1 call Mr. Falgione.

2 THE COURT: Okay.

3 MS. CLYBURN-POPE: I'm sorry. I didn't hear you.

4 THE COURT: That's okay.

5 I'm gonna make this Court Exhibit please. Court
6 Exhibit 1.

7 (WHEREUPON, the document was marked as Court's Exhibit
8 No. 1 and received into evidence at this time.)

9 ADRIAN FALGIONE, being first duly
10 sworn, testified as follows:

11 THE CLERK: Have a seat please.

12 DIRECT EXAMINATION

13 BY MS. CLYBURN-POPE:

14 Q Good morning, Mr. Falgione.

15 A Good morning.

16 Q Mr. Falgione, can you tell me approximately how many
17 times you went to visit Mr. Jones in order to prepare for
18 this trial?

19 A I think I actually traveled to Edgefield about five
20 times. However, Mr. Jones, my private investigator saw him
21 easily another five times. Mr. Jones corresponded with me
22 by mail on a regular basis. He was quite proficient at
23 that, and I accepted collect calls from Mr. Jones several
24 times a week during my representation of him.

25 Q Thank you, Mr. Falgione.

Adrian Falgione - Direct examination
by Ms. Clyburn-Pope

1 Can you also tell me if you would -- if you ever gave
2 him a copy of his discovery?

3 A We sent discovery. I was -- I did have some concerns
4 because of an incident with Mr. Jones in that materials we
5 sent him seemed to be circulated throughout the jail. So, I
6 sent the discovery with my private investigator who met with
7 him. It was a Court -- I was Court appointed on this case
8 --

9 Q Yes, sir.

10 A -- in December. He was arrested in May and had a
11 previous Public Defender appointed who was relieved --
12 subsequently relieved and I was the second one coming in.
13 But, at any rate, his discovery -- I personally met with him
14 and went through his discovery. My private investigator
15 personally met with Mr. Jones and went through that
16 discovery.

17 Q Was Mr. Jones allowed to keep his own copy of the
18 discovery?

19 A We advised him not to for fear that it would be
20 circulated. However, we did provide him with various
21 portions of it, and I have some correspondents that
22 documents that.

23 Q Okay. Mr. Falgione, can you please explain, in terms
24 of your trial strategy, why the mother of the alleged
25 victim, Ms.---

Adrian Falgione - Direct examination
by Ms. Clyburn-Pope

1 A Grim.

2 Q -- Ms. Grim, why, why she was not allowed to testify --
3 why she was not called, excuse me, on Mr. Jones's behalf?

4 A I met with Ms. Grim and it was apparent to me that she
5 was a person of, of mental, mental challenges. She suffered
6 from mental challenges. But, strategically, the important
7 part, for me, was that Mr. Jones had a history, as was kind
8 of discussed on his direct, of having sexual intercourse
9 with her when she was 13 and 14 years old, and my concern
10 was that, if she got on the witness stand, a lot of that
11 history with Mr. Jones was going to come to light, and I was
12 very much afraid that that would be very detrimental to his
13 case.

14 Q Mr. Falgione, was that explained to Mr. Jones?

15 A Yes, it was.

16 Q Do you believe that he had a thorough understanding of
17 that?

18 A Yes.

19 Q Did he ask that she be placed on the stand?

20 A No, he did not disagree with that at that time and that
21 was at trial.

22 Q Mr. Falgione, did Mr. Jones ask you, in regards to his
23 own testimony at the trial, did he ask for your advice on
24 that?

25 A I strongly advised Mr. Jones not to take the witness

Adrian Falgione - Direct examination
by Ms. Clyburn-Pope

1 stand. That was a -- from the period of time until the
2 trial date, that was my continuing advice to Mr. Jones. At
3 trial, the Judge gave Mr. Jones an instruction advising him
4 of his right to take the stand and his right not to take the
5 stand.

6 Mr. Jones, after hearing that testimony, changed his
7 mind, and, receiving that instruction from the Judge,
8 changed his mind and told us that he wanted to testify.
9 Thereupon, this was at trial. Thereupon, we spent a fair
10 amount of time, my private investigator and I, with
11 Mr. Jones --.

12 Q Yes, sir.

13 A -- relaying our feelings to him about that, and the
14 potential hazards that he might encounter in doing so.

15 Q Mr. Falgione, do you think that he was properly
16 prepared to testify at the trial?

17 A I think Mr. Jones thought he was prepared to testify at
18 trial. Mr. Jones indicated he wanted to go forth. We
19 advised him of the potential hazards of doing that as to
20 what he could expect and the decision was his to make.

21 Q Was he -- was Mr. Jones ever taken specifically for
22 trial preparation for his, his testimony?

23 A Yes, ma'am, when he made that decision at trial, we met
24 with Mr. Jones in the witness room privately with him.

25 Q Can you tell me approximately how long you met with

Adrian Falgione - Direct examination
by Ms. Clyburn-Pope

1 Mr. Jones?

2 A I think, in all probability, given that the trial was
3 ongoing, I can't -- you know, I think it was probably an
4 hour.

5 Q Do you think an hour was enough time to properly
6 prepare him?

7 A At that point we had no choice.

8 Q Mr. Falgione, the, the next question that I'd like to
9 ask you is regarding the witness, the expert witness
10 testimony.

11 Why was there not another expert called on Mr. Jones'
12 behalf?

13 A As to what aspect?

14 Q In regards to -- excuse me. I'm sorry. In regards to
15 the, the possibility or the defense that herpes may have
16 been transmitted through the use of bath water or a
17 washcloth.

18 A We had attempted to locate an expert that would give us
19 that testimony. We had a -- it boiled down to the person
20 that we had the best chance of doing that was a nurse who
21 was present that we had, that we had retained. However, she
22 indicated that, at trial, that she could not testify that
23 herpes had been transmitted to this young lady by a wet
24 washcloth, that we could find no other person that would
25 substantiate that. So, therefore, we did not call that,

Adrian Falgione - Direct examination
by MS. Clyburn-Pope

1 that nurse.

2 Q Mr. Falgione, would she have testified that it would
3 have been a potential, not that it specifically had been,
4 but---

5 A No, she would not.

6 Q Thank you.

7 Mr. Falgione, do you believe that your examination of
8 the minor child or the alleged victim was thorough?

9 A I felt it was appropriate at the time, yes, ma'am.

10 Q When you say appropriate, can you explain -- well, can
11 you explain why that was deemed appropriate?

12 A Well, the, the setting was we had a very young child
13 who had been diagnosed as being the recipient of herpes. We
14 had a very sympathetic situation in terms of a jury,
15 naturally, is more sympathetic to that kind of a situation I
16 believe.

17 So, consequently, I asked questions that I thought
18 would be favorable towards eliciting testimony in favor of
19 Mr. Jones, and I did not -- tried not to alienate the jury
20 by going too far with that witness.

21 Q Mr. Falgione, in regards to the other potential
22 witnesses, Mr. Culbreath specifically, were you aware of
23 those witnesses?

24 A We were. In fact, the private investigator had met
25 with those witnesses.

Adrian Falgione - Direct examination
by Ms. Clyburn-Pope

1 Q Why were they not called to testify on Mr. Jones's
2 behalf?

3 A Well, Mr. Culbreath had some issues in his past that
4 were gonna be extremely problematic. Also, he indicated to
5 us that he was not gonna testify that he'd had sexual
6 relations with Ms. Grim.

7 Q Was that expressed to Mr. Jones?

8 A Yes, ma'am, the reason why we didn't call witnesses and
9 the witnesses that we did call were all part of a
10 consultation with Mr. Jones.

11 Q Do you believe that he had a thorough understanding of
12 your defensive strategy?

13 A Yes, ma'am, I do.

14 Q Mr. Falgione, those are all the questions that I have
15 for you.

16 THE COURT: Cross-examination.

17 MR. WHITMIRE: May it please the Court.

18 CROSS-EXAMINATION

19 BY MR. WHITMIRE:

20 Q Good morning, Mr. Falgione.

21 A Good morning.

22 Q Just a few quick background questions.

23 How long you been practicing criminal law?

24 A Approximately 24 years, yes.

25 Q And how many cases have you taken to trial

Adrian Falgione - Cross-examination
by Mr. Whitmire

1 approximately?

2 A I'd -- I'm not prepared to give an answer to that, but
3 I think it would be more than 50, less than 500. I don't
4 know.

5 Q That's fair.

6 Upon reviewing the State's evidence, what were your
7 initial impressions of the case against Mr. Jones?

8 A Well, my initial impressions were it was gonna be a
9 very difficult case. Just being difficult doesn't mean it's
10 impossible, but it was definitely gonna be an uphill climb.

11 Q Did you achieve some early victories during the
12 pretrial motions?

13 A Well, I think we did. We were able to limit some of --
14 the introduction of some of the evidence. You mentioned the
15 fact that Mr. Jones was diagnosed with HIV and those kinds
16 of things, but there were other ongoing preliminary motions
17 that were -- we had fought. DSS had resisted turning over
18 those records.

19 We certainly -- we were successful in getting that. We
20 were successful in the Court was, was very lenient in
21 allowing the funds to be made available for the private
22 investigator, and, in an unusual move, for the private
23 investigator to be able to assist me throughout the trial
24 and to be present throughout the trial.

25 Q You got Mr. Jones's dissemination of HIV charge

Adrian Falgione - Cross-examination
by Mr. Whitmire

1 dismissed?

2 A Yes.

3 Q Do you recall how you were able to do that?

4 A Well, I think it's probably in the record, but we
5 fashioned a novel -- kind of a novel approach to that, that
6 there was an, an ambiguity, if you will, between two
7 competing sections of the code. One which -- and then we
8 used the Black's Dictionary actually to define sexual
9 intercourse as requiring penetration, and given the
10 allegations that there was no -- it was penetration by a
11 male sex organ.

12 Given that the allegations were that the herpes had
13 been spread to this young lady by virtue of touching and not
14 necessarily with a sex organ, the Court heard our argument
15 and, and granted that.

16 Q As a result of your success, were you able to
17 springboard into a 403 argument on mentioning the herpes
18 diagnosis?

19 A We were.

20 Q You were also able to keep out Mr. Jones's statement in
21 the Denno hearings.

22 Is that correct?

23 A We were.

24 Q If I recall correctly, your trial strategy to prepare
25 your case would of been to distance the herpes diagnosis and

Adrian Falgione - Cross-examination
by Mr. Whitmire

1 focus on credibility?

2 A Yes. Yes.

3 Q And you called witnesses that had contact with the
4 victim in your case in chief.

5 Is that correct?

6 A Yes, we did. Specifically the foster mother or the,
7 the foster parent, and tried to bring out in --
8 inconsistencies with the child's statement and what, what
9 her testimony would be.

10 Q How did the child come across as a witness at trial?

11 A The child, to me, appeared to be very sympathetic and
12 very believable.

13 Q How -- when did you start discussing trial strategy and
14 Mr. Jones's right to testify or not testify with him during
15 the course of representation of him?

16 A Early on. Very, very early on. I think Mr. Jones
17 testified that, if I understood correctly, that that had
18 been the case.

19 Q Would your trial strategy have been different had you
20 known he desired to testify?

21 A Yes.

22 Q Could you briefly elaborate on some potential changes
23 you might have made?

24 A Well, Mr. Jones's background would of been extremely,
25 and was, kind of a checkered issue to deal with if I may say

Adrian Falgione - Cross-examination
by Mr. Whitmire

1 so, but certainly we would of spent a great deal of time
2 with Mr. Jones attempting to reinforce the necessity of
3 being very consistent with a true story.

4 Q Did you advise Mr. Jones that Solicitor Maye was, in
5 fact, a seasoned prosecutor?

6 A Yes.

7 Q And you let him know all the potential detriments that
8 could happen had he testified?

9 A Yes.

10 Q Do you recall his testimony?

11 A I do recall portions of it.

12 Q Did that testimony hurt his case?

13 A I believe so.

14 Q And he was impeached --

15 A Yes.

16 Q -- with -- by her statement?

17 A With an inconsistent statement, yes, sir.

18 MR. WHITMIRE: Beg the Court's indulgence.

19 (Pause.)

20 Q And did you or your investigator interview or attempt
21 to contact every single witness that was -- Mr. Jones gave
22 you guys?

23 A Yes, we did.

24 Q And all those decisions and information you obtained
25 were shared with him?

George Jones - Redirect examination
by MS. Clyburn-Pope

1 A I believe so.

2 Q You tried this case to the best of your ability?

3 A I did.

4 MR. WHITMIRE: No further questions, Your Honor.

5 THE COURT: Redirect.

6 MR. WHITMIRE: Thank you, Mr. Falgione.

7 MS. CLYBURN-POPE: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. CLYBURN-POPE:

10 Q Mr. Falgione, can you tell us specifically when
11 Mr. Jones received his discovery?

12 A My private investigator would take it and drive to
13 Edgefield. Of course, I'm located in Lexington, and I
14 believe I have some correspondents and some notes with
15 Mr. Jones that -- where we had that conversation.
16 Mr. Jones, do you want me to come to Edgefield or do you --
17 would you rather I spent that time preparing for your trial,
18 and I'll send that down by way of private investigator.

19 So, my private investigator or the Court's private
20 investigator that they allowed us to hire would take that
21 discovery to, to Mr. Jones and meet with him at the jail and
22 go over it. And, of course, I went over various portions of
23 it with him when I met with him.

24 Q Mr. Falgione, did you -- you testified that he was
25 allowed to call collect to your office.

George Jones - Redirect examination
by MS. Clyburn-Pope

1 A Yes, ma'am.

2 Q Was he allowed to call collect throughout the course of
3 your representation?

4 A Through a good portion of it. I issued a letter to him
5 initially and asked him to please correspond by way of
6 letter so that I could read it and see what he had, but
7 there were times when we received two or three collect calls
8 a day from Mr. Jones as the trial time became closer.

9 Q Well, Mr. Falgione, isn't it true that you, you only
10 allowed him to call collect in preparation for the trial?

11 A Well, that -- you know, that may be possible.
12 Certainly.

13 Q At one point during the trial, Mr. Falgione, Mr. Ervin
14 Maye, the prosecutor, began to ask leading questions, and
15 you did not object.

16 MR. WHITMIRE: Objection. Outside the scope of cross.

17 THE COURT: Overruled.

18 Go ahead.

19 Q At one point in the trial Mr. Maye began to ask leading
20 questions.

21 Can you tell us why there was no objection made to
22 that?

23 A Well, this, this trial was approximately four years
24 ago. To the best of my ability, all I can assume is, if I
25 did not object to a leading question, it had to do with the

George Jones - Redirect examination
by Ms. Clyburn-Pope

1 dynamics and the flow of the trial and other objections I'd
2 interposed. If, if the question doesn't cause a problem,
3 it's been my experience that sometimes you alienate a jury
4 if you object too frequently over nominal things.

5 Q Those are all the questions I have, Mr. Falgione.

6 A Yes, ma'am.

7 MR. WHITMIRE: One further question, Your Honor.

8 RECROSS EXAMINATION

9 BY MR. WHITMIRE:

10 Q Regarding use of leading questions, Page 152, when
11 Mr. Maye was questioning the victim on redirect, I believe
12 you objected and announced to the jury I've limited my
13 objections because the tender age of the child.

14 Is that correct?

15 A I'm -- I haven't read that portion of the transcript,
16 but it certainly would be consistent with the way I try a
17 case.

18 MR. WHITMIRE: No further questions, Your Honor.

19 THE COURT: Thank you, sir. You may step down.

20 Any reason why Mr. Falgione can't be excused?

21 MR. WHITMIRE: No, Your Honor.

22 MS. CLYBURN-POPE: No, Your Honor.

23 THE COURT: Thank you, sir.

24 THE WITNESS: Thank you, Your Honor.

25 MS. CLYBURN-POPE: Your Honor, we have no further

1 witnesses for this.

