

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Jean H. Toal, Circuit Court Judge

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S.C. SUPREME COURT

DAVID LEON STEPHENS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001168

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY) CASE NO.: 2014-GS-08-00644

STATE OF SOUTH CAROLINA)
)
VS.)
)
DAVID LEON STEPHENS,)
)
DEFENDANT.)
_____)

GUILTY PLEA

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Berkeley County Courthouse
Moncks Corner, South Carolina
on Wednesday, September 17, 2014, Commencing at 4:16 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
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EXHIBITS

[None]

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PROCEEDINGS

MS. WILLIAMS: Mr. Stephens is pleading straight up to CSC with a minor in the second degree, two counts. The agreement that we have is that there's a negotiated cap of fifteen years and that whatever sentence the Court imposes, we'll run concurrent. Ms. Littlejohn is aware of the fact that the State intends to argue for fifteen years, even though it is straight up and there's a cap. So we've been clear on that from the beginning.

The only other thing I would tell Your Honor, at the appropriate time I think I think we both have some documents to hand you regarding time served. He was in a facility, the department of corrections, in Pennsylvania when he was served with this warrant so we have sort of a different opinion of how much time he served, and I think that we both trust the Court to make whatever decision that you feel is correct with regard to that. And when you see the documents, I think it will be clear.

THE COURT: All right. Please swear the defendant.

THE CLERK OF COURT: Please raise your right hand.

[Whereupon, Mr. Stephens is duly sworn by the
MIA PERRON, CVR-CM-M

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1 clerk of court as follows: do you solemnly swear or
2 affirm that the testimony you will give the Court in
3 this matter will be the truth, the whole truth, and
4 nothing but the truth, so help you God]

5 MR. STEPHENS: Yes.

6 THE COURT: Thank you.

7 THE COURT: Ms. Littlejohn, you represent
8 Mr. Stephens?

9 MS. LITTLEJOHN: I do, Your Honor.

10 THE COURT: Have you advised your client of the
11 charges that he is facing, the possible punishment, as
12 well as the consequences of this plea?

13 MS. LITTLEJOHN: I have, Your Honor.

14 And for the record, I have also advised him that
15 this is a non parole, violent, and subject to the SVP,
16 as well as electronic monitoring -- excuse me -- as
17 well as the sex offender registry.

18 THE COURT: Mr. Stephens --

19 MR. STEPHENS: Yes, ma'am.

20 THE COURT: -- you are here to plead guilty on
21 these two indictments.

22 MR. STEPHENS: Yes, ma'am.

23 THE COURT: The State and your attorney have
24 worked out a negotiation that I impose upon you no
25 more than fifteen years and that these can run

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1 concurrent. I can sentence you on criminal sexual
2 conduct second degree with a minor age eleven to
3 fourteen, I can sentence you on each indictment up to
4 twenty years. Do you understand that's the possible
5 punishment?

6 MR. STEPHENS: Yes.

7 THE COURT: Knowing that, do you still wish to
8 go forward here today?

9 MR. STEPHENS: Yes.

10 THE COURT: Sir, do you understand -- and your
11 attorney has indicated to me she has explained it to
12 you -- the collateral consequences of a plea to a
13 criminal sexual conduct charge?

14 MR. STEPHENS: Yes, ma'am.

15 THE COURT: What are the consequences? You do
16 not have to state all of them, but do you understand
17 that there are collateral consequences that will
18 effect you after today's plea?

19 MR. STEPHENS: Yes.

20 THE COURT: You understand that this could
21 subject you to a civil commitment after you finish
22 this sentence?

23 MR. STEPHENS: Yes.

24 THE COURT: Knowing that, do you still wish to
25 go forward here today?

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1 MR. STEPHENS: Yes.

2 THE COURT: And did she explain to you we call
3 that sexually violent predator?

4 MR. STEPHENS: Yes.

5 THE COURT: You understand that each of these
6 offenses are violent and most serious?

7 MR. STEPHENS: Yes.

8 THE COURT: Do you understand what the
9 classification of violent means?

10 MR. STEPHENS: Yes.

11 THE COURT: What does that mean?

12 MR. STEPHENS: It means that it was something
13 that was done by a person that could be very
14 dangerous.

15 THE COURT: Well, and violent has different
16 meanings. But in this particular context, do you
17 understand what violent means?

18 MR. STEPHENS: [No response]

19 THE COURT: Did you explain to him what the
20 classification of violent means?

21 [Whereupon, Ms. Littlejohn and Mr. Stephens
22 confer]

23 MR. STEPHENS: Oh. Yeah. Yes.

24 THE COURT: Explain it to me.

25 MR. STEPHENS: How I'll be classified with the

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1 sex registry and amongst --

2 THE COURT: Violent has to do -- will affect
3 your placement and your classification with the
4 department of corrections and whether or not when --
5 whether and when you may be eligible for parole. Do
6 you understand that?

7 MR. STEPHENS: Yes. Yes.

8 THE COURT: So it did mean what you thought it
9 meant, but it also legally means this. So I tell
10 people the best way to plan for the sentence that I'm
11 about to impose is just to plan you're going to be
12 there for the entire sentence.

