

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN 21 2018

APPEAL FROM PICKENS COUNTY

S.C. SUPREME COURT

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Court of Appeals Appellate Case No. 2015-000211

THE STATE,.....PETITIONER,

v.

FREDERICK SCOTT PFEIFFER,.....RESPONDENT.

APPENDIX

ALAN WILSON
Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

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ATTORNEYS FOR PETITIONER

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522 North Church Street
Greenville, SC 29601

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ATTORNEYS FOR RESPONDENT

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FILED

STATE OF SOUTH CAROLINA

SEP 18 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

CLERK STATE GRAND JURY

INDICTMENT/CASE#: 2013-GS-47 -09 (Count I)

VS.

FREDRICK SCOTT PFEIFFER

A/W#: Direct Presentment

AKA: SCOTT PFEIFFER

Date of Offense: Sept. 2001 through Feb. 2013

Race: w Sex: m Age: [redacted]

S.C. Code §: 16-17-410

DOB: [redacted] SS#: [redacted]

CDR Code #: 0049

Address: [redacted]

City, State, Zip: Greenville, SC 29607

DL# [redacted] SID# [redacted]

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

SENTENCE SHEET

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

☐ CONVICTED OF or ☒ PLEADS

TO: Criminal Conspiracy

In violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ 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. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

12155

Attorney General

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 3 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: 9/17/13 place☒ 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.☐ 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 SCDPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine: \$

Random Drug/Alcohol Testing ☐

§14-1-206 (Assessments 107.5%) \$

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

pmts. of \$ Beginning

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$

\$ Paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$

§56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$

§50-21-114 (BUI Breath Test Fee) \$50 \$

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$

TOTAL \$ 3.90

\$ 133.90

Clerk of Court/Deputy Clerk James R. Parks [Parks, James R.]

Court Reporter: [Cross, Vivian]

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation

Presiding Judge [Maddox, J. Cordell]

Judge Code: 2134

Sentence Date September 18, 2013

FILED

SEP 18 2013

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

JAMES R. PARKS
CLERK, STATE GRAND JURY

IN THE COURT OF GENERAL SESSIONS

STATE VS.
FREDRICK SCOTT PFEIFFER
AKA: **SCOTT PFEIFFER**
Race: **W** Sex: **M** Age: **[REDACTED]**
City, State, Zip: **Greenville, SC 29607**
DL# **[REDACTED]** SID# **[REDACTED]**
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: **2013-GS-47-09 (Count6)**
A/W#: **Direct Presentment**
Date of Offense: **September 2001 - February 15, 2013**
S.C. Code §: **35-01-0501 & 35-01-0508(a)(1)**
CDR Code #: **2615**

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:
Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more
In violation of § **35-01-0501 & 35-01-0508(a)(1)** of the S.C. Code of Laws, bearing CDR Code # **2615**
☒ 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, (def.'s initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: **[Signature]** **12155** **[Signature]** **0278**
Attorney General 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 **10** days/months/years or ☐ under the Youthful Offender Act not to exceed **6** years
and/or to pay a fine of \$ **0**; provided that upon the service of **0** days/months/years and or payment
of \$ **0**; 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: **9/12/13 PL-05**
☒ 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.
☐ 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: \$ **0** plus 20% fee: \$ **0** **0** days/hours Public Service Employment

Payment Terms: **0**
☐ Set by SCDPPPS Obtain GED ☐
Attend Voc. Rehab. Or Job Corp. **0**

Recipient: **0** May serve W/E beginning
Substance Abuse Counseling ☐

*Fine:

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

Clerk of Court/Deputy Clerk **James R. Parks** [Parks, James R.]
Court Reporter: **[Signature]** [Cross, Vivian]

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ **0** Beginning
\$ **0** Paid to Public Defender Fund
Other: **Remainder 2 years**
active post-conv to
be served public Prob
incarceration
☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation. **[Signature]**

Presiding Judge **[Signature]** [Maddox, J. Cordell]
Judge Code: **2131**
Sentence Date: **September 18, 2013**

May report 9/27/13
by 5:00pm at
ACDC

FILED

SEP 18 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE

INDICTMENT/CASE#: 2013-GS-47 -09 (Count3)

VS.

FREDRICK SCOTT PFEIFFER

A/W#: Direct Presentment

AKA: SCOTT PFEIFFER

Date of Offense: March 17, 2003 - March 21, 2006

Race: W Sex: m Age: [redacted]

S.C. Code §: 35-01-0501 & 35-01-0508(a)(1)

DOB: [redacted]

CDR Code #: 2615

Address: [redacted]

City, State, Zip: Greenville, SC 29607

SENTENCE SHEETDL# [redacted] *SID# [redacted]
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § 35-01-0501 & 35-01-0508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense,

Defendant Waives Presentment to Grand Jury.

The plea is: ☒ Without Negotiations or Recommendation,Negotiated Sentence ☐ Recommendation by the State.

ATTEST:

12155

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 10 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 3 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.☐ 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	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk
Court Reporter:

James R. Parks

[Parks, James R.]
[Cross, Vivian]Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

Miss report 9/27/13
by 5:00 pm of ACTR☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2130

Sentence Date September 18, 2013

FILED

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

AMENDED

STATE

VS.

JAMES R. PARKS
CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2013-GS-47 - 09 (Count 3)

FREDRICK SCOTT PFEIFFER

A/V#: Direct Presentment

AKA: SCOTT PFEIFFER

Date of Offense: March 17, 2003 - March 21, 2006

Race: W Sex: M Age: [redacted]

S.C. Code §: 35-01-0501 & 35-01-0508(a)(1)

DOB: [redacted]

CDR Code #: 2615

Address: [redacted]

City, State, Zip: Greenville, SC 29607

DL# [redacted]

SID# [redacted]

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

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS:

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § 35-01-0501 & 35-01-0508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ 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, (def.'s Initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

SC Bar # 12155

Defendant

Attorney for Defendant

SC Bar # 68296

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 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 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-55 (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 ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

*Fine:

\$14-1-206 (Assessments, 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2955 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def Prob.)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk

[Parks, James R.]

Court Reporter:

[Cross, Vivian]

Presiding Judge [Maddox, J. Cordell]

Judge Code: 2131

Sentence Date September 18, 2013

Amended - October 08, 2013

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

AMENDED

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2013-GS-47-09 (Count 1)

VS.

FREDRICK SCOTT PFEIFFER

A/N#: Direct Presentment

AKA: SCOTT PFEIFFER

Date of Offense: Sept. 2001 through Feb. 2013

Race: W Sex: M Age: [redacted]

S.C. Code §: 16-17-410

DOB: [redacted] SS#: [redacted]

CDR Code #: 0049

Address: [redacted]

City, State, Zip: Greenville, SC 29607

SENTENCE SHEET

DL# [redacted] Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal Conspiracy☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 12155 [Signature] 0271

Attorney General 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 3 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.☐ 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 16-25-85 (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 WE beginning
Substance Abuse Counseling ☐

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2905 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
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\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 5.00
TOTAL	\$	\$ 3.90
	\$	\$ 133.90

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§47-12 requires \$500 be paid to Clerk
during probation.

Presiding Judge [Maddox, J. Cordell]

Judge Code: 2131

Sentence Date September 18, 2013

Amended - October 08, 2013

SCCA/217 (03/2011)

Clerk of Court/Deputy Clerk [Parks, James R.]
Court Reporter: [Cross, Vivian]

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

AMENDED

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: **2013-GS-47-09 (Count 6)**

FREDRICK SCOTT PFEIFFER

AW#: **Direct Presentment**

AKA: **SCOTT PFEIFFER**

Date of Offense: **September 2001 - February 15, 2013**

Race: **W** Sex: **M** Age: **44**

S.C. Code §: **35-01-0501 & 35-01-0508(a)(1)**

DOB: **[REDACTED]** SS#: **[REDACTED]**

CDR Code #: **2615**

Address: **[REDACTED]**

City, State, Zip: **Greenville, SC 29607**

SENTENCE SHEET

DL# **[REDACTED]** SID# **[REDACTED]**
 *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: **Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more**

In violation of § **35-01-0501 & 35-01-0508(a)(1)** of the S.C. Code of Laws, bearing CDR Code # **2615**

☒ 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. (def's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: **[Signature]** **12155** **[Signature]** **6271**
 Attorney General 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 **10** days/months/years ☐ under the Youthful Offender Act not to exceed **6** years and/or to pay a fine of \$ **0**; provided that upon the service of **6** days/months/years and or payment of \$ **0**; plus costs and assessments as applicable; the balance is suspended with probation for **0** 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 sentences 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.
☐ 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 16-25-66 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered **PTUP**

Total: \$ **0** plus 20% fee: \$ **0** **0** days/hours Public Service Employment

Payment Terms: **0**

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. **0**

Recipient: **0**

May serve WE beginning Substance Abuse Counseling ☐

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100
\$14-1-211 (A)(2)(DUI Surcharge)	\$100
\$56-5-2955 (DUI Assessment)	\$12
\$56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
\$14-1-212 (Law Enforce. Funding)	\$25
\$14-1-213 (Drug Court Surcharge)	\$150
\$50-21-114 (BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ **0** Beginning **0**
 \$ **0** Paid to Public Defender Fund

Other: **last 2 years of sentence to be served on HIP as Home Arrest**

☐ Appointed PD or appointed other counsel, §47-12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk **[Parks, James R.]**
 Court Reporter: **[Cross, Vivian]**

Presiding Judge **[Maddox, J. Cordell]**
 Judge Code: **2137**
 Sentence Date **September 18, 2013**

Amended - October 08, 2013

FILED

OCT 08 2013

JAMES R. PARKS
CLERK, STATE GRAND JURYSTATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF PICKENS) FOR THE 13TH JUDICIAL CIRCUIT

State of South Carolina,

v.

FREDRICK SCOTT PFEIFFER,

Defendant.

Order of Restitution

2013	-GS-	47	- 09 (1)	-GS-	-
2013	-GS-	47	- 09 (3)	-GS-	-
2013	-GS-	47	- 09 (6)	-GS-	-
-	-GS-	-	-	-GS-	-

Upon motion of the Attorney General's Office, it appears SC Code §17-25-322(A) provides "in addition to any other sentence which it may impose, the court shall order the defendant make restitution or compensate the victim..." unless the Court finds a substantial and compelling reason not to order restitution.

Therefore, this Court finds:

() Restitution should not be ordered for the following reasons:

() Restitution should be paid by the Defendant to the State Office of Victim Assistance, provided payment is made by SOVA on behalf of the listed victim(s) in any subrogated amounts paid.

() Restitution hearing is waived by Defendant, restitution agreed to as shown below.

() Restitution should be paid by the Defendant as a condition of his/her sentence to the designated victims in the Court-ordered amounts:

1. VICTIM: C/O Jerry Saad, CPA (Receiver)

Address: 1249 S. Pleasantburg, Dr.

Greenville, SC 29605

Phone: 864-422-9616

Restitution: \$ 169,186.30*to be determined at later hearing*

2. VICTIM:

Address:

Phone:

Restitution: \$

169,186.30

3. VICTIM:

Address:

Phone:

Restitution: \$

4. VICTIM:

Address:

Phone:

Restitution: \$

TOTAL AMOUNT OF RESTITUTION ORDERED: \$ 169,186.30

() Restitution is joint and several with the following co-defendant(s):

AND IT IS SO ORDERED this 18 day of Sept, 2013, Anderson South Carolina

I SO MOVE:

Assistant Attorney General

Presiding Judge

I HAVE RECEIVED A COPY:

Defendant/Attorney for Defendant

FILED

STATE GRAND JURY OF SOUTH CAROLINA

JAN 23 2015

THE STATE OF SOUTH
CAROLINA,Case No.: 2013-GS-47-09 JAMES R. PARKS
CLERK, STATE GRAND JURY

v.

ORDER GRANTING DEFENDANT'S
2ND MOTION TO RECONSIDER

FREDRICK SCOTT PFEIFFER,

DEFENDANT.

This Order follows a hearing before this Court in Anderson County on July 9, 2014 pursuant to Defendant's 2nd Motion for Reconsideration filed October 17, 2013. Having heard the arguments presented by Defendant and the objections made by the State this Court agrees with Defendant's arguments regarding a lack of relativity and a denial of fundamental fairness concerning the disparity between Defendant's sentence and that of his codefendant. Accordingly, this Court orders that Defendant's sentence be reduced.

I. FACTUAL BACKGROUND

On June 13, 2012, the State Grand Jury of South Carolina (the "State Grand Jury") returned a true billed indictment (the "Indictment") charging DEFENDANT and Arthur M. Field ("CO-DEFENDANT") with securities fraud and conspiracy. DEFENDANT was a lawyer licensed in South Carolina until this first indictment.¹ The indictment alleged that DEFENDANT and CODEFENDANT conspired to perpetrate a fraud upon South Carolina investors by concealing and misstating material information in connection with the offer and sale of notes by the now

¹ DEFENDANT's license to practice law was suspended on June 15, 2012. S.C. Judicial Department (Jan. 18, 2013, 16:00), <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2012-06-15-01>.

defunct Capital Investment Funding, LLC ("CIF"). Defendant was again indicted by the South Carolina State Grand Jury; these indictments included commission of securities fraud and conspiracy with regard to the operations of Cosimo, LLC, which served as the major relender of investor funds provided to Capital Investment Funding, LLC. They also alleged forgery by use of a fictitious name to endorse a check from the South Carolina Department of Transportation for compensation in condemnation of property, and perjury and false swearing regarding this fictitious name in two depositions where Capital Investment Funding loans were involved, 2013GS4709, 2013GS4710.

Ultimately, DEFENDANT pled guilty before this Court on September 18, 2013 to three (3) of the counts of indictment 2013GS4709, under a plea agreement wherein it was within this Court's discretion to sentence PFEIFFER from 0-20 years in prison:

- Count I (Criminal Conspiracy CDR 0049);
- Count III (Securities Fraud, CDR 2615); and
- Count VI (Securities Fraud CDR 2615).

This Court sentenced Pfeiffer, with a lead active sentence of six (6) years, with four years of imprisonment followed by two years of home incarceration. DEFENDANT's restitution hearing was deferred following his plea and sentencing on September 18, 2013. DEFENDANT filed a timely (1st) motion for reconsideration on September 30, 2013. On October 8, 2013, this Court held a hearing on DEFENDANT's (1st) Motion for Reconsideration of sentence at the same time as the restitution hearing – this Court issued amended sentencing sheets the same day at DEFENDANT's request for a clarification regarding SCDC's calculation(s) methods.

Simultaneous to the October 8, 2013 amended sentence for DEFENDANT, co-defendant also appeared before this Court and was sentenced. Unbeknownst to this Court, co-defendant was to be released almost immediately after being processed by SCDC because co-defendant was being afforded both credit and *good-time* credit for the several months he spent prior to conviction on GPS monitoring.² Based on the disparate sentences between the two codefendants, DEFENDANT filed a 2nd motion for reconsideration – dated October 17, 2013.

The State argues that this Court lacks jurisdiction and cannot re-sentence Defendant because the 2nd motion to reconsider was filed beyond the ten (10) day window afforded by Rule 29, SCRCrimP.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

a. Timeliness

The State's argument regarding timeliness neglects to include the fact that the codefendant's sentence was not known to Defendant until October 8, 2013 (in fact it was not until days later that even this Court learned of the way SCDC was going to calculate the codefendant's sentence and immediately release him – making the disparate sentence even worse). With the new codefendant sentencing information, Defendant did timely file this 2nd motion for reconsideration, dated October 17, 2013. The October 17, 2013 motion for reconsideration is timely and valid considering the date of the codefendant's sentencing.

b. Sentence Reduction

Because of the unfair and unintended disparity in the sentences of Defendant

² S.C. Code § 24-13-40.

compared to the co-defendant this Court agrees to reduce Defendant's sentence. In an effort to correct the disparate sentences and accelerate compensation to the victims, this Court's intent is to restructure/reduce Defendant's active incarceration period while increasing the suspended portion of his sentence to be used in the event he willfully fails to pay the restitution ordered by this Court.

III. Conclusion

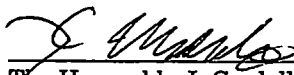
Accordingly, Defendant's sentence is further amended/reduced to the following:

- Count I (Criminal Conspiracy CDR 0049)
 - Three (3) years suspended on the service of five (5) years of probation.
- Count III (Securities Fraud, CDR 2615)
 - Ten (10) years suspended on the service of five (5) years in SCDC, with the last two (2) years of the sentence to be served on HIP or house arrest, followed by five (5) years of probation.
- Count VI (Securities Fraud CDR 2615)
 - Ten (10) years consecutive to Count III suspended on the service of five (5) years of probation.

To be perfectly clear, it is this Court's intent to restructure Defendant's sentence so that the final SCDC calculations result in a reduction of one (1) year active SCDC incarceration time compared to the October 8, 2013 "AMENDED" sentencing sheets.³

AND IT IS SO ORDERED.

This 19th day of January, 2014.


 The Honorable J. Cordell Maddox, Jr.
 Circuit Court Judge

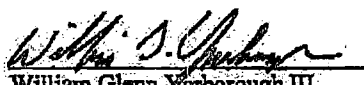
Ayleen, South Carolina

³ As of July 9, 2014, Defendant's projected release date is listed as "09/27/2015". <http://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000357233>

COUNTY OF PICKENS	)	IN THE COURT OF GENERAL SESSIONS
	)	
v.	)	
	)	
FREDERICK SCOTT PFEIFFER	)	<u>MOTION TO RECONSIDER</u>
	)	INDICTMENT Nos. 2013-GS-47-09
DEFENDANT.	)	2013-GS-47-10

The Defendant, through his undersigned attorney, does respectfully move before this Honorable Court for a reconsideration hearing of his sentences in the above referenced matters. The reason for the reconsideration is that there are inconsistencies between the sentences handed down by the Court with what is reflected within the Sentencing Sheets, which are a part of the record and have been forwarded to the South Carolina Department of Corrections. At the reconsideration hearing, Defendant's Counsel will present the clerical errors for the Court to review. Defendant's Counsel has also forward this motion to the South Carolina Attorney General's Office.

Respectfully submitted,


 William Glenn Yarborough III
 Attorney for the Defendant
 522 North Church Street
 Greenville, SC 29601
 (864) 331-1612
 SC Bar No.:10271

Greenville, SC
 September 30, 2013

FILED

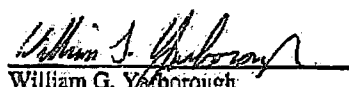
SEP 30 2013

JAMES F. BREHM
 CLERK, STATE AND DISTRICT JURY

COUNTY OF PICKENS	)	IN THE COURT OF GENERAL SESSIONS
	)	
V.	)	
	)	
FREDRICK SCOTT PFEIFFER	)	<u>MOTION TO RECONSIDER</u>
	)	WARRANT NOS.: 2013-GS-47-09
DEFENDANT.	)	2013-GS-47-10

The Defendant, through his undersigned attorney, does respectfully move before this Honorable Court for a reconsideration hearing of his sentences in the above referenced matters. The reason for the reconsideration is that there are inconsistencies between the sentences handed down by the Court with regards to Arthur Field and Defendant Pfeiffer. The Defendant believes, and will argue, that Fields was the ring-leader kingpin of the conspiracy and was actually the one who was involved in an overwhelming amount of the crime which was committed. Yet, the Defendant Field's actual sentence was but one-half of the sentence handed down for Defendant Pfeiffer. Pfeiffer would further argue that the ends of justice can only be reached by a sentence reduction in his case from a period of incarceration of less than eighteen (18) months. Defense counsel has forwarded this motion to the South Carolina Attorney General's office for their review and would request a hearing accordingly.