2 THE COURT: Thank you, Ms Pope.

3 Any witnesses, Mr. Whitmire?

4 MR. WHITMIRE: Respondent rests, Your Honor. Be happy
5 to answer any questions you may have.

6 THE COURT: All right. Let me make sure I have this
7 right, Ms. Pope.

8 The Petitioner's grounds are failure to investigate --
9 ineffective assistance for failure to investigate, consult
10 with an expert to challenge the diagnosis of the victim's
11 herpes, and tell -- correct me if I'm wrong, I'm just
12 looking at my notes, failure to investigate whether
13 Defendant had a particular Type I or II Herpes, failure to
14 disclose DSS report of victim's mother pursuant to Rule 5,
15 and failure to advise Defendant not to testify.

16 Is that correct?

17 MS. CLYBURN-POPE: And, Your Honor, in addition,
18 failure to receive discovery.

19 THE COURT: Ma'am?

20 MS. CLYBURN-POPE: Failure, failure to receive
21 discovery.

22 THE COURT: Okay. In all these cases, I know counsel
23 knows that Strickland requires that a two prong approach is
24 applicable to these cases. One, that there's deficient
25 performance, and there is prejudice as a result of the

1 deficient performance.

2 In this case, there are a number of witnesses that
3 allegedly should of been called that were not. None of
4 those witnesses testified in this Court today. Therefore,
5 there's no testimony for me to consider, and you failed to
6 meet that burden of proof.

7 Mr. Jones, it is your burden of proof in this case by
8 preponderance of the evidence. Therefore, you have not
9 established any deficient performance in failure to call any
10 witnesses. You have not established, in this case, what
11 expert testimony would have revealed if it had been properly
12 investigated in this case by way of testimony in this
13 courtroom today.

14 The DSS records were made available according to the
15 testimony of counsel and yourself at trial. Although that
16 may of been somewhat late, they were made available and
17 there's no testimony whatsoever as to what those records
18 would have revealed, and also the testimony reveals that you
19 were given discovery in this matter by the personal, I mean
20 excuse me, the private investigator and by counsel.

21 And so, in total, you've failed to meet your burden of
22 proof. There's been no showing whatsoever of any deficient
23 performance in the first prong of the -- of the Strickland
24 analysis. There's certainly no prejudice that has been
25 suffered as a result allegedly by you of this matter.

1 As to the failure to prevent you from testifying, the
2 record reflects that Judge Keesley properly went through the
3 Fifth Amendment colloquy with you on the record. You made a
4 personal choice to testify. That is your personal choice,
5 as you're told in every case, as any trial judge will tell
6 you. I'm sure your attorney who testified that he advised
7 you not to testify, but it was your choice to do so.

8 So, that being said, that is not a basis in this case
9 for you to have relief under a Post-Conviction Relief. All
10 said and done, I'm denying your Petition in total.

11 Mr. Whitmire, if you will, prepare me an order, and give
12 it to Ms. Pope prior to sending it to me please, sir.

13 MR. WHITMIRE: Yes, Your Honor.

14 THE COURT: Thank you.

15

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17 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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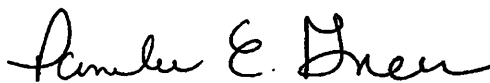
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh 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 Nonjury for Edgefield County, South Carolina, on the 14th day of November, 2013.

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

July 11th, 2018



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

George A. Jones,
S.C.D.C. No. 252442,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No. 2012-CP-19-100

ORDER OF DISMISSAL

2014 APR -1 AM 10:21

EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

This matter comes to this Court by way of an Application for Post-Conviction Relief filed April 18, 2012. Respondent made its Return on March 13, 2013. A hearing was convened on November 14, 2013 at the Lexington County Courthouse. Applicant was present and was represented by Courtney Clyburn-Pope, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Edgefield County. The Applicant was indicted at the July 2009 term of the Court of General Sessions for Edgefield County for lewd act with a minor (2009-GS-19-349) and criminal sexual conduct with a minor, first degree (2009-GS-19-409). Adrian L. Falgione, Esq., represented Applicant. On February 5, 2010 a jury convicted Applicant as indicted. The Honorable William P. Keesley sentenced Applicant to a term of thirty (30) years imprisonment for the criminal sexual conduct with a minor, first-degree and to a term of fifteen (15) years imprisonment for lewd act. The sentences were to be served concurrently.

A notice of appeal was filed on Applicant's behalf and perfected by Wanda Carter, Esq., of the Office of Appellate Defense. On February 29, 2012 the Court of Appeals affirmed Applicant's sentence and conviction in an unpublished opinion. (George Jones v. State, No. 2012-UP-120). The remittitur was issued on March 16, 2012. At the PCR hearing, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. Failure to prepare Applicant's case for trial;
 - b. failure to investigate and beneficial witnesses;
 - c. failure to consult an expert witness to refute the State's herpes diagnosis;
 - d. failure to advise Applicant to exercise his right to not testify;
2. Prosecutorial misconduct:
 - a. failure to disclose DSS materials on the victim's mother.

SUMMARY OF TESTIMONY

Applicant alleged counsel was ineffective for failing to adequately prepare his case for trial. Applicant testified he was only provided a portion of the State's discovery disclosure on the eve of trial. He stated that he never received information from the State regarding the victim or the victim's mother. He stated counsel never discussed defenses with him. He testified that counsel failed to adequately present the defense theory that the victim's mother or another third party exposed the victim to genital herpes.

Applicant alleged counsel was ineffective for failing to interview character witnesses that would have been beneficial to the defense. He testified that he was a supportive father. He testified that counsel should have interviewed the victim's grandmother as a character witness. He opined that victim's grandmother would have conveyed important timeline information to counsel that showed when he lived with and cared for his family. Applicant alleged counsel should have also interviewed his sister and his cousin as potential character witnesses. Next,

Applicant alleged counsel should have interviewed Larry Galbraith. He stated that Galbraith was intimately involved with the victim's mother prior to the offense. He opined counsel could have used this to refute the victim's mother's allegation that Applicant exposed her to genital. Applicant further opined by inference that counsel should have used Galbraith to establish third party guilty because he had access to the home and the victim. Last, Applicant alleged counsel should have presented the victim's mother as a defense witness at trial. He testified that D.S.S. documents proved the victim's mother had genital herpes. He claimed that the D.S.S. matters were not mentioned at his trial.

Applicant alleged counsel was ineffective for failing to consult an independent medical expert to prove Applicant did not expose the victim to genital herpes. He testified that the State's medical expert testified at trial that the victim was specifically diagnosed with genital herpes while his diagnosis did not specify between genital herpes or the more common and benign version that is not attributed to sexual contact.

Last, Applicant alleged counsel was ineffective for failing to properly advise him on his right to testify in his own defense. He stated counsel "never told him what to say" on the stand and that he was unaware of counsel's trial strategy. He suggests that his trial testimony would have been more credible and convincing had counsel provided adequately performance here.

Counsel testified to his course of conduct during the representation. Counsel has twenty-four years of criminal trial experience and recalled this case to have been a difficult case. He testified that he tried the case to the best of his ability. Despite counsel's late appointment, he met with Applicant five times. Counsel obtained funding for a private investigator who also met with Applicant five times. In addition, counsel communicated with Applicant by phone and correspondence. Counsel noted that he purposefully only provided Applicant with portions of the

discovery materials. His rationale behind the general practice resulted from concerns that the physical copies of sensitive materials were at a high risk to be improperly circulated in the county jail. Thus, counsel utilized his investigator as a conduit for discovery. Counsel formulated a defense theory to establish a case for reasonable doubt; the strategy included distancing Applicant from the victim's genital herpes diagnosis and exploiting inconsistent statements made by the victim. It was counsel's opinion that the strategy was essential because the victim made a credible and sympathetic witness. It was counsel's opinion that his performance was sound. He noted that he was successful in getting the Dissemination of H.I.V. charge dismissed. Importantly, the early victory resulted in the trial judge sustaining his Rule 403, SCRE, motion that prevented the State from presenting testimony or evidence that mentioned Applicant's H.I.V. diagnosis.

Counsel investigated the victim's mother and discussed presenting her as a trial witness with Applicant. It was counsel's opinion that she would have been a harmful witness to the defense for several reasons. First, Applicant was convicted on criminal charges for getting her pregnant when she was thirteen or fourteen years old. Counsel did not want to open the door here at trial. Second, the victim's mother suffered from mild mental retardation and would have made a sympathetic witness that could have personally turned the jury against Applicant. Third, the victim's mother was adamant that Applicant exposed her to genital herpes. Counsel independently investigated Culbraith and advised Applicant he would not have been a beneficial defense witness. Counsel noted that Culbraith was adamant that he never engaged in inappropriate conduct with the victim. Further, Culbraith's prior history made him a combustible witness.

Counsel testified Applicant's case did not warrant consulting an independent medical expert. First, counsel noted that he did not know of an expert who could testify that there was a realistic probability that the victim's mother infected the victim with genital Herpes through inadvertent non-sexual contact. Second, counsel noted that he prepared a thorough cross-examination of the State's medical experts to distance Applicant from a genital herpes diagnosis.

Counsel advised Applicant on his right to testify during trial preparations. He cautioned Applicant from deciding to testify. Applicant notified counsel in the middle of trial that he now wanted to testify in his defense. Counsel further cautioned him despite his persistence. Applicant told counsel that he thought he was sufficiently prepared to testify. The private investigator frantically did his best to prepare Applicant for the solicitor's cross-examination. Counsel warned Applicant that this particular solicitor was a seasoned and aggressive prosecutor. Counsel testified Applicant's late decision adversely affected the manner in which he presented the case. Furthermore, he noted that he would have devoted more time to preparing Applicant on the matter leading up to trial. Specifically, counsel stated he would have reinforced the necessity of testifying consistently to Applicant. Counsel stated that he had no doubt Applicant's testimony hurt the case where Applicant was impeached with a damaging statement when he got caught in a lie.

APPLICABLE LAW

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, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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. at 668, 104 S.Ct. at 2064. 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, *supra*. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds counsel's performance well above of Strickland's threshold sufficiently requirement. This Court finds counsel's testimony at the PCR hearing to be convincing. The fact that counsel presented a vigorous defense case while having to meander through delicate situations where any minor misstep would have opened the door for the State to present prejudicial testimony and evidence was impressive. Most of Applicant's issues in light an absence of supporting witness testimony at the hearing. Last, this Court finds Applicant's conviction was supported by overwhelming evidence of his guilt that included the victim's trial testimony that was corroborated by the medical evidence and Applicant's inconsistent trial testimony.

A.

This Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to properly investigate and prepare his case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012). "[B]revity of time spent in consultation, without more, is insufficient to establish ineffective assistance of counsel." Smith v. State, 404 S.C. 493, 499, 745 S.E.2d 378, 381 (Ct. App. 2012). This Court finds counsel's testimony significantly more credible than Applicant's testimony. Applicant has presented no credible evidence to show that he was not fully apprised of all relevant developments in his case. Nor has counsel presented credible evidence that even remotely calls into question the outcome at trial. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (finding PCR judge erred in finding counsel ineffective in preparing respondent's case where respondent failed to show how his counsel's lack of preparation prejudiced him given

respondent did not "present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Furthermore, counsel's decision to not provide Applicant with physical copies of the discovery disclosures was valid under the circumstances of the case. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) ("Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel."). As a result a result of Applicant's confinement in pre-trial detention, counsel made an intelligent decision to protect sensitive materials from being leaked to a potential "jailhouse witness." This Court finds that counsel took appropriate measures to keep Applicant apprised of developments in the case. The private investigator met with Applicant on a number of occasions. Therefore, this allegation is denied and dismissed.

For similar reasons announced above, this Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to interview and present certain allergy beneficial defense witnesses. This Court again finds counsel's testimony more credible than Applicant's testimony. "Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR." Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) Counsel's suspect testimony regarding his predictions on how the victim's mother, victim's grandmother, Culbraith, sister, and Investigator Young would have benefited his case lacked corroboration. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence."). However, in the interest of judicial economy this Court finds counsel presented valid reasons for limiting his investigation and not

presenting the mentioned witnesses at trial. This Court finds counsel made a necessary decision to not present the victim's mother at trial. Regardless of her consistent account that Applicant infected her with genital herpes, the threat that the jury might hear of Applicant's prior unlawful sexual intercourse with her was alone sufficient to support counsel's decision on the matter. Furthermore, this Court finds counsel conducted a limited investigation of the victim's mother based upon counsel's sound opinion of her utility to his defense theory.¹ Again, counsel made a valid strategic decision to not present Culbraith. He consistently denied any misconduct with the victim and would have testified in a hostile manner. See Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Murray v. Griffith, 243 Va. 384, 416 S.E.2d 219, 222 (1992) (finding counsel's failure to interview a particular witness not deficient where the witness's testimony would have been cumulative and witness himself could have been harmful to the defense). The other alleged witnesses that Applicant mentioned were immaterial.

Last, this Court finds Applicant failed to meet his burden to prove counsel was ineffective for failing to consult an independent medical expert to support the defense theory that the victim's mother most likely infected the victim. Again, Applicant failed to present a relevant expert witness at the PCR hearing to show that he was prejudiced from counsel's performance here. Regardless, this Court finds counsel's performance in cross-examining Dr. Gordineer and Dr. Brenner to be exemplary. (Trial Tr. p.124; p.248). This Court notes that as a result of counsel's competent performance here, Applicant fortuitously received a windfall benefit from the imprecise Herpes testing from Applicant's blood sample employed by the State. See Lorenzen v. State, 376 S.C. 521, 531, 657 S.E.2d 771, 777 (2008) ([C]ounsel's failure to procure expert witnesses did not render her representation deficient given she vigorously cross-examined

¹ This Court notes Applicant incorrectly pleaded this allegation as prosecutorial misconduct but presented as ineffective assistance of counsel at the PCR hearing. Regardless, counsel successfully obtained relevant D.S.S. documents. (Trial Tr. pp. 10-12). Therefore, this allegation is summarily denied and dismissed.

the State's witnesses and attacked the accuracy of the evidence.”). Therefore, these allegations are denied and dismissed.

C.

This Court finds Applicant’s allegation that counsel failed to adequately advise him on the possible detriments exercising the constitutional right to testify in one’s defense. “The Fifth Amendment provides that “[n]o person ... shall be compelled in any criminal case to be a witness against himself.” U.S. Const. Amend. V. The decision to testify or not is a perilous one.” Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000). “A defendant’s decision to testify or not must be made with knowledge of the consequences of either choice.” Id. This Court finds counsel’s testimony credible that he discussed the relevant constitutional rights and waivers in addition to strategic impacts of the decision well in advance of trial with Applicant. Counsel testified he did everything possible to prepare Applicant to testify when Applicant surprised him with his late decision at trial. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993) (“We have never required an attorney to be clairvoyant or anticipate changes in the law which were not in existence at the time of trial.”). In contrast, this Court finds Applicant’s testimony irrational and unconvincing. Thus, this Court notes any prejudicial impact Applicant suffered as a result of his decision to testify cannot be associated with counsel’s performance. See U.S. v. Pellerito, 878 F.2d 1535, 1543 (1st Cir. 1989) (“If counsel was ineffective in any sense, it was only because the client rendered him so, first by keeping Noriega in the dark, and then, by refusing to heed his advice. That is not the sort of “ineffectiveness” for which relief can be granted.”). This Court finds counsel worked diligently to prepare Applicant to testify under the circumstances. This Court is convinced counsel sufficiently advised Applicant of the potential dangers at play prior to him taking the stand. Regardless, the trial judge conducted a thorough colloquy on the matter.

(Trial Tr. pp.340-48). See Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 381 (Ct. App. 2012) ("Further, the record shows the trial judge informed petitioner of his right to testify or not testify, and petitioner agreed with the trial judge that he had discussed this right with trial counsel."). Therefore, this allegation is denied and dismissed.