13 MR. STEPHENS: I understand.

14 THE COURT: I cannot tell you, even if I imposed
15 a certain time frame on you, they're -- I don't
16 understand how they calculate the time, so you just --
17 it's just best for you to understand that if I impose
18 a certain sentence upon you, just assume you're going
19 to serve that day for day. Do you understand, sir?

20 MR. STEPHENS: Yes, ma'am.

21 THE COURT: You also -- this is a most serious
22 offense. Do you understand what that classification
23 means?

24 MR. STEPHENS: Yes.

25 THE COURT: What does that mean?

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1 MR. STEPHENS: That to get a couple of these
2 most serious charges and I'll get life in prison.

3 THE COURT: All right. So we call these -- most
4 people refer to them, and they're easily understood
5 as, three strikes.

6 MR. STEPHENS: Yes.

7 THE COURT: A combination of a serious and most
8 serious on your next serious or most serious offense,
9 the State can file what is called a life without
10 parole intent notice and on that conviction for that
11 charge you could serve -- regardless of the potential
12 sentence, you could serve life in the Department of
13 Corrections without the possibility of parole. Do you
14 understand?

15 MR. STEPHENS: Yes.

16 THE COURT: And knowing all of these things, do
17 you still wish to go forward here today?

18 MR. STEPHENS: Yes.

19 THE COURT: This will also place you on the sex
20 offender registry for the rest of your life. Do you
21 understand that, sir?

22 MR. STEPHENS: Yes.

23 THE COURT: Knowing that, do you still wish to
24 go forward with this plea?

25 MR. STEPHENS: Yes.

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1 THE COURT: Has anybody promised you anything,
2 threatened you, forced you to plead guilty here today?

3 MR. STEPHENS: No.

4 THE COURT: Whose decision was it for you to
5 plead guilty?

6 MR. STEPHENS: Mine.

7 THE COURT: Have you been satisfied with the
8 services of your attorney?

9 MR. STEPHENS: Yes.

10 THE COURT: You do not have to plead guilty. By
11 pleading guilty, you're giving up certain rights:
12 your right to a jury trial; your right to have a jury
13 determine your guilt beyond a reasonable doubt based
14 upon the evidence the State presents, as well as any
15 evidence you may introduce; your right against self-
16 incrimination; your right to say nothing at all; your
17 right to confront and be confronted by the witnesses
18 against you; as well as the right to call witnesses on
19 your own behalf.

20 By pleading guilty here today, you give up any
21 defense that you may have to this charge. Do you
22 understand those rights?

23 MR. STEPHENS: Yes, ma'am.

24 THE COURT: And do you waive all those rights at
25 this time?

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1 MR. STEPHENS: Yes.

2 THE COURT: Understanding the charge that you're
3 facing, the possible punishment, as well as the
4 collateral consequences of this plea, how do you plead
5 to criminal sexual conduct with a minor second degree
6 involving **Victim** Needs [phonetic]?

7 MR. STEPHENS: Guilty.

8 THE COURT: How do you plead to criminal sexual
9 conduct with a minor second degree involving that same
10 individual between May 1st, 2010, and June, 2010?

11 MR. STEPHENS: Guilty.

12 THE COURT: You are pleading guilty -- I'm just
13 trying to make a determination. One had to do with
14 genital intercourse and one had to do with digital
15 penetration. Is that what you did, sir?

16 MR. STEPHENS: Yes.

17 THE COURT: You have the right to appeal this
18 plea and the sentence that I do impose, but you or
19 your attorney must do so within ten days. Do you
20 understand?

21 MR. STEPHENS: Yes.

22 THE COURT: Please listen to the facts.

23 MS. WILLIAMS: Thank you, Your Honor.

24 First of all, with regard to the procedural
25 facts, Mr. Stephens was in Pennsylvania serving a

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1 sentence at the time that Pennsylvania became
2 aware of the outstanding warrant in South Carolina.
3 He was served the warrant on a particular date that
4 Ms. Littlejohn has. But from the State's perspective,
5 he waived extradition. He was served with the warrant
6 and had his extradition hearing February of 2012 --
7 this is our position -- and then waived extradition in
8 September of 2012. However, he did not get to South
9 Carolina and actually get served with the warrants
10 until September of 2013.

11 I'm going to hand the Court up the waiver of
12 expedition. Also, he notified -- or we were notified
13 back in April 16th of 2013 -- actually, it was April
14 12th of 2013, that he was filing an interstate
15 detainer agreement, and I want to hand that up to the
16 Court.

17 [Whereupon, Ms. Williams proffers documents to
18 the Court]

19 MS. WILLIAMS: I calculated 504 days, based on
20 April 12th of 2013. Even though he didn't get served
21 with the warrants until September, I feel like at that
22 point he was giving notice that he wanted to come and,
23 you know, be transported here to deal with his
24 warrants.

25 I know that Ms. Littlejohn has a different

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1 perspective on those dates, and she has her own
2 documentation, but I just wanted to let you have that.
3 Our position is that he was already in prison for a
4 completely separate charge, so the fact that he became
5 aware of this other warrant way back a year before has
6 no bearing on the fact that -- of how much time he
7 served here. However, admittedly, once he gives us
8 notice on the interstate agreement detainer, I think
9 he should be given credit even though he wasn't here
10 and hadn't been served with the warrant. So our
11 position is April 12th of 2013, and that would be 504
12 days until today.