Respectfully submitted,



William G. Yeborough
Attorney for the Defendant
522 North Church Street
Greenville, SC 29601
(864) 331-1612
SC Bar No.: 10271

Greenville, SC
October 17, 2013

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-GS-47-00009
	)	
Fredrick Scott Pfeiffer,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on September 18, 2013, before The Honorable J. Cordell Mattox in the Court of General Sessions, Anderson, South Carolina; attended by counsel as follows:

APPEARANCES:

Brian T. Petrano, Esq.
 S. Creighton Waters, Esq.
 U.S. ATTORNEY GENERAL
 Appearing for State of South Carolina

Bradley Bennett, Esq.
 -and-
 William G. Yarborough, Esq.
 Appearing for Defendant

TRANSCRIBED FROM AUDIO NOTES OF VIVIAN CROSS

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

1 THE COURT: First, let me apologize to
2 everyone for making you wait. I appreciate
3 your patience. You've waited longer than you
4 may have wanted to. I am in the middle of
5 another trial, just for those people who are
6 not used to be in the courtroom, and I had to
7 deal with some issues there. My law clerk,
8 who is very good, this morning -- after she
9 got here, suffered a pretty severe migraine,
10 so we had to deal with that. Anyway, I do
11 apologize.

12 All right. Yes, sir, you can call
13 the case.

14 MR. WATERS: Yes, Your Honor. The
15 State calls Frederick Scott Pfeiffer. It's
16 a State Grand Jury matter, 2013-GS-47-09.
17 Uh, pursuant to a written plea agreement,
18 Mr. Pfeiffer is here today pleading to three
19 counts within that particular indictment.
20 There will be two counts of securities fraud,
21 one count of conspiracy. Those two
22 securities fraud counts are ten years apiece,
23 the conspiracy is obviously five; however, it
24 is a negotiated term that the five-year
25 conspiracy will run concurrent with any

1 sentence Your Honor decides to give, in your.
2 discretion, on the two securities fraud
3 counts.

4 Along with that, once the plea is
5 accepted, the State will *nol pross* all
6 remaining counts in the 2012 indictments as
7 well as in the 2013-10 indictments, the other
8 State Grand Jury indictments that were
9 issued.

10 Your Honor, along with this plea
11 agreement we would request a colloquy on
12 this. Mr. Pfeiffer has signed a waiver of
13 any direct appeal, PCR, federal habeas
14 collateral actions and things of that sort;
15 with one exception, that Mr. Pfeiffer can
16 appeal any restitution amount that is
17 Ordered, at his option.

18 And, finally, we are agreeing that
19 this -- this indictment is from Pickens
20 County. Obviously, Your Honor has statewide
21 jurisdiction, because it is a statewide
22 matter, but we are -- the defense is
23 agreeable to waiving venue and having that
24 plea accepted here today in Anderson. But
25 there probably needs to be colloquy on that.

1 Your Honor, at this time we have
2 marked as Court's 1 the plea agreement, which
3 I will hand up to Your Honor, (tendering).

4 THE COURT: All right. Before you go
5 on, I just wanted to say this, and this just
6 -- is just a matter of housekeeping. No
7 phones or computers are allowed in the
8 courtroom. Some members of the press,
9 because of their, uh, because of their system
10 have to use phones, that's just the platform
11 that they use. If you see somebody using a
12 phone, they are a member of the press.
13 Please don't pull out a phone and -- we have
14 had people blogging from the courtroom, which
15 is a huge problem.

16 Before we start, also I just want
17 to put on the record that last evening and
18 yesterday afternoon, I went through and read
19 all of the documents that I have, including
20 the sentencing memorandum, the indictments,
21 and the plea agreement for Mr. Field. I read
22 every victim's impact statement and, in fact,
23 as you can see -- just so that you will know
24 that I really did, uh, I have tabbed many of
25 them because there were pertinent issues in

1 those that I wanted to deal with. I also
2 read Mr. Pfeiffer's letter to me yesterday --
3 that I assume everyone got?

4 CREIGHTON WATERS: Yes, sir, Your Honor.

5 THE COURT: So I am well aware. Again,
6 I took the Field plea sometime in the very
7 recent past -- a month or so ago.

8 CREIGHTON WATERS: May 5th.

9 THE COURT: May 5th? Time flies. I
10 took his plea but deferred sentencing, just
11 so that we are all on the same page.

12 MR. YARBOROUGH: Your Honor, if it may
13 please the Court. I am Bill Yarborough, I am
14 here on behalf of Mr. Pfeiffer. May we
15 approach?

16 THE COURT: Yes.

17 (OFF RECORD BENCH CONFERENCE)

18 THE COURT: Do y'all have a sentencing
19 sheet?

20 CREIGHTON WATERS: Yes, sir, we are all
21 signed up.

22 (WHEREUPON DEFENDANT SWORN)

23 THE COURT: All right. Mr. Pfeiffer,
24 I need to ask you some questions -- but let
25 me sign this first. I am not trying to delay

1 it or create tension by making you stand
2 there.

3 The way that I intend to proceed, as
4 I told the parties in the back, I am going to
5 accept Mr. Pfeiffer's -- go through my
6 colloquy and accept his plea. Uh, then what
7 I would like to do is hear from Mr. Pfeiffer
8 and his attorneys. At that point, which is
9 a little bit abnormal, I would then like to
10 hear from the victims if anyone wants to
11 speak.

12 Now, I will also tell people in the
13 courtroom that the acoustics in here are not
14 good. Can everybody hear? No? That's what
15 I was afraid of. When this courthouse was
16 built, someone didn't think about the
17 acoustics. I don't have a problem if you
18 want to spread out and sit closer. I've got
19 my mic ---

20 BAILIFF: If you want, I can put
21 this on.

22 THE COURT: Can you hear me now?
23 I have a cold, so you're going to have to
24 hear me sniff too.

25 All right, Mr. Pfeiffer, how old are you?

1 DEFENDANT: Forty-seven (47), Your
2 Honor.

3 THE COURT: All right. And tell me a
4 little bit about your educational background.
5 I have read the sheet, but for the record, if
6 you would.

7 DEFENDANT: I graduated from Furman --
8 I went to Spring Valley High School in
9 Columbia, South Carolina. Then I went to
10 Furman, graduated from Furman in 1988 with a
11 degree in History. Then went to law school
12 at the University of South Carolina,
13 graduated in 1993.

14 THE COURT: I understand from reading
15 through your memorandum that you at one point
16 had a top secret clearance?

17 DEFENDANT: Yes, sir. I was in the
18 Army for ten years as a military intelligence
19 officer. I had a top secret SCI clearance.

20 THE COURT: All right. And when did
21 you matriculate out of the Army?

22 DEFENDANT: 1998.

23 THE COURT: At that point did you begin
24 practicing law in Greenville?

25 DEFENDANT: Well, after law school and

1 until 1998, I was in the South Carolina Army
2 National Guard, and practiced law.

3 THE COURT: All right. Have you had
4 any drugs or alcohol in the last twenty-four
5 hours?

6 DEFENDANT: I had a beer last night.
7 That's all.

8 THE COURT: Just one?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right. Are you taking
11 any kind of medication or prescription that
12 might prevent you from knowing what is going
13 on here today?

14 DEFENDANT: I am not.

15 THE COURT: All right. Do you under-
16 stand that in South Carolina anyone pleading
17 waives their Constitutional rights?

18 DEFENDANT: I do understand that.

19 THE COURT: In particular, you have to
20 waive your right to a jury trial. Are you
21 waiving that right?

22 DEFENDANT: I am.

23 THE COURT: Are you also waiving your
24 right to remain silent?

25 DEFENDANT: I am waiving my right.

1 THE COURT: Are you waiving your right
2 to put up a defense to these charges?

3 DEFENDANT: I am waiving that right.

4 THE COURT: You also have a right under
5 the Constitution of the State and the
6 national Constitution to confront witnesses
7 who come in and testify against you, that the
8 prosecutor would bring in to testify from the
9 stand, that you would have the right of
10 confronting them. That is your right of
11 confrontation. Are you waiving that right?

12 DEFENDANT: I am waiving that right.

13 THE COURT: And are you married?

14 DEFENDANT: I am married.

15 THE COURT: And do you have any
16 children?

17 DEFENDANT: I have five.

18 THE COURT: All right. How old are
19 they?

20 DEFENDANT: They are twenty (20),
21 eighteen (18), seventeen (17), sixteen (16)
22 and fifteen (15).

23 THE COURT: All right. Have you had
24 plenty of time to speak with your lawyers?

25 DEFENDANT: I have.

1 THE COURT: And are you satisfied with
2 this service?

3 DEFENDANT: I am satisfied with their
4 services.

5 THE COURT: Have they done everything
6 that you have asked them to do?

7 DEFENDANT: Yes, sir.

8 THE COURT: Is there anything that you
9 have asked them to do that they have refused
10 to do?

11 DEFENDANT: No, sir.

12 THE COURT: All right. Do you under-
13 stand -- you heard the Attorney General set
14 forth the agreement, uh, -- it's a negotiated
15 settlement, correct? Or is it a regular ---

16 CREIGHTON WATERS: It is negotiated
17 that any term on the conspiracy count will be
18 concurrent to whatever Your Honor decides to
19 give on the two securities fraud counts.
20 Other than that, there is no negotiation or
21 recommendation.

22 THE COURT: Do you understand that
23 based upon that, and I believe that I am
24 correct but correct me if I am wrong, that
25 you are facing today up to twenty years in

1 prison?

2 DEFENDANT: I do understand that.

3 THE COURT: And do you understand that
4 a recommendation is just that on those
5 charges? That it is a recommendation, and
6 that I don't have to accept it; but that I
7 could sentence you to the maximum allowed by
8 law?

9 DEFENDANT: I understand.

10 THE COURT: And do you understand that
11 the negotiation is that the conspiracy charge
12 will run concurrent?

13 DEFENDANT: I understand.

14 THE COURT: But that the other two
15 could run consecutive?

16 DEFENDANT: I understand.

17 THE COURT: I think that's how we get
18 to the twenty years.

19 DEFENDANT: Yes, sir.

20 THE COURT: Okay. Have you had plenty
21 of time to review all the documents in this
22 case?

23 DEFENDANT: Yes, sir.

24 THE COURT: And you have read -- have
25 you had a chance to read any of the victims'

1 statements?

2 DEFENDANT: I have.

3 THE COURT: Have you read all of them?

4 DEFENDANT: Yes, sir.

5 THE COURT: Okay. Do you understand
6 that this case actually is a Pickens County
7 case and that technically while you are
8 waiving the venue in Pickens -- just so that
9 the record is clear, are you waiving venue
10 and jurisdiction in the Pickens County
11 Courthouse -- or courtroom?

12 DEFENDANT: Yes, sir.

13 THE COURT: All right. And these are
14 direct indictments?

15 CREIGHTON WATERS: Yes, sir.

16 THE COURT: All right. Do you under-
17 stand that you have a right to have each one
18 of these cases sent to the grand jury, a
19 determination made there by the grand jury?

20 CREIGHTON WATERS: Well, Your Honor,
21 the State grand jury did pass on all of
22 these. There was just no prior warrant.
23 My apologies.

24 THE COURT: That's okay. Do you have
25 any questions about the grand jury process?

1 DEFENDANT: No, sir, I don't.

2 THE COURT: Do you have any questions
3 of me now?

4 DEFENDANT: No, sir.

5 THE COURT: All right. And have you
6 two had plenty of time to speak with your
7 client? Do you feel like he understands the
8 elements of these charges and his waiver of
9 his Constitutional rights?

10 MR. YARBOROUGH: Yes, we do, Your
11 Honor.

12 THE COURT: And do you feel like he
13 understands the various documents and agree-
14 ment in this case?

15 MR. YARBOROUGH: He does, Your Honor.

16 THE COURT: All right. Mr. Pfeiffer,
17 do you want to plead guilty to these three
18 charges?

19 DEFENDANT: Yes, sir, I do.

20 THE COURT: Are you guilty of these
21 three charges?

22 DEFENDANT: Yes, sir, I am.

23 THE COURT: All right. Yes, sir?

24 CREIGHTON WATERS: Thank you, Your Honor.
25 Also at the appropriate time, I would request

1 a colloquy on the waiver of appeal and
2 collateral attack rights as well?

3 THE COURT: All right. Sir, do you
4 understand that as a part of this plea today
5 that you are waiving any right to a direct
6 appeal, any right to pursue a habeas corpus
7 in any court in this country? Do you
8 understand that?

9 DEFENDANT: Yes, Your Honor, I do.

10 THE COURT: All right. And I
11 understand that you are preserving the right
12 to contest at some point, uh, the restitution
13 amount?

14 DEFENDANT: That is in the agreement;
15 yes, sir.

16 THE COURT: And basically that would be
17 the only avenue of appeal for further action
18 that you would have once we complete today?

19 DEFENDANT: Yes, sir.

20 THE COURT: All right. And is that the
21 agreement as you understand it?

22 MR. YARBOROUGH: Yes, sir, Your Honor.

23 THE COURT: All right, so you want to
24 plead guilty here, Mr. Pfeiffer?

25 DEFENDANT: Yes, sir.

1 THE COURT: And you are guilty?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right. Yes, sir?

4 CREIGHTON WATERS: Thank you, Your
5 Honor. This case obviously is arising out
6 of the demise of an entity known as Capital
7 Investment Funding. I know that Your Honor
8 has heard the factual basis during Mr.
9 Field's plea, so I will not go into too much
10 detail as to the background facts, since you
11 are familiar with those.

12 However, this case is more of a subtle
13 case than one might see with securities
14 fraud. This is not a case where someone gets
15 an investment and they take it and just run
16 off to Vegas with it, or something like that.
17 This is a case that primarily boils down to
18 an act, a practice, a course of business that
19 had the effect of defrauding another
20 individual. That is really the main focus of
21 what we have here.

22 Ultimately with regard to the conspiracy
23 charge -- of course, you've heard, of course,
24 the factual basis, his involvement with Mr.
25 Arthur Field, who he was partners with in

1 Cosimo, in which he served as counsel for CIF
2 and -- and as I talk through these facts, you
3 know, these were done in conjunction with Mr.
4 Field as we go through it.

5 Ultimately when CIF ceased opera-
6 tions and folded, there is presently about
7 thirty-nine million (\$39 Million) dollars
8 that is outstanding to the various note-
9 holders. From what the Receiver tells me, it
10 is, at best, less than four million (\$4
11 Million) dollars that may be able to be
12 recovered. So there is a sizeable amount
13 that is outstanding.

14 But the way that this started
15 specifically with Mr. Pfeiffer is that --
16 he was obviously practicing law here in
17 Greenville -- not here but in Greenville.
18 He meet Mr. Field who has CIF, who had CIF,
19 who obviously has access to the investor
20 money that he is collecting from the citizens
21 of South Carolina. That's how the two of
22 them get involved.

23 Initially most of the money was
24 being sent from CIF up to a company called
25 LRI, which I've described at the prior

1 preceding before Your Honor. And, uh, Mr.
2 Pfeiffer and Mr. Field formed a company known
3 as Cosimo here in South Carolina to keep the
4 lending here in South Carolina.

5 They were essentially half partners
6 in that through various entities. Mr. Field
7 had fifty percent of Cosimo and Mr. Pfeiffer
8 had fifty percent of Cosimo.

9 As things went down along the way,
10 ultimately Mr. Pfeiffer's half was shared
11 with members of his firm; but that
12 essentially was the arrangement, Arthur Field
13 fifty percent and fifty Mr. Pfeiffer. So
14 that's how he got involved in this particular
15 entity.

16 With regard to the securities fraud
17 charges, the first charge deals with the use
18 of a fake person by the name of Henry Rex.
19 Mr. Pfeiffer and Mr. Field created this
20 individual, Henry Rex, who was the principal
21 of a company called Bolingbroke, which is how
22 Arthur Field held his half interest of
23 Cosimo.

24 The State's position is that this,
25 of course, was used to hide the identity of

1 the true owners and to cover up the fact that
2 they were related-party transactions and --
3 not only with regards to the investors in CIF
4 but also with regards to the partners who had
5 been involved in LRI from the securities
6 division and all the rest.

7 Ultimately what we see is Mr. Rex's
8 name being used on various documents. Legal
9 and real estate documents that were prepared
10 in Mr. Pfeiffer's offices would have this
11 fictitious Mr. Rex signing that and be
12 notarized and all the -- all the rest of it.

13 Again, the relevance of that, the
14 importance of that, the materiality of that
15 is that not only is it using a fake name to
16 hide true ownership interests but it covers
17 up those related-party transactions. Those
18 related-party transactions are important
19 because, obviously, they are a huge red flag
20 to auditors, to the securities division and
21 ultimately to investors to understand the
22 true nature of what's been going on. At this
23 particular time, Mr. Field of course is
24 telling investors that, 'I am minding the
25 store, I am not lending to myself' and the

1 like.

2 The reason -- one of the reasons
3 why it is important for those related-party
4 transactions to be disclosed, and which was
5 particularly relevant in this case, leads
6 into the next count that Mr. Pfeiffer is
7 pleading to today. That is with the
8 operations of Cosimo, which again was the
9 major re-lender of CIF once they stopped
10 sending all of the money to LRI up in New
11 Jersey.

12 Cosimo's business essentially had no
13 other business than relending CIF money.
14 They had that ready source of funds from the
15 investors of South Carolina. CIF would loan
16 it to Cosimo, Cosimo would, uh, relend it.

17 But that's where we have the rub
18 here. Because of those related-party
19 transactions, ultimately there was an act, a
20 practice, a course of business that operated
21 to create a fraud on the investors in South
22 Carolina.

23 What we see with the operations of
24 Cosimo, which Mr. Pfeiffer was a co-manager,
25 he was a half owner, the records tell a story

1 here and reflect his involvement in the
2 operations of Cosimo throughout it. But what
3 we see with Cosimo is kind of like a movie
4 set. From a distance it looks good. But as
5 you get closer and you start to peel back the
6 layers, ultimately inside it is a rotten --
7 it is a rotten egg.

8 What we see is that throughout the
9 operations of Cosimo that the entity
10 continued to -- there is no better way to put
11 it than to vomit out good money after bad.
12 This would have the effect of sending out
13 money to entities that were already behind on
14 their loans. That money would go out, it
15 would be used to pay off prior loans, to get
16 everything current and then to repay CIF, to
17 give the illusion of paying good loans that
18 were ongoing. As this progressed, it got to
19 the point where there really was no good
20 economic viable reason for this money to
21 continue to be sent out to these defaulting
22 debtors other than to allow them to use that
23 money -- to use that money to pay, to get
24 everything current, to give the illusion that
25 we have valid loans, paying loans.

1 Of course, every time that happened,
2 every time one of these new loans went out,
3 there were fees, there were points, there
4 were manager fees, there were legal fees that
5 were taken. So it was very lucrative that
6 each time the money would go out, it would
7 just circle around, everybody would take a
8 cut and it would come back. As long as you
9 had that ready source of money from CIF that
10 was constantly there, you could keep doing
11 that; you could keep sending that money out,
12 everybody takes a cut, some of it circles
13 back enough to get everything current.