E.

Except as discussed above, this Court finds that the Applicant affirmatively abandons the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

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

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is

also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed:

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 27 day of March, 2014.


R. LAWTON MCINTOSH
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. LEE

STATE OF SOUTH CAROLINA

County of Edgefield

2017 OCT 23

AM 8:54

IN THE COURT OF COMMON PLEAS

George Albert Jones, 254442

Full name and prison number (if any) of Applicant

v.

State of South Carolina

Its Departments and Agents,
Alan Wilson, Attorney
General For South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

RESUBMIT PCR APPLICATION

(2012-CP-19-100)

2017-CP-19-367

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Edgefield County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-19-349 Criminal Sexual conduct
 - (b) 2009-GS-19-409 Lewd act upon a minor

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 5, 2010
- (b) 30 Years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
My counsel file the appeal for me
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Commission on Indigent Defense
- ii. Division of Appellate Defense
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 29, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Initial Anders Brief filed
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My counsel did Appeal
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel, Subject matter
- (b) Jurisdiction, Brady violation, Due process violation,
- (c) Hearsay Testimony violation, Denial Expert witness, Violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachments enclosed
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Only this PCR application
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? None
- (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. South Carolina Supreme Court
- ii. Unpublished Opinion NO. 2012-UP-120
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Supreme Court, P.O. Box 11549
- ii. Columbia, SC 29211
- iii. _____
- iv. _____

(c) the disposition thereof:

i. Dismissal

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. February 29, 2012

ii. _____

iii. _____

iv. _____

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

i. The order was unpublished Opinion NO. 2012-UP-120

ii. _____

iii. _____

iv. _____

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

None

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

(a) which grounds have been presented:

i. Ineffective assistance of counsel, Subject matter

ii. Jurisdiction, Hearsay Testimony, Denial Expert Witness

iii. Brady violation, Due Process, violation

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

i. In the first PCR application. See attachment

ii. _____

iii. _____

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) Subject Matter Jurisdiction, Expert Witness,
 (b) Brady Violation, The reason why such grounds have
 (c) not been presented because defendant have not had the
opportunity and legal tools to bring them forth.

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

- (a) your arraignment and plea? Adrian L. Falgione, Esquire
 (b) your trial, if any? Adrian L. Falgione, Esquire
 (c) your sentencing? Adrian L. Falgione Esquire
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Wanda H. Carter, Appellate counsel
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Post-Conviction Relief Action only

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. Trial: Adrian L. Falgione, LLC 113 East Main St. P.O.
Box 277, Lexington, South Carolina 29071
 ii. Appeal: Wanda H. Carter Deputy Chief Appellate Defender
South Carolina Commission On Indigent Defense Division
of Appellate Defense, P.O. Box 11589 Columbia, SC 29211-1589
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. Adrian L. Falgione, represented at trail
Wanda H. Carter, represented on Direct Appeal
 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:
Reversal or Remanded for a new trial

20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
)
 County of Edgefield)

VERIFICATION

EDGEFIELD COUNTY
 CLERK OF COURT
 CHARLES LINEAL
 2017 OCT 27 AM 8:54

I, George Albert Jones, # 254442, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

George A Jones

SWORN to and subscribed before me this 24th
 day of October, 2017.
Janelle T. Spearman (L.S.)
 Notary Public

My Commission Expires:

JANELLE T. SPEARMAN
 Notary Public-State of South Carolina
 My Commission Expires
 August 26, 2025

CLERK OF COURT
CHARLES L. REEL

2017 OCT 27 AM 8:54

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

I, George Albert Jones, # 254442, 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.

George A. Jones
Applicant

SWORN or affirmed to and subscribed before me this
27th day of October, 2017

Janelle T. Spearman
Notary Public

My Commission Expires:



Defendant is entitled to a full adjudication on the merits of the original petition, or "one bite at the apple." Aice v. State, 305 S.C. 448, 452, 409 S.E. 2d 392, 395 (1991). This "bite" includes an defendant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. See Aice, 305 S.C. at 448, 409 S.E. 2d at 392.

An Austin appeal is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review. See Aice, 305 S.C. at 448, 409 S.E. 2d at 392; Hope v. State, 328 S.C. 78, 492 S.E. 2d 76 (1997) (permitting an Austin appeal where original PCR counsel failed to appeal from the first denial of PCR). In Austin, the defendant never received a full procedural "bite at the apple" because he was prevented from seeking any review of the denial of his PCR application, Aice, 305 S.C. at 452, 409 S.E. 2d at 395.

A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either; (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. See King, 308 S.C. at 348, 417 S.E. 2d at 868. If the PCR court finds an applicant was denied his right to appeal, the applicant can petition for Certiorari and this court will review whether the petitioner was prejudiced by the failure to obtain appellate review. Id., See King, 303 S.C. at 349, 417 S.E. 2d at 868 (outlining the procedure used to seek review pursuant to Austin v. State; Wicker v. State, 310 S.C. 8, 425 S.E. 2d 25 (1992)).

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CLERK OF COURT
CHARLES L. REEL
2017 OCT 27 AM 8:54

Counsel failure to advised the defendant of his appeal rights. The counsel must ensure that a criminal defendant is made fully aware of his appeal rights, White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1994). A gross miscarriage of justice. See Butler v. State, 297 S.E. 2d 87 (S.C. 1990), in the applicant's case the applicant has not had under judicial circumstances, a full fair bite at the apple. See Aice v. State, 409 S.E. 2d 395 (S.C. 1991). Anders requires appellate counsel to brief arguable issues, despite counsel's belief the appeal is frivolous, as a safeguard of the rights to appeal. In applying Anders on PCR, we recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR. Supreme court Rule 50 (6) expressly provides for the appointment of competent counsel to seek appellate review of PCR. Because the petitioner is entitled to the assistance of appellate counsel on PCR, we find his allegations that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance. Wherefore, petitioner prays that this Honorable court will allow the petitioner's to have his fair bite at the apple, to exhaust all available state remedies through the appropriate appellate procedures that is available under state Law.

Elizabeth A. McLeod and Courtney Clyburn Pope, have agree for Ms. Pope to serve as attorney for petitioner in this matter. Upon motion of Elizabeth A. McLeod, and with the consent of Ms. Pope, I find it is appropriate to relieve Ms. McLeod as attorney of record in this matter and to substitute Courtney Clyburn Pope, as the named attorney for the petitioner, George Albert Jones. Therefore, it is hereby ORDERED That Courtney Clyburn Pope, is hereby substituted as attorney for the petitioner, George Albert Jones in this case and Elizabeth A. McLeod is hereby relieved as attorney. Date April 30, 2013. It is so ORDERED by the presiding circuit court judge the Honorable William P. Keesley, for the eleventh Judicial circuit.

The defendant was represented at his PCR hearing by Courtney Clyburn Pope, Esquire counsel fail to file the notice of intent to appeal in this case. The defendant have been informed by the Clerk of the supreme court the Honorable Daniel E. Shearouse, since relief under Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), is sought by filing an application for post-conviction relief in the circuit court.

CF King v. State, 308 S.C. 348, 417 S.E. 2d 868 (1992) (setting forth the appellate procedures to be followed depending on the findings made by the PCR judge regarding the Austin claim). A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either (1) the applicant requested and was denied an opportunity to seek appellate review, or (2) the right to appellate review of a previous PCR. Order was not knowingly and intelligently waived. See King, 308 S.C. at 349, 417 S.E. 2d at 868 (outlining the procedure used to seek review pursuant to Austin v. State Wicker v. State, 310 S.C. 8, 425 S.E. 2d 25 (1992)).

The defendant is precluded from exhausting all available state remedies, state remedies are not deemed exhausted until the applicant utilized all procedures available under state Law to raise his claim. See Id. § 2254 (c). The applicant satisfies the exhaustion requirement by properly pursuing a claim throughout the entire appellate process of the state. See Justice of Boston Mann. Court v. Lydon, 466 U.S. 294, 302-03 (1984) (Exhaustion requirement satisfied by presentation of claim on appeal to state supreme court from denial of motion to dismiss), See e.g. McCandless v. Vaugh, 172 F. 3d 255, 260 (3d cir. 1999), (exhaustion requirement satisfied only when applicant has exhausted remedies available in court of State). Rust v. Zent, 17 F. 155, 160 (6th cir. 1994)(exhaustion requirement satisfied by filing required application in state appellate and supreme court. Wayne v. Missouri, Bd. of probation & parole, 83 F. 3d 994, 996 (8th cir. 1996)(exhaustion requirement satisfied when petitioner presented Federal claims in full round of litigation before state trial and appellate courts even though relitigation in state forum though another procedural device possible).

After appointed post-conviction counsel refused to perfect an appeal the applicant began the appeal process pro se, with notice of intent to appeal and request for appellate defense assistance with notice, note Rule 71.1 is based in part on former supreme court Rule 50 (1)-(8), and has no counterpart in the federal Rule 71.1 was added by order of the supreme court on April 17, 1940, and became effective September 1, 1990. South Carolina PCR case Law. Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991) state. "The right to seek appellate review of denial of PCR is expressly authorized by State Law. S.C. code Ann. § 17-27-100 (1995) supreme court Rule 50 (g).

Whether such review is granted is discretionary with court. Knight v. State, 284 S.C. 138, 325 S.E. 2d 535 (1985). Although the South Carolina supreme court recently held in Austin v. State, OP-NO. 23256 (filed 8/27/90), that post-conviction relief counsel may be found to be ineffective, that decision only addresses post-conviction relief counsel's failure to file a notice of appeal from the denial of an application for post-conviction relief. The court finds that Austin does not intend to general effectiveness of counsel during the course of the post-conviction relief proceeding or appeal there from but rather is limited to counsel's failure to file an appeal from the denial of the application for post-conviction relief. See Aice v. State, S.Ct. OP.NO.23476 (filed September 9, 1991).

The applicant contends due to his illiteracy to the Law he was entitled to rely upon his counsel to make reasonable decision. Pursuant to U.S. v. Dewalt, 92 F. 30 1209 without some authoritative guidance the defendant did not understand the appeal process from the PCR hearing. Counsel failure to advised the applicant of his appeal rights, the counsel must ensure that a criminal defendant is made fully aware of his appeal rights. White v. State, 263 S.C. 110, 208 S.E. 26, 35 (1974). A gross miscarriage of Justice. See Butler v. State, 297 S.E. 2d 87 (S.C.1990), in the applicant's case the applicant has not had under Judicial circumstance a full fair bite at the apple. See

Aice v. State, S.C. 20 395 (S.C. 1991). Anders requires appellate counsel to brief arguable issues, despite counsel's belief the appeal is frivolous, as a safeguard of the rights to appeal.

In applying Anders on PCR, we recognized a prisoner's right to the assistance of appellate counsel in seeking review of the denial of PCR. Supreme court Rule 50(6) expressly provides for the appointment of competent counsel to seek appellate review of PCR. Because the petitioner is entitled to the assistance of appellate counsel on PCR, we find his allegations that counsel failed to seek review in this case sufficiently states a claim of ineffective assistance.

Wherefore, applicant prays this Honorable court will allow him to have his fair bite at the apple, to exhaust all available State remedies through the appropriate appellate procedures available under State Law.

RESPECTFULLY SUBMITTED,

The defendant contends that he never received his Rule 5 discovery to be able to present his defense. Enclosed you will see some letters requesting his attorney to file for the material. The PCR act provides for the appointment of counsel to indigent defendant [i]f necessary for the effective utilization of discovery procedures.

The State must assure the indigent defendant has an opportunity to present his claims fairly. *Moffitt*, 417 U.S. at 616, 94 S.Ct. at 2447, though a State is required by the constitution to provide a right to appeal, it is well established that when such a right of appeal is provided an indigent defendant is entitled to a adequate appellate review as defendant who have money enough to by transcript. *Griffin v. Ill*, 351 U.S. at 19, 76 S.Ct. at 591 (plurality opinion) of course it is not really transcripts that are at issue in those cases, it is the matter of being able to have the tools of court litigations necessary to present ones claims on a fair and equal basis.

Without access to the Discovery materials the defendant will be effective precluded from presenting to this court anything other than conclusory allegations based upon his memory of the hearing proceedings. Wherefore, defendant prays that this Honorable court will provide the production of all information described herein and allow the defendant the right to present a complete defense.

RESPECTFULLY SUBMITTED,

INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant case is one of clear and plain manifest injustice not only of his trial but also thereafter to a gross degree. Defendant's trial was extremely unfair or served any degree of justice. As chief justice.

The court cannot any longer turn a blind eye to the injustices that the defendant has suffered due to gross incompetence, inability or plain out uncaring of the attorney who represented defendant at trial and since. The court must ensure that the issues involved in this case are fully aried or admit that there is no justice for the under privileges in South Carolina.

Did defendant receive effective assistance of counsel in accordance with the sixth Amendment when his trial counsel was ineffective over all, when he failed to properly prepare for trial, investigate all the elements of alleged crime scene, and challenges to the sufficiency of the indictment. Trial counsel failed to properly move to review the indictment in accordance with section 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the uniform post-conviction procedure act notably the statute of limitation and successiveness. See S.C. code §§ 1227-45 and - 90 (2003).

A convicted defendant making a claim of ineffective assistance must identify acts or omission of counsel that are alleged not to have been result of reasonable professional judgment and then court must determine whether in light of all circumstances, identified acts or omissions were outside wide range of professional competent assistance in making that determination courts should keep in mind that counsel's function is to make adversarial testing process work in the particular case. U.S.C.A. const. Amend. 6.

To succed on a sixth Amendment claim of ineffective assistance of counsel, defendant must show that there is a "reasonable probability, which is a probability sufficient to undermine confidence in the outcome, that but for counsel's unprofessional errors, result of the proceeding would have been different. U.S.C.A. const. Amend.

In making determination whether specified errors of counsel resulted in required prejudice for a defendant to succeed on a sixth Amendment claim. A court should presume, absent challenge to judgment on grounds of evidentiary insufficiency that judge or jury acted according to Law U.S.C.A. const. Amend. 6.

The sixth Amendment right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. The same principle applies to a capital sentencing proceeding such as the one provided by Florida Law that is sufficiently like a trial in its adversarial format and in the existence of standards for decision that counsel's role in the proceeding is comparable to counsel's role at trial. pp. 2063-2064.

Judicial scrutiny of counsel's performance must be highly deferential, and a fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel challenged conduct, and to evaluate the conduct from counsel's perspective at the time. A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. These standards require no special amplification in order to define counsel's duty to investigate, the duty at issue in this case pp. 2064-2067.

With regard to the required showing of prejudice the proper standard requires the defendant to show that there is a reasonable probability that but for counsel's unprofessional errors, the result of ** 3056 the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. A court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury. pp. 2067-2069.

Counsel assistance resulted in ineffective because he failed to render reasonably effective assistance under prevailing norms, and that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E. 2d 353, 356 (2006). In order to prove prejudice defendant will show "there is a reasonable probability that but for counsel's unprofessional errors the result of the proceeding would have been different. Cherry v. State, 300 S.C. at 117 18 386 S.E. 2d at 625. "A reasonable probability is a probability is a probability sufficient to undermine confidence in the outcome of trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E. 2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)).

Defendant contends that trial counsel failed to investigate both factual and legal matters to determine if defense could be developed. It is definitive objective description of the competency normally demanded of counsel in certain aspect of their services. And with this discretion the courts should admonish that if the right to counsel guarantee by the constitution is to serve its purpose, defendant can not be left to the mercies of incompetent counsel. Judge's should strive to maintain proper standard of performance by attorneys who are representing defendant's in criminal cases, their courts. McMunn v. Richardson, 397 U.S. 789, 90 S.Ct. 1441 25 L.Ed. 2d 736 (1970), Marzullo v. State, of M.D. 561 F. R. 2d S. 56 544. Example Coles v. Peyton, 389 F. 2d 224, 226, (4th cir. 1968), 397 U.S. at 771, 90 S.Ct. at 1449.