13 The other thing I would like to put on the
14 record is that Mr. Stephens filed that and was asking
15 to be tried within 180 days. Ms. Littlejohn did bring
16 that to our attention and was prepared to file a
17 speedy trial motion, but the problem was we didn't
18 have the SLED results back. So we informed her that
19 we would exercise our right to ask for a continuance
20 and felt certain that we would be granted one because
21 we had no SLED results yet.

22 That whole argument became moot when I realized,
23 after I talked with the victim, that the dates were
24 wrong on the original warrant and actually had three
25 counts instead of one. So we basically nol-prossed

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1 the warrant that was the subject of this interstate
2 agreement detainer and I directly indicted three
3 counts of CSC second with a minor.

4 So just in the event that that issue becomes
5 clouded later, I wanted to make sure that the
6 procedural record was clear on that issue and that
7 Ms. Littlejohn was steadfast in trying to deal with
8 that issue on behalf of her client.

9 As far as the facts of the case, the substantive
10 facts of the case, Your Honor, this is a very sad
11 case. And the only reason that we're even capping
12 this at fifteen is because this child is still in
13 treatment. She goes to Berkeley County mental health
14 once a week, sometimes twice a week, and has been
15 profoundly affected by this crime and her mother has
16 asked me to try to resolve this case without her
17 having to testify. And I know we do say that a lot,
18 because it happens a lot. I have visited with the
19 child three times with the counselor and she really is
20 having a difficult time. So for that reason, that is
21 why we are here today with this agreement.

22 This mother, the mother of the child, had had a
23 terrible tragedy occur right before she met the
24 defendant. And I think it's important because she
25 meets him on line and I think she was particularly

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1 vulnerable. Her husband and her son were killed in a
2 car wreck when they lived in Pennsylvania and she was
3 distraught and lonely. For whatever reason, she was
4 vulnerable to the advances of the defendant. She met
5 him on line and she very quickly moved him into her
6 home.

7 The two of them moved to South Carolina in 2010
8 and several months later, right around May 1st of
9 2010, [Victim] her then twelve-year-old daughter,
10 moved in. And at the time of the assaults, [Victim]
11 was not -- about to be thirteen. She was six months
12 shy of being thirteen, so she was a twelve-year-old.
13 Soon after she moved into the home, the defendant
14 began going into her bedroom, while the mother was
15 asleep, and assaulted her. Told her to be quiet. She
16 told him it hurt. He again told her to be quiet. She
17 said three times he went into her bedroom.

18 And he was also directly indicted for a lewd
19 act. We're dismissing that charge as part of this
20 agreement.

21 Unfortunately for [Victim] she also got pregnant
22 from the assaults and when her mother found out, she
23 insisted that she have an abortion. And, you know, I
24 don't think it's really anyone's business to judge the
25 mother's decision, but I know that part of [Victim]

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1 problem is that she really didn't want to have an
2 abortion. Not that a twelve-year-old should get to
3 decide, but she has been traumatized I think almost as
4 much by having to go through that procedure. Maybe
5 not as much, but she's certainly been traumatized by
6 the abortion and going through that, in addition to
7 the sexual assaults by the defendant.

8 After the abortion, there was biological
9 material retrieved from that procedure. It was sent
10 to SLED, and there was a positive paternity test that
11 Mr. Stephens was the father of that aborted child.

12 I think given the facts of this case, the age of
13 the child, and the extensive criminal history that the
14 defendant has -- he has been to prison numerous times,
15 he has been provoked on probation numerous times -- he
16 clearly has not learned a lesson. And in this case he
17 has victimized a very vulnerable child with the worst
18 possible result, the worst possible result. I don't
19 know if she'll ever be the same.

20 They did not want to come here today, they don't
21 want to ever see him again, but a lot of what I'm
22 saying is just passing on their feelings to the Court.
23 They would strenuously ask the Court to give him the
24 full fifteen years. Had we been at trial and had we
25 been successful, I think the mother would have been up

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1 here asking for twenty years on each, to run
2 consecutive.

3 This family is never going to be the same. And,
4 again, I would just ask the Court to please impose a
5 fifteen-year sentence to run concurrent on these two
6 charges.

7 And, also, Your Honor, we would just ask, too,
8 that during the time of his incarceration and any
9 parole that he's able to achieve, that he has no
10 contact whatsoever with Tina Pope [phonetic] or
11 **Victim** Needs [phonetic], either directly or
12 indirectly.

13 THE COURT: Is that what you did, sir?

14 MR. STEPHENS: Yes.

15 THE COURT: I find a substantial factual basis
16 for your plea. Your decision to plead guilty has been
17 freely, voluntarily, knowingly and intelligently made.
18 You have indicated to the Court you've had the advice
19 and counsel of a competent attorney with whom you've
20 told the Court you were satisfied. I hereby accept
21 your plea of guilt.

22 Ms. Littlejohn?

23 MS. WILLIAMS: Yes. Your Honor, Ms. Williams is
24 correct in that we have different documentation. I
25 just wanted to get the procedural portion out of the

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1 way first, Your Honor.