14 But, eventually after a few months,
15 after a year or whatever, you're back in the
16 same boat and you have to do it again.

17 Well, what happened is that in 2007,
18 the South Carolina Securities Division
19 started to take a look at the operations of
20 CIF, and in May of 2007 issued a notice of
21 intent to essentially prevent CIF from
22 gathering any further investor money. So
23 essentially they turned off the spigot.

24 Obviously if that is the course of
25 business as it'd been going, it constantly

1 needed new money to come into the top to
2 circle back around and get everybody current.
3 That is really what brought the whole scheme
4 down, is that once they lost their ability to
5 gather more money.

6 They continued to, in 2007 -- in
7 2007, the records really reflect a scrambling
8 in an attempt to get -- continue to get in
9 money through various means, whether it was
10 by calling note renewals, and that's not the
11 sale of new securities; by going through Reg
12 D, they proposed a new entity; trying to get
13 that spigot on. It was very evident that the
14 minute that that spigot was off that every-
15 thing would come to a -- would come to a, uh,
16 crashing halt.

17 Similarly at the same time they sent
18 out new money after these bad loans to all
19 these related entities to get everybody
20 current, so that ultimately when they
21 declared the winding up, on its face
22 everything looked good, everything looked
23 like it was okay. But once people started
24 to dig, once people started to look into what
25 they had here, it became very clear that this

1 was a rotten egg on the inside and had been
2 for years.

3 Ultimately when everything came to
4 an end, Cosimo is left owing CIF some
5 thirteen million (\$13 Million) dollars.
6 There were little, if any, assets that were
7 left there. Much of that had to do with the
8 failure to perfect collateral, with
9 continuing to loan money to debtors without
10 sufficient collateral, to disburse monies
11 without due diligent and without proper
12 controls and procedures in place to ensure
13 that lender was protected. Again, every time
14 one of those happened, there were fees,
15 points, management fees accepted and that in
16 a nutshell is the course of business, the
17 act, the practice, the scheme to defraud that
18 ultimately defrauded the investors of South
19 Carolina.

20 THE COURT: All right. Do you
21 have any idea how much Mr. Pfeiffer profited
22 from this?

23 CREIGHTON WATERS: Yes, Your Honor.
24 Like I said, this case is subtle inasmuch as
25 this is not a case where Mr. Pfeiffer or Mr.

1 Field made off with thirty-eight million (\$38
2 Million) dollars. That is not what happened
3 here.

4 THE COURT: It was an incremental thing.

5 CREIGHTON WATERS: It was an incremental
6 thing and the monies that they took were, on
7 their face, valid monies to take: they were
8 salaries, they were management fees, they
9 were legal fees and that sort of thing. But
10 it was the lack of controls and the manner
11 in which the business was conducted, the
12 illusion of solvent entities that were
13 created is where the fraud exists.

14 With that being said, Your Honor,
15 we -- in looking at the various books and
16 various, uh, records we were able to deter-
17 mine an amount that went into Mr. Pfeiffer's
18 world, so to speak; whether it was fees to
19 himself, management fees, legal fees, fees to
20 his firm, various other sources of revenue
21 from CIF and Cosimo. The figure that we came
22 up with in that regard is one million nine
23 thousand one hundred eighty-six dollars and
24 thirty-eight cents (\$1,009,186.38).

25 THE COURT: One million, nine

1 thousand, one hundred --- ?

2 CREIGHTON WATERS: One million nine
3 thousand one hundred eighty-six dollars and
4 thirty-eight cents (\$1,009,186.38).

5 And, Your Honor, I don't know if you
6 want to go further into restitution at this
7 time. There is a provision in the plea
8 agreement with regard to a malpractice
9 settlement. I will be glad to do it now or
10 we can ---

11 THE COURT: Now's fine.

12 CREIGHTON WATERS: Okay.

13 THE COURT: I mean, I want to get the
14 status of it.

15 CREIGHTON WATERS: Yes, sir, Your Honor.
16 Obviously as Your Honor is aware, there were
17 a number of civil actions that have been
18 filed with -- from the demise of CIF and all
19 of its related entities. One of those was a
20 malpractice action that was filed against Mr.
21 Pfeiffer and his firm. Ultimately that
22 malpractice action settled for an amount of
23 eight hundred and forty thousand (\$840,000)
24 dollars; which my understanding is has been
25 paid to the class. Obviously attorneys' fees

1 and all the rest of it have to come out of
2 that. As a negotiated term in the plea
3 agreement, Mr. Pfeiffer is to be given a
4 credit for that particular amount that came.
5 However, if for any reason any of that amount
6 is returned from the class, then he still is
7 on the hook for the entire amount.

8 That is eight hundred forty thousand
9 (\$840,000) dollars of credit from that mal-
10 practice settlement.

11 Obviously there's a conceptual issue
12 there, but that was a negotiated provision
13 that we went back and forth on and came to
14 that agreement. I obviously also had consul-
15 tations with members on the civil side. They
16 are present. Mr. Saad, Jerry Saad, is the
17 Receiver. Mr. Stan Case is the class
18 counsel. Mr. Curt Stodghill is the counsel
19 for Mr. Saad. And I would like to make part
20 of the record the Order with regards to this
21 settlement agreement that was entered. I
22 will have those marked as Court's 2 and 3.

23 THE COURT: All right, that'll be fine.
24 Any objection to that?

25 MR. YARBOROUGH: No objection to that,

1 Your Honor.

2 (SO ENTERED AS COURT'S EXHIBIT 2)

3 (SO ENTERED AS COURT'S EXHIBIT 3)

4 MR. YARBOROUGH: Your Honor, are far as
5 the State's rendition of the facts, Mr.
6 Pfeiffer does not agree with everything that
7 was said; but we do believe that there is
8 enough information there to make a basis for
9 a guilty plea.

10 THE COURT: Sure.

11 MR. YARBOROUGH: As far as the way I --
12 it looks to me like that with the
13 negotiations of the monies paid in, assuming
14 all that money stays in, it is a hundred and
15 sixty-nine thousand that is what is really
16 left (\$169,000) on the restitution figure.

17 THE COURT: Okay. All right. Mr.
18 Pfeiffer you just heard the facts as given by
19 the State. Your lawyer just said that there
20 were obviously some details that you might
21 not agree with. But do you agree with the
22 majority of the details as given by the
23 State?

24 DEFENDANT: Yes, Your Honor.

25 THE COURT: And do you believe that you

1 have committed violations of the Uniform
2 Securities Act, in other words securities
3 fraud, and committed other criminal
4 conspiracy acts?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you admit to those
7 facts?

8 DEFENDANT: I admit to those facts.
9 Yes, sir.

10 THE COURT: All right.

11 CREIGHTON WATERS: Thank you, Judge.

12 THE COURT: All right. And, again,
13 like you said, I am going to do this a little
14 backwards. I will be glad to hear from Mr.
15 Pfeiffer and then I will be glad to hear from
16 any of the witnesses. Yes, sir?

17 MR. YARBOROUGH: Your Honor, do you
18 want to hear from Mr. Pfeiffer first or ---

19 THE COURT: However you want to do it.
20 It is your -- you've got it.

21 MR. YARBOROUGH: Your Honor, I think
22 that I will go and then, uh, Mr. Bennett will
23 go and then Mr. Pfeiffer may have ---

24 THE COURT: That will be fine.

25 MR. YARBOROUGH: Your Honor, just a

1 little background. There are two stories to
2 this thing. There are two sides to this
3 man's life. I mean, you -- you read the
4 brief that we filed.

5 THE COURT: (Affirmative nod).

6 MR. YARBOROUGH: I have been involved
7 in a lot of these cases over the years and
8 usually the lawyers have letters written, you
9 get your cronies from the bar and you all get
10 together and say, you know, -- here, there
11 are people out there that he's made a big
12 difference in his lives. There are people
13 out there that he's made a big difference in
14 their lives.

15 There are two sides to this man's life.
16 It is a shame that this has culminated in his
17 walking in here today. But that's what we
18 are here for. You're in a tough position,
19 having to craft a sentence that is both just
20 to the State and just to the defendant.

21 I just wish that you would look at the
22 fact that his man went to high school in
23 South Carolina, he went to Furman University.
24 The list of awards that he had at Furman go
25 on and on. The list of awards that he had in

1 law school -- moot court. Ten years of
2 military intelligence; you know, working for
3 his country. You know, he -- that's
4 impressive. Those are impressive
5 credentials.

6 As a lawyer, he clerked for Ross
7 Anderson. That's when I first met him. I
8 was with the U.S. Attorney's Office, he was
9 clerking for G. Ross Anderson. You know, he
10 impressed me with his intelligence. He
11 impressed me with his work ethic. My wife at
12 the time also worked at Nelson Mullins where
13 he went, she was -- they were both young
14 lawyers. I will tell you that back in those
15 days, those sweatshops, they worked hard. I
16 knew Scott at that time. I knew my wife knew
17 him and worked with him. He was well thought
18 of. He was well thought of when he started
19 his own firm. That was fifteen, sixteen
20 years ago.

21 You know, at some point something
22 happened. Lawyers sometimes make mistakes.
23 I think a mistake was made when he got into
24 this partnership with Field. You know,
25 whether that was all Field's fault or whether

1 it was Pfeiffer/Field, it doesn't matter.
2 He's pleading guilty today.

3 Since then he's lost his law license.
4 His family has become -- I think destitute
5 would be the wrong word, but they certainly
6 don't live the way that they used to live.
7 They're losing their house.

8 But he's trying to change around. I
9 mean, a lot of times you get people who walk
10 into court and they haven't done anything
11 since the charges came down. This man has
12 started a whole new career. He is building
13 a new life. He's trying to make amends for
14 the mistakes that he made.

15 Is he ever going to be able to tell his
16 victims, "I am making you whole"? That's not
17 going to happen. I'm sorry. I wish that was
18 happening today. I know that you all do. I
19 know that the judge does. I know that every-
20 body does, but it is not. I know that the
21 State wants you to.

22 I can tell you one thing, this man
23 (indicating Mr. Pfeiffer) wants you to be
24 made whole, but it's not happening right now.
25 We're sorry. He will tell you how sorry that

1 he is.

2 Your Honor, I know you're in an awkward
3 position. We will discuss the sentencing
4 issues after the State, I guess, unless you
5 want me to try to go into them now.

6 THE COURT: No, we will do that last.
7 I just wanted to hear what you had to say on
8 his behalf. Then I'd like to hear the
9 victims. Then, quite frankly, I'd like to
10 take a break to deal with the sentence.

11 MR. YARBOROUGH: Yes, sir. Mr.
12 Bennett?

13 MR. BENNETT: May it please the
14 court, Your Honor, Bradley Bennett on behalf
15 of Scott Pfeiffer.

16 Your Honor, before you stands a broken
17 man. He is not the way that I've known this
18 man. He has -- he's lived an exemplary life.
19 He's been an exemplary friend.

20 He was a military brat, grew up all over
21 the world; from Texas to Thailand, from
22 California to the Carolinas where he settled
23 down in 1984 and went to Furman. He
24 graduated, went on to law school, went into
25 the military, came back to Greenville, worked

1 at Nelson Mullins, worked hard, raised a
2 family.

3 He and his wife are seated here today.
4 They have five children. They have had a
5 wonderfully happy and hectic life. He was
6 a active father, he was involved in his
7 children's lives; whether it was his oldest
8 son -- taking Taekwondo with him, -- or his
9 youngest daughter, Clair, playing board
10 strategy games with her. He gave of his time
11 and his talent.

12 He gave to his community. Gave to his
13 friends. He was an active member of his
14 church, taught Sunday school, worked with the
15 Youth. All of these friends that are here
16 today are a demonstration of the kind of man
17 Scott is. He had a strong shoulder to lean
18 on when they had trouble, and a kind heart,
19 the wisdom to counsel friends, to be there
20 for others. That type of life is the life
21 that he worked hard and grew.

22 But all of that has changed now, Your
23 Honor. Over the last fifteen months, since
24 the day that he was arrested, the confident
25 and self-assured lawyer that I'd known for

1 approximately sixteen years stands before you
2 humbled and scared. He is humiliated by the
3 taunts that his children receive at school,
4 his own personal fall from grace. He's
5 scared for the family's financial health, in
6 fact their house has gone into foreclosure,
7 the fact that he has not been able to provide
8 sufficiently and the fact that he's had to
9 rely upon friends and family members for kind
10 support and generosity. He's lost the
11 profession that he fought so long and hard
12 for and worked so diligently at. He's lost
13 all of his investments, he's lost all of his
14 savings. He and his family are now in debt
15 and have credit cards bills that are accruing
16 continuously.

17 In spite of all these problems, and all
18 this difficulty over the past fifteen months,
19 Scott has shown the true character of who he
20 is by not laying down and giving up. But
21 he's tried to make right and do well.

22 He's got basically three jobs, Your
23 Honor, that he does in trying to pull as much
24 money together as he can. He works for a
25 company called Core Communications. He's a

1 billing agent for them. He works writing
2 business proposals and ghost writing for a
3 company out of California, who he was in
4 contact with during his days at Furman. My
5 ex-wife and I have several rental houses and
6 he works for us cleaning those houses, moving
7 tenants out and their belongings out when
8 they're vacated and doing yard work. He is
9 not ashamed of hard work. He is not ashamed
10 of doing work that he hadn't done since he
11 was a young man.

12 He is shamed however by the position that
13 he is in by his own dealings. He's done all
14 of this, trying to make amends and take care
15 of his family with this day looming over his
16 head.

17 These past fifteen months have taken a
18 toll on my friend. He's lost all of his
19 comforts. He's lost all of his career and
20 he's lost all of his credibility with the
21 public that he served. He's humiliated and
22 humbled before both friends and family. Also
23 Shakespearian-like in tragedy, last Friday,
24 this past Friday, he lost his father who had
25 a heart attack, unexpectantly. It was a

1 sudden loss. It has left Scott the patriarch
2 of the family, a family that is in disarray.

3 Your Honor, we're here today asking this
4 court to consider home incarceration for Mr.
5 Pfeiffer. We ask that respectfully and we
6 ask that with full knowledge and appreciation
7 to the victims. We are sorry for their loss,
8 but we feel as though home incarceration will
9 allow Mr. Pfeiffer to continue on with the
10 good work that he has done in trying to
11 rebuild his life, trying to make amends,
12 trying to provide for himself and others.

13 THE COURT: Would home incarceration
14 allow him to continue to pay restitution?

15 MR. BENNETT: Yes, sir, Your Honor.
16 Yes, sir. And taxes. And the ability to
17 take care of a family that otherwise may not
18 have anybody to take care of them. This man
19 is now the head of the Pfeiffer family. His
20 father was sixty-nine years old, who was in
21 excellent health. His sudden death last
22 Friday has left a void within the family.

23 No punishment is necessary for the
24 deterrence of Mr. Pfeiffer. No more
25 punishment benefits society, Your Honor.

1 Arguably, more punishment would only cost
2 society. Respectfully, Your Honor, we
3 believe that no more punishment would be
4 just.

5 Before you stands a broken man, Your
6 Honor. Please have mercy upon him and his
7 family. Thank you.

8 THE COURT: Thank you. Mr. Pfeiffer,
9 anything else that you want to tell me?

10 DEFENDANT: Yes, sir.

11 THE COURT: Then I will hear from --
12 if any victims want to speak to me, I'll be
13 happy to hear anything that you want to tell
14 me.

15 DEFENDANT: Your Honor, I am humbled
16 and embarrassed to be standing here in front
17 of you today. I've stood here many times
18 counseling my clients through this difficult
19 situation. I never dreamed that I would
20 stand in this position before you.

21 My actions in representing Capital
22 Investment Funding did not live up to the
23 high standards that are expected of me by
24 society, by the Bar or by myself. I
25 dedicated my entire professional life to the

1 practice of law. I tried to be a good
2 lawyer, do good for my clients. But because
3 of my actions, and after this plea, certainly
4 I will no longer have the honor of practicing
5 law. Not now, not for years to come -- if
6 ever again.

7 But in the year and a half since I've
8 lost my license, I've begun to try to rebuild
9 my life, a simpler, humbler life of teaching
10 and service.

11 I stand here today to tell you, Your
12 Honor, that I am wrong. To tell you and to
13 tell all of you that I am deeply sorry for
14 the actions of mine that contributed to the
15 losses suffered by these investors.

16 I've made the restitution that I am
17 financially able to make. I directed the
18 settlement of the civil lawsuit as I could so
19 that I could pay as much money, the policy
20 limits, that were left to try to make amends.

21 I stand here today and ask you for mercy.
22 Please consider a sentence that allows me to
23 stay home, take care of my family, take care
24 of my friends and continue to rebuild my
25 life. Thank you, Your Honor.

1 THE COURT: Thank you. Yes, sir? I'll
2 be happy to hear from any of the victims.

3 I am not sure if I said this but I find
4 that this plea is freely, knowingly,
5 intelligently and voluntarily made. Based on
6 the advice of counsel, I find that this court
7 has jurisdiction. I further find that the
8 defendant has waived his Constitutional
9 rights in making this plea knowingly and
10 voluntarily based on the advice of very
11 competent counsel.

12 Yes, sir?

13 CREIGHTON WATERS: Thank you, Your
14 Honor. As Your Honor is, of course, aware,
15 because of the large amount of victims in
16 this particular case, some six hundred
17 eighty-eight (688), we asked the victims if
18 they would submit written statements to Your
19 Honor; which of course you've been provided
20 and noted on the record that you have
21 reviewed.

22 A number of the victims, in fact
23 most of them, are in their senior years.
24 Many of them, I know that you saw from the
25 letters that you received, were either too

1 Okay. All right. I've accepted the plea
2 on Mr. Pfeiffer for obvious reasons.

3 I've been on the bench for twelve years
4 and I have no idea how many pleas that I have
5 taken, hundreds probably if not a thousand or
6 maybe more. I've come to realize that there
7 are two types of defendants in this world.
8 There are those that are bad people, and my
9 job is to put them somewhere where they can't
10 continue to hurt people. Then there are the
11 vast majority of defendants who are good
12 people who, like all human being, made
13 mistakes. Quite frankly, Mr. Pfeiffer, I
14 think you're in the latter group.

15 I don't criticize you at all for your
16 life's endeavors, your career. I think that
17 you probably at some point can recover that.

18 And I understand that because of the
19 circumstances there, in many ways your life
20 has been ruined, devastated. The fact that
21 your father passed away, to me, is just very
22 sad. I know that whatever I do it will not
23 lightened that load, but I want you to know
24 that I give you my greatest sympathy. I am
25 very close to my father, who of course is

1 still here.

2 What I kept thinking about as I was
3 listening to all of this was the Bible verse
4 of Luke 12:48, which is "to whom much is
5 given, much is expected." A very interesting
6 thing about that verse -- and I'm not going
7 to give you a Sunday school lesson but the
8 first part of it talks about punishing people
9 who don't know what's going on as a crime, it
10 says that to those people that aren't given
11 much, you should give them mercy, treat them
12 a little better. Quite frankly, you're one
13 of those people to whom much has been given
14 -- and much is expected.

15 Lawyers in this country are unfairly
16 criticized. It makes me angry when I hear
17 that. Their function is essential and trust
18 in those lawyers is key. Quite frankly, you
19 breached that trust.