When a State obtains a criminal conviction in a trial in which the accused is deprived of the effective assistance of counsel the State unconstitutionally deprives the defendant of his liberty, Cuyler, 446 U.S. at 343, 100 S.Ct. at 1175 the right to the effective assistance of counsel is recognized not for its own sake but because of the effect it has on the ability of the accused to receive a fair trial. United States v. Cronin, 466 U.S. 658, 104 S.Ct. 2939, 2046 (1984).

The United States Supreme court has recently recognized that defense counsel must conduct a reasonable investigation to discover all reasonable available mitigation evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor. Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 2537, 156 L.Ed. 2d 471 (2003)(citation omitted). Particularized prejudice inquiry unnecessary. Frett v. State, 298 S.C. 54, 56, 376 S.E. 2d 248 251 (1988).

If the attorney make a serious mistake which could effect the verdict, reversal is required even if the attorney was general competent. Tromly v. Anderson, 439 F. Supp. 1250, 1256 (1977). Aff'd 584 F. 2d 807 (6th cir. 1978); Hyman v. Aiken, 924 F. 2d 1405 (4th cir. 1987).

Defendant further, contends that the State's evidence when view in the light most favorable to the prosecution, was so insufficient that no rational trier of facts could have found the essential elements beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct 2781, 61 L.Ed. 2d 560 (1991).

To determine whether counsel has fallen below a minimum standard needed for effective assistance of counsel under the sixth Amendment to the constitution. A two prong test must be met. In Strickland v. Washington, 466 U.S. 688-694 (1984), the supreme court held that a determination of ineffective assistance of counsel would be conditioned on two factors; (1) counsel's performance must have fallen below an objective standard of reasonable; and (2) there must be a reasonable probability that but for counsel's errors, the results of the proceedings would probably have been different. South Carolina has adopted the Strickland standard. See e.g. Cherry v. State, 300 S.C. 115, 386 S.E. 624 (1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and, prejudicial, Murray v. Carrier, 477 U.S. 478 (1986).

It is the defendant's right to expect that his counsel will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the defendant and in undertaking representation of defendant's, Frazer v. United States, 18 F. 3d 778, 785 (9th cir. 1994).

SUBJECT MATTER JURISDICTION

A applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 242, 540 S.E. 2d 846 (2001), Overrule in part by Gentry, 610 S.E. 494. However, "[C]ircuit courts obviously have subject matter jurisdiction to try criminal matter. "Gentry, 610 S.E. 2d 494; See also S.C. const. Art. v § 7. Thus, the applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The applicant's conviction involved a criminal charge in General sessions court. Thus, the circuit court had subject matter jurisdiction.

STATUTE CITING

One of our South Carolina court's primary functions in the interpreting of a statute is to ascertain the direct intention of the legislative intent and apply the statute according to its literal meaning. In construing such a statute, the words or its language must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Statutes 24(1). The literal meaning and legislative intent of our common Law statute, section 17-19-30 (1976) is quite clear cut by it's language. The common Law requirements in South Carolina remain the same on every particular as they stood at common Law of olden times State v. Judges, 208 S.C. 497, 38 S.E. 2d 715, 7119 (1946).

As stated in State v. Smalls, 364 S.C. 343, 613 S.E. 2d 754 (2005), Although, an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment, State v. Coleman, 17 S.C. 473, 1882 WL 5605 (1882). The indictment in question here, was not valid and the circuit court lacked subject matter jurisdiction in this particular case. State v. Perry, 70 S.E. 304 (1911).

PRESUMPTION OR PREJUDICE

There are time when prejudice is presumed. When counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, there has been a denial of the sixth Amendment right that makes the adversary process, itself presumptively unreliable and prejudice may be presumed. Cronic v. U.S., 446 U.S. 648, 104, S.Ct. 2039, 80 L.Ed. 2d 657 (1984); (Nance v. Ozmint, 367 S.C. 547, 626 S.E. 2d 878 (2006)).

When trial counsel fails to object to impermissible hearsay testimony as in Jolly v. State, 314 S.C. 17, 443 S.E. 2d 566 (1994) and Sanchez v. State, 351 S.C. 270, 569 S.E. 2d 363 (2002) does such deficient performance satisfy Strickland's prejudice prong as a matter of Law, or can the "overwhelming evidence Rule still apply?

The supreme court of South Carolina has addressed the issue of improper corroboration testimony in criminal sexual conduct cases on many occasions resulting in a rule as a matter of Law that when the improper corroboration testimony is erroneously allowed in, it satisfies the prejudice prong of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052. In State v. Barrett, 299 S.C. 485, 386 S.E. 2d 242 (1989), the court ruled "improper corroboration testimony that is merely cumulative to the victim's testimony. However, cannot be harmless, because it is precisely this cumulative effect which enhances the devasteing impact of improper corroboration " Id. The court later cited this exact language in Jolly. Each time the court has discussed improper corroboration testimony in criminal sexual conduct cases, it has cited the Jolly or Barrett decision in the portion of the opinion addressing the prejudice prong of Strickland.

The court clearly states that the improper testimony cannot be harmless. see State v. Barrett, 299 S.C. 485, 386 S.E. 2d 242 (1989).

Jolly v. State, 314 S.C. 17, 443 S.E. 2d 566 (1994), Sanchez v. State, 351 S.C. 270, 569 S.E. 2d 363 (2002), Dawkins v. State, 346 S.C. 151, 551 S.E. 2d 260 (2001). In the 2002 case, Ingle v. State, 348 S.C. 467, 560 S.C. 467, 560 S.E. 2d 401, the court clearly addressed the issue and its application to the Strickland prejudice prong.

As to the prejudice prong of the Strickland test. We reiterate that improper corroboration testimony that is cumulative to the victim's testimony is harmful since "it is precisely this cumulative effect which enhances the devastating impact of improper corroboration. Dawkins, Supra, Jolly, Supra. We hold trial counsel's deficient performances in allowing the hearsay testimony of both Dr. Elizabeth Gordineer, forensic interviews and investigator Lamaz Robinson, clearly prejudiced petitioner.

The court, as in the other related cases on this did not go through and analysis of the entire set of facts for each case in determining the prejudicial prong of Strickland. It simply stated the error cannot be harmless. Ingle v. State, 348 S.C. 467, 560 S.E. 2d 401 (2002).

BRADY V. MARYLAND VIOLATION

Government's constitutional Disclosure Duties Fifth and Fourteenth Amendments require the government to disclose specific type of evidence to defendants. For example, in Brady v. Maryland, the supreme court held that due process requires the prosecution to disclose upon request evidence favorable to an accused when such evidence is material to guilt or punishment. A brady violation occurs when; (1) evidence is favorable to the accused because it is exculpatory or impeaching; (2) evidence was suppressed by the state, either willfully or madvertently; and (3) prejudice ensured. In United States v. Bagley, the court held that the government's duty under Brady arises regardless of whether the defendant specifically requests material or favorable evidence. Favorable evidence is "material" if there is a reasonable probability that disclosure of the evidence would have changed the outcome of the proceeding.

A reasonable probability under Bagley is a probability sufficient to undermine confidence in the outcome. When assessing evidence materiality, the court must take into account the cumulative effect of the suppressed evidence in light of other evidence, not the probative value of the suppressed evidence standing alone. The prosecution's intent behind the supression of evidence does not determine whether evidence is material or whether the proceedings outcome would have changed. Aside from exculpatory evidence the government is also obligated to disclose information that could be used to impeach government witnesses especially where the witnesses testimony is an important part of the government's case.

In particular, impeachment evidence includes an agreement witness for testimony in exchange for monetary compensation of favorable treatment in the criminal justice system. The prosecution is not required to disclose material impeachment information prior to the entry of a guilty plea if the defendant pleads guilty. However, it is unclear whether the prosecution must disclose material exculpatory under Brady before a guilty plea is entered.

The government's duty to disclose favorable evidence does not compel the government to draw and disclose information from the evidence nor does the Brady doctrine require that the prosecution make available all evidence in its file. The government need not disclose; (1) neutral, irrelevant, speculative, or inculpatory evidence; (2) evidence available to the defense from other sources. (3) evidence the defense already possesses; on (4) evidence of which the prosecutor could not reasonably be thought to have imputed knowledge or control.

Nevertheless, the prosecutor has an affirmative duty to learn of and disclose any exculpatory or impeachment evidence known to other government agents, including any agents or officers involved in the investigation. The government's constitutional duty to disclose continues throughout the proceedings. However, tardy disclosure of Brady material does not itself constitute a Brady violation and will not result in sanctions unless the defendant can show a reasonable probability that the delay changed the outcome of the case.

indictment issues

Example: If a prosecutor simply drew up an "indictment" had a grand jury foreperson sign it and then used it to charge the defendant with a criminal offense, it would clearly be dismissed, as a violation of the fifth Amendment. This is because the indictment would in no sense be the product of a constitutionally required grand jury proceeding. So, would an indictment issued by a kangaroo grand jury one whose deliberations were so overborne by a prosecutor or judge that the indictment was in effect, the prosecutor's or judges handi work, and not the result of a considered judgment by an independently functioning grand jury. See United States v. McKenzie, 678 F. 2d 629, 631 (5th cir. 1982), holding that an indictment may be dismissed when prosecutorial misconduct amounts to overbearing the will of the grand jury so that the indictment is in effects, that of the prosecutor rather than the grand jury; see also Stirone v. U.S. 80 S.Ct. 270, 273 (1960).

The very purpose of the requirement that a man be indicted by a grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting attorney or judge.

Subsequent supreme court cases have reaffirmed the importance of the fifth Amendment's grand jury clause, implying that courts have the authority to dismiss an indictment that is the product of a grand jury process so flawed that the grand jury's independence has been infringed. In Bank Of Novascotial, 108 S.Ct. 2369 (1988), prejudice is one of the key factors that must also be found in a non-constitutional error claim in the grand jury. The fifth Amendment requires that an indictment issue from an independent grand jury. Where a grand jury proceeding is so corrupted by the conduct of a prosecutor or judge that it substantially influenced the grand jury's decision to indict was free from substantial influence. Bank of Novascotia 108 S.Ct. at 2374, court should not hesitate to remedy the

violation because the indictment not in reality, of a grand jury. U.S. const. Amend. v.

The Bank of Novascotia, inquiry is written in the disjunctive meaning the indictment may be dismissed if it is found either that the grand jury was substantially influenced or if there is grave doubt that the decision was not free from substantial influence. The disjunctive test is deprived from the harmless error analysis found in Koteako v. U.S., 328 U.S. 750, 66 S.Ct. 1239, 9 L.Ed. 1557 (1946), and U.S. v. Lane, 106 S.Ct. 725 (1986) under this test, "grave doubt" means that in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise. O'Neal v. McAninch, 115 S.Ct. 992, 994 (1995).

CLERK OF COURT
COURTNEY E. NEWBY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2013 MAY -1) AM 11:45

COUNTY OF EDGEFIELD)

George A. Jones, 254442,)

2012-CP-19-100

Applicant,)

v.)

SUBSTITUTION OF COUNSEL

State of South Carolina,)

Respondent.)

Elizabeth A. McLeod, Esquire, was appointed as attorney for the Petitioner, George Albert Jones in the above-referenced matter. Elizabeth A. McLeod and Courtney Clyburn Pope have agreed for Ms. Pope to serve as attorney for the Petitioner in this matter. Upon motion of Elizabeth A. McLeod and with the consent of Ms. Pope, I find it is appropriate to relieve Ms. McLeod as attorney of record in this matter and to substitute Courtney Clyburn Pope as the named attorney for the Petitioner, George Albert Jones. Therefore, it is hereby

ORDERED that Courtney Clyburn Pope is hereby substituted as attorney for the Petitioner, George Albert Jones in this case and Elizabeth A. McLeod is hereby relieved as attorney.

IT IS SO ORDERED this 30th day of April, 2013, at Edgefield, South Carolina.

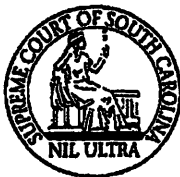
William P. Clardy
Presiding Circuit Court Judge
Eleventh Judicial Circuit

I CONSENT:

Elizabeth A. McLeod
Elizabeth A. McLeod

I CONSENT:

Courtney Clyburn Pope
Courtney Clyburn Pope



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

June 28, 2017

Mr. George A. Jones, #254442
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Jones:

RE: *George A. Jones v. State*, 2012CP1900100

Dear Mr. Jones:

This responds to your letters dated April 21, 2017.

I can find no record that a notice of appeal was filed in the above case. I am providing your counsel with a copy of this letter so that she can be aware of your desire to seek appellate review.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel E. Shearouse", is written over a horizontal line.

Daniel E. Shearouse

cc: Office of the Attorney General (with copy of letters)
Courtney Clyburn Pope, Esquire (with copy of letters)

LEGAL MAIL

State of South Carolina
County of Edgefield.

George A. Jones,

Applicant,

RECEIVED
CLERK OF COURT
SHIRLEY F. L. WBY
2014 APR 17 AM 11:06

In the Court of Common Pleas
Eleventh Judicial Circuit

Case No. 2012-CP-19-100

order of Dismissal

v.
State of South Carolina,
Respondent,

The Applicant pursuant to this order Respectfully beg Counsel to File and Serve Notice of appeal, directed to South Carolina Appellate Court Rule 243 For appropriate procedures. Base on substitution of Counsel, Elizabeth A. McLeod and Courtney Cliburn Price have agreed For Ms Price to serve as attorney For the Petitioner George Albert Jones, but the order did not have a mailing address, Therefore I beg this Court of Clerk to Foreward the required Notice of appeal to her office.

Respectfully Submitted
George A. Jones

on the 14th day of April 2014
Susan H. Drye

My Connection Expires
March 5, 2018

632

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

2017 OCT 27 AM 8:54

Mr. George Albert Jones, # 254442
Broad River Correctional Institution
Murray Unit B - 225
4460 Broad River Rd.
Columbia, SC 29210

Date: 10/24/2017

2017-CP-19-367

CHARLES L. REEL
Clerk Of Court & R.M.C.
P.O. Box 34
Edgefield, South Carolina 29824

RESUBMIT PCR APPLICATION

Enclosed please find for filing and processing with the Edgefield County Clerk of Court Office. An application, for resubmitting post-conviction relief action. Since relief under Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), is sought by filing an Resubmitting application for post-conviction relief in the circuit court. Please file the original, once filing is completed please return the clocked stamped copy to me with file date thereof, Your assistance in this matter will be greatly appreciated.

Sincerely,

S/ George A. Jones
George A. Jones, # 254442

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

George Albert Jones, # 254442,

Applicant,

v.

The State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2017-CP-19-367

RETURN AND PARTIAL
MOTION TO DISMISS

Respondent hereby makes a Return and Partial Motion to Dismiss the Application for Post-Conviction Relief (PCR) filed on October 27, 2017. On November 8, 2017, Kristy Goldberg, Esquire, was appointed to represent him.

Respondent submits that the all claims in the Application, except for his claim that he is entitled to relief pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991), should be summarily dismissed because (1) the Application is untimely under the PCR statute of limitations; and (2) it is successive to a previous Application filed on April 18, 2012, on which Applicant received a hearing. Respondent would request that the Court hold a hearing limited to his claim that he is entitled to *Austin* relief. Respondent would show this Court that:

I. PROCEDURAL HISTORY

George Albert Jones, # 254442 (Applicant), is presently confined in the Broad River Correctional Institution, of the South Carolina Department of Corrections (SCDC), as the result of his Edgefield County convictions and sentence. The Edgefield County Grand Jury indicted him in July 2009 for lewd act with a minor (2009-GS- 19-349) and criminal sexual conduct (CSC) with a minor, first degree (2009-GS- 19-409). Adrian L. Falgione, Esquire, represented him on these charges.