2 THE COURT: What do you show the days,
3 Ms. Littlejohn? I don't need a whole lot of
4 explanation.

5 MS. LITTLEJOHN: The dates that I'm showing,
6 Your Honor, is a detainer placed on him -- I've showed
7 this to Ms. Williams -- on 2/16/11, which would be
8 1,308; the governor's warrant was signed on February
9 15th, 2012, which is 763; and he waived extradition on
10 September 11th, 2012, which I calculated that up to be
11 736 days.

12 THE COURT: Where did you get the 504? What day
13 was that?

14 MS. WILLIAMS: April 12, two thousand and I
15 think it's thirteen --

16 MS. LITTLEJOHN: Right.

17 MS. WILLIAMS: -- because that's the day when he
18 finally notifies us and says he wants to be brought
19 here. He was still serving his sentence. He was
20 still serving his sentence in Pennsylvania, which he
21 would have been there anyway. He actually doesn't get
22 here until September 18th, 2013.

23 THE COURT: When did he stop serving his
24 sentence in Pennsylvania?

25 MS. WILLIAMS: It didn't stop until he was here.

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1 Like, he was still --

2 THE COURT: So what day did he get here?

3 MS. WILLIAMS: September 18th, 2013.

4 THE COURT: How many days is that? How long
5 have you been here, Mr. Stephens?

6 MR. STEPHENS: Tomorrow will be a year.

7 MS. LITTLEJOHN: 364.

8 He was picked up, for 365 days, on the 17th and
9 they served him the next day. So I guess he was
10 picked up and brought into our jail however long it
11 takes them to drive back. He was served with it on
12 the 18th.

13 THE COURT: All right. Let me hear from you
14 regarding sentencing. I think the number of days is
15 the least of our concerns --

16 MS. LITTLEJOHN: Right.

17 THE COURT: -- at this point.

18 MS. LITTLEJOHN: I think we both wanted just
19 procedurally to get that down on the record, Your
20 Honor.

21 THE COURT: I think that's the least of our
22 concerns.

23 MS. LITTLEJOHN: I probably could --

24 THE COURT: I understand that, Ms. Littlejohn.
25 Thank you.

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1 MS. WILLIAMS: Your Honor, Ms. Williams is
2 right. This is a tragic case. And as you see,
3 there's nothing on his record like this.

4 I've actually spoken with some folks and did a
5 little bit of research. And David is forty years old
6 and one of the I guess -- the research, some of the
7 research, tends to say that when persons are older
8 with these types of convictions, that there is less
9 chance of recidivism. Obviously, there's research to
10 the contrary, because there's research on everything.
11 But age does tend to be a factor.

12 Another factor in the hypothesis with regard to
13 sexual assault cases tends to be employment. David
14 grew up in Whiteville, North Carolina. He worked with
15 his dad, as a youth, until 2008. They had the largest
16 landscaping company in Columbus County, which is where
17 Whiteville is.

18 He then went to Pittsburgh from 2008 to 2010 --
19 no. He was in Stranton, Pennsylvania, with a
20 telecommunications company. Moved to Pittsburgh at
21 age 36 and he was supervisor of the Steeler's stadium
22 concession stands where there are forty-two stands
23 that are actually built into the stadium and of about
24 450 employees. He had been there a year.

25 So with regard to another one of those factors

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1 with regard to recidivism, there's that work ethic
2 there.

3 Your Honor, I have been in tremendous contact
4 with his fiancé. She and David have a six-year-old
5 son. He's in Pennsylvania. He also has other
6 children in North Carolina.

7 I asked him about this and, as often you might
8 hear, it did have to do with drinking. When he was
9 locked up in Pennsylvania, he tells me he took anger
10 management classes, alcohol classes, and battery
11 classes. What was interesting about that is he went
12 on to talk about how with the battery classes, it's
13 not just a hitting, it can be the verbal.

14 I looked at him and I said, David, you know
15 what's happened. Tell me how you feel. Your Honor, I
16 think I'm going to let him address this, the depth of
17 it, but he advised me that while he was locked up he
18 found out that his daughter, who is seventeen now, was
19 a victim and that the person who assaulted her is due
20 out in 2015. He's learned to deal with that.

21 So as tragic as it is, it happened to his
22 daughter. As tragic as it is, it happened in this.
23 He probably does have a greater sense of how it feels.
24 I think that's what he's wanting to express to you.
25 He didn't learn about any of that. Nevertheless, Your

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1 Honor, he says, you know, I can't feel anger towards
2 that person; I have to learn forgiveness. He says
3 that's what he hopes will occur in this case.

4 Your Honor, I'm going to -- David is going to
5 address the Court. And I would ask that the Court
6 take into consideration his age, his employment
7 history, that he does hope to eventually return to
8 Pennsylvania, and that he will -- that it's a no
9 parole charge, and I would ask that the Court sentence
10 hm to eight years.