20 I have an immense amount of sympathy for
21 your family, for your children, for your wife
22 and for all your friends. But on the other
23 side there are people whose lives have been
24 ruined. As I said, it is very much like
25 dropping a pebble into a lake and watching

1 that wave ruin generations. There are people
2 out there who have worked all their lives to
3 leave something for their family, for their
4 children, for their grandchildren. That's
5 gone. We all know, in this courtroom, that
6 some of it may come back but that most of it
7 is not.

8 What I have been pondering back there is
9 what is appropriate. As I said, and I'm not
10 asking for any sympathy but it's very
11 difficult to sentence you today.

12 But I accepted your plea and the sentence
13 on Indictment 13-GS-47-0009, which is a six-
14 count indictment, the sentence is ten (10)
15 years, provided on the service of six (6)
16 years the balance is suspended with probation
17 for five (5) years. I am running that
18 consecutive with Indictment 13-GS-47-0009
19 (sic), which is a three-count indictment.
20 That's a ten-year (10 year) sentence
21 suspended to five (5) years probation.

22 Then on the conspiracy, which carries a
23 maximum of five years, it is five (5) years
24 to run concurrent.

25 This is a sixty-five (65) percent

1 sentence, right? . . .

2 CREIGHTON WATERS: Yes, sir, Your Honor.

3 THE COURT: I'm sure that there are
4 going to be people who will think that
5 sentence is way too harsh. I am also
6 completely certain that there will be more
7 people that think that it is not anywhere
8 near enough. It is the sentence after a lot
9 of consideration, prayer and thought and
10 review of this record that I came up with
11 that sentence. Any questions about it?

12 MR. YARBOROUGH: No, sir, Your Honor.
13 We would ask if a part of that six-year
14 sentence confinement, if part of that
15 sentence, say three years, could be home
16 confinement.

17 THE COURT: I don't have a problem with
18 modifying it so that there are two years of
19 home incarceration, which is run through
20 Probation, HIP. So he would do four and the
21 remainder at home.

22 Home incarceration, to the victims, I
23 know that sounds like home -- that home
24 incarceration is something that is easy.
25 Under our new HIP program, he wears a

1 monitor, he can't leave his house, he is
2 under constant surveillance with a GPS
3 monitor. So I will do that.

4 I will say that as attorneys that you all
5 have done a great job. I would also say that
6 the State -- that it's a complicated mess and
7 I think that everybody has done a good job.
8 Part of the problem is that punishment -- as
9 you said in your memorandum, which I thought
10 was very good, that there is a huge deterrent
11 to punishment like this. When I read your
12 letter, Mr. Pfeiffer, I realized that I could
13 see myself in that position, working, making
14 money and somebody comes along -- now, what
15 I've got to do with Mr. Field, that is a
16 whole different matter. Suddenly having the
17 opportunity to make a whole lot of money.
18 Unfortunately that's -- I'd hope everybody
19 would be able to resist that.

20 Now, it's ten years amended to six and on
21 the service of four years, the end of that --
22 so can I just leave it at six and put down at
23 the bottom he'll be monitored by HIP. For
24 purposes of this, I will leave six years down
25 as the sentence but then I will write down on

1 this form that the remaining two years of the
2 active sentence may be served by home
3 incarceration. I will do that for you.

4 MR. YARBOROUGH: Thank you, Your Honor.

5 THE COURT: All right. So it is ten
6 (10) years suspended on service of six (6)
7 years imprisonment with five (5) years
8 probation, the remaining two (2) years of
9 active service to be served on home
10 incarceration.

11 The other sentence will remain the same:
12 ten (10) years suspended on five (5) years
13 probation and run that consecutive. So when
14 he comes out, he's got fourteen years hanging
15 over his head.

16 Then on the conspiracy, instead of five
17 years -- ordinarily when I do this -- I'm
18 just going to sentence him to three(3) years,
19 concurrent. I think that solves everybody's
20 problem.

21 MR. YARBOROUGH: Your Honor, if I may,
22 may Mr. Pfeiffer be allowed to self-report?

23 THE COURT: Any objection to that?
24 You got his passport?

25 CREIGHTON WATERS: We do. I'd like to

1 know the details.

2 MR. YARBOROUGH: Sure. Your Honor, as
3 I said, Mr. Pfeiffer's father died this past
4 Friday. He's got family in town for the
5 funeral. As you can imagine, since Friday
6 of last week nothing has been done to get
7 preparations made for a day such as today.

8 THE COURT: When is the funeral?

9 MR. YARBOROUGH: It's already taken
10 place but, as I said, nothing else has really
11 gotten done since that day. Could he have
12 thirty days to ---

13 THE COURT: No, that's ---

14 CREIGHTON WATERS: We would object to
15 thirty days.

16 THE COURT: I'll give him until next
17 Friday, that's the most that I can do. Now,
18 Mr. Pfeiffer, you know the law like I do. If
19 you don't report, it's an escape charge and
20 I'm going to bring you back and -- I don't
21 mean to frighten you but it would not be
22 good.

23 DEFENDANT: You don't have to worry
24 about that. Thank you.

25 THE COURT: So report next Friday by --

1 what is the date, next Friday?

2 MR. YARBOROUGH: The 27th, Your Honor.

3 THE COURT: Report by September 27th,
4 2013.

5 CREIGHTON WATERS: Judge, before we
6 conclude, I do have marked as Court's 4 the
7 financial declarations that Mr. Pfeiffer had
8 to submit and affirm under oath pursuant to
9 the plea agreement. I have marked those as
10 Court's 4, which I will hand to the clerk.
11 I just wanted to make sure that got on the
12 record.

13 (SO ENTERED AS COURT'S EXHIBIT 4)

14 CREIGHTON WATERS: And, also, there
15 -- we have since prepared a blank restitution
16 order as well.

17 THE COURT: All right. Do you need for
18 him to affirm that that is his financial ---

19 CREIGHTON WATERS: That is what the plea
20 agreement required him to do, to affirm under
21 oath that these are correct and that he has
22 not hidden or has not disclosed any assets,
23 whether he holds those directly, indirectly,
24 through an entity, whatever.

25 THE COURT: Okay. Mr. Pfeiffer, have

1 you had a chance to look at the financial
2 forms?

3 DEFENDANT: Yes, sir.

4 THE COURT: Are those correct? You're
5 under oath. Are those correct?

6 DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Is there
8 anything else that you need from him?

9 CREIGHTON WATERS: No, sir, Your Honor.
10 Aside from the restitution Order.

11 THE COURT: Thank you for your patience
12 today.

13 (HEARING CONCLUDED)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held on September 18, 2013, before The Honorable Cordell Maddox, as prepared from the audio notes of Vivian Cross, Court Reporter;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Charleston, South Carolina
January 5, 2013

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF ANDERSON)

STATE OF SOUTH CAROLINA)
)
 Plaintiff,)
)
 v.) Case No. 13-CP-47-08
)
 Arthur Field and)
 Frederick Scott Pfeiffer,)
)
)
 Defendants.)

TRANSCRIPT OF SENTENCING HEARING

The within Hearing in the above-captioned matter was held on October 8, 2013, before The Honorable Cordell Maddox in the Court of General Session, Anderson, South Carolina; attended by counsel as follows:

APPEARANCES:

Brian T. Petrano, Esq.
 S. Creighton Waters, Esq.
 U.S. ATTORNEY GENERAL
 Appearing for State of South Carolina

J. Todd Rutherford, Esq.
 Appearing for Arthur Field

Bradley Bennett, Esq.
 William G. Yarborough, Esq.
 Appearing for Defendant Pfeiffer

TRANSCRIBED FROM AUDIO NOTES OF VIVIAN CROSS

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 Circuit Court Reporter – 9th Judicial Circuit
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State v Arthur Field and Scott Pfeiffer
Case No. 13-CP-47-08 and 13-CP-47-09
Hearing of October 8, 2013
Before The Honorable Cordell Maddox

2

1
2 NOTE:

3 PRIOR HEARING FOR FIELD ON MAY 6, 2013

4 PRIOR HEARING PFIEFFER ON SEPTEMBER 18, 2013

5 (DEFENDANTS PRESENT)

6 THE COURT: Okay. We've got three
7 things that we need to do today. We need to
8 do the restitution issue with Mr. Pfeiffer.
9 Then we've got the Motion to amend the
10 sentencing sheets, which I will deal with.
11 Then we've got Mr. Field's sentencing.

12 I believe that we will first deal with
13 the amendment of the sentencing sheets.
14 There was a question from the Department of
15 Corrections about the previous sentence of
16 Mr. Pfeiffer. The sentence was ten years
17 suspended on the service of six years; the
18 first four of that to be incarcerated, and
19 the balance of two years to be home
20 incarceration. The reason I did it that way
21 was because that's the way that I've been
22 told that you have to do it for probation
23 purposes. Apparently the Department of
24 Corrections didn't completely understand
25 that. So I am going to redo the sentencing

State v Arthur Field and Scott Pfeiffer
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1 sheets on Mr. Pfeiffer to reflect that it
2 was ten years suspended to six, the first
3 four to be incarceration and the remaining
4 two to be home incarceration; all of which is
5 to run consecutive. Let me just double check
6 -- yeah, all to run consecutive. Do you all
7 agree with that?

8 MR. YARBOROUGH: Your Honor, I think
9 the first count of the Indictment 2013-GS-09,
10 Count 1, the conspiracy count, ----

11 THE COURT: Right, there was a second
12 sentence -- and it won't affect his time
13 served.

14 CREIGHTON WATERS: That is correct,
15 the conspiracy would be three years. Count
16 six would be the six/four/two and five. And
17 then count three would be consecutive, ten
18 suspended to five probation.

19 MR. YARBOROUGH: Your Honor, also on
20 the record, because I went through this with
21 the Department of Corrections. If there is a
22 questioning about the sentencing, your Order
23 was placed on the record. I can submit that.

24 THE COURT: That is not required. Let
25 me put it this way, if they've got a question

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1 then they need to call me. I don't have a
2 clue what they've done.

3 MR. YARBOROUGH: Okay.

4 THE COURT: Well, I will deal with
5 them. It's pretty clear what I ordered.
6 This is not the first time they've needed
7 clarification. Let me fill these out.

8 MR. YARBOROUGH: The first four years
9 was incarceration and the second part, the
10 last two years, would be home incarceration.
11 Yes, sir.

12 THE COURT: That takes care of the
13 amended sentencing sheets.

14 Now, what about Mr. Pfeiffer's
15 restitution?

16 CREIGHTON WATERS: Your Honor, if I
17 could interject just a minute. I could, of
18 course, take those amended sentencing sheets
19 and take them -- take them to the defense
20 table for Mr. Pfeiffer to sign those?

21 THE COURT: Sure.

22 CREIGHTON WATERS: Thank you, Your
23 Honor.

24 (AMENDED SENTENCING SHEETS SIGNED
25 BY DEFENDANT PFIEFFER)

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5

1 CREIGHTON WATERS: Thank you, Judge.

2 With regard to the restitution on Mr.
3 Pfeiffer, as I told Your Honor at the prior
4 proceeding, this is obviously not a case
5 where they just took the money and ran.

6 This is a case where the point was to
7 keep the loans serviced, continue to generate
8 fees and owner withdrawals, uh, and, uh, that
9 sort of thing.

10 In doing this, the total amount of loss
11 from this particular operation was about
12 thirty-nine million dollars (\$39 Million).
13 Of that, I believe about thirteen million
14 (\$13 Million) of that was -- however, for
15 mitigation calculations it was determined how
16 much actually ended up in the hands of Mr.
17 Pfeiffer, through the various ways through
18 which he received compensation, during the
19 operation of this scheme. In doing that we
20 came up with the figure of one million nine
21 thousand one hundred eighty-six dollars and
22 thirty-eight cents (\$1,009,186.38). I have
23 that broken down and I'd like to mark this
24 as Court's Exhibit 5 for purposes of Mr.
25 Pfeiffer's hearing. I have provided those

State v Arthur Field and Scott Pfeiffer
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1 figures to the defense. So that's the amount
2 that we have, put in his hands.

3 Now, the plea agreement that was signed
4 of course gave Mr. Pfeiffer credit for the
5 settlement agreement, the eight hundred and
6 forty thousand dollars (\$840,000) that was
7 recovered as a part of the malpractice action
8 in the related civil action.

9 So if you look at that particular amount
10 that Mr. Pfeiffer received minus that settle-
11 ment, we're looking at a net amount of one
12 hundred sixty-nine thousand, one hundred
13 eight-six dollars and thirty cents
14 (\$169,186.30).

15 So, those are -- Your Honor, those are
16 sort of the facts that are in play as far as
17 the restitution. It's my understanding that
18 they're not wanting to dispute, neither do
19 they -- they do have a reservation that they
20 would like to present to Your Honor on the
21 various factors under the statute.

22 THE COURT: All right. Yes, sir?

23 MR. YARBOROUGH: Your Honor, if the
24 Court pleases, I'd call Mr. Pfeiffer to --
25 do you want me to bring him around and swear

State v Arthur Field and Scott Pfeiffer
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1 him?

2 THE COURT: Yeah, just bring him up
3 here so that everybody can hear him.

4 (WITNESS TAKES STAND)

5 FREDERICK SCOTT PFEIFFER, having
6 been sworn to tell the truth, and nothing but
7 the truth, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. YARBOROUGH:

10 Q. Mr. Pfeiffer, you are currently in
11 the Department of Corrections?

12 A. Yes, I am.

13 Q. And did you enter a guilty plea
14 several weeks ago before this judge?

15 A. Yes, I did.

16 Q. As part of that sentence, were you
17 sentenced to incarceration?

18 A. I was.

19 Q. And also as part of that, you
20 prepared financial declarations which out-
21 lined how much money or assets that you
22 presently have?

23 A. I did.

24 Q. And is that financial declaration
25 fair and accurate as to your wherewithal or

State v Arthur Field and Scott Pfeiffer
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1 ability to pay the restitution outside the
2 malpractice insurance which you had?

3 A. Yes, it is.

4 Q. And do you have the ability to pay
5 any restitution?

6 A. No, I do not.

7 Q. Do you have any assets?

8 A. No, other than as are listed on that
9 form.

10 Q. Okay. Is there anything hidden,
11 anything that is not on this form?

12 A. No.

13 Q. And the form fairly and accurately
14 represents your financial ability to pay?

15 A. It does.

16 Q. And that ability is basically that
17 you don't have any more money outside of your
18 malpractice carrier?

19 A. I don't have and I am not earning
20 any money currently, as I am incarcerated.

21 MR. YARBOROUGH: I would ask that you
22 answer any questions that the attorney
23 general may have for you.

24 THE COURT: Mr. Waters.

25 CROSS EXAMINATION

State v Arthur Field and Scott Pfeiffer
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1 BY CREIGHTON WATERS:

2 Q. Mr. Pfeiffer, just so that we are
3 clear, you're affirming under oath that those
4 financial statements, marked as a court's
5 exhibit, fairly and completely represent your
6 financial status right now; is that correct?

7 A. As of the date that I prepared them,
8 that's correct.

9 Q. Okay. Has anything changed since
10 then? Any material change?

11 A. No material change, no.

12 Q. Any increase in the assets?

13 A. Certainly not.

14 Q. Okay. Just so that we are clear, as
15 well, do you have any interest in any asset,
16 any property or any account(s) that could be
17 obtained through conditional assignment of a
18 membership interest?

19 A. No, I do not.

20 Q. Do you have any assets, any
21 property, interest in account(s) or interest
22 in any money that is not reflected on those
23 forms; any interest, direct or indirect?

24 A. No, I do not.

25 Q. So there is no mechanism, whether it

State v Arthur Field and Scott Pfeiffer

10

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1 be through the various LLC's or the various
2 entities through which you could get an
3 interest in property or money by any sort
4 of legal mechanism that is not reflected in
5 this agreement.

6 A. That's correct, there are none.

7 CREIGHTON WATERS: Thank you very much,
8 Mr. Pfeiffer.

9 THE COURT: Anything else?

10 REDIRECT EXAMINATION

11 BY MR. YARBOROUGH:

12 Q. Mr. Pfeiffer, you did have mal-
13 practice insurance?

14 A. I did, yes.

15 Q. Do you know how much that mal-
16 practice insurance paid out in this case?

17 A. Eight hundred forty thousand dollars
18 (\$840,000).

19 Q. Is that the limit of your ability to
20 pay restitution?

21 A. Yes, it is.

22 Q. All right. Thank you.

23 CREIGHTON WATERS: Nothing further, Your
24 Honor.

25 THE COURT: All right. Mr. Pfeiffer,

State v Arthur Field and Scott Pfeiffer

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1 do you have a max-out date yet? The forms?

2 DEFENDANT PFEIFFER: Yes, I have.

3 THE COURT: What is that?

4 DEFENDANT PFEIFFER: It's June 3 --

5 three years and nine months from now.

6 THE COURT: Three years and a few
7 months?

8 DEFENDANT PFEIFFER: Yes, three years
9 and nine months.

10 THE COURT: I gotcha. Thank you.

11 DEFENDANT PFEIFFER: Yes, sir.

12 THE COURT: You may step down.

13 (WITNESS STEPS DOWN)

14 THE COURT: What I am hearing is that
15 basically you all agree on the amounts.
16 Whether you are agreeing happily or whole-
17 heartedly, that's the amount that we have
18 come to agree that he can pay. The issue is
19 whether or not he can pay now?

20 MR. WATERS: Yes, sir.

21 THE COURT: And for purposes that don't
22 have anything to do with this plea or this
23 situation, you want and need an Order that
24 says that he has no present ability to pay?

25 MR. YARBOROUGH: That's correct, Your

State v Arthur Field and Scott Pfeiffer
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1 Honor.

2 THE COURT: Okay.

3 MR. YARBOROUGH: Your Honor, just so
4 that the record is clear, there is no way
5 that he can pay. I think the Order correctly
6 reflects that Mr. Pfeiffer has no ability to
7 pay restitution at this time. I am sure that
8 he wishes that his malpractice carrier could
9 have paid the entire amount, but it maxed out
10 what they could pay.

11 MR. WATERS: Your Honor, I under-
12 stand their position but we think that it is
13 important that at least at some time Mr.
14 Pfeiffer has to cut a check for restitution
15 to the various noteholders and investors of
16 the Capital Investment Fund.

17 THE COURT: Okay. I've got enough
18 information to make a decision. As I said in
19 the back, I am going to review this. I will
20 let -- I am going to take it under advisement
21 and let -- I'll issue an Order within the
22 next day or two. I mean, I know the
23 parameters of what I'm going to do, as I told
24 you in the back.

25 The issue, quite frankly, is that I

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1 don't have any doubt that he cannot pay now.
2 In fact, I have no doubt that he has the
3 ability to pay now. My concern is issuing an
4 Order that will bind him and anyone else in
5 the foreseeable future in the event that he
6 had an asset that could go back to these
7 victims. So I've got to craft an Order that
8 gives me a little bit of supervision there.
9 I understand that y'all want to end it.
10 Everybody wants to end it. I don't know how
11 to do that without setting a date in the
12 future that I can review everything, or my
13 prede--, whoever follows behind me if I am
14 not here. But I'll let you know something.
15 I understand both of your issues there.