Applicant received a jury trial on these charges, before the Honorable William P. Keesley, on February 2-5, 2010. The jury convicted him of both offenses and Judge Keesley imposed concurrent sentences of thirty years imprisonment for the CSC with a minor, first-degree, and fifteen years imprisonment for lewd act with a minor.

Applicant timely served and filed a timely notice of appeal. Deputy Chief Appellate Defender Wanda H. Carter, of the South Carolina Commission on Indigent Defense's Division of Appellate Defense, represented him on direct appeal. On May 16, 2011, Ms. Carter filed a Final *Anders* Brief of Appellant,¹ and petitioned to be relieved as counsel. The Final *Anders* Brief presented the following issue:

The lower court erred in denying appellant's motion for a directed verdict of acquittal on the charge of first degree criminal sexual conduct with a minor as the state failed to prove sexual battery because the prosecutrix stated that her head was covered with a pillow during the alleged sexual act and that she did not see anything, but only "felt something" in connection with her genitals whereas sexual battery requires an actual intrusion into one's genital opening(s).

Petitioner made a *pro se* response to the *Anders* filing on or about May 31, 2011. He argued that:

THE LOWER COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT OF ACQUITTAL IN THIS CASE AS TO BOTH CHARGES OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE AND A LEWD ACT UPON A MINOR.

The South Carolina Court of Appeals dismissed his appeal on February 29, 2012. *See State v. George Jones*, 2012-UP-120 (S.C. Ct.App., Feb. 29, 2012). It sent the Remittitur to the Edgefield County Clerk of Court on March 16, 2012.

Applicant then filed his original *pro se* PCR Application (2012-CP-19-100) on April 18, 2012, in which he raised the following claims:

1. Ineffective Assistance of Counsel:

¹ *See Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967).

- a. Counsel failed to "pursue all plausible and affirmative defenses;"
 - b. Counsel failed to "conduct reasonable pretrial investigation and preparations;" and
 - c. Counsel failed to "object to the discovery violation of the solicitor."
- 2. Ineffective assistance of appellate counsel.
 - 3. Denial of Due Process.

The Honorable R. Lawton McIntosh held an evidentiary hearing into the matter on November 14, 2013, at the Lexington County Courthouse. Davis was present at the hearing; and Courtney Clyburn-Pope, Esquire, represented him. Assistant Attorney General Walt Whitmire represented the State. Davis testified on his own behalf, and trial counsel, Mr. Falgione, also testified. Petitioner went forward on the following claims at the hearing:

- 1. Ineffective Assistance of Counsel:
 - a. Failure to prepare Applicant's case for trial;
 - b. failure to investigate and beneficial witnesses;
 - c. failure to consult an expert witness to refute the State's herpes diagnosis;
 - d. failure to advise Applicant to exercise his right to not testify;
- 2. Prosecutorial misconduct:
 - a. failure to disclose DSS materials on the victim's mother.

On April 1, 2014, Judge McIntosh filed an Order of Dismissal, in which he denied relief and dismissed the Application with prejudice. The Order of Dismissal addressed Davis' claims that: (1) counsel was ineffective for failing to properly investigate and prepare his case; (2) counsel was ineffective for failing to interview and present certain allegedly beneficial defense witnesses; (3) counsel was ineffective for failing to consult an independent medical expert to support the defense theory that the victim's mother most likely infected the victim; (4) counsel

was ineffective for not adequately advising him on the possible detriments to exercising his constitutional right to testify in his defense.

Applicant did not timely serve a notice of appeal and no appeal from the judgment entered on the Order of Dismissal was perfected.

Respondent incorporates the following documents by reference that are attached to the Return:

1. The Record on Appeal filed in the appeal from the February 2-5, 2010 trial and sentencing proceedings;
2. The Final *Anders* Brief of Appellant;
3. Applicant's *pro se* response to the Final *Anders* Brief of Appellant;
4. The South Carolina Court of Appeals unpublished decision dismissing his appeal in *State v. George Jones*, 2012-UP-120 (S.C. Ct.App., Feb. 29, 2012).
5. The March 16, 2012 Remittitur;
6. The PCR Application (2012-CP-19-100) filed on April 18, 2012;
7. The Return;
8. The Order of Dismissal filed on April 1, 2014;
9. Applicant's SCDC records; and
10. The Edgefield County Clerk of Court's records relating to Applicant's conviction and sentence.

II.

Applicant raises the following claims in his Application:

- 11[(a)]. Ineffective assistance of PCR counsel for failing to perfect an appeal from the Order of Dismissal. "The defendant was represented at his PCR hearing by Courtney Clyburn Pope, Esquire[.] [Counsel failed] to file the notice of intent to appeal in this case. The defendant [has] been informed by the Clerk of the supreme court the Honorable Daniel E. Shearouse, since relief

under Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), is sought by filing an application for post-conviction relief in the circuit court;”

- (b). “The defendant contends that he never received his Rule 5 discovery to be able to present his defense;”
- (c). “Did defendant receive effective assistance of counsel in accordance with the sixth Amendment when his trial counsel was ineffective over all, when he failed to properly prepare for trial, investigate all the elements of alleged crime scene, and challenges to the sufficiency of the indictment;”
- (d). SUBJECT MATTER JURISDICTION. As stated in State v. Smalls, 364 S.C. 343, 613 S.E. 2d 754 (2005). Although an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment. State v. Coleman, 17 S.C. 473, 1882 WL 5605 (1882). The indictment in question here, was not valid and the circuit court lacked subject matter jurisdiction in this particular case.
- (e). BRADY V. MARYLAND VIOLATION.

III. DISCUSSION

A. Applicant is entitled to a hearing on his *Austin v. State* claim.

The Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application. “[T]he contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.] § 17-27-90 [(2003)].” *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394(1991).

State law, however, expressly authorizes the right to seek appellate review of the denial of post-conviction relief. See S.C. Code Ann. § 17-27-100 (2003). Whether such review is granted is discretionary with the South Carolina Supreme Court. *Knight v. State*, 284 S.C. 138, 325 S.E.2d 535 (1985). Also, the Court has ruled that *Anders* continues to apply in PCR matters. *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988); Therefore, the Court recognized an exception to *Aice*’s general rule in *Austin*, where prior PCR counsel fails to appeal the denial of

the application. *Austin*, 305 S.C. at 454-55, 409 S.E.2d at 396. In the absence of an intelligent waiver by the applicant, counsel must advise the applicant of his appellate rights or comply with the procedure required by *Anders v. California*, *supra*. *Austin*, 305 S.C. at 454-55, 409 S.E.2d at 396. Where the PCR judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of post-conviction relief issues pursuant to *Austin*. See *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992). The holding in *Austin* "is limited to its particular factual situation..." *Aice*, 305 S.C. at 452, 409 S.E.2d at 394. Respondent lacks sufficient information to admit or deny this allegation and requests an evidentiary hearing on this ground for relief. *Id.* See also *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

Finally, Respondent would direct Applicant and his attorney's attention to Rule 607(i), SCACR, which provides, in pertinent part, as follows:

(i) **Retention of Tapes.** Except as provided below, a court reporter shall retain the primary and backup tapes of a proceeding for a period of at least five (5) years after the date of the proceeding, and the court reporter may reuse or destroy the tapes after the expiration of that period. If the proceeding was a hearing or trial which lasted for more than one day, the time shall be computed from the last day of the hearing or trial.

B. All other claims.

Respondent submits that all other claims should be summarily dismissed because the 2017 Application is untimely under the statute of limitations and impermissibly successive to the 2012 Application.

1. Statute of Limitations.

¹"Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, **the applicant must petition this Court for... review** (emphasis added)." *Davis v. State*, 288 S.C. 290, 291 at n. 1, 342 S.E.2d 60 (1986).

Respondent submits that the 2017 Application is untimely and that the statute of limitations applicable to Post-Conviction Relief actions bars the remaining claims in the Application. *See* S.C. Code Ann. § 17-27-45(A) (Supp. 2017). Section 17-27-45(A) specifically provides that

[a]n application for relief pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

See also Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996) (allowing one-year grace period after effective date of § 17-27-45(A) for inmates whose convictions became final before effective date of statute).

As discussed, Applicant was found guilty after a jury trial and he was sentenced on February 5, 2010. He then took an appeal, which the South Carolina Court of Appeals dismissed on February 29, 2012. *See State v. George Jones*, 2012-UP-120 (S.C. Ct.App., Feb. 29, 2012). It sent the Remittitur to the Edgefield County Clerk of Court on March 16, 2012.

Applicant thereafter had one year from March 16, 2012, within which to file a PCR Application. He did not file the Application in 2017-CP-19-367 until October 27, 2017. *See Gary v. State*, 347 S.C. 627, 557 S.E.2d 662 (2001) (mailing of a PCR application does not constitute filing, for statute of limitations purposes. Rather, the application is filed when received by the Clerk of Court). This is over five years and seven months after the Court of Appeals sent the Remittitur to the Edgefield Clerk of Court, and well beyond the limitations period in § 17-27-45(A).

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. *Leamon v. State*, 363 S.C. 432, 611 S.E.2d 494 (2003). Additionally, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for

summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

2. The 2017 Application is successive.

Further, the 2017 Application must be dismissed because it is impermissibly successive to the previous Application (2012-CP-19-100), upon which Applicant has previously received a hearing. The Uniform Post Conviction Procedure Act provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (Supp. 2016).

"This statute forbids a successive PCR application unless an applicant can point to a 'sufficient reason' why the new grounds for relief he asserts were not raised, or were not raised properly." *Aice*, 305 S.C. at 450, 409 S.E.2d at 394. *See also McCoy v. State*, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013) ("Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing"); *Robertson v. State*, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016). "An individual under PCR effectively is granted one chance to argue for relief and must do so within a year of his final appeal. These limitations adequately

prevent inmates from abusing the PCR process." *Wade v. State*, 348 S.C. 255, 264, 559 S.E.2d 843, 847 (2002).

The Supreme Court in *Aice* expressly declined to interpret the term "sufficient reason" to include the ineffectiveness of original PCR counsel. Instead, the Court noted that it had defined this phrase "very narrowly" by Court Rule, and it held that "as long as it was possible to raise the argument in his first PCR application, an applicant may not raise it in a successive application. We will not engage in an exploration of why the grounds were not raised, it is sufficient that they could have been raised, but were not" *Aice*, 305 S.C. at 448, 409 S.E.2d at 392

As discussed, the claims in his 2017 Application could have been presented in the original Application filed in 2012. Also, none of the other previously recognized exceptions to the rule set forth in *Aice* apply to Applicant's successive PCR action.

Therefore, Respondent moves for summary dismissal of the remaining claims in his Application as impermissibly successive under *Aice*. See also *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834, 843 (1992), *cert. denied*, 507 U.S. 927 (1993); *Hunter v. State*, 271 S.C. 48, 244 S.E.2d 530, 533 (1978) (successive application barred where applicant was aware of claim at the time of the filing of prior applications but did not raise it); *Land v. State*, 274 S.C. 243, 262 S.E.2d 735, 737 (1980) (applicant's conclusory assertion that PCR counsel was "inadequate" held not a "sufficient reason" warranting a successive application); *Graham v. State*, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008); *Ivey v. Catoe*, 36 Fed.Appx. 718, 730-31, 2002 WL 459004 (4th Cir., Mar. 26, 2002).

CONCLUSION

WHEREFORE, having made its Return and Partial Motion to Dismiss, Respondent asks the Court to conduct an evidentiary hearing limited to Applicant's claim that he is entitled to

relief under *Austin v. State*. Respondent would ask the Court to dismiss all other claims as barred by the statute of limitations and the bar against successive applications.

Respectfully submitted,

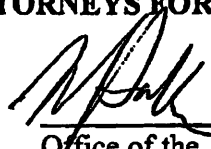
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By: 

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November 30, 2017.

STATE OF SOUTH CAROLINA)

COUNTY OF EDGEFIELD)

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH JUDICIAL CIRCUIT

2017-CP-19-367

GEORGE ALBERT JONES, #254442,)

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 and Partial Motion to Dismiss**, with attachments, in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

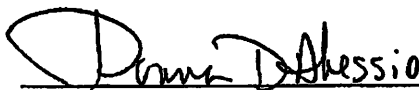
Kristy G. Goldberg, Esq.
Law Office of Kristy Goldberg, LLC
1720 Main Street, Ste. #303
Columbia, South Carolina 29201

RETURN ATTACHMENT LIST:

- (1) Record on Appeal from February 2-5, 2010 trial and sentencing proceedings;
- (2) Final *Anders* Brief of Appellant;
- (3) Applicant's *pro se* response to the Final *Anders* Brief of Appellant;
- (4) The South Carolina Court of Appeals unpublished decision dismissing his appeal in *State v. George Jones*, 2012-UP-120 (S.C. Ct.App., Feb. 29, 2012).
- (5) The March 16, 2012 Remittitur;
- (6) The PCR Application (2012-CP-19-100) filed on April 18, 2012;
- (7) The Return;
- (8) The Order of Dismissal filed on April 1, 2014;

- (9) Applicant's SCDC records; and
- (10) The Edgefield County Clerk of Court's records relating to Applicant's conviction and sentence.

DATED this 30th day of November, 2017.

A handwritten signature in black ink, appearing to read "Donna D'Alessio", written over a horizontal line.

Donna D'Alessio
Legal Assistant to William Edgar Salter, III
Senior Assistant Attorney General

1 State of South Carolina)
2 County of Edgefield) In the Court
3 George A. Jones,) Of Common Pleas
4 Applicant/Petitioner,) Case No.: 2017-CP-19-00367
5 vs.) Transcript of Record
6 State of South Carolina,)
7 Respondent/Defendant.)
8 _____)

9
10 April 18, 2018
11 Lexington, South Carolina

12 BEFORE:

13 The Honorable William A. McKinnon, Judge
14

15 APPEARANCES:

16 Kristy Goldberg, Esquire
17 Attorney for the Applicant/Petitioner
18

19 Al Simon, Assistant Attorney General
20 Attorney for the Respondent/Defendant

21 ALSO PRESENT:

22 George A. Jones
23
24
25

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1 Thereupon, the following proceedings were had,
2 (Whereupon, Applicant's Exhibits #1 through #4
3 marked for Identification.)

4 MR. SIMON: This is George Albert Jones versus the
5 State of South Carolina. This is an Edgefield County
6 case. The case number is 2017-CP-19-367. Mr. Jones was
7 indicted by the Edgefield County Grand Jury in July of
8 2009 for one count of lewd act with a minor and one count
9 of criminal sexual conduct with a minor first degree. He
10 was tried by a jury in front of Judge Keesley. At that
11 trial he was represented by Adrian, I want to pronounce
12 it Falgione, it's F-a-l-g-i-o-n-e. He was convicted of
13 both offenses and in February of 2010 he received a 30
14 year sentence for CSC with a minor first degree and a 15
15 year sentence for the lewd act with a minor. Both
16 sentences to be served concurrently.

17 He filed a direct appeal. That appeal was perfected
18 with the filing of a formal Anders Brief of appellant.
19 He was represented by Wanda Carter with the South
20 Carolina Commission on Indigent Defense, Division of
21 Appellate Defense on that appeal and the appeal was
22 dismissed February 29th of 2012. He has filed a prior
23 PCR. That PCR was filed April 18th, 2012 and the case
24 number for that was 2012-CP-19-100. That was heard by
25 the Honorable R. Lawton McIntosh on November 14th, 2013.

1 At that hearing he was represented by Courtney
2 Clyburn-Pope who is sitting to my left. Judge McIntosh
3 issued a final order of dismissal on April 1st, 2014 and
4 there was no appeal from that and that is actually what
5 is - the action we have before us is a PCR based on
6 Austin v. State. He is requesting a belated appeal and
7 so we're going to have testimony regarding that.