11 THE COURT: All right. Mr. Stephens, what do
12 you wish to tell me?

13 MR. STEPHENS: I would like to apologize to the
14 victim and the victim's family, first of all. And I
15 know that an apology doesn't change anything or make
16 anything easier but deep down, I ask for the victims
17 to forgive me for my actions. Everyone in life makes
18 mistakes and by far we're definitely not perfect.

19 As my record shows, I've never had any charges
20 of this nature before and I honestly don't know what
21 was going through my head at the time of the incident.
22 But now that I've had time to think about it, my
23 remorse and prayers go out to the victim and the
24 family. Since this act has taken place, my daughter
25 has also been a victim to such a crime, and the hurt

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1 that a parent feels and that the victim will feel
2 towards themselves and towards a child is a hurt
3 that's unbearable. My daughter told me to have pity
4 on the guy, that -- have pity on the guy because
5 there's nothing that can be done now, but what he has
6 done he has to live with. And she has to live with it
7 at all -- herself. She's done overcame it, so I had
8 to let go of the anger that I was holding inside
9 myself towards this guy, and I had to let go of it.

10 The child -- I understand it's a child and
11 they'll be growing up thinking about that for the rest
12 of their lives. At certain times or points it will
13 come to them.

14 But all I'm doing is asking for a little bit of
15 remorse because since I've been locked up the past two
16 and a half years, I done came to a religion that I
17 love and I took anger management, came out at the top
18 of the class. Battery, came out at the top of the
19 class.

20 I done changed in more ways than a little bit in
21 so many different aspects and all I'm doing is looking
22 for a little bit of leeway. Like when I leave here --
23 whenever I do be released from incarceration, I'm
24 leaving South Carolina. So the family doesn't have to
25 worry about ever seeing me around here again. And all

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1 I want is looking for a little bit of a foot way
2 [phonetic] so I can get back up to my kids.

3 THE COURT: Anything else, Ms. Littlejohn?

4 MS. LITTLEJOHN: Nothing, Your Honor. I think
5 he's presented all that.

6 I apologize that I don't have any of the data,
7 but I think Your Honor is familiar with the studies.
8 It goes both ways. And some stability factors.

9 THE COURT: It's the order of the Court on 2014-
10 GS-08-645 and 644 -- pursuant to the negotiations,
11 these will run concurrent -- that you be committed to
12 the State Department of Corrections for a term of
13 fifteen years. I give you credit for 365 days, which
14 is my calculation, pursuant to the statute, that you
15 get credit. The other days, you do not get credit for
16 because you were serving another sentence. This
17 places you on the sexual offender registry. There is
18 to be no contact with the victim or the victim's
19 family.

20 Good luck to you, Mr. Stephens.

21 MR. STEPHENS: Thank you, Your Honor.

22 [GUILTY PLEA CONCLUDES AT 4:40 P.M.]
23
24
25

Certificate of Court Reporter
State vs. David Leon Stephens

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the guilty plea held before the Honorable Kristi L. Harrington, on Wednesday, September 17, 2014.

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

Dated this 23rd day of June, 2015.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF BerkeleyDavid Leon Stephens # 361522
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-00-640

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional
2. Name and location of Court which imposed sentence General Sessions Court, Berkeley County, Moncks Corner, SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (2014 GS 0800644) Criminal Sexual Conduct with a Minor 2nd Degree
 - (b) (2014 GS 0800645) Criminal Sexual Conduct with a Minor 2nd Degree
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 17, 2014 15 years
 - (b) _____

45

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My Public Defender never submitted or requested appeal I presume
- (b) Did not know I could do it myself
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Constitutional Rights were violated due to violation of my IAD which was dismissed when they brought these charges on me
- (b) Public Defender said I'm going to let my client speak for himself
- (c) Held in custody 7 months on a charge that was suppose to be dismiss in Oct. 2013 until evidence was found to charge me with these charges
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) I was expedited here on a (IAD) signed in April, 2013; which expired in Oct. 2013, and didn't have court until Nov. 2013
- (b) My Public defender did not speak on my behalf in pleading my case
- (c) After I was charged with these crimes my charge I sat in jail for 7 months after violation of my IAD was dismissed
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) My Public Defender did not file any
- (b) I have been in Kirkland R&E since September 24, 2014 and have no access to any resources
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? N/A
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Debra Kay Littlejohn 219 N. Hwy. 52, Suite E Moncks Corner, SC 29461
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Debra Kay Littlejohn 219 N. Hwy. 52, Suite E Moncks Corner, SC 29461
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacate sentencing, dismissal, sentence reduction.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

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

David L. Stephens

SWORN to and subscribed before me this 4th
day of March, 2015.

Alvin W. Carter (L.S.)
Notary Public

My Commission Expires: Sept 11, 2021

FILED
2015 MAR 11 PM 4:46
MATT P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

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

I, DLG, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

David L. S. [Signature]
Applicant

SWORN or affirmed to and subscribed before me this
4th day of March, 2015.

Alunta W. Carter
Notary Public

My Commission Expires: Sept 11, 2021

FILED
 2015 MAR 11 PM 4:46
 MAY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

David Leon Stephens, #361522,

2015-CP-08-0640

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed March 11, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2014 term of the Berkeley County Grand Jury for two counts of Criminal Sexual Conduct with a minor, 2nd degree (2014-GS-08-0644, -645). Debra K. Littlejohn, Esquire, represented the Applicant. On April 17, 2014, the Applicant pled guilty as indicted. The Honorable Kristi Lea Harrington sentenced the Applicant, pursuant to negotiations, to confinement for fifteen (15) years. Applicant did not appeal his convictions or sentence.