16 MR. WATERS: Thank you.

17 THE COURT: Okay. So that's all the
18 matters up to Mr. Field's sentencing, right?

19 MR. WATERS: All right, let's do
20 that then. Do we want to stand down briefly
21 and let Mr. Pfeiffer ---

22 THE COURT: He may want to stay.
23 Whatever you want to do.

24 MR. YARBOROUGH: Thank you, Your Honor.
25 We will stay.

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Charleston, South Carolina
January 5, 2014

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	2013-GS-47-00009
Frederick Scott Pfeiffer,	)	
	)	
Defendant	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	2013-GS-74-00008
Arthur M. Field,	)	
	)	
Defendant.	)	

ORIGINAL TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on July 9, 2014, before The Honorable J. Cordell Maddox, Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

S. Creighton Waters, Esq.,
Brian T. Petrano, Esq.,
Appearing for The State.

William G. Yarborough, III, Esq.,
Joseph Bradley Bennett, Esq.,
Appearing for Defendant Pfeiffer.

James Todd Rutherford, Esq.,
Appearing for Defendant Field.

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I-N-D-E-X

STATE OF SOUTH CAROLINA v. FREDERICK SCOTT PFEIFFER

CASE NO. 2013-GS-47-00009

STATE OF SOUTH CAROLINA v. ARTHUR M. FIELD

CASE NO. 2013-GS-47-00008

JULY 9, 2014

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E-X-H-I-B-I-T-S

IDENTIFICATION ENTERED

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(11:12 A.AM)

1
2
3 THE COURT: Okay; we're on the record, uh --
4 we have dual hearings here. First, let me say
5 this -- Louis, can you get somebody -- can you
6 buzz Richard to come turn this mic up a little?

7 Can you-all hear -- everybody hear me?

8 MR. RUTHERFORD: Yes, sir.

9 THE COURT: We've got a little bit of a
10 problem here because when the air conditioning
11 turns on, you can't hear. And we've spent a lot
12 of money to have speakers put in but for some
13 reason they're not on. So, I'll talk as loud as I
14 can. If you can't hear me, if you get to a point
15 where you can't, if you raise your hand I'll yell
16 if I have to. It probably won't be the only time
17 I yell today.

18 Um, we're here for the, uh, joint matter of
19 The State versus Pfeiffer and Field; is that
20 correct?

21 MR. WATERS: Yes, sir; Your Honor.

22 THE COURT: All right, we've got numerous
23 Motions. Let me just say this from the beginning,
24 because I'm not sure exactly why, but this case
25 has bothered me from the beginning. It is not

1 because of any actions taken by the parties or
2 their lawyers, but obviously what I'm trying to do
3 here is -- is two things. I'm trying to be fair
4 to the Defendants and the victims and The State;
5 and I'm also trying to work out a situation in
6 which the victims can get as much money back
7 during the probation period as, uh -- the most we
8 can. I mean, there's obviously a limit to it.

9 And what happened here, just so everybody
10 understands -- we got to get on the same page --
11 is that when Mr. Pfeiffer was sentenced I gave him
12 a substantial period of time followed by house
13 arrest. Subsequent to that, I sentenced
14 Mr. Fields (sic) to what, uh -- what I would
15 assume The State thought was too little and the
16 Defense thought was too much; that's just the way
17 it goes.

18 And -- and the operation of the Statute
19 regarding house arrest created a situation in
20 which Mr. Field served basically thirty-three days
21 in jail. And that struck me, quite frankly, as
22 unfair.

23 It's not anything that anybody in here did;
24 The State has done a great job presenting this,
25 you-all have done a great job defending your

1 clients. But, it seems to me that that relative
2 sentence of those two parties operated to be
3 somewhat unfair to Mr. Pfeiffer. That bothered
4 me. It didn't bother me from a legal perspective;
5 what I did was exactly within the realm of, um,
6 sentencing guidelines, such as they are. It
7 bothered because when I got up in the morning and
8 shaved I thought it was unfair. That's all it --
9 the only thing that started this is that I created
10 a situation in which I believed that it was
11 relatively unfair to one of the parties.

12 So, with that said, that's what we're doing
13 here today. And I had agonized over how to fix
14 this because the victims are entitled both to a
15 sentence that they feel punishes these parties
16 because they plead guilty; they're also -- the
17 victims are also entitled to a return of as much
18 money as possible during probation.

19 Hold on just a second, I don't want to --
20 this thing will scream when we turn it on.

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR
22 MICROPHONE ADJUSTMENT.)

23 (WHEREUPON, PROCEEDINGS CONTINUED.)

24 **THE COURT:** There you go. All right, can you
25 hear me better?

1 (ATTORNEYS AND GALLERY IN UNISON) Yes -- yes.

2 THE COURT: Okay; do I have to start over?
3 Let me just tell you, the problem is I thought
4 this was unfair. I have to look at myself in the
5 mirror. I mean, I've done this job for thirteen
6 year and I have spent less time sentencing people
7 to thirty-five years in prison because it was a
8 cut and dry situation, um, than I have on this
9 case. This is amorphous moving target. And when
10 you have two Defendants like this, you've got one
11 Defendant who is less culpable in my mind --
12 and that's Mr. Pfeiffer -- and you've got
13 one Defendant who is more culpable -- that's
14 Mr. Fields (sic), but the more culpable person who
15 cooperates with The State and spends a good bit of
16 time helping them, therefore his sentence is less,
17 that seemed to me to operate in an unfair way for
18 Mr. Pfeiffer.

19 That's what happened. You know, people can
20 say other things happened; that's what happened.
21 I'm concerned about the fairness.

22 So, with that said, I want to take up, um,
23 Mr. Fields (sic) sentencing first. And let me
24 again make sure that I understand what happened,
25 because The State has filed a Motion asking me to

1 probably contrary to the way the statute is
2 written, but it does need to be, uh -- greater
3 detail needs to be set forth.

4 But -- so, I'm back in the situation where I
5 look at myself and shave and know you're right but
6 I basically can't do anything because of the way
7 the statute -- the ambiguity -- ambiguity of the
8 statute.

9 All right, so I'm gonna leave that the way it
10 is -- I don't like it -- and then we're gonna deal
11 with Mr. Field's probation last, because that,
12 quite frankly, is what I'm trying to get to here.

13 All right, let me go to Mr. Pfeiffer. Here's
14 the problem with Mr. Pfeiffer. Mr. Pfeiffer got a
15 sentence that was fairly harsh and -- and again,
16 the problem I have is the operation of the way
17 this worked is that I had to look at Mr. Pfeiffer
18 sitting there basically with his life ruined and
19 in shambles, and his family in shambles, and then
20 sentence Mr. Fields (sic) -- basically here's the
21 problem. I'm trying to -- I'm trying to make --
22 I'm trying to shorten this 'cause I don't think
23 everybody wants to stay through it.

24 Mr. Fields (sic) got less time than I
25 intended. The operation of the relative fairness

1 of this is that Mr. Pfeiffer probably got more
2 time than he should. I mean, I'm sure that there
3 are certain victims that would like me to take him
4 out on I-85 and drag him behind a car; I can't do
5 that. But, you know, again, I've got to be true
6 to myself, and that's -- and the law, and that's
7 what I'm trying to do.

8 Now, tell me exactly what Mr. Pfeiffer's
9 sentence was, 'cause you-all have the records, I
10 don't. They're spread over four counties.

11 MR. WATERS: Your Honor, he got, uh -- he
12 got, uh, on count six, which was a securities
13 fraud, he got ten years, uh, upon the service of
14 six years, he would have five years' probation.
15 And Your Honor, uh, had -- um, also allowed that
16 the last two years of that six years could be---

17 THE COURT: House arrest.

18 MR. WATERS: ---house. Uh, he got a, uh, on
19 count three, which is a securities fraud charge,
20 he got ten years, uh, suspended on the service of
21 five years' probation; that was consecutive.

22 All right, and then he got a concurrent three
23 years on count one, which is a conspiracy. The
24 way that, uh, that S-C-D-C is calculating that is
25 they essentially have the actu- -- the active four

1 years' incarceration---

2 THE COURT: Okay.

3 MR. WATERS: ---for which he's been accruing
4 good time. And I know there was a represent- --
5 representation made that he had four years to go.
6 He's actually got a max out in September of 2015;
7 I just looked up on the web site. Additionally,
8 he is a minimum security person.

9 THE COURT: Is that right, Mr. Pfeiffer? You
10 would know more better (sic) than me. Is it 2015?

11 MR. PFEIFFER: Yes, sir; the -- when we came
12 the first time, what he's talking about, my max
13 out time was four years because S-C-D-C had put
14 three years---

15 THE COURT: I got you.

16 MR. PFEIFFER: ---consecutive to the six and
17 they thought I had nine years. But we fixed that.

18 THE COURT: Again, we're back to the way they
19 calculate. So---

20 MR. WATERS: And Your Honor, we actually
21 contacted S-C-D-C because they were doing the, uh,
22 the conspiracy first and -- and then starting on
23 securities fraud. And we said no, I don't think
24 that's what the Judge intended. So, I mean, we
25 were---

1 THE COURT: Yeah, and I appreciate that.

2 MR. WATERS: ---we were actually -- wanted to
3 make sure that they had it accurate in -- in that
4 regard. But---

5 THE COURT: So he got ten suspended to
6 six/five and then ten suspended to five
7 consecutive.

8 MR. WATERS: That's correct.

9 MR. YARBOROUGH: Your -- Your Honor, I think
10 you could fix this pretty easy. I mean, you
11 could -- you could give him the opp- -- the -- the
12 fifteen months that it happened with Field and --
13 and increase that on his house arrest. Let the
14 Department, uh -- uh, determine how that spins out
15 on his time. You're just increasing from that
16 two year potential for a house arrest to, uh,
17 thirty-seven months and -- and then -- and your --
18 that -- that way -- you didn't -- you didn't know
19 what was gonna happen with Field---

20 THE COURT: I didn't.

21 MR. YARBOROUGH: ---and -- and -- and -- and
22 so with Pfeiffer you could do the same with him
23 and it would be fair. We could walk away from
24 this thing and I think every -- everybody -- you
25 can look in the mirror and say you did something

1 that was -- that was -- was fair. I think
2 Mr. Pfeiffer could live with that. I -- I --
3 hopefully everybody can live with it and he can
4 get out.

5 THE COURT: Well do you understand that when
6 he gets out he's gonna have to start paying them?

7 MR. YARBOROUGH: He's gonna have to start
8 paying money back.

9 THE COURT: And that's really where I am; I
10 want these people paid back---

11 MR. YARBOROUGH: Right.

12 THE COURT: ---to the extent that we can make
13 these two guys pay it back in five years.

14 What would be the maximum he could get on the
15 securities fraud?

16 MR. WATERS: They were ten-year charges
17 apiece. So he had -- he had ten and ten and five
18 I believe. And so I think that -- I think it was
19 twenty; he was facing twenty.

20 THE COURT: Yeah.

21 MR. WATERS: 'Cause we -- we agreed as a
22 negotiated term that the conspiracy would be
23 concurrent. So he was facing -- he -- he had ten
24 and ten and then the five and---

25 THE COURT: All right, you-all -- you-all

1 approach a minute.

2 MR. WATERS: Yes, sir.

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR
4 A BENCH CONFERENCE, OFF THE RECORD.)

5 (WHEREUPON, PROCEEDINGS CONTINUED.)

6 THE COURT: All right. All right, we're
7 gonna take a break. They're gonna talk to their,
8 uh, client and explain what I'm trying to do.
9 Again, just so everybody understands, I am, with
10 Mr. Pfeiffer, trying to work out a situation --
11 and you-all can take him back there if you want to
12 talk to him.

13 MR. YARBOROUGH: Thank you, Your Honor.

14 THE COURT: But look, before you go, I'm
15 trying to work out a situation in which more time
16 is hung over Mr. Pfeiffer's head if he violates
17 his probation and then knock off a year of actual
18 sentence because I want him out paying. I mean, I
19 don't think that him being in jail helps get this
20 money back.

21 But again, I don't want to also send a
22 message that you can just, uh, take money and...

23 We'll work it out.

24 MR. RUTHERFORD: Your Honor, in addition to
25 that, is there any way that Your Honor can order

1 restitution Mr. Pfeiffer makes and that
2 Mr. Field makes go directly to the victims?

3 THE COURT: We're gonna deal with -- I'm
4 gonna do the restitution, uh---

5 MR. RUTHERFORD: Okay.

6 THE COURT: ---as a part of the probation
7 last. I mean, we got to get to that point. So,
8 you-all can take five minutes. I won't start for
9 five minutes, so if you need to go to the
10 restroom, now is a good time.

11 (WHEREUPON, PROCEEDINGS RECESSED AT
12 11:47 A.M.)

13 (WHEREUPON, PROCEEDINGS RESUMED AT
14 12:00 P.M. WITH A BENCH CONFERENCE, OFF THE
15 RECORD.)

16 (WHEREUPON, PROCEEDINGS CONTINUED.)

17 THE COURT: Okay, we're back on the record,
18 uh, with Mr. Pfeiffer. We've had an off the
19 record discussion about how best to resolve this
20 problem and quite frankly what I'm trying to do is
21 increase the amount of time hanging over his head
22 in the event that he doesn't pay the amount owed,
23 which is a-hundred-and-sixty-nine-something. Give
24 him one year extra credit in the middle so that
25 his max-out time -- in other words, he's out

1 earlier to start paying. At some point, punishing
2 him is beating a dead horse. We got to get to an
3 amount where we're paying.

4 So the only way I know to do that, because
5 you-all's agreement -- and this is sort of a
6 moving part situation -- because the agreement was
7 that the conspiracy would be run consecutive -- I
8 mean, uh, concurrent and not consecutive, and
9 I think that was basically the only agreement
10 you-all had, right?

11 **MR. WATERS:** That's correct, Your Honor.

12 **THE COURT:** Yeah. So, everything else is my
13 decision. I think, in order to get to the point
14 where I am hanging twenty-three years over his
15 head instead of twenty and reducing his actual
16 time served by one year, is to run the conspiracy
17 consecutive but give him no time for it. In other
18 words, what I'm looking at is doing ten suspended
19 to three and then five years' probation,
20 consecutive to ten suspended to two and five
21 years' probation, consecutive to five sus- -- or,
22 five, suspended to five years' probation. Run 'em
23 all consecutive, give him credit for the time he's
24 served, plus the two years that were on the back
25 end of the house arrest.

1 Now, you-all can talk about it, but I mean,
2 I'm trying to -- I'm trying to get to that point.

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR
4 A CONFERENCE, OFF THE RECORD.)

5 (WHEREUPON, PROCEEDINGS CONTINUED.)

6 MR. YARBOROUGH: No, sir, Your Honor.

7 THE COURT: What's you-all's concern? I
8 mean, you -- might as well just---

9 MR. YARBOROUGH: He's just -- he's just
10 trying, um, to figure out how much that actually
11 is gonna cut off his -- you know, his sentence. I
12 mean, that -- that---

13 THE COURT: And -- and that's the problem; I
14 mean, that's where we all get in this problem. We
15 send things out thinking they're gonna be A, they
16 come back to us as C.

17 MR YARBOROUGH: It---

18 THE COURT: He's concerned that that's gonna
19 actually increase the time that you serve?

20 MR. YARBOROUGH: Right; and -- and so I think
21 that if -- if -- if The Court would -- would --
22 would just cut the sentence from -- to four
23 years -- six to four, and then with the last two
24 being on house arrest, and then run the other
25 stuff consecutive, then you -- you would be -- you

1 would -- you would accomplish the same thing
2 you're trying to do now.

3 It's just -- but -- but by doing the two
4 sentences---

5 **THE COURT:** All right, what about if I did
6 ten suspended -- and this -- I mean, obviously
7 we're not auctioning here, but I -- we're all
8 trying to get to the same point. Ten suspended to
9 five then five years' probation, run that
10 consecutive to ten suspended to five years'
11 probation, run that consecutive to three suspended
12 to five years' probation. You got twenty-three
13 years hanging over your head, you got five years
14 actual service, the rest of it's probation and
15 consecutive.

16 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR
17 A CONFERENCE, OFF THE RECORD.)

18 (WHEREUPON, PROCEEDINGS CONTINUED.)

19 **MR YARBOROUGH:** And -- and two years on house
20 arrest?

21 **THE COURT:** Right; that -- yeah, that's not
22 gonna change. I'm trying to get to the point
23 where he is out to pay this money back and that
24 his sentence is more in line with Mr. Field's,
25 which is what's bothering me. Mr. Fields (sic)

1 got off light and he got off light because of the
2 way -- for a lot of reasons but most, you know --
3 you know, I did what I did.

4 So, I think that if I do ten suspended to
5 five and then five years' probation, don't give
6 him time on the other two charges but run them
7 consecutive, I think he has twenty-three years
8 hanging over his head, five years served, two
9 years home incarceration at the end, and credit
10 for time served.

11 MR. YARBOROUGH: Yes, sir.

12 THE COURT: Now again, my experience with
13 Mr. Pfeiffer, you know better than anybody how
14 that's gonna affect you. I just -- I don't want
15 to -- we already came out of one hearing or
16 several hearings with something that nobody
17 understood -- I didn't -- and I don't want to do
18 that again. But, I don't think that's gonna
19 change it.

20 MR. YARBOROUGH: I think...

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR
22 A CONFERENCE, OFF THE RECORD.)

23 (WHEREUPON, PROCEEDINGS CONTINUED.)

24 MR. BENNETT: Sorry, Your Honor.

25 THE COURT: That's okay.

1 MR. BENNETT: Just want to confirm that the
2 two years comes out of the five.

3 THE COURT: Right.

4 MR. YARBOROUGH: That's -- yeah.

5 MR. BENNETT: So it's three years---

6 THE COURT: Basically, I'm knocking from six
7 to five and giving him two years credit but I'm
8 hanging more time over his head. And I want him
9 to be out to pay the money back. So---

10 MR. YARBOROUGH: Thank you.

11 THE COURT: And just for the record, The
12 State is opposed to this. I mean, I'm -- I'm
13 gonna put on the record, because I know we're all
14 tired, but The State's opposed to me altering this
15 and it -- and I understand why.

16 All right, if there's no objection, I'll do
17 that with Mr. Pfeiffer now. Any objection? I
18 mean, other than you-all being opposed to me
19 altering that sentence?

20 MR. WATERS: I mean, Your Honor I think has
21 expressed what you're intending to do, and I think
22 that that's the way it's gonna -- gonna work, so,
23 uh, but as you -- as you---

24 THE COURT: I'm always trying to listen.

25 MR. WATERS: ---as -- as you have pointed

1 out, um---

2 **THE COURT:** Well, I understand that you-all
3 don't think I should alter it downward, and I --
4 and I -- again, I'm just trying, quite frankly, to
5 be as completely fair to everybody -- including
6 the victims -- as possible. But if I was you I
7 wouldn't want me to do it either, and if I was
8 Mr. Pfeiffer's attorneys I would expect more.
9 So...

10 All right, if you-all will -- Mr. Pfeiffer,
11 you-all come around and we'll do the colloquy and
12 we'll just amend it.

13 (DEFENDANT FORWARD.)

14 **MR. PARKS:** Mr. Pfeiffer, if you would, place
15 your left hand on the Bible, raise your right
16 hand.

17 (WHEREUPON, **FREDERICK SCOTT PFEIFFER** WAS DULY
18 SWORN AND TESTIFIED AS FOLLOWS:)

19 **MR. PARKS:** State your full name.