8 It's my understanding that the State did file --
9 This action was filed on October 27th, 2017. He raised
10 five claims in the application, one being ineffective
11 assistance of PCR counsel for failing to file a notice of
12 appeal from the first PCR and he raised four other
13 claims. The state served a partial motion to dismiss on
14 November 30th, 2017. We agreed that a hearing should be
15 held on the Austin claim though we moved to dismiss the
16 other claims because we submit they are successive and
17 untimely to the first application that could have been
18 raised in the first application and they are time barred
19 since based on the time frame of when he should have
20 filed which would have been one year after the remittitur
21 from his direct appeal to the time he actually filed this
22 one. And at this point I'm going to turn it over to Ms.
23 Goldberg.

24 THE COURT: Ms. Goldberg, do you agree that only the
25 Austin claim is recognizable?

1 MS. GOLDBERG: Your Honor, Mr. Jones' original
2 application is about 18 pages of substance in addition to
3 the application itself which several claims were raised.
4 For the majority of them they were either raised in his
5 original appeal or original PCR or were not raised in a
6 timely manner so we don't have any defense to the fact
7 that the State has asked for a bulk of the claims to be
8 dismissed for those reasons. However, remaining would be
9 his appeal of the PCR which we are going forward on.

10 THE COURT: Which is the Austin claim, right?

11 MS. GOLDBERG: And then my client also wants to
12 argue or bring forth a subject matter jurisdiction issue
13 that he believes exists and I believe there's case law
14 that says subject matter can be challenged generally at
15 any time. That's Gentry I believe is the case. So he
16 will provide some brief testimony to that but that would
17 be the only thing that we are going to present today.

18 THE COURT: Okay.

19 MS. GOLDBERG: At this time I would call my client
20 Mr. Jones to the stand.

21 Thereupon,

22 GEORGE A. JONES

23 after having been first duly sworn, testified as follows,

24 DIRECT EXAMINATION

25 BY MS. GOLDBERG:

1 Q. State your name for the record please, sir.

2 A. George Alfred Jones.

3 Q. Mr. Jones, where are you housed currently?

4 A. At the Broad River Correctional Institute.

5 Q. On what charge and sentence?

6 A. Uhm, criminal sexual conduct with a minor first
7 degree and lewd act.

8 Q. Out of what county?

9 A. Edgefield.

10 Q. Did you go to trial or plea?

11 A. Trial.

12 Q. That was February 2010?

13 A. Yes, ma'am.

14 Q. Now, after your trial, you did file an appeal,
15 correct?

16 A. Yes, ma'am.

17 Q. There was an Anders Brief in 2011 and then you, in
18 fact, yourself filed a pro se brief in that case?

19 A. Yes, ma'am.

20 Q. And then the appeal was dismissed in 2012 and the
21 remittitur issued March of 2012. Does that all sound
22 accurate?

23 A. Yes, ma'am.

24 Q. All right. After your appeal was concluded, you did
25 file a post conviction relief application April 18th, 2012.

GEORGE JONES - DIRECT BY MS. GOLDBERG

7

1 Does that sound accurate?

2 A. Yes, ma'am.

3 Q. All right. Very good. That concerned what happened
4 in your actual jury trial?

5 A. Mm-hmm.

6 MS. GOLDBERG: Your Honor, at this time to save some
7 time there are four exhibits in this case that the State
8 has seen and has consented to them all being admitted
9 into evidence.

10 THE COURT: Any objection?

11 MR. SIMON: No objections, Your Honor.

12 THE COURT: Okay. Without objection.

13 BY MS. GOLDBERG:

14 Q. Mr. Jones, I'm going to hand you what has been
15 marked as Plaintiff's exhibit number 1. Now, when you filed
16 your PCR application, did you hire an attorney or was one
17 appointed?

18 A. Appointed.

19 Q. Who was appointed initially?

20 A. First it was Elizabeth A. McCloud.

21 Q. McCloud?

22 A. Yes, ma'am.

23 Q. Okay. Did you ever talk to her?

24 A. No.

25 Q. Never had any contact with that particular lawyer?

1 A. (Witness shaking head.)

2 Q. Exhibit number 1 that I've handed you, what is that
3 document?

4 A. Substitute of counsel.

5 Q. That's the substitution of counsel form?

6 A. Mm-hmm.

7 Q. And that, as a result of that form who became your
8 attorney?

9 A. Ms. Clyburn. Ms. Courtney Clyburn-Pope.

10 Q. Did you receive a copy of that document while your
11 PCR was pending?

12 A. A copy of this?

13 Q. Mm-hmm.

14 A. Yes, ma'am.

15 Q. So that's how you knew who your lawyer was?

16 A. Yes, ma'am. Mm-hmm.

17 Q. Does that document, that particular substitution of
18 counsel document have an address or contact information from
19 Ms. Pope?

20 A. No. It just had been sent to me from the Clerk of
21 Court.

22 Q. It just has her name?

23 A. Mm-hmm.

24 Q. All right. So during the pendency of your PCR up
25 until the hearing, did you have any contact with Ms. Pope,

GEORGE JONES - DIRECT BY MS. GOLDBERG

9

- 1 meet with her, talk on the phone?
- 2 A. She came to see me.
- 3 Q. She came to see you?
- 4 A. Mm-hmm.
- 5 Q. And that's how you prepared for your PCR trial is
- 6 when she came to see you?
- 7 A. Yes, ma'am.
- 8 Q. Very good. Did she ever give you her mailing
- 9 address or contact information?
- 10 A. No.
- 11 Q. Your PCR hearing was held November 14th of 2013?
- 12 A. Yes, ma'am.
- 13 Q. Now, after the hearing, after your PCR, did the
- 14 judge take the matter under advisement or ask for proposed
- 15 orders or did he state on the record what his decision would
- 16 be?
- 17 A. He stated on the record what his decision was.
- 18 Q. What did he say?
- 19 A. Dismissed.
- 20 Q. Now, did you and your lawyer talk at that time, that
- 21 day about what happens next?
- 22 A. Yeah. She said she was going to get in touch with
- 23 me.
- 24 Q. And what else?
- 25 A. And I told her I wanted an appeal on it.

1 Q. What was her response?

2 A. She said she would get in touch with me.

3 Q. A order of dismissal was filed in the Clerk's Office
4 on April 1st, 2014. Did you ever get a copy of that order?

5 A. No.

6 Q. Did the Clerk of Court's Office send it to you?

7 A. No.

8 Q. Did your lawyer Ms. Pope send it to you?

9 A. No.

10 Q. I'm going to hand you what's been pre-marked as
11 plaintiff's exhibit number 2 and tell me what that document
12 is.

13 A. This is when I wrote to her telling her that I
14 wanted an appeal.

15 Q. So that's your written request for an appeal?

16 A. Yes, ma'am.

17 Q. And did you send it to her or did you send it
18 somewhere else?

19 A. I sent it to the Clerk of Court because I didn't
20 have her address.

21 Q. And what is the date on that document?

22 A. It is April 14th.

23 Q. So that was within 30 days of your, of the order
24 being filed on April 1st?

25 A. Mm-hmm.

GEORGE JONES - DIRECT BY MS. GOLDBERG

11

1 Q. But did you even know that at the time?

2 A. No.

3 Q. Did you mail that to anywhere else or just the Clerk
4 of Court's Office?

5 A. Just the Clerk of Court and I told them to mail it
6 to the different parties because she didn't have no mailing
7 address.

8 Q. Did you ever receive a response?

9 A. No.

10 Q. Did the Clerk of Court send you a clocked copy
11 back?

12 A. Yeah. The Clerk of Court did.

13 Q. But they didn't send a letter or further
14 instructions?

15 A. No.

16 Q. The fact that you got a copy back showing that it
17 had been clocked with the court, did that mean anything to
18 you?

19 A. Well, to me it mean that they send it to different
20 parties it was supposed to go to.

21 Q. So you thought you had done what you were supposed
22 to do?

23 A. Yes, ma'am.

24 Q. And that your request for an appeal was out there?

25 A. Yes, ma'am.

1 Q. Now, at what point did you find out that no appeal
2 had ever been filed?

3 A. Well, uhm, it was a while back, you know, when, uhm,
4 I was talking to somebody about it. He said, well, you
5 probably need to file a belated appeal, you know, and so we
6 wrote and they sent a letter back saying there was no appeal
7 filed.

8 Q. I'm going to hand you what's been pre-marked and
9 admitted by consent exhibit number 4. What is that
10 document?

11 A. It's from the Supreme Court.

12 Q. What does it tell you?

13 A. It says I can't find no record that a notice of
14 appeal was filed in the above case. I'm providing your
15 counsel with a copy of this letter so that she can be aware of
16 your desire to seek appellate review.

17 Q. So that's the Supreme Court telling you for sure
18 that no appeal was ever filed?

19 A. Yes, ma'am.

20 Q. Did you know that for sure prior to that date?

21 A. No.

22 Q. What is the date on that letter?

23 A. June 20, '17.

24 Q. And as a result of receiving that letter what did
25 you do?

GEORGE JONES - DIRECT BY MS. GOLDBERG

13

- 1 A. I started trying to file something else.
- 2 Q. You filed this case?
- 3 A. Mm-hmm.
- 4 Q. And you filed this one in October of 2017?
- 5 A. Yes, ma'am.
- 6 Q. Is there anything else factually that you need to
- 7 address regarding the appeal?
- 8 A. Well, to me, uhm, I think that really I was tried
- 9 outside the statutes, you know.
- 10 Q. Okay. We'll get to that.
- 11 A. Okay.
- 12 Q. But as far as the appeal goes you said that you
- 13 asked your lawyer in person?
- 14 A. Yeah. When I was at trial at the end of it.
- 15 Q. And then again in writing?
- 16 A. Yes, ma'am.
- 17 Q. Okay. Very good. Now, Mr. Jones, a separate issue.
- 18 In your application you raised a concern that there may not
- 19 have been subject matter jurisdiction in your original
- 20 criminal trial and you have cited to some case law where you
- 21 believe that subject matter jurisdiction issues can be raised
- 22 at any time. Explain to the Court why you think there is a
- 23 subject matter jurisdiction issue.
- 24 A. Well, the statute is clear that I read that court is
- 25 supposed to be held in March, July and October for Edgefield

1 County but they tried to sentence me in February.

2 Q. I'm going to hand you - this isn't an exhibit. I'm
3 just going to hand you South Carolina code section 14-5-760.
4 Is that the statute you're referring to?

5 A. Let me see. I can't see it.

6 Q. (Proffering.)

7 A. Yes.

8 Q. Okay. All right. So you think that because that
9 statute dictates particular terms of court and your trial was
10 during a different term of court that there was no criminal
11 court jurisdiction that week?

12 A. Yes, ma'am.

13 Q. Is there anything else that you think that you need
14 to explain to the Court regarding your subject matter
15 jurisdiction issue?

16 A. (Witness shaking head.)

17 Q. That sums it up?

18 A. Yes, ma'am.

19 MS. GOLDBERG: All right. No further questions.

20 THE COURT: Mr. Simon.

21 MR. SIMON: Just briefly, Your Honor.

22 CROSS EXAMINATION

23 BY MR. SIMON:

24 Q. Mr. Jones, just so I'm clear and that His Honor
25 understands what you have been saying, prior to your PCR

GEORGE JONES - CROSS BY MR. SIMON

15

1 hearing, Ms. Pope came and talked with you in person,
2 correct?

3 A. Mm-hmm.

4 Q. And you said that the PCR judge at the PCR hearing,
5 he made his ruling on the record?

6 A. Mm-hmm.

7 Q. And you told Ms. Pope after hearing that ruling that
8 you wanted an appeal?

9 A. Mm-hmm.

10 Q. Okay. Did you have any contact with Ms. Pope after
11 the PCR hearing?

12 A. No.

13 Q. No contact by --

14 A. No.

15 Q. -- in writing?

16 A. Nothing.

17 MR. SIMON: Okay. I do not have any further
18 questions, Your Honor.

19 THE COURT: All right.

20 MS. GOLDBERG: No further questions for this
21 witness.

22 THE COURT: Okay.

23 MS. GOLDBERG: Your Honor, as far as the applicant's
24 case goes there's one exhibit that I do offer that was
25 not presented through this witness but he hasn't seen it.

1 It's the Form 4 that was issued when the PCR was
2 dismissed. So I'm offering it simply to show that the
3 court sent it to Ms. Pope and to the Attorney General but
4 did not send a copy independently to Mr. Jones so he
5 wouldn't have received anything unless his lawyer sent it
6 to him. I'll hand all of the exhibits up to the Court
7 and that's the applicant's case.

8 THE COURT: The issue of the jurisdiction first, I
9 mean, special terms of court are permitted. Was there a
10 term of court called by the chief justice for that term
11 of court?

12 MR. SIMON: Your Honor, I'm not sure regarding that
13 but I do have an argument regarding the subject matter
14 jurisdiction claim.

15 THE COURT: Okay. Let me hear that first.

16 MR. SIMON: First, issues regarding indictments are
17 separate from subject matter jurisdiction. If you look
18 at in State v. Gentry the Supreme Court outlined that
19 subject matter jurisdiction and indictment issues are
20 separate and so really the issue that he's raising is
21 regarding whether or not the indictment was sufficient or
22 he was denied due process as a result of how the
23 indictment came about. We would submit that that is a
24 claim, under Gentry those kind of claims are supposed to
25 be raised at trial before the trial starts.

GEORGE JONES - CROSS BY MR. SIMON

17

1 THE COURT: I thought he was saying he was tried in
2 a term of court that was not pursuant to statute, not
3 that there was an issue of the indictment. That was my
4 understanding of the argument. Is that not correct?

5 MR. SIMON: Okay.

6 MS. GOLDBERG: That is correct, Your Honor.

7 MR. SIMON: Well, then, I apologize. I
8 mis-interpreted what the claim was based off what I
9 prepared for. I'm not sure if there was a special term
10 of court. I can definitely find that information out if
11 we can leave the record open just for me to verify when
12 that occurred.

13 THE COURT: Absolutely. The Title 14, Chapter 5
14 provides the Circuit Court judges or the chief justice
15 can call special terms of court. I suspect that that's
16 what happened. If it wasn't done, we should probably
17 know that. So I guess you want to advise the Court via
18 email with a copy to opposing counsel when you check on
19 that?

20 MR. SIMON: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. SIMON: And we do have testimony to present
23 in regards to the Austin claim.

24 THE COURT: Okay.

25 MR. SIMON: At this time the State would call

1 Courtney Clyburn-Pope.

2 THE COURT: Okay.

3 Thereupon,

4 COURTNEY CLYBURN-POPE

5 after having been first duly sworn, testified as follows,

6 DIRECT EXAMINATION

7 BY MR. SIMON:

8 Q. State your full name for the record, please.

9 A. My name is Courtney Clyburn, C-l-y-b-u-r-n hyphen
10 Pope, P-o-p-e.

11 Q. All right. Ms. Clyburn-Pope, how are you currently
12 employed?

13 A. I'm employed with the City of Aiken as the city
14 Solicitor and city attorney.

15 Q. And part of that can you just give us your
16 background in terms of like your law practice?

17 A. Certainly. I originally worked for McGinnis,
18 Guylock and Curry doing workers' compensation defense and
19 moved to Aiken and opened up my own law practice and
20 specialized in criminal and family court. I closed that
21 practice in March of 2014, I believe, in order to accept the
22 job with the city of Aiken.

23 Q. Okay. And when you had your own practice in Aiken,
24 how much of your work consisted of dealing with post
25 conviction relief actions?

1 A. Maybe 15 percent. 15 to 20 percent.

2 Q. Do you recall how you came to represent Mr. Jones?

3 A. Yes. A firm Fulcher, Hagler out of Augusta,
4 Georgia, hired my firm to handle all of their PCR appointments
5 and this was one that fell under that.