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the application, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Constitutional rights were violated due to violation of my IAD which was dismissed when they brought these charges on me"
 - i. "I was expedited here on a (IAD) signed in April, 2013; which expired in October, 2013 and didn't have court until Nov. 2013"
2. "Public Defender said I'm going to let my client speak for himself"
 - i. "My Public Defender did not speak on my behalf in pleading my case"
3. "Held in custody 7 months on a charge that was supposed to be dismissed in Oct. 2013 until evidence was found to charge me with these charges."
 - i. "After I was charged with these crimes my charge I sat in jail for 7 months after violation of my IAD was dismissed"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

The Applicant's allegations are of ineffective assistance of plea counsel. The Respondent submits plea counsel rendered effective assistance of counsel. In a Post-Conviction Relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon

as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

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

IV.

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

V.

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

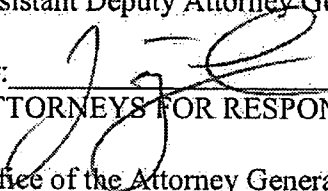
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

MARCH 28th, 2016.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2015-CP-08-0640
	)	
DAVID LEON STEPHENS, #361522	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esq.
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 28th day of March, 2016.


 Jocelyn Baker, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BERKELEY 2015-CP-08-00640

DAVID L. STEPHENS,)
) TRANSCRIPT OF RECORD
) Applicant,)
) September 16, 2016
) -vs-)
) Moncks Corner, South Carolina
STATE OF SOUTH CAROLINA,)
) Respondent.)

B E F O R E:

The Honorable Jean H. Toal, Judge.

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

Lance F. Boozer, Esquire
Attorney for the Applicant

J. Rutledge Johnson, Esquire
John Ard, Esquire
Attorneys for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

E X A M I N A T I O N S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>T</u>	<u>RECROSS</u>
DAVID L. STEPHENS	4	15	--	--
DEBRA LITTLEJOHN	19	23	--	--

E X H I B I T S

<u>COURT'S</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>RECEIVED</u> <u>D</u>
1	Notice of Untried Indictment	35	--

1 (September 16, 2016.)

2 THE COURT: All right. The next matter for
3 consideration this morning is David Leon Stephens. This
4 is application 2015-CP-08-0640. Mr. Stephens is present
5 in the courtroom along with his counsel, Lance Boozer,
6 and presenting for the State will be a Charleston law
7 student, presenting under the student practice rule
8 supervised by Assistant Attorney General Rutledge
9 Johnson.

10 Mr. Johnson, will you introduce your student
11 practitioner.

12 MR. JOHNSON: Yes, ma'am. This is John Ard,
13 third year student, Charleston School of Law.

14 THE COURT: Mr. Ard, you may proceed.

15 MR. ARD: Yes, ma'am. Your Honor,
16 Mr. Stephens was indicted in the May 2014 term of the
17 Berkeley County grand jury for two counts of criminal
18 sexual conduct with a minor, second degree, and had a
19 hearing on September 17th, 2014 before the Honorable
20 Kristi Lea Harrington. Mr. Stephens pled guilty as
21 indicted and was sentenced pursuant to negotiations to 15
22 years.

23 Mr. Stephens did not appeal his convictions
24 or sentence, but he did file a timely PCR application on
25 March 11, 2015 and the State filed its return on March

1 28, 2016, and Mr. Stephens is represented here today by
2 Mr. Lance Boozer.

3 Thank you, Your Honor.

4 THE COURT: Thank you. All right.

5 Mr. Boozer, you may proceed.

6 MR. BOOZER: Thank you, Your Honor. If it
7 pleases the Court, Judge -- excuse me. Justice, as a
8 preliminary matter, I do have just an act that I'm going
9 to be referencing that is part of Mr. Stephens's case. I
10 provided a copy to the Attorney General's office and
11 certainly, if you wouldn't mind if I approached Your
12 Honor, would provide one to Your Honor.

13 THE COURT: Absolutely. Very good.

14 State has passed up the interstate agreement
15 too and other information pertinent to the oral argument
16 and presentation he will make. You may proceed.

17 MR. BOOZER: Thank you, Your Honor. May it
18 please the Court: We will call Mr. Stephens to the
19 stand.

20 THE COURT: Come around and be sworn and take
21 the witness stand.

22 DAVID L. STEPHENS,
23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BOOZER:

2 Q. Mr. Stephens, how are you doing today?

3 A. Good.

4 Q. If you would, for me, just make sure to keep your
5 voice up as Madame Court Reporter needs to take down
6 everything we say. Just make sure you speak up, okay?

7 A. Yes.

8 Q. Obviously, you filed an application for
9 post-conviction relief?

10 A. Yes.

11 Q. And are you attempting to get a new trial?

12 A. Yes.

13 Q. And is that your understanding that that's why
14 we're here today? This Court can't reduce your sentence
15 or anything like that.