20 **MR. PFEIFFER:** Frederick Scott Pfeiffer.

21 **MR. PARKS:** Thank you, sir.

22 **THE COURT:** All right, Mr. Pfeiffer, you've
23 been, uh, here during all of these hearings;
24 you've been here today watching us toward --
25 toward -- go through these emaciations. Do you

1 understand what I'm trying to do here?

2 MR. PFEIFFER: I believe so.

3 THE COURT: What I'm trying to do is -- is I
4 believe that your sentence, as compared to
5 Mr. Field's, was too severe on the amount of time
6 you serve. Um, I'm not sure that it's too severe
7 in a vacuum, but it's just not fair in the way it
8 worked out and I'm concerned about that.

9 So what I'm trying to do here is alter your
10 sentence so that you have five years active time
11 but you have -- basically you have twenty years
12 hanging over your head; you'll have an additional
13 three, which is significant quite frankly. So you
14 understand what I'm trying to do?

15 MR. PFEIFFER: Yes, sir.

16 THE COURT: Do you have any objection to me
17 doing that?

18 MR. PFEIFFER: No, sir.

19 THE COURT: Okay. Um, you have already plead
20 guilty; all I'm doing, basically, is just altering
21 the sentencing. Do you need for me to go through
22 all of your waiver of Constitutional rights?

23 MR. PFEIFFER: No, sir.

24 THE COURT: And you understand that you have
25 to waive any and all Constitutional rights that

1 you may have, including your right to remain
2 silent, your right to put up a defense, your right
3 to confront the witnesses who would testify
4 against you, and your right to a jury trial if you
5 want me to do this? Do you understand that?

6 MR. PFEIFFER: Yes, sir.

7 THE COURT: And you're not taking any kind of
8 medication or a prescription medication now,
9 right?

10 MR. PFEIFFER: I'm not.

11 THE COURT: And you haven't had any drugs or
12 alcohol in the last twenty-four hours?

13 MR. PFEIFFER: Uh, no.

14 THE COURT: And have you had plenty of time
15 to speak with your lawyer about this issue?

16 MR. PFEIFFER: I have.

17 THE COURT: And do you have any questions for
18 them now or any questions for me?

19 MR. PFEIFFER: Um, no, I don't think so.

20 THE COURT: Okay. All right, and you will
21 continue your position that you plead guilty to
22 these three charges, is that correct?

23 MR. PFEIFFER: Correct.

24 THE COURT: So you want to plead guilty to
25 those charges today?

1 **MR. PFEIFFER:** I -- I have so claimed.

2 **THE COURT:** Okay. And nothing has changed,
3 is that correct?

4 **MR. PFEIFFER:** Nothing's changed, Your Honor.

5 **THE COURT:** All right, I'm gonna -- I'm gonna
6 accept the plea again. I'm -- I'm bending over
7 backwards to make sure that, uh, the waiver of
8 Constitutional rights is in there. And again,
9 Mr. Pfeiffer, I've got some concern about the way
10 this fell out.

11 Um, and what I'm gonna do is I'm gonna amend
12 your sentence so that on the first charge it's ten
13 years suspended to five years' service, uh, and
14 then five years' probation. And I'm backing off
15 the five years with two years house arrest that I
16 gave you originally. The net effect of this is it
17 backs off one year of your active time.

18 And then the other two charges, um, one is
19 ten years suspended to five years' probation; run
20 that consecutive. And on the conspiracy it's
21 three years suspended to five years' probation;
22 run that consecutively.

23 I'm gonna retain jurisdiction of this --
24 against my better judgment, but I'm gonna retain
25 jurisdiction, uh, until Department of Corrections

1 has calculated this. Because, the worst case
2 scenario is that he goes back and they've got some
3 other way of calculating it.

4 So, um, I would ask them as quickly as
5 possible to make sure that this -- the net effect
6 on this is not that he does more time. That is
7 not my intention. Okay?

8 All right now, the other thing is, we've had
9 some discussions -- and again, I'm trying to wrap
10 this into a ball so we all don't have to come
11 back. We had discussions about your restitution,
12 and the amount that, uh, I understand that The
13 State believes you owe is a hundred-and-sixty-nine
14 thousand some-odd dollars, and that's the total
15 amount that they calculate in their, uh -- minus
16 the malpractice payment of a-hundred-and -- eight
17 hundred and forty. So, what is that -- do you
18 have that exact amount?

19 **MR. WATERS:** Your Honor, uh, we did a
20 calculation of the actual money that went to
21 Mr. Pfeiffer by way of either direct money,
22 manager fees, uh, legal fees, um, other personal
23 expenses through all the various layer of entities
24 that these two individuals constructed to defraud
25 these people out of, uh, all this money.

1 Uh, the amount that Mr. Pfeiffer and his law
2 firm put into their pocket was one million, nine
3 thousand, one hundred and eighty-six dollars and
4 thirty-eight cents. Uh, there was a recovery that
5 was paid, uh, by the malpractice insurer to the,
6 um, receiver of eight hundred and forty thousand
7 dollars, and the remainder is one hundred and
8 sixty-nine thousand, one hundred and eighty-six
9 dollars and thirty cents.

10 **THE COURT:** All right, now I understand we --
11 again, in trying to wrap this up, we've had some
12 discussions off the record. There is some
13 disagreement on Mr. Pfeiffer's part that that is
14 the correct amount owed. I've given an indication
15 that I believe that probably is the correct
16 amount. Do you-all have any issue, other than
17 what you've previously raised?

18 **MR. YARBOROUGH:** Not -- not oth- -- other
19 than what we previously raised, Your Honor.
20 And -- and I -- my understanding is that your
21 ruling is based on that finding as you've looked
22 at it and you think that -- that even with
23 Mr. Pfeiffer -- Pfeiffer not having the ability to
24 pay at this time and -- and based on what they
25 paid out that it's a hundred and sixty-nine

1 thousand is what you're finding.

2 **THE COURT:** A hundred and sixty-nine
3 thousand, one hundred and eighty-six dollars and
4 thirty-eight cents.

5 **MR. YARBOROUGH:** And that's your ruling.

6 **THE COURT:** That's my ruling.

7 **MR. YARBOROUGH:** Okay.

8 **THE COURT:** And then, once he gets out, we're
9 gonna have to -- somebody, me or another judge --
10 is gonna have to calculate what is the appropriate
11 monthly amount so that if he fails to pay there's
12 a willfulness there. But that's somewhere down
13 the road.

14 I think what this does is gets him back a
15 year early to his family and lets him start paying
16 this money back. And if he has the ability to pay
17 that back, I will feel better because then he has
18 rid himself of this and can go on and live his
19 life. And then I'm still dealing with the
20 victims; that's what I'm trying to do.

21 **MR. YARBOROUGH:** I mean -- I mean, it --
22 thank you, Your Honor.

23 **THE COURT:** Okay. All right, so I'm gonna
24 rule that a hundred and sixty-nine thousand, one
25 hundred and eighty-six dollars and thirty-eight

1 cents is owed in restitution and the payment of
2 that will be dealt with once Mr. Pfeiffer is
3 released. Okay?

4 MR. YARBOROUGH: Yep.

5 THE COURT: Now, I need you to find out, as
6 soon as possible, how the Department of
7 Corrections is gonna calculate this.

8 MR. YARBOROUGH: Okay, and -- and -- and we
9 can come back to you with -- with some kind of --
10 if we need to change something to what you just
11 did we'll get it---

12 THE COURT: That's what I'm saying. I'm
13 gonna retain jurisdiction because I don't want him
14 to go back and then to come out with some out of
15 the blue calculation. Quite frankly, I don't want
16 another Field situation where they come back with
17 tremendous amount of credit.

18 MR. YARBOROUGH: Okay.

19 THE COURT: Okay.

20 MR. BENNETT: Thank you, Judge.

21 THE COURT: All right; thank you, sir.

22 Okay, let's go to Mr. Field. I know that,
23 uh, you all have just a couple of hearings. We've
24 got to deal with Mr. Fields (sic) and the
25 restitution amount. And this has to do with the

1 probation.

2 (TO DEFENDANT PFEIFFER LEAVING COURTROOM.)

3 THE COURT: Good luck to you.

4 MR. BENNETT: Thank you, Judge.

5 THE COURT: Um, and because time is short and
6 obviously you all have other things you need to
7 do, I'm gonna try to summarize this and you-all
8 can tell me where I'm wrong.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR
10 A CONFERENCE, OFF THE RECORD.)

11 (WHEREUPON, PROCEEDINGS CONTINUED.)

12 THE COURT: All right, um, just for the
13 record, on -- in regard to Arthur M. Field and his
14 probation, what amount do you believe that
15 Mr. Fields (sic) owes?

16 MR. NETTLES: I'm sorry, I couldn't hear.

17 THE COURT: What amount does he owe?
18 Mr. Fields (sic)?

19 MR. NETTLES: According to our records when
20 this report was issued, uh, the remaining balance
21 due is three million, four hundred forty-eight
22 thousand, one hundred and nineteen dollars and
23 ninety cents.

24 THE COURT: All right, and how much has he
25 paid toward that?

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF ANDERSON)

4
5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS
8 A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE
10 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
11 COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH
12 CAROLINA, ON THE 9th DAY OF JULY 2014.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

15
16
17
18
19
20
21
22 _____
23 VIVIAN H. CROSS, COURT REPORTER

24 TENTH CIRCUIT AT LARGE

25 AUGUST 10, 2015

(RESENT: FEBRUARY 1, 2016)

FILED

JUN 19 2013

STATE GRAND JURY OF SOUTH CAROLINAJAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

Case No. **2013GS 47 097**

v.

**INDICTMENT FOR CONSPIRACY
AND SECURITIES FRAUD**

FREDRICK SCOTT PFEIFFER,

Defendants.

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on June 19, 2013, the State Grand Jurors present upon their oath and charge as follows:

COUNT ONE
CRIMINAL CONSPIRACY
(S.C. Code Ann. § 16-17-410)

That FREDRICK SCOTT PFEIFFER, Arthur M. Field, and other persons both known and unknown to the Grand Jury, in Pickens County, from on or about some time in September 2001, to on or about some time in February 2013, did wilfully, unlawfully, and feloniously unite, combine, conspire, confederate, agree and have a tacit understanding or agreement between two or more persons, for the purpose of accomplishing an unlawful object or lawful object by unlawful means, including but not limited to securities fraud, forgery, and other crimes involving the business activities and actions of Capital Investment Funding, LLC ("CIF"), Cosimo, LLC, Monmouth Financial Group, Ltd, Bolingbroke United (England) Ltd. ("Bolingbroke"), and other related entities. All in violation of Section 16-

17-410, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

Against the peace and dignity of this State and contrary to the law in such case made and provided.

COUNT TWO
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

That FREDRICK SCOTT PFEIFFER, in Pickens County, from on or about March 6, 2002 until on or about January 15, 2008, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, LLC ("CIF"), directly or indirectly, did willfully make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; to wit:

The CIF Prospectuses did not disclose to South Carolina investors that Elliot Salzman, the former President and CEO of CIF's parent company Lancaster Resources, Incorporated ("LRI"), and also the former Director and co-Manager of CIF, had been removed from those entities for improper financial transactions with LRI's money that came primarily from CIF, that as a result of Salzman's misconduct sizeable sums of LRI's money had been lost; and that CIF was continuing to do business with entities involving Elliot Salzman.

All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

Against the peace and dignity of this State and contrary to the law in such case made and provided.

COUNT THREE
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

That FREDRICK SCOTT PFEIFFER, in Pickens County, from on or about March 17, 2003 until on or about March 21, 2006, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, LLC ("CIF"), directly or indirectly, did willfully make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; to wit:

The CIF Prospectuses failed to adequately disclose the true nature of the interests in Cosimo and that the interest of Arthur M. Field, the principal of CIF and PFEIFFER's partner in Cosimo, was through the use of Bolingbroke and fictitious names such as "Henry Rex".

All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, resulting in a loss to investors of twenty

thousand dollars (\$20,000) or more, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

Against the peace and dignity of this State and contrary to the law in such case made and provided.

COUNT FOUR
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

That FREDRICK SCOTT PFEIFFER, in Pickens County, from on or about March 19, 2004 until on or about January 15, 2008, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, LLC ("CIF") directly or indirectly, did willfully make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; to wit:

The CIF Prospectus fails to adequately disclose the issue, as expressed by Arthur M. Field and PFEIFFER as well as opinion of counsel to the parent of CIF, that CIF potentially had significant civil and criminal liability contingent or otherwise for lack of compliance with the Intrastate Offering Exemption of the Federal securities laws.

All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation

of the securities laws, and such conduct having not been authorized by law.

COUNT FIVE
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

That FREDRICK SCOTT PFEIFFER, in Pickens County, from on or about November 6, 2006 until on or about January 15, 2008, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did willfully make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; to wit:

PFEIFFER and Arthur M. Field concealed from investors CIF's true position with regard to its regulatory problems and Lancaster Resources, Incorporated's ("LRI") default by sending CIF funds to LRI and its president so that LRI could make its principal and interest payments.

All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

COUNT SIX
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

That FREDRICK SCOTT PFEIFFER, in Pickens County, from on or about some time in September 2001 until on or about February 15, 2013, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, LLC, directly or indirectly, did willfully engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person, to wit:

As co-manager along with Arthur M. Field of Cosimo, LLC, the function of which was to make loans with investor funds provided to Capital Investment Funding, LLC ("CIF"), engaging in commercially unreasonable business practices and transactions in order to continue to generate profits, fees, and other monies for himself, his business entities, and his law firm, to the detriment of Cosimo's ability to repay the money it received from CIF.

All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

Against the peace and dignity of this State and contrary to the law in such case made and provided.

A. TRUE Bill

Donald F. Smith
FOREPERSON

Alan Wilson
ALAN WILSON (scw) by Jm.
ATTORNEY GENERAL

FILED

JUN 19 2013

JAMES A. PARKS
CLERK, STATE GRAND JURY**STATE GRAND JURY OF SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)

CASE NO. SGJ2008-0189

VS.)

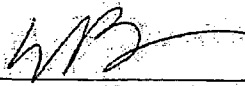
2013GS 47 09

FREDRICK SCOTT PFEIFFER,)

VENUE ORDERDEFENDANT.)
_____)

The State Grand Jury of South Carolina returned a True Bill of Indictment in the above case on June 19, 2013. The Indictment is within the authority of the State Grand Jury and is otherwise in accordance with the provisions of the State Grand Jury Act, found in S.C. Code Ann. §§14-7-1600 to -1820 (Law. Co-op. 1976). Venue is appropriate under South Carolina law in the County of Pickens. Accordingly, it is hereby

ORDERED that the instant Indictment be returned to Pickens County for prosecution by the Attorney General or his designee.


 DEANDREA G. BENJAMIN
 FIFTH JUDICIAL CIRCUIT
 PRESIDING JUDGE
 STATE GRAND JURY OF SOUTH CAROLINA

Columbia, South Carolina

June 19, 2013

FILED

JUN 19 2013

STATE GRAND JURY OF SOUTH CAROLINAJAMES R. FARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

Case No. **2013GS 47 107**

v.

**INDICTMENT FOR FORGERY,
PERJURY AND FALSE SWEARING**

FREDRICK SCOTT PFEIFFER,

Defendants.

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on June 19, 2013, the State Grand Jurors present upon their oath and charge as follows:

COUNT ONE
FORGERY
(S.C. Code Ann. § 16-13-10)

That FREDRICK SCOTT PFEIFFER, in Greenville County, on or about some time in March of 2003, did wilfully, unlawfully, and feloniously, cause and procure to be falsely made, forged, or counterfeited any writing or instrument of writing; with an intention to defraud any person; to wit:

PFEIFFER caused a check for \$1,150,000, issued by the South Carolina Department of Transportation ("DOT") as compensation for condemnation of land owned by Credo Land Holdings, LP, to be endorsed with the fictitious name "Henry Rex" for Bolingbroke United (England) Ltd. as a mortgagee, for the purpose of hiding the interests in and control of in Bolingbroke.

All in violation of Section 16-13-10(A)(1) & (B)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and involving an amount of the forgery ten thousand dollars or more; and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

Against the peace and dignity of this State and contrary to the law in such case made and provided.

COUNT TWO
PERJURY
(S.C. Code Ann. § 16-9-10)

That FREDRICK SCOTT PFEIFFER, in Greenville County, on or about September 1, 2004, did wilfully give false, misleading, and incomplete testimony under oath in a judicial proceeding in this State, to wit:

PFEIFFER testified that he did not know the owner of Bolingbroke United (England) Ltd ("Bolingbroke") personally, when in fact he did know the actual owner and beneficial owner personally, as well as that "Henry Rex" was a fictitious person created to hide the identity of interests in and control of Bolingbroke.

All in violation of Section 16-9-10(A)(1) & (B)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended; and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

Against the peace and dignity of this State and contrary to the law in such case

made and provided.

COUNT THREE
FALSE SWEARING
(S.C. Code Ann. § 16-9-30)

That FREDRICK SCOTT PFEIFFER, in Greenville County, on or about April 12, 2011, did wilfully and knowingly swear falsely in taking any oath required by law that is administered by a person directed or permitted by law to administer such oath, to wit:

PFEIFFER testified falsely when he stated "I don't know" when asked who "Henry Rex" is, when in fact he knew that "Henry Rex" was a fictitious person created to hide interests in and control of Bolingbroke United (England) Ltd ("Bolingbroke").

All in violation of Section 16-9-30, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended; and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

Against the peace and dignity of this State and contrary to the law in such case made and provided.

A. T. R. V. E. Bill

[Signature]
FOREPERSON

A. Dan Wilson
ALAN WILSON (scw) By J. M. S.
ATTORNEY GENERAL

FILED

JUN 19 2013

STATE GRAND JURY OF SOUTH CAROLINAJAMES H. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA)

VS.)

FREDRICK SCOTT PFEIFFER,)

DEFENDANT.)
_____)

CASE NO. SGJ2008-0189

2013GS 47 10th**VENUE ORDER**

The State Grand Jury of South Carolina returned a True Bill of Indictment in the above case on June 19, 2013. The Indictment is within the authority of the State Grand Jury and is otherwise in accordance with the provisions of the State Grand Jury Act, found in S.C. Code Ann. §§14-7-1600 to -1820 (Law. Co-op. 1976). Venue is appropriate under South Carolina law in the County of Greenville. Accordingly, it is hereby

ORDERED that the instant Indictment be returned to Greenville County for prosecution by the Attorney General or his designee.


 DEANDREA G. BENJAMIN
 FIFTH JUDICIAL CIRCUIT
 PRESIDING JUDGE
 STATE GRAND JURY OF SOUTH CAROLINA

Columbia, South Carolina

June 19, 2013

FILED

SEP 18 2013

PLEA AGREEMENT**JAMES R. PARKS
CLERK, STATE GRAND JURY**

(1) **Plea:** Fredrick Scott Pfeiffer agrees to plead guilty to, and the State agrees to accept a plea of guilty to, Counts One (Conspiracy), Three (Securities Fraud \$20,000 or more), and Six (Securities Fraud \$20,000 or more), as set forth in Indictment 2013-GS-47-09. It is agreed as a negotiated term of this plea that the sentence given on Count One (Conspiracy) will be concurrent to the sentences given on the Securities Fraud Counts (Three and Six).