6 Q. Okay. Prior to the hearing, do you recall, did you
7 have communications with Mr. Jones about his PCR?

8 A. Prior to the hearing?

9 Q. Yes.

10 A. Yes. I went and met with him, I believe, in August
11 of that year of 2014 and I don't believe his hearing was not
12 until November of 2014. I don't recall how many times I went
13 to see him. Usually I visit my PCR clients two or three
14 times. I cannot recall.

15 Q. Would that have been in 2013?

16 A. Maybe 2013.

17 Q. Okay. Do you recall that there was a hearing on
18 November 13th, 2013?

19 A. Yes.

20 Q. Do you recall if there were any rulings made at the
21 hearing?

22 A. I do not recall. It was so long ago I just do not
23 remember.

24 Q. Do you recall receiving the filed order of dismissal
25 in that case?

1 A. I do remember receiving the order.

2 Q. After you received the order, did you have any
3 contact with Mr. Jones about the order?

4 A. I do not recall but my firm's practice was was that
5 when we received those orders, our paralegal would mail those
6 orders out. I can't confirm whether or not that was done. I
7 don't have a letter that indicates that.

8 Q. Okay. I guess at the end of the hearing do you
9 recall if you had any conversations with Mr. Jones about
10 whether or not to take an appeal?

11 A. I don't recall. Just as a normal practice I do meet
12 with all of my clients after the hearing, immediately after
13 the hearing since they are there and I don't have to go to
14 wherever they're housed. I don't recall meeting with him
15 specifically.

16 Q. Okay. And to your recollection do you know if you
17 ever had a discussion with Mr. Jones in which he told you he
18 would like to file a notice of appeal in regards to that
19 PCR?

20 A. I don't recall.

21 MR. SIMON: Okay. Your Honor, that's all the
22 questions that we have.

23 THE COURT: Okay. Ms. Goldberg.

24 MS. GOLDBERG: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MS. GOLDBERG:

2 Q. Just briefly, Ms. Pope, and I'm not trying to
3 belabor the point. I just want to make sure the record is
4 clear. Basically you can't remember your actual conversation
5 with Mr. Jones that day after the hearing; is that accurate?

6 A. Certainly.

7 Q. And then afterwards you don't have with you today
8 any documentation to prove whether there was correspondence
9 between the two of you after the fact?

10 A. I do not. I do not have any correspondence.

11 Q. You don't have any specific recollection of actually
12 mailing him anything?

13 A. I don't. That's something that we had someone in
14 our office to handle but as a normal everyday practice that's
15 what we generally do.

16 Q. Do you have any memory of receiving this document
17 that the Clerk of Court forwarded you that he had drafted
18 asking for an appeal?

19 A. I do not.

20 Q. You don't remember receiving it?

21 A. The first time I have seen that letter was today.

22 MS. GOLDBERG: No further questions.

23 THE COURT: Thank you. Argument.

24 MS. GOLDBERG: I guess we can let Ms. Pope go.

25 THE COURT: Yes. Absolutely. Ms. Pope, you're

1 excused. Thank you.

2 MS. GOLDBERG: Your Honor, just essentially the
3 argument would be just rehashing the testimony that Mr.
4 Jones was clear that he knew that it was going to be
5 dismissed, asked for an appeal, says that he never knew
6 or never received a copy of the written dismissal but
7 even if he had, his written request to the court asking
8 for an appeal was still timely. It was within the 30
9 days afterwards. Sounds like from Mr. Jones' statement
10 that that was a coincidence but even if not, it was
11 timely. No appeal was filed and he simply asks that he
12 be given the belated right to appeal his original PCR
13 decision and understanding - and I won't address subject
14 matter jurisdiction issues since that's already been
15 addressed.

16 THE COURT: Mr. Simon.

17 MR. SIMON: Your Honor, based on the testimony of --
18 I mean, I'm not going to say that he's not entitled to an
19 Austin appeal because the testimony that we have is the
20 matter of counsel couldn't recall and we have his
21 testimony and so in light of that we are leaving it to
22 the Court's discretion in terms of whether or not he
23 should be granted an appeal.

24 THE COURT: This is my first PCR term. I'm brand
25 new but my review of the law is he's entitled to an

1 Austin appeal. My understanding, - correct me if I'm
2 wrong, is all I can do is order that the appeal is
3 granted but the actual review of the merits of the appeal
4 are with the Supreme Court not with me; is that correct?

5 MS. GOLDBERG: Yes, Your Honor.

6 MR. SIMON: Yes, Your Honor.

7 MS. GOLDBERG: And, Your Honor, I think the way
8 technically it will go procedurally is if there's an
9 order from this Court allowing the appeal, I will then on
10 his behalf file a notice of appeal from the PCR and
11 attach that order with it so that they know it's allowed
12 even though it's out of time so then it would go through
13 the normal appellate process.

14 THE COURT: Okay. Well, in that case, Ms. Goldberg,
15 if you will draft an order and I will actually -- Mr.
16 Simon, if you will check into the issue of subject matter
17 jurisdiction. If you believe that, in fact, there was no
18 order authorizing that term of court, draft an order that
19 says that and Mr. Simon can respond. I suspect that when
20 you check, you will find that that term of court was
21 authorized. But if it turns out that it was not and if
22 there was a problem, include that in your order and
23 Mr. Simon will have a chance to respond to it before I
24 sign it.

25 MS. GOLDBERG: Thank you, Your Honor.

1 MR. SIMON: Thank you, Your Honor.
2 WHEREUPON, THE HEARING WAS CONCLUDED.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

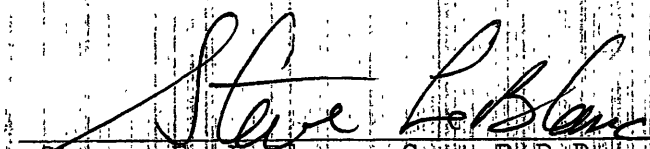
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 18th day of April, 2018.

11 I FURTHER CERTIFY that the forgoing 24 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 14th day of August, 2018.

17
18 
19 Steven E. LeBlanc, Sr., R.P.R.,
20 Eleventh Circuit Court Reporter
21 State of South Carolina.
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

George A. Jones, 254442,

Applicant,

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-19-100

SUBSTITUTION OF COUNSEL

Elizabeth A. McLeod, Esquire, was appointed as attorney for the Petitioner, George Albert Jones in the above-referenced matter. Elizabeth A. McLeod and Courtney Clyburn Pope have agreed for Ms. Pope to serve as attorney for the Petitioner in this matter. Upon motion of Elizabeth A. McLeod and with the consent of Ms. Pope, I find it is appropriate to relieve Ms. McLeod as attorney of record in this matter and to substitute Courtney Clyburn Pope as the named attorney for the Petitioner, George Albert Jones. Therefore, it is hereby

ORDERED that Courtney Clyburn Pope is hereby substituted as attorney for the Petitioner, George Albert Jones in this case and Elizabeth A. McLeod is hereby relieved as attorney.

IT IS SO ORDERED this 30th day of April, 2013, at Edgefield, South Carolina.

William P. Clardy
Presiding Circuit Court Judge
Eleventh Judicial Circuit

I CONSENT:

Elizabeth A. McLeod
Elizabeth A. McLeod

I CONSENT:

Courtney Clyburn Pope
Courtney Clyburn Pope



803-637-4117

LEGAL MAILRECEIVED
CLERK OF COURT
SHIRLEY F. LEWBY

2014 APR 17 AM 11:06

State of South Carolina
County of Edgefield.

George A. Jones,

Applicant,

In the Court of Common Pleas

Eleventh Judicial Circuit

Case No. 2012-CP-19-100

order of Dismissal

v.

State of South Carolina,

Respondent,

The Applicant pursuant to this order Respectfully has Counsel to File and Serve Notice of Appeal, directed to South Carolina Appellate Court Rule 243 For appropriate procedures. Base on substitution of Counsel, Elizabeth A. McLeod and Courtney Cliburn Rice have agreed For Ms Rice to serve as attorney For the Petitioner George Albert Jones, but the order did not have a mailing address, Therefore I had this Court of Clerk to Forward the required Notice of Appeal to her office.

Respectfully Submitted

George A. Jones

on the 14th day of April 2014
Susan H. Frye

My Commission Expires
March 5, 2018



Re: civil action 2012-CP-19-00100
George A Jones -vs- State of SC

UNDER SEAL
JAMES H. HANCOCK
SHIRLEY E. HANCOCK

2014 APR 17 PM 4:44

Mailed a copy of the Order of Dismissal filed by Mr
George Jones to Atty Pope and a copy to Mr Jones on
April 21, 2014.

803-637-4117

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
IN THE COURT OF COMMON PLEAS
EDGEFIELD COUNTY
SHIRLEY F. NEWBY

JUDGMENT IN A CIVIL CASE

CASE NO. 2012CP190100

PLAINTIFF'S
EXHIBIT

#3 4-18-18
2017CP19-367

George A. Jones

2013 NOV 27 AM 10:07

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Circuit Court Judge
SCRPC Form 4C (03/2013)

2155
Judge Code

11-21-13
Date
Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Courtney C. Pope

Walt Whitmire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporters – Carol Thueme

Shirley F. Newby – Clerk of Court

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

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

Petitioner's application for post-conviction relief is DENIED. Walt Whitmire to prepare a formal order consistent with instructions given at the PCR hearing, the pleadings, memoranda, and oral arguments. Mr. Whitmire is to provide the proposed order to Ms. Pope prior to its submission to me.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1498

June 28, 2017

Mr. George A. Jones, #254442
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Jones:

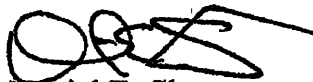
RE: *George A. Jones v. State*, 2012CP1900100

Dear Mr. Jones:

This responds to your letters dated April 21, 2017.

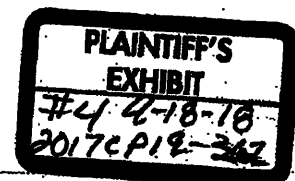
I can find no record that a notice of appeal was filed in the above case. I am providing your counsel with a copy of this letter so that she can be aware of your desire to seek appellate review.

Sincerely,



Daniel E. Shearouse

cc: Office of the Attorney General (with copy of letters)
Courtney Clyburn Pope, Esquire (with copy of letters)



STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

GEORGE ALBERT JONES)
SCDC # 254442,)
Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2017-CP-19-367

ORDER OF DISMISSAL GRANTING
APPELLATE REVIEW PURSUANT TO
AUSTIN V. STATE¹

2018 MAY 21 PM 1:20

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed October 27, 2017. The Respondent made its Return and "Partial Motion to Dismiss" on November 30, 2017. No Amended Application was filed. The matter was heard by this Court on April 18, 2018 at the Lexington County Courthouse. Applicant was present and was represented by Kristy Goldberg, Esq. Respondent was represented by Alphonso Simon of the Office of the Attorney General. Also present to testify was attorney Courtney Clyburn-Pope, former PCR counsel for Applicant.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. Applicant was indicted at the July 2009 term of the Edgefield County Grand Jury for Lewd Act with a Minor (2009-GS-19-349); and at the November 2009 term of the Edgefield County Grand Jury for Criminal Sexual Conduct with a Minor, 1st Degree (2009-GS-19-409). Adrian L. Falgione, Esq. represented him during his jury trial held February 2-5, 2010, whereupon he was convicted of both charges. The Honorable William P. Keesley sentenced Applicant to thirty years on the CSC 1st conviction and 15 years on the Lewd Act conviction, both sentences to be run concurrently.

¹ Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

A notice of appeal was filed, and the appeal was perfected when an Anders² Brief of Appellant was filed by Wanda Carter, Esq. with the Office of Appellate Defense on May 16, 2011. The Applicant also filed a Pro Se brief on May 25, 2011. On February 28, 2012, the Court of Appeals dismissed Applicant's appeal in an unpublished opinion. (George Jones v. State, No. 2012-UP-120). The remittitur was issued on March 16, 2012.

2012-CP-19-100

Applicant filed his first application for post-conviction relief on April 18, 2012. An evidentiary hearing was held at the Lexington County Courthouse on November 14, 2013. Applicant was present and was represented by Courtney Clyburn-Pope, Esq. The Respondent was represented by Walt Whitmire, Esq. of the Office of the Attorney General. At the hearing, Applicant testified on his own behalf. The State offered Adrian Falgione, Esq. as a witness at the proceeding. On November 21, 2013 the Honorable R. Lawton McIntosh filed a Form 4 Judgment with the Clerk of Court stating the decision of the court to deny the Application for Post-Conviction Relief and ordering the Attorney General to draft a proposed order. A copy of the Form 4 Judgment was mailed to Mr. Whitmire and Ms. Pope only.

The Application was officially denied and dismissed with prejudice by written order dated March 27, 2014. This order was filed with the Edgefield County Clerk of Court on April 1, 2014. The order stated Applicant must file and serve notice of appeal within thirty days "from the receipt of this order" to secure the appropriate appellate review.

Applicant submitted a written request for counsel to file and serve notice of appeal to the Edgefield County Clerk of Court's office, which was filed on April 17, 2014. The Clerk of

² Anders v. State of Cal., 386 U.S. 738, 87 S. Ct. 1396 (1967).

Court records show that a copy of this letter was forwarded by the Clerk's office to Courtney Clyburn-Pope on April 21, 2014. Counsel for Applicant did not file a Notice of Appeal.

ALLEGATIONS

In his application for post-conviction relief in this action, Applicant presented the following allegations for relief:

- (a) Ineffective assistance of PCR counsel for failing to perfect an appeal from the Order of Dismissal. "The defendant was represented at his PCR hearing by Courtney Clyburn Pope, Esquire[.] [Counsel failed] to file the notice of intent to appeal in this case. The defendant [has] been informed by the Clerk of the supreme court the Honorable Daniel E. Shearouse, since relief under Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), is sought by filing an application for post-conviction relief in the circuit court;"
- (b) "The defendant contends that he never received his Rule 5 discovery to be able to present his defense;"
- (c) "Did defendant receive effective assistance of counsel in accordance with the sixth Amendment when his trial counsel was ineffective over all, when he failed to properly prepare for trial, investigate all the elements of alleged crime scene, and challenges to the sufficiency of the indictment;"
- (d) SUBJECT MATTER JURISDICTION. As stated in State v. Smalls, 364 S.C. 343, 613 S.E. 2d 754 (2005). Although an indictment does not confer subject matter jurisdiction, due process requires that a criminal defendant be properly served with a valid indictment. State v. Coleman, 17 S.C. 473, 1882 WL 5605 (1882). The indictment in question here, was not valid and the circuit court lacked subject matter jurisdiction in this particular case.
- (e) BRADY V. MARYLAND VIOLATION.

At the beginning of the evidentiary hearing, Applicant stated that he would only be presenting argument and testimony regarding the claim for Austin relief and on the subject matter jurisdiction claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court reviewed and considered the Clerk of Court's records regarding the subject convictions, Applicant's prior PCR, Applicant's direct appeal, Applicant's record from the South Carolina Department of Corrections, the current application for post-conviction relief, the transcripts and exhibits from the prior proceedings, and legal arguments of counsel. Pursuant to § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

APPLICANT IS ENTITLED TO RELIEF PURSUANT TO AUSTIN V. STATE

Applicant alleges that he was denied the right to appeal the dismissal of his previous post-conviction relief application because prior PCR counsel, Courtney Clyburn Pope, Esq., failed to timely file a notice of intent to appeal. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395, (1991), a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of his prior application.