16 A. Yes.

17 Q. And you still want to proceed with your
18 PCR application?

19 A. Yes.

20 Q. And let's just walk through some of your
21 allegations, that you've alleged in your PCR application.
22 You have alleged ineffective assistance of counsel and
23 involuntary plea because you alleged your constitutional
24 rights were violated. Is that one of your allegations?

25 A. Yes.

1 Q. You also allege that your public defender did not
2 speak on your behalf. Is that one of your allegations?

3 A. Yes.

4 Q. And you've also alleged you were in custody for
5 seven months on a charge that was supposed to be
6 dismissed October of 2013?

7 A. Yes.

8 Q. And is that what you are referring to when you
9 refer to the interstate agreement on detainers?

10 A. Yes.

11 Q. All right. When did you plead guilty in this
12 case?

13 A. I think it was August of 2014.

14 Q. August of 2014?

15 A. If I'm not mistaken, August or September, one of
16 the two.

17 Q. Could it have been September 2014?

18 A. Possibly, one of the two.

19 Q. If that's what is reflected in the transcript,
20 would you disagree with that? No?

21 A. I wouldn't disagree with it.

22 Q. Okay. Now, tell us a little bit of background as
23 far as this charge that you pled guilty to. When were
24 you either indicted or charged with that particular
25 crime?

1 A. The charges that I'm -- the charges that I'm in
2 here for right now that I'm doing time for, they brought
3 these charges up on me in May of 2014 and they dismissed
4 the charges that they brought me here for, that they had
5 brought me down here for in May, the end of May.

6 Q. What was the original charge?

7 A. Criminal sexual conduct with a minor.

8 Q. So is it pretty much the same charge -- what was
9 different about it?

10 A. That was the same charge. In May they had
11 dismissed that after they had said they found out my
12 constitutional rights were violated. They had dropped it
13 and then they had brought up three more charges and put
14 them on me.

15 Q. Now, who represented you for your plea?

16 A. Deborah Littlejohn.

17 Q. How did she come about representing you? Did you
18 hire her or was she appointed?

19 A. Court appointed.

20 Q. Do you know when she was first appointed to
21 represent you?

22 A. In October.

23 Q. October of what year?

24 A. 2013.

25 Q. You, and I, probably, have to wait until I finish

1 asking you a question before you start speaking, and I'll
2 do the same, okay?

3 So in October of 2013, you were in South
4 Carolina, obviously, when she was appointed to represent
5 you.

6 A. Yes.

7 Q. Tell me a little bit about before that. Where
8 were you before that?

9 A. I was in prison in Pennsylvania, in Somerset,
10 Pennsylvania, in Somerset prison, and they expedited
11 {sic} me down here -- they expedited me down here
12 September 17th of 2013.

13 Q. How did it come about that you were expedited --
14 excuse -- me, extradited down here? Did you make that
15 request?

16 A. I had made the request in April of 2013. I had
17 filled out an interstate agreement on detainers so I
18 could go ahead and take care of these charges down here.

19 Q. What is your understanding of what it is you're
20 referring to, this interstate agreement on detainers?

21 A. I was informed of -- up there in Pennsylvania, we
22 have solicitors that work at the prisons, and we speak to
23 them, and they had told us that, okay, if you fill it
24 out, it's a speedy trial you're requesting.

25 They have -- it says the state has 180 days

DIRECT EXAMINATION - DAVID L. STEPHENS

1 to come and get you, have you in court and have your
2 first appearance and be going on with your case and
3 everything. I had put it in April 12th. April 15th the
4 head solicitor at Charleston County had signed it and
5 faxed it back, so we waited from that point on, and then
6 they came and got me September 17th, 2013, which my 180
7 days would have been up October 8th, and then they didn't
8 do nothing.

9 Q. When were you brought down to South Carolina?

10 A. September 17th of 2013.

11 Q. And your understanding is when should they have
12 tried your case?

13 A. They would have started at least by October the
14 8th.

15 Q. They should have started the trial?

16 A. They should have had the trial started already. I
17 should have had my first appearance at least by then.

18 Q. Do you have any position on whether -- once they
19 bring you down here, then do they have a certain number
20 of days to try you?

21 A. They had -- from the way I was told, they had 180
22 days to have everything go in order, and unless they
23 filed for an extension or anything of the such, then my
24 case was supposed to be dismissed, and it was all in the
25 paperwork and everything. And I kept on telling Debra

1 Littlejohn; I wrote solicitors; I wrote Scarlett, I wrote
2 several people and everything, mentioning this, and
3 everybody just kept on saying, I don't know. Speak to
4 your attorney.

5 And when I kept mentioning Debra Littlejohn,
6 she's, like, I don't know nothing about this type of
7 thing. I'll check with someone, and that's just how it
8 kept on going, all the way until March.

9 Q. Let me ask you this: How many times did you meet
10 with Ms. Littlejohn in total prior to your plea?

11 A. Probably about five times.

12 Q. About five times?

13 A. Probably.

14 Q. Were you out on bond?

15 A. I didn't have no bond until after they had
16 dismissed this case and -- well, dismissed my original
17 charge and gave me the other three charges. They kept me
18 with no bond the whole time.