This plea agreement, if consummated through sentencing and restitution, will resolve Mr. Pfeiffer's criminal liability for South Carolina securities fraud crimes, and state crimes related to securities fraud, during and related to Mr. Pfeiffer's involvement with Capital Investment Funding, LLC ("CIF"), and Cosimo, LLC. It does not resolve any state or federal tax liability nor any criminal liability in jurisdictions other than the State of South Carolina. This Agreement in no way limits or affects Mr. Pfeiffer's potential exposure to further criminal prosecution by the South Carolina Attorney General's Office, any Solicitor's Office in the State of South Carolina, or the United States Attorney for conduct which is not a basis for his indictment and criminal prosecution by the State Grand Jury of South Carolina.

Upon Mr. Pfeiffer entering a plea as set forth above and herein and its acceptance by the trial court, and upon consummation of the plea through sentencing and restitution, the State within a reasonable time will dismiss the remaining counts in Indictments 2012-GS-47-08, 2013-GS-47-09, and 2013-GS-47-10.

(2) **Time:** It is the intent of the parties that time is of the essence, and the actual plea of guilty in this matter must be accomplished by September 30, 2013. Unless the parties agree in writing to extend this time limit, failure to consummate a plea of guilty by this time shall render this agreement null and void. Once the plea of guilty is entered by Mr. Pfeiffer, it may not be withdrawn for any reason.

(3) **Sentencing:** Sentencing is to occur the same day as the plea; however, it may be deferred by written agreement of both parties, or be deferred by Order of the trial court. The State retains the right to call the order of plea and/or sentencing for Mr. Pfeiffer and any codefendant.

(4) **Restitution:** Additionally, at or within a reasonable time of the sentencing proceeding, a restitution hearing will be held to determine the amount of any restitution Mr. Pfeiffer owes to the victims in this matter. Nothing in this provision prevents the parties from agreeing as to the restitution amount prior to or at any such hearing. Mr. Pfeiffer shall get credit for any amounts finally paid to the CIF Receiver through the settlement in CIF's civil malpractice action against Mr. Pfeiffer (2011-CP-23-7359). Mr. Pfeiffer agrees that he will agree to and facilitate the release of the remaining \$300,000 in settlement funds to the Receiver for CIF. Mr. Pfeiffer remains responsible for the entire

amount of restitution if for any reason the \$300,000 in settlement funds is not released or any amount of the \$840,000 settlement amount is ordered to be returned from the Receiver to the insurer.

Mr. Pfeiffer shall provide at least three (3) days prior to the restitution hearing a listing of all assets in which he has a direct, indirect, or beneficial interest, including all domestic and foreign assets or accounts. This submission of assets shall include a listing of all direct, indirect, or beneficial interests Mr. Pfeiffer has in any domestic or foreign business entity, including direct, indirect or beneficial interests in entities by a conditional assignment of membership interests. Mr. Pfeiffer shall provide a list of all assets in which he had a direct, indirect, or beneficial interest but disposed of that interest since April 6, 2012. Mr. Pfeiffer will also provide copies of his 2011 and 2012 federal tax returns. These submissions shall be made under penalty of perjury and adopted by Mr. Pfeiffer under oath at the hearing.

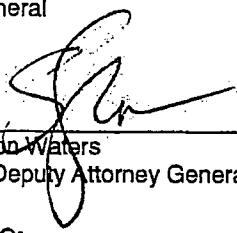
(5) Presentations at Proceedings: The Attorneys for the State reserve the right to present, summarize, and discuss all evidence, statements, and information they deem appropriate in establishing a factual basis for the plea, and for assessing in sentencing the nature, extent, and effect of Mr. Pfeiffer's culpability.

However, the parties also agree to discuss with each other in good faith, prior to the plea proceeding, their respective factual and sentencing presentations. Further, as a negotiated term the State agrees that it will not ask for any specific sentence and that any sentence will be in the discretion of the sentencing court. The State is permitted at the end of its presentation to ask the sentencing court to fashion an appropriate sentence given the State's presentation as to the nature, extent, and effect of Mr. Pfeiffer's crimes and any other relevant factors. Mr. Pfeiffer understands that the victims in this matter have a statutory right to speak at sentencing and this agreement in no way limits any presentation a victim wishes to make.

(6) Waiver of direct appeals and collateral attacks: Mr. Pfeiffer hereby waives any entitlement to and agrees never to pursue any and all direct appeals, post-conviction relief applications and appeals therefrom, state habeas corpus petitions and appeals therefrom, federal habeas corpus petitions and appeals therefrom, or any and all other methods of direct or collateral review of these convictions and sentences. Mr. Pfeiffer hereby acknowledges that he fully understands the nature and extent of the direct and collateral review he is waiving and is making the waiver in this provision freely, intelligently, and voluntarily. The **only exception** to this waiver of appellate and collateral attack actions is that Mr. Pfeiffer may at his option file a direct appeal only as to the amount of any restitution to the extent that such a direct appeal is permitted by law. Such an appeal will not affect the validity of the underlying convictions for conspiracy and securities fraud.

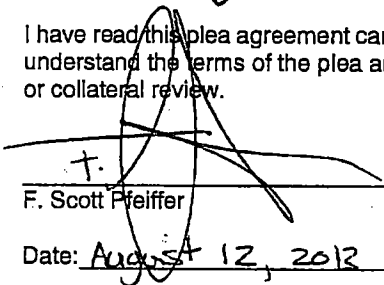
It is the intent of the parties that this agreement and the resulting pleas and sentences finally conclude any and all existing or possible legal proceedings related to indictment 2012-GS-47-0008, 2013-GS-47-0009, and 2013-GS-47-0010 whether direct or collateral, and that all that remains is for Mr. Pfeiffer to serve any sentence given by the Court in the manner provided for by state law.

ALAN WILSON
Attorney General

By: 
S. Creighton Waters
Assistant Deputy Attorney General

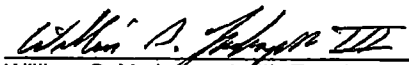
Date: 9/18/13

I have read this plea agreement carefully and reviewed each part of it with my attorney. I understand the terms of the plea and voluntarily agree to it, including the waiver of direct or collateral review.


F. Scott Pfeiffer

Date: August 12, 2013

I represent Mr. Pfeiffer as legal counsel. I have carefully reviewed every part of this plea agreement with Mr. Pfeiffer. To my knowledge, the decision to make this plea agreement is informed and voluntary.


William G. Yarborough, III, Esquire

Date: 8/10/13


J. Bradley Bennett, Esquire

Date: 8/12/13

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 15, 2016

/s/ Brian T. Petrano
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SC Bar # 074244
Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000211

THE STATE, ... APPELLANT,

v.

FREDERICK SCOTT PFEIFFER, ... RESPONDENT.

FINAL BRIEF OF APPELLANT

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Assistant Deputy Attorney General

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TABLE OF AUTHORITIES

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STATEMENT OF ISSUES ON APPEAL**ARGUMENT**

Whether The sentencing court was without authority to rule on Respondent's 2nd post-trial motion because Respondent's 2nd motion was not made within ten (10) days after the imposition of his sentence?

STATEMENT OF THE CASE

On June 19, 2012, the State Grand Jury of South Carolina (the "State Grand Jury") returned a true-billed indictment charging Respondent and Arthur M. Field ("codefendant") with securities fraud and conspiracy. (R. pp. 107 - 113 [Indictment 2013GS4709]). Respondent was a lawyer licensed in South Carolina until his indictment.¹ The Indictment alleged that Respondent and codefendant conspired to perpetrate a fraud upon South Carolina investors by concealing and misstating material information in connection with the offer and sale of notes by the now defunct Capital Investment Funding, LLC ("CIF"). CIF raised money through the sale of "senior notes" to South Carolina investors. These notes constituted securities under South Carolina law, and as such were registered with the South Carolina Securities Division (the "Securities Division"). The proceeds of these note sales were then lent to various entities; primarily the New Jersey based Lancaster Resources, Inc. ("LRI"), which was CIF's primary debtor for the entirety of its existence. Respondent served as counsel to CIF as well as the co-owner and co-manager of CIF's principal re-lender Cosimo, LLC ("Cosimo"). Throughout the course of CIF's existence, Respondent supplied legal opinions on CIF's compliance with state and federal securities laws and the lack thereof. Respondent was also separately indicted by the South

¹ <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2012-06-15-01>

Carolina State Grand Jury; these multi-county indictments include commission of securities fraud and conspiracy with regard to the operations of Cosimo, LLC, which served as the major relender of investor funds provided to Capital Investment Funding, LLC. (R. pp. 115 - 118 [Indictment 2013GS4710]). They also alleged forgery by use of a fictitious name to endorse a check from the South Carolina Department of Transportation for compensation in condemnation of property, and perjury and false swearing regarding this fictitious name in two depositions where Capital Investment Funding loans were involved.

Ultimately, Respondent pled guilty on September 18, 2013 to three (3) of the counts, i.e. 2013GS4709 Count I (Criminal Conspiracy CDR 0049); Count III (Securities Fraud, CDR 2615); and Count VI (Securities Fraud CDR 2615). (R. pp. 16 - 64 [September 18, 2013 plea transcript]). Respondent's restitution hearing was deferred following his plea and sentencing.

Respondent filed a timely (1st) motion for reconsideration on September 30, 2013. (R. p. 14 [Respondent's 1st Motion for Reconsideration, dated September 30, 2013]). On October 8, 2013, the sentencing court held a hearing on Respondent's (1st) Motion for Reconsideration of sentence at the same time as the restitution hearing – the sentencing Court issued amended sentencing sheets the same day at Respondent's request for a mere clarification regarding SCDC's calculation(s) methods. (R. pp. 5 - 7 [Amended Sentencing Sheets dated October 8, 2013], R. pp. 65 - 78 [October 8, 2013

restitution and re-sentencing transcript)).

Twenty-nine (29) days after his plea, Respondent filed a 2nd motion for reconsideration – dated October 17, 2013. (R. p. 15 [Respondent's 2nd motion for reconsideration is dated October 17, 2013]). Respondent was ordered to pay restitution in the net amount of \$169,186.30. (R. pp. 102 - 105 [July 9, 2014 restitution and 2nd reconsideration transcript], R. p. 8 [Restitution Order]). Ultimately, the sentencing court granted Respondent's 2nd request to reconsider his sentence. (R. p. 9 [Order Granting Defendant's 2nd Motion to Reconsider, dated January 23, 2015])

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). “On appeal, the trial court’s ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law.” State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs where the trial court’s conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

ARGUMENT

THE SENTENCING COURT WAS WITHOUT AUTHORITY TO RULE ON RESPONDENT'S 2ND POST-TRIAL MOTION BECAUSE RESPONDENT'S 2ND MOTION WAS NOT MADE WITHIN TEN (10) DAYS AFTER THE IMPOSITION OF HIS SENTENCE

Respondent's 2nd motion for reconsideration is dated October 17, 2013. (R. p. 15 [Respondent's 2nd motion for reconsideration dated October 17, 2013]). The 2nd motion for reconsideration is untimely and invalid. It is far beyond the ten (10) days from the September 18, 2013 plea available per Rule 29(a), SCRCrimP. The rule is clear that "post-trial motions shall be made within ten (10) days after the imposition of sentence." Accordingly, the sentencing court was without authority to entertain the motion. *See, State v. Warren*, 392 S.C. 235 (Ct. App. 2011).

There were two (2) motions for reconsideration filed by Respondent, the first was timely filed and the sentencing court of course retained authority to decide the limited issue presented in Respondent's 1st motion for reconsideration – but that authority does not extend to supplemental arguments presented outside the ten (10) day window.² *Id.* at 240. The sole issue in the 1st motion for reconsideration was an alleged inconsistency with this Court's sentencing as interpreted by SCDC, i.e. "that there are inconsistencies between the sentences handed down by the Court with what

² Respondent's plea was on September 18, 2013. Ten (10) days later was September 28, 2013, which was a Saturday. Accordingly, Respondent's 1st Motion for Reconsideration was timely filed on September 30, 2013.

is reflected within the Sentencing Sheets...” (R. p. 14 [Respondent’s 1st Motion for Reconsideration, dated September 30, 2013]).

The sentencing court had limited authority following the plea. The limited authority over the case following the plea was “for the purpose of hearing and disposing of the motion” – the specific issue presented in the 1st motion, not over anything and everything else forever. Rule 29(a), SCRCrimP; Warren, at 240. Respondent’s 2nd Motion for Reconsideration presented a different issue and is therefore untimely and invalid.

The sentencing court specifically rejected this timeliness argument explaining “*that the codefendant’s sentence was not known until October 8, 2013...With this new codefendant sentencing information, Defendant did timely file this 2nd motion for reconsideration, dated October 17, 2013.*”³ (ROA, p. 11 [Order Granting Defendant’s 2nd Motion to Reconsider, dated January 23, 2015]). The sentencing court’s ruling is an error of law. Rule 29(a), SCRCrimP. affords a limited ten (10) day window that begins “after the imposition of the sentence.” The sentencing of a codefendant is irrelevant for the purposes of Rule 29(a), SCRCrimP.

The only exception to the ten (10) day window for defense filed post-trial motions is in regards to “motions for new trials based on after-

³ Applying the sentencing court’s logic would allow any defendant to file a post-trial motion for reconsideration of sentencing whenever a codefendant’s sentence is arguably at issue. To do so would virtually eliminate any finality – for example, in the matter at hand, the codefendant’s sentence calculation is not final; it is the issue in pending Appellate Case number 2015-000210.

discovered evidence...”⁴ Rule 29(a), SCRCrimP. Respondent never attempted to claim that he wanted a “new trial” based on the substance of his 2nd Motion for Reconsideration. Accordingly, the timeline provided by our Rules requires that “[p]ost-trial motions shall be made within ten (10) days after the imposition of the sentence.” Rule 29(a), SCRCrimP.

Respondent’s 2nd post-trial motion was made beyond ten (10) days after the imposition of his sentence – it is therefore invalid. Moreover, the sentencing court lacked the authority to rule on said motion because absent any exception to the rule requiring a timely motion “a trial judge is without [authority] to consider a criminal matter once the term of court during which judgment was entered expires.” State v. Campbell, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008).

⁴ While inapplicable to this matter, in substantial assistance situations the State can make such a motion per S.C. Code § 17-25-65.

CONCLUSION

Respondent's 2nd motion for reconsideration was untimely. The sentencing court erred by granting relief based on an untimely motion for reconsideration. The sentencing court's "Order Granting Defendant's 2nd Motion to Reconsider" (dated January 13, 2015) should be nullified.

Respectfully submitted,

ALAN WILSON
Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

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By: 

ATTORNEYS FOR THE APPELLANT

Columbia, South Carolina
November 7, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Honorable J. Cordell Maddox Jr., Circuit Court Judge

Case No. 2015-00021

The State

Appellant,

v.

Fredrick Scott Pfeiffer

Respondent.

RESPONDENT'S FINAL BRIEF

Counsel for Appellant:

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STATEMENT OF ISSUES ON APPEAL

1. Did the State waive its right to appeal Respondent's sentence in the Plea Agreement between Respondent and the State, where the Plea Agreement states that the parties intend for the plea to end litigation, where the State did not specifically retain the right to appeal the sentence, and where an end to litigation was part of the Respondent's bargain?
2. Did the trial court err in determining that the Respondent's second Motion to Reconsider was timely filed, where the trial court resentenced Respondent at the October 8, 2013 hearing, and where the Respondent's second Motion to Reconsider, was filed within ten days after that sentencing?
3. May the State raise this issue on appeal where the facts giving rise to the motion did not exist until more than ten days after the original sentence because the State, who in the State Grand Jury system is entirely in control of the docket, intentionally scheduled the sentencings of the co-defendants more than ten days apart, thereby inducing the error they are complaining of?

STATEMENT OF THE CASE

Respondent and a co-defendant were indicted by State Grand Jury. Respondent, pursuant to a written plea agreement with Appellant, plead guilty to three counts of Indictment 2013GS4709 before The Honorable J. Cordell Maddox, Jr. (the "Trial Court") on September 18, 2013. (R. pp. 120-122; R. pp. 16-64). The Trial Court sentenced Respondent to an active sentence of six (6) years, with four years of imprisonment followed by two years of home incarceration on that same day. (R. pp. 2-4). Respondent filed a timely motion for reconsideration of the sentence.

Respondent's first motion for reconsideration was heard by Judge Maddox on October 8, 2013. At that hearing, the Trial Court amended the sentences that day issuing amended sentencing sheets dated October 8, 2013. (R. pp. 5-7). Later on that same day, October 8, 2013, the co-defendant was sentenced by the Trial Court. (R. p. 66, line 11). The co-defendant's sentence resulted in the co-defendant being released almost immediately. Because the co-defendant's almost immediate release created a disparity in sentencing, Respondent filed a motion to reconsider Respondent's amended sentence in light of the co-defendant's sentence on October 17, 2013. (R. p. 15).

The Trial Court held a hearing on the second motion to reconsider on July 9, 2014. At that hearing, Appellant argued that the second motion to reconsider was not timely made. The Trial Court found that Respondent's motion was timely made, and issued the Order appealed from increasing the Respondent's total sentence, but reducing the active sentence to five (5) years with four years of imprisonment followed by two years of home incarceration. (R. p. 13). The Trial Court signed the Order appealed from on January 13, 2015 and it was filed on January 23, 2015. Appellant then served its Notice of Appeal on February 2, 2015.

STANDARD OF REVIEW

The appellate court is to review errors of law when reviewing criminal convictions. *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006). The appellate court's task is to determine whether the trial court abused its discretion. *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998). An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support. *State v. Pagan*, 369 S.C.201, 208, 631 S.E.2d 262, 265 (2006).

"[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). "On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law," *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

Sound judicial discretion must be exercised in every case with a thorough regard for what is just and proper under the circumstances. *State v. Scates*, 212 S.C. 150, 156, 46 S.E.2d 693, 695 (1948). "The reasonableness of any given sentence will largely depend upon the specific facts of each case and the district court's consideration and application of the § 3553(a) factors to those facts." *U.S. v. Hampton*, 441 F.3d 284, 287 (4th Cir. 2006), (referring to sentencing factors outlined in 18 U.S.C.A. § 3553(a) (2012)).

ARGUMENT

I. THE STATE'S APPEAL SHOULD BE DISMISSED BECAUSE THE STATE WAIVED ITS RIGHT TO APPEAL AND BECAUSE THIS APPEAL DEPRIVES THE RESPONDENT OF THE BENEFIT OF HIS BARGAIN WITH THE STATE.

This appeal should be dismissed because Appellant waived its right to appeal though the Plea Agreement signed by both Appellant and Respondent and accepted by the Trial Court.

Section (6) of the Plea Agreement is captioned "Waiver of direct appeals and collateral attacks." The second paragraph of Section (6) states:

It is the intent of the *parties* that this agreement and the resulting pleas and sentences finally conclude any and all existing or possible legal proceedings related to indictment 2012-GS-47-0008, 2013-GS-47-0009, and 2013-GS-47-0010 whether direct or collateral, and all that remains is for Mr. Pfeiffer to serve any sentence given by the Court in the manner provided for by state law. (emphasis added). (R. p. 122)

This paragraph makes it clear that the bargain of the "parties" was that the plea was to end all litigation, and not just for the Respondent.