Where an Applicant is denied an opportunity to properly appeal an adverse final ruling of a court in a post-conviction relief action, he or she may seek limited relief in a subsequent action to correct the unfairness. Austin, 305 S.C. at 454, 409 S.E.2d at 396. "A PCR applicant is entitled to an Austin appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived." Odom v. State, 337 S.C. 256, 262, 523 S.E.2d 753, 756 (1999) (citing King v. State, 308 S.C. 348, 348-49, 417 S.E.2d 868 (1992)). If the PCR court finds an applicant was denied his or her right to appeal, the applicant can petition for certiorari and the South Carolina Supreme Court will review whether he or she was prejudiced by the failure to obtain appellate review. Id. "The one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to Austin v. State." Id.

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at 263, 523 S.E.2d at 756.

This Court finds Applicant requested appellate review be sought. This Court also finds Applicant was denied an opportunity to seek appellate review from the denial of PCR relief in his first PCR action as a result of PCR counsel's failure to file a notice of appeal from the order of dismissal. Applicant testified that Judge McIntosh orally stated his intention to dismiss the PCR application at the end of the evidentiary hearing. At that time, Applicant informed PCR counsel in person of his desire to appeal the decision. Applicant also testified that, although he never received a copy of the final order from his counsel or anyone else, he wrote a letter to the Clerk of Court informing the Court of his intention to have the matter appealed. This letter was received by the Clerk within thirty days of the filing of the final order denying PCR relief. This letter was provided to PCR counsel by the Clerk's Office. Applicant testified he did not mail the request to the office of Ms. Clyburn-Pope directly because he was never given her mailing address.

PCR counsel testified she did not recall whether or not Mr. Jones asked her to file notice of appeal or whether or not she ever received anything in the mail from him. She stated she could not confirm or deny his testimony. PCR counsel testified she did not have copies of any correspondence between herself and Mr. Jones or notes in her file to submit to the court relevant to this issue.

This Court finds Applicant's testimony was credible in that he made known to PCR counsel orally and in writing his desire to appeal the order denying PCR relief in his prior action, and he relied on Ms. Clyburn-Pope to file the notice of appeal. Applicant was denied his opportunity to appeal the denial of relief from the prior action when PCR counsel did not file the notice of appeal that was requested. Thus, this Court finds Applicant has established he is

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entitled to appellate review of the first PCR action under Austin. Therefore, this Court grants Applicant relief pursuant to Austin v. State review of the Order of Dismissal filed April 1, 2014 denying his first PCR application (2012-CP-19-100).

THE TRIAL COURT HAD SUBJECT MATTER JURISDICTION

During the evidentiary hearing, Applicant asserted that he believes the Edgefield County Circuit Court did not have subject matter jurisdiction over his indictments during the week of his trial, February 2-5, 2010. Applicant cited to South Carolina Code of Laws § 14-5-760(1), which provides for the specific terms of general sessions court in Edgefield County and does not include any available terms in February.

This Court would note that this statute was abrogated by Order of the Supreme Court dated July 17, 2009. *See attached Order*. The Order states that the terms of court as set forth in the above referenced statute was cancelled and the circuit court assignments would be posted on the South Carolina Judicial Department's website. The South Carolina Judicial Department website reflects that a term of general sessions court was scheduled in Edgefield County for the week beginning February 1, 2010, and the Honorable William P. Keesley was scheduled to preside over the term. *See attached printout*. Applicant's jury trial was held February 2 – 5, 2010 before the Honorable William P. Keesley.

Accordingly, this Court finds this allegation to be without merit and therefore denies the claim.

THE REMAINING ALLEGATIONS ARE BARRED BY THE STATUTE OF LIMITATIONS AND ARE SUCCESSIVE TO THE PRIOR PCR ACTION.

To the extent Applicant presented additional claims for relief in his application, this Court denies and dismisses those claims because they are barred by the statute of limitations and are successive to the application filed in 2012.

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S.C. Code Ann. § 17-27-45(A) specifically provides that

[a]n application for relief pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

See also Peloquin v. State, 321 S.C. 468, 470, 469 S.E.2d 606, 607 (1996) (allowing one-year grace period after effective date of § 17-27-45(A) for inmates whose convictions became final before effective date of statute).

Applicant was found guilty after a jury trial and he was sentenced on February 5, 2010. He then took an appeal, which the South Carolina Court of Appeals dismissed on February 29, 2012. See State v. George Jones, 2012-UP-120 (S.C. Ct.App., Feb. 29, 2012). The remittitur was sent to the Edgefield County Clerk of Court on March 16, 2012.

Applicant thereafter had one year from March 16, 2012, within which to file a PCR Application. He did not file this application until October 27, 2017. See Gary v. State, 347 S.C. 627, 557 S.E.2d 662 (2001) (mailing of a PCR application does not constitute filing, for statute of limitations purposes. Rather, the application is filed when received by the Clerk of Court). This is over five years and seven months after the Court of Appeals sent the remittitur to the Edgefield Clerk of Court, well beyond the limitations period in § 17-27-45(A). Therefore, excepting the claim and grant of relief pursuant to Austin v. State, the Court dismisses the application as barred by the statute of limitations.

Furthermore, this Court finds these additional claims are successive to the prior application. The Uniform Post Conviction Procedure Act provides that:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a

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subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

S.C. Code Ann. § 17-27-90 (Supp. 2016).

"This statute forbids a successive PCR application unless an applicant can point to a 'sufficient reason' why the new grounds for relief he asserts were not raised, or were not raised properly." Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). See also McCoy v. State, 401 S.C. 363, 369, 737 S.E.2d 623, 626 (2013) ("Where an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing"); Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016). ("An individual under PCR effectively is granted one chance to argue for relief and must do so within a year of his final appeal. These limitations adequately prevent inmates from abusing the PCR process."); Wade v. State, 348 S.C. 255, 264, 559 S.E.2d 843, 847 (2002). Applicant bears the burden of showing the allegations could not have been previously raised. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Supreme Court in Aice expressly declined to interpret the term "sufficient reason" to include the ineffectiveness of original PCR counsel. Instead, the Court noted that it had defined this phrase "very narrowly" by Court Rule, and it held that "as long as it was possible to raise the argument in his first PCR application, an applicant may not raise it in a successive application. We will not engage in an exploration of why the grounds were not raised, it is sufficient that they could have been raised, but were not" Aice, 305 S.C. at 448, 409 S.E.2d at 392

Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief. Therefore, he has failed

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to meet the burden imposed upon him, and excepting the claim and grant of relief pursuant to Austin v. State, the Court dismisses the application as successive to Applicant's previous PCR application.

CONCLUSION

This Court finds that the grant of relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991) is proper. This Court further finds Applicant's claim the trial court lacked subject matter jurisdiction is without merit. All other allegations are dismissed as untimely and successive.

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

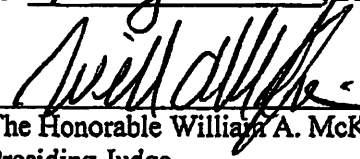
Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed.
2. That the Applicant is granted an appeal from the denial of his first PCR application – filed April 18, 2012 and captioned 2012-CP-19-100.
3. The Applicant remain in the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 16 day of May, 2018.


The Honorable William A. McKinnon
Presiding Judge

#2761

Lexington, South Carolina

WAM/10

The Supreme Court of South Carolina

ORDER

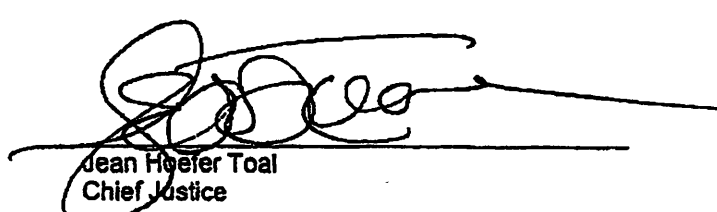
2018 MAY 21 PM 1:21

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES L. REEL

Pursuant to the provisions of S. C. CONST. Art. V, §4, the statutory terms of circuit court set forth in §14-5-620 through §14-5-820, 1976 Code of Laws of South Carolina, as amended, for the period commencing January 3, 2010 and ending July 3, 2010, are hereby canceled.

IT IS ORDERED that the terms of circuit court and assignment of circuit judges to preside over these terms for the period commencing January 3, 2010 and ending July 3, 2010, shall be as set forth on the South Carolina Judicial Department's WEB site at www.judicial.state.sc.us/calendar which schedule is incorporated herein and made a part hereof by reference. Additional terms of court may be scheduled and assignments or reassignments of circuit judges may be made during this period by subsequent orders. Where a circuit-wide nonjury term is indicated, the Chief Circuit Judge for Administrative Purposes for the circuit shall designate the time and location of the term among the counties within the circuit. In those circuits with two chief judges for administrative purposes, these responsibilities shall be assumed by the chief judge for administrative purposes for the court of common pleas. A term designated as a circuit wide administrative week shall be held at such times and locations within the circuit as designated by the Chief Circuit Judge for Administrative Purposes assigned to that term.

The general assignment of judges to judicial circuits pursuant to the provisions of S.C. CONST. Art V, §14, will be made by separate order.



Dean Hooper Toal
Chief Justice

July 17, 2009
Columbia, South Carolina

WAM / 11

February ▾ 2010 ▾ Go To Date

Terms of Circuit and Family Court February 2010

Holiday:
Mon Feb 15. President's Day

Circuit Number	2/1/2010	2/8/2010	2/15/2010	2/22/2010
11	General Sessions Edgefield Keesley, William SHEPPARD Common Pleas Non-Jury/PCR McIntosh, R. THUEME 1, 2, 3 HARRIS 4 THOMAS 5 Common Pleas Lexington McMahon, R. PANTSARI	General Sessions Edgefield Keesley, William NO CR NEEDED 8, 9, 10 SHEPPARD General Sessions Lexington McMahon, R. PANTSARI General Sessions Lexington Russo, Thomas NO CR NEEDED 8, 9, 10 THUEME 11, 12 General Sessions Lexington Keesley, William SHEPPARD 8, 9, 10 NO CR NEEDED 11, 12 General Sessions Edgefield Russo, Thomas THUEME 8, 9, 10 NO CR NEEDED 11, 12		General Sessions McCormick Keesley, William SHEPPARD General Sessions Lexington McMahon, R. PANTSARI General Sessions Lexington McIntosh, R. THUEME 22, 23 NAY 24, 25, 26
	Family Court Lexington Chewning, Richard W. SHEALY Family Court Lexington Allen, Kellum W.	Family Court 9 Lexington Chewning, Richard W. SHEALY 9 Family Court 9 Saluda	Family Court Lexington Chewning, Richard W. SHEALY Family Court Lexington Allen, Kellum W.	Family Court Lexington Chewning, Richard W. SHEALY Family Court Lexington Allen, Kellum W.

1 AM/12

	KAISER	DERRICK 9 Family Court 12 Lexington Allen, Kellum W. KAISER 12	KAISER 10, 10, 11, 10 COLLINS 19 Family Court Edgefield / McCormick / Saluda Neese, Deborah DERRICK Family Court 16 Lexington Neese, Deborah KAISER 16 Family Court 16 Edgefield / McCormick / Saluda Allen, Kellum W. DERRICK 16	KAISER 24, 20 HARRIS 24, 25, 26 Family Court Lexington Neese, Deborah DERRICK
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LAM/13

WITNESSES

ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

TRUE BILL

Angela Bawser

Foreperson of Grand Jury

Date: ~~2009~~ 29 2009

VERDICT

GUILTY

James Z. Davis

Foreperson of Petit Jury

Date: FEB. 5, 2010

DOCKET NO. 2009-GS-19- 349

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

JULY TERM 2009

THE STATE

vs.

GEORGE ALBERT JONES

CDR#2468

Indictment for

LEWD ACT WITH A MINOR

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
LEWD ACT WITH A MINOR

At a Court of General Sessions, convened on July 29, 2009 the Grand Jurors of Edgefield County present upon their oath:

That GEORGE ALBERT JONES, DOB [REDACTED], being over fourteen years of age, did in Edgefield County on or between the dates of June 1, 2007 and April 1, 2008 willfully and lewdly commit a lewd and/or lascivious act upon or with the body of [REDACTED] Minor, DOB [REDACTED], being a child less than sixteen years of age, in that the defendant, George Albert Jones did fondle and caress the body and/or touch the vagina area of the victim, with the intent of arousing, appealing to and/or gratifying the lust and/or passions and/or sexual desires of the said defendant, all in violation of Section 16-15-140 of the Code of Laws of South Carolina, 1976, as amended.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Edgefield

VS.
Mr. George Albert JonesINDICTMENT/CASE#: 2009 - GS - 19 - 349

A/W#: DIRECT

Date of Offense: 6/1/2007S.C. Code §: 16-15-0140CDR Code #: 2468

SENTENCE SHEET

AKA:
Race: B Sex: M Age: 43
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Johnston, SC 29832
DL# [REDACTED] SID# [REDACTED]

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

☒ CONVICTED OF or ☐ PLEADSTO: LEWD ACT UPON A MINORIn violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST.

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on.☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. CREDIT 667 DAYS SERVED.☒ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

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

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.96</u>

Random Drug/Alcohol Testing ☐
Fine may be pd. In equal, consecutive weekly/monthly
pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender FundOther: see 2009 - GS - 19 - 349409409☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge William P. HensleyJudge Code: 2050Sentence Date Feb. 5, 2010Clerk of Court/Deputy Clerk Shirley NewbyCourt Reporter: Stacy Sheppard

SCCA/217 (06/2009)

WITNESSES

ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

Angela Bowers

Foreperson of Grand Jury

Date: NOV 10 2009

VERDICT

GUILTY

Donna L. Chinn

Foreperson of Petit Jury

Date: FEB. 5, 2010

DOCKET NO. 2009-GS-19- 409

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2009

THE STATE

vs.

GEORGE ALBERT JONES

CDR#0385

Indictment for

CRIMINAL SEXUAL CONDUCT
WITH A MINOR
1st Degree

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT
WITH A MINOR
1st Degree

At a Court of General Sessions, convened on November 10, 2009 the Grand Jurors of Edgefield County present upon their oath:

That GEORGE ALBERT JONES, DOB [REDACTED] did in Edgefield County on or between the dates of June 1, 2007 and April 1, 2008, engage in a sexual battery with the victim, [REDACTED] Minor, DOB [REDACTED], the child being less than eleven years of age and the defendant being older than the victim, in violation of Section 16-3-655(1) of the 1976, South Carolina Code of laws, as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

Edgefield

STATE

VS.

Mr. George Albert Jones

AKA:

Race: B Sex: M Age: 43

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Johnston, SC 29832

DL# [REDACTED] SID# [REDACTED]

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

☒ CONVICTED OF or ☐ PLEADS

TO: CRIMINAL SEXUAL CONDUCT WITH MIND IN THE FIRST DEGREE

In violation of § 16-3-655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted. ☐ Lesser Included Offense.The plea is: ☐ Without Negotiations or Recommendation.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. CREDIT 667 DAYS TIME SERVED. (KAC)☒ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$14-1-211 (A)(2)(DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

\$47.12 (Public Def/Prob)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

\$90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$	100.00
\$	100.00
\$	12.00
\$	25.00
\$	500.00
\$	25.00
\$	100.00
\$	50.00
\$	40/ea
\$	5.00
\$	3.00
\$	133.90

Random Drug/Alcohol Testing ☐

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

\$ _____ Paid to Public Defender Fund

① NOT CONSENSUAL

Other ② THE JURY FOUND THAT

THE OFFENSE INVOLVED PENETRATION

OF THE VICTIM'S GENITAL ORGANS,

AS DEFINED IN § 16-3-655

(c) (1) - SEE VERDICT FORM B/PAY

☐ Appointed PD or appointed other counsel, COURT

\$47.12 requires \$500 be paid to Clerk during probation. COURT

180 DAYS OF RELEASE FROM PRISON

Presiding Judge

William P. Harty

Judge Code:

2052

Sentence Date

FEB. 5, 2010

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

⑭

ELECTRONIC/GPS MONITORING UNDER § 23-3-540

⑮

SEX OFFENDER REGISTRY