19 Q. What would you two talk about during your
20 meetings?

21 A. The case, why I was down here. The main thing I
22 kept bringing up was me on the interstate agreement.
23 That was my main issue on the whole thing.

24 Q. What was her response about your inquiries on this
25 interstate agreement?

DIRECT EXAMINATION - DAVID L. STEPHENS

1 A. I'll check with someone because I've never handled
2 a case like that. Nobody in my firm has handled a case
3 like that.

4 Q. To your knowledge, did she ever check on anything?

5 A. To my knowledge, I never seen any paperwork that
6 she had checked on anything. She said she spoke to one
7 of her friends that was an attorney that had dealt with
8 it, but she had told me that in 2014.

9 Q. Okay. So what do you think your lawyer should
10 have done?

11 A. Actually, when I told her about the interstate
12 agreement and I hadn't seen the paperwork, she should
13 have at least went and found out, Has his constitutional
14 rights been violated? Should his case have been
15 dismissed? or whatever.

16 Q. Now, do you recall your plea? Do you recall that
17 day?

18 A. Vaguely.

19 Q. All right.

20 MR. BOOZER: And, Your Honor, I'm looking at
21 the guilty plea transcript, specifically I'm looking at
22 page 12.

23 THE COURT: I have it.

24 BY MR. BOOZER:

25 Q. There was some discussion on the record about what

1 you had filed pursuant to this agreement. Do you recall
2 that?

3 A. Not right offhand.

4 Q. Do you recall the solicitor stating also he
5 notified -- or, We were notified back in April 16th of
6 2013 -- actually, it was April 12th, 2013, that he was
7 filing an interstate detainer agreement, and I want to
8 hand that up to the Court.

9 And then flipping over to page 13, beginning at
10 line 13, the solicitor continued: The other thing I'd
11 like to put on the record is that Mr. Stephens filed that
12 and was asking to be tried within 180 days. Ms.
13 Littlejohn did bring that to our attention and was
14 prepared to file a speedy trial motion, but the problem
15 was, we didn't have the SLED results back.

16 And then we skip down to line 22, where the
17 solicitor continues: That whole argument became moot
18 when I realized, after I talked to the victim, that the
19 dates were wrong on the original warrant, and they
20 actually had three counts instead of one, so we basically
21 null prosed the warrant that was the subject of this
22 interstate agreement on detainers.

23 What do you think would have happened if your
24 lawyer would have gone ahead and made some sort of a
25 motion pursuant to the agreement with regard to that

1 charge?

2 A. If that would have happened, then possibly I could
3 have spent some more time with my family, at least.

4 Q. Well, there also is the possibility that maybe the
5 charges could be dismissed.

6 A. Dismissed.

7 Q. Other than what you've already stated about your
8 conversations with Ms. Littlejohn, did she give you any
9 reasons for not attempting to do that?

10 A. No.

11 Q. Let me ask you this: Why was it that you ended up
12 entering the plea in this case?

13 A. One, I was in jail, sitting down here, because I
14 knew my constitutional rights were violated, and I could
15 see that I was just getting railroaded anyway, so that
16 was one of the main issues.

17 Another one, the solicitor -- Littlejohn had
18 came to tell me the solicitor said, Don't take the plea.
19 We're going to put everything back to back, make it
20 consecutive, and, basically, she'd be going for the max
21 on each sentence. So I was, like, 15 years is a lot
22 better than 70, so --

23 Q. And your lawyer had not filed what you thought was
24 the proper motion to have the charge dismissed pursuant
25 to a violation of the interstate agreement?

1 A. Exactly.

2 Q. Did you and Ms. Littlejohn review any evidence or
3 other charges related to the offenses?

4 A. We looked at some other paperwork that they had
5 brought in, yes.

6 Q. Did you two ever discuss having a trial in the
7 case?

8 A. No.

9 Q. When you say that you feel like Ms. Littlejohn
10 didn't speak on your behalf, explain that a little more.

11 A. She was, like, I'm going to let my client speak
12 for himself. So when I started speaking and everything,
13 the judge, she listened, and she had heard -- she said,
14 Well, taking a 15-year plea, you're getting 15 years,
15 basically.

16 Q. Other than what we have already discussed here
17 today, is there anything else you want to bring to the
18 Court's attention as it applies to your application about
19 any claims of ineffectiveness against Ms. Littlejohn that
20 you may have that we haven't covered?

21 A. Basically, right offhand --

22 Q. Let's not do it offhand, because this is your day,
23 so I want to make sure everything is covered. We've
24 obviously talked about the interstate agreement on
25 detainers. Have we covered everything that you felt like

DAVID L. STEPHENS - CROSS-EXAMINATION

1 your lawyer should have done with regard to that
2 allegation?

3 A. Yeah.

4 Q. I'm sorry?

5 A. Yes.

6 Q. Okay. As far as you sort of have a generals
7 allegation of your constitutional rights were violated.
8 Does that also fall under that allegation as well?

9 A. Yes.

10 Q. Have we covered everything in regard to that
11 allegation?

12 A. Yes.

13 Q. And, also, you've got the allegation that your
14 attorney didn't speak on your behalf. Have