The State is bound by the bargain that it made to obtain a defendant's guilty plea. *State v. Rhinehart*, 312 S.C. 36, 39, 430 S.E.2d at 536, 537 (Ct. App. 1993). "The trial court, having accepted the plea agreement, must honor it also." *Id.* at 39, 430 S.E.2d at 538. The plain language of the plea agreement, that the Respondent's sentence "finally concludes any and all existing or possible legal proceedings, whether direct or collateral" clearly prohibits this direct appeal. The State is bound by this language and this appeal must be dismissed.

The State waives its right to appeal where the State demands an appeal waiver from the defendant, and the State does not explicitly preserve its own appeal rights. "Regarding plea bargains generally, this Court has recognized and followed federal precedent. *See, e.g., State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994) (discussing *Santobello v. New York*, 404

U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) and *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993)).” *Id.* at 607. Federal precedent from The Fourth Circuit Court of Appeals is that not only may the State waive its appeal rights but that it does waive its rights to appeal if there is a waiver of the defendant’s appeal rights in a plea agreement and the State does not explicitly preserve those rights. *United States v. Guevera*, 941 F.2d 1299 (4th Cir. 1991)¹. In so deciding, the *Guevera* court noted that “[t]he finality of judgments and sentences imposed is no more preserved by appeals by the government than by appeals by the defendant and it strikes us as far too one-sided to construe the plea agreement to permit an appeal by the government for a fancied mistake by the district court, as here, but not to permit an appeal on similar grounds by the defendant. . .” *Id.* Here, the State required as a condition of the plea that Respondent waive his rights to appeal. (R. p 121). The State did not explicitly retain its own appeal rights². Therefore, the State’s right to appeal is also waived.

To permit this appeal to go forward would deprive Respondent of the benefit of his bargain with the State. A “plea bargain rests on contractual principles, and that each party should receive the benefit of the bargain.” *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341, 347 (1994) (citing *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993)). “[W]here a guilty plea rests on a promise or agreement which can be said to be a part of the inducement or consideration, then the agreement must be fulfilled.” *Id.* at 347 (1994) (citing *Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971)). Further, the State must “be held to a higher degree of responsibility than the defendant for imprecisions or ambiguities.” *Id.* at 347 (citing *United States v. Ringling*, 988 F.2d 504 (4th Cir. 1993)). The Plea Agreement, in the

¹ In *Guevera* the United States appealed, as the State does here, because the severity of the sentence was “not to its liking.”

² In fact, the State explicitly waived its appellate rights in the second paragraph of Section 6, as shown above.

second paragraph of Section (5) states that “any sentence will be in the discretion of the sentencing court.” By bringing this appeal, the State is now attempting to wrest the sentencing decision from the sentencing court and give that discretion to this Court. To allow this would be to deprive Respondent of the benefit of his bargain with the State.

The State waived its right to appeal the trial court’s sentence, failed to explicitly retain any such right, and bargained away that right in order to induce Respondent’s plea. For all those reasons, this appeal should be dismissed.

II. THE SENTENCING COURT HAD AUTHORITY TO RULE ON RESPONDENT’S OCTOBER 17, 2013 MOTION TO RECONSIDER BECAUSE IT WAS TIMELY FILED.

Respondent’s October 17, 2013 Motion to Reconsider was timely filed because it was filed 9 days (within 10 days) after the sentencing court’s imposition of the sentence on October 8, 2013. Rule 29(a) of the SCRCrimP states “Except for motions for new trials based on after-discovered evidence, post-trial motions shall be made within ten (10) days after the imposition of the sentence.” When interpreting a court rule the same rules of construction used in interpreting statutes is applied. *Stark Truss Co. v. Superior Construction Corp.*, 360 S.C. 503, 508, 602 S.E.2d 99 (Ct. App. 2004). “Therefore the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule.” *Id.* at 508. (internal citation omitted.) When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning.” *Id.* at 508. Here, the October 17, 2013 motion was made within ten days of the imposition of sentence on October 8, 2013. Therefore, under a plain reading of Rule 29(a) SCRCrimP, the motion was timely. The State argues that the October 17, 2013 motion was untimely because it was made more than ten days

after the plea which was also the date of the original sentencing. Rule 29(a) SCRCrimP does not specify that it applies only to the original sentencing. The rule does not mention the plea at all.

The sentencing court imposed a sentence on September 18, 2013. A motion to amend sentence was timely filed and the sentencing court heard that motion on October 8, 2013. The sentencing court granted that motion and imposed a new sentence on October 8, 2013. This created a new date for the “imposition of the sentence” contemplated by Rule 29(a) SCRCrimP. A reading of Rule 29(a) SCRCrimP that the grant of a motion to reconsider a sentence is not itself an “imposition of sentence” would produce two absurd results. First, if a sentencing court grants a motion to reconsider a sentence and inadvertently, or on purpose, gives a defendant an illegal sentence, there would be no mechanism for that sentencing court to correct the error and the defendant would have to resolve the matter through appeal. If, for example, the sentencing court gave a thirty day sentence for assault and battery in the third degree³, then upon a motion to reconsider, intended to change the sentence to fifteen days, but inadvertently marked the sentencing sheet fifteen years, the defendant would have to remain in prison far in excess of the statutory maximum of thirty days while awaiting a ruling on an appeal. Second, Rule 203(b)(2) SCACR requires that an appeal from a Court of General Sessions must be notice “within ten (10) days after the sentence is imposed.” However, “[w]hen a *timely* post-trial motion is made under Rule 29(a) SCRCrimP the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion.” Rule 203(b)(2) SCACR (*emphasis added*). Because of this rule, the defendant in the previous example could not appeal the sentence. In fact, under the State’s theory that the October 17, 2013 motion was not timely because it was filed more than ten days after Respondent’s original sentencing date of September

³ The maximum imprisonment for assault and batter in the third degree is 30 days. SC Code § 16-3-600(E)(2)

18, 2013 and the post-trial motion appealed from was not timely. Therefore, if the State's theory were correct, this appeal is also not timely and should be dismissed.

In criminal cases, the appellate court reviews only errors of law and is bound by the factual findings of the trial court unless the findings are clearly erroneous. *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). An abuse of discretion occurs where the conclusions of the trial court are either controlled by an error of law or lack evidentiary support. *State v. Winkler*, 388 S.C. 574, 583, 698 S.E.2d 596, 601 (2010).

The Appellant admits that the Respondent's initial motion to reconsider was timely filed. (See Brief of Appellant at p. 3). Rule 29 SCRCrimP allows a circuit judge to retain jurisdiction over a case when a motion to reconsider is timely filed. Therefore, the trial court had both jurisdiction over the case and had the "claim-processing" power to act on the first motion to reconsider when it held the October 8, 2013 hearing. See *State v. Warren*, 392 S.C. 235, 708 S.E.2d (Ct. App. 2011). When the trial court granted, with the State's consent, Respondent's motion to reconsider and issued Amended Sentencing Sheets, the court was acting with full authority and jurisdiction. This resentencing created a new ten-day window within which either party could file a timely appeal (see Rule 203(b)(2) SCACR) or motion (see Rule 29, SCRCrimP). Respondent's second motion to reconsider was filed within that ten-day window, as the trial court held. (R. p.11).

Because Respondent's motion to reconsider under Rule 29(a) was filed within ten days after his sentence was amended by the trial court, the motion was timely and the trial court

retained both jurisdiction and claim processing authority to consider the second motion to reconsider and to amend Respondent's sentence.

III. THE STATE CANNOT BE HEARD ON APPEAL TO COMPLAIN OF ANY ERROR INDUCED BY ITS OWN CONDUCT.

The State may not complain about the sentencing court's reconsideration of its sentence an imposition of a new sentence because it was the State's conduct that produced the result. "A party cannot complain of an error which his own conduct has induced." *See State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005), *State v. Babb*, 299 S.C. 451, 455, 385 S.E.2d 827, 829 (1989), *State v. McCrary*, 242 S.C. 506, 131 S.E.2d 687 (1963) ("The appellant is not in position to complain of any prejudice resulting to him by reason of his tender of the aforesaid plea. He cannot complain of an error which his own conduct has induced. *State v. Epes*, 209 S.C. 246, 39 S.E.2d 769; *Brown v. State*, 150 Ga. 756, 105 S.E. 289, and *Brown v. State*, 71 Ga. App. 522, 31 S.E.2d 85"). Respondent's second motion to reconsider was based on the disparity between his amended sentence and the sentence of his co-defendant. This disparity did not exist until the co-defendant was sentenced on October 8, 2013. Appellant's position that the ten-day window to file a motion to reconsider runs only from the initial sentencing, if accepted, would permit Attorney General to bar any reconsideration based on a disparity in the sentences of co-defendants by simply scheduling the sentencing dates more than ten days apart. Clearly, however, concern over disparity in sentencing is an appropriate concern for a trial court and is within that court's general discretion regarding sentencing.⁴ Because the Attorney General exercises exclusive control over the docket in all State Grand Jury cases, the Attorney General's

⁴ "An attentive concern with whether A was treated as A deserves, and whether any difference in the treatment between A and B can be justified, is a concern for justice". H.L.A. Hart, *The Concept of Law*, Third Edition, Introduction by Leslie Green, at xxxviii.

scheduling of Respondent's and his co-defendant's sentencings more than ten days apart induced the error of which the State now complains.

There was no extrinsic reason for separate sentencing dates for the Respondent and the co-defendant. In fact, the co-defendant entered his guilty plea months before the Respondent, and the Attorney General withheld sentencing until after Appellant's plea, in order to obtain cooperation from the co-defendant. Once Respondent pled guilty on September 18, 2013, however, there was no reason to further delay the sentencing of the co-defendant.

The Attorney General exercises control over the docket of State Grand Jury cases, and intentionally scheduled the pleas of these co-defendants more than ten days apart. He cannot be heard to complain, then, that the trial court reconsidered the first plea in light of the second plea, even were they more than ten days apart.⁵

CONCLUSION

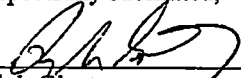
The State clearly and unambiguously waived any right to appeal the trial court's final sentence, or at least failed to explicitly reserve that right when requiring Respondent to waive his rights, and permitting such an appeal would deprive Respondent of the benefit of his bargain with the State. Further, the State's argument that the trial court was without jurisdiction to reconsider Respondent's sentence is entirely without merit, because Respondent's second motion to reconsider was timely filed within ten days of the trial court's amended sentence. Finally, even if such an appeal were to be permitted and the State's argument that the ten-day window to move to reconsider a sentence runs only from the initial sentencing and not any amended sentence, the Attorney General induced the error by scheduling the co-defendant's sentencings more than ten

⁵ Of course, in this case, because the trial court also amended Respondent's sentence on the same day the co-defendant pled, the second motion to reconsider was timely, as argued above.

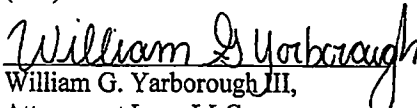
days apart, depriving the trial court of the benefit of hearing all argument in both sentencings and issuing consistent and just sentences to both defendants.

For all these reasons, the decision of the trial court appealed from should be affirmed by this Court, and the appeal dismissed.

Respectfully submitted,



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Attorneys for Respondent

November 4, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Honorable J. Cordell Maddox Jr., Circuit Court Judge

Case No.: 2015-000211

The State,

Appellant,

v.

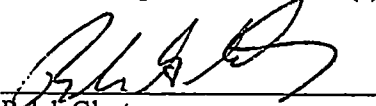
Fredrick Scott Pfeiffer,

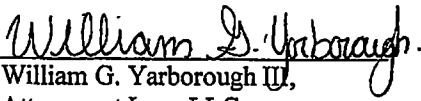
Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b) SCACR.

November 4, 2016


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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Frederick Scott Pfeiffer, Respondent.

Appellate Case No. 2015-000211

Appeal From State Grand Jury
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2018-UP-130
Heard December 11, 2017 – Filed March 28, 2018

AFFIRMED

Attorney General Alan McCrory Wilson, Assistant
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Assistant Attorney General Brian T. Petrano, all of
Columbia, for Appellant.

Ralph Gleaton, of Gleaton Wyatt, PA, and William G.
Yarborough, III, both of Greenville, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Campbell*, 376 S.C. 212, 215, 656 S.E.2d 371, 373 (2008) ("It
is a long-standing rule of law that a trial judge is without jurisdiction to consider a

criminal matter once the term of court during which judgment was entered expires."); Rule 29(a), SCRCrimP (permitting post-trial motions to be made within ten days after the imposition of the sentence); *see generally Collins Music Co. v. IGT*, 353 S.C. 559, 564, 579 S.E.2d 524, 526 (Ct. App. 2002) (explaining successive post-trial motions are permitted in civil cases if the successive motion seeks "relief on issues coming to light as a result of an order following an initial post-trial motion that alters or amends the judgment").

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APR 12 2018

SC Court of Appeals

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000211

THE STATE,..... APPELLANT,

v.

FREDERICK SCOTT PFEIFFER, ...RESPONDENT.

Unpublished Opinion 2018-UP-130, filed March 28, 2018

Petition for Rehearing

On March 28, 2018, this Court issued an opinion in which it affirmed the decision of the circuit court. State v. Pfeiffer, Unpub. Op. No. 2018-UP-130 (S.C. Ct. App. filed March 28, 2018). The decision affirms the circuit court's conclusion that it had jurisdiction over the new issue raised in Respondent's untimely 2nd "Motion to Reconsider". Appellant respectfully petitions for rehearing per Rule 221, SCACR because this Court overlooks that Respondent's 2nd motion did not seek relief on the order granting his 1st motion.

This Court's opinion cites its prior opinion in Collins Music Co. v. IGT, 353 S.C. 559, 564, 579 S.E.2d 524, 526 (Ct. App. 2002): "(explaining successive post-trial

motions are permitted in civil cases if the successive motion seeks "relief on issues coming to light as a result of an order following an initial post-trial motion that alters or amends the judgment"). *State v. Pfeiffer*, Unpub. Op. No. 2018-UP-130 (S.C. Ct. App. filed March 28, 2018). *Collins Music* is a civil case regarding the applicability Rule 59, SCRCP. The case at hand is a criminal case regarding the applicability of Rule 29(a), SCRCrimP. The civil and criminal post-trial rules are worded practically identical as it relates to jurisdiction.¹

Simply put, "ten (10) days after the imposition of sentence", the circuit court lacks "jurisdiction of the action" except "for the purpose of hearing and disposing of the motion." Rule 29(a), SCRCrimP. The relevant dates are as follows:

1. 09/18/13, Respondent sentenced. R. p. 16.
2. 09/30/13, Respondent's 1st "Motion to Reconsider." R. p. 14.
3. 10/08/13, Order granting Respondent's 1st "Motion to Reconsider." R. p. 5-7.
4. 10/17/13, Respondent's 2nd "Motion to Reconsider." R. p. 15.

Respondent's 2nd "Motion to Reconsider" was twenty-nine (29) days after Respondent's sentencing—far beyond the ten (10) days required for the circuit judge to "retain jurisdiction" "of the motion" per Rule 29(a), SCRCrimP.

As explained by this Court, the only way for the circuit court to have jurisdiction over a 2nd post-trial motion would be if that 2nd motion sought "relief on issues coming to light as a result of an order following an initial post-trial motion that alters or amends the judgment." *Collins Music Co. v. IGT*, 353 S.C. 559, 564, 579 S.E.2d 524, 526 (Ct. App. 2002). Meaning, the 2nd motion is timely only if there

¹ Rule 59(f), SCRCP, provides:

"[A]nd the trial judge shall retain jurisdiction of the action for the purpose of hearing and disposing of such motion if not heard and disposed during the term."

Rule 29(a), SCRCrimP., provides:

"[A]nd the circuit judge shall retain jurisdiction of the action for the purpose of hearing and disposing of the motion if not heard and disposed of during the term."

was a problem with the actual order as to the issue(s) raised in the 1st motion.

The sole issue in the 1st "Motion to Reconsider" was an alleged inconsistency with Respondent's sentencing as interpreted by SCDC, i.e. *"that there are inconsistencies between the sentences handed down by the Court with what is reflected within the Sentencing Sheets..."* R. p. 14. Whereas Respondent's 2nd "Motion to Reconsider" raised for the first-time a completely new and wholly unrelated issue and is therefore untimely and invalid. Respondent's 2nd motion was essentially a *new information has come to light* type claim regarding the sentence of the co-defendant, who Respondent argued was the "ring-leader kingpin of the conspiracy", and thought the comparative sentences were unfair. R. p. 15. Respondent did not and could not have raised the co-defendant sentence disparity issue within ten (10) days of Respondent's sentencing [September 18] because "the codefendant's sentence was not known to Defendant until October 8, 2013." R. p. 11.

If Respondent truly thought the co-defendant's sentence was relevant after-discovered evidence then he could have sought the application of Rule 29(b) SCRCrimP. (as opposed to Rule 29(a)). However, Rule 29(b) SCRCrimP. cannot be used to alter a sentence – the only relief afforded under Rule 29(b) is a new trial. Respondent never sought a new trial; instead he sought a sentence reduction by filing an untimely motion raising a new issue that the circuit court no longer had jurisdiction to address. The circuit court erred as a matter of law thinking it had jurisdiction over the new issue raised in Respondent's untimely 2nd "Motion to Reconsider".

WHEREFORE, because the circuit court erred as a matter of law when it granted relief on a new issue raised (29) days after sentencing, Appellant requests this Court grant the Petition for Rehearing and rehear the case as the circuit court lacked the jurisdiction to do so per Rule 29(a), SCRCrimP.

Respectfully submitted,

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Columbia, South Carolina

April 12, 2018.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Honorable J. Cordell Maddox Jr., Circuit Court Judge

Case No.: 2015-000211

RECEIVED
APR 23 2018
SC Court of Appeals

The State,

Appellant,

v.

Fredrick Scott Pfeiffer,

Respondent.

Unpublished Opinion 2019-UP-130, Filed March 28, 2018

Return to Appellant's Petition for Rehearing

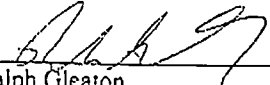
Respondent objects to the Appellant's Petition for Rehearing. The Court's one sentence Per Curium Order succinctly and correctly disposed of this matter. As appellant points out, Rule 59(f) SCRCP and Rule 29(a) SCRCrimP are worded practically identically and therefore the reasoning in *Collins Music Co. V. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002) applies to this matter. The trial court noted in the order appealed from and this Court recognizes by its opinion that Respondent's second motion to reconsider was based on an issue that came to light only after the first motion was

heard and ruled on. Therefore this Court's reasoning is correct and no further hearing is needed.

Respondent also objects based on the arguments in his brief and made at oral argument. Those are: 1) that the State waived its right to appeal, 2) that the second motion was timely made because it was made within ten (10) days of the imposition of the sentence after the first motion to reconsider, 3) that if this Court adopts a strict reading of Rule 29(a) SCRCrimP means that appellants appeal was filed late and should be dismissed as such, 4) that the State crated the issue and therefore may not complain of it. Respondent has fully briefed these issues and refers to his final brief for those arguments.

For these reasons Respondent re quests that this Court deny the Appellant's Petition for Rehearing.

Respectfully submitted,


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April 23, 2018

The South Carolina Court of Appeals

The State, Appellant,

v.

Frederick Scott Pfeiffer, Respondent.

Appellate Case No. 2015-000211

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.
[Signature] J.
John D. Beathan J.

Columbia, South Carolina

cc:

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FILED

May 23, 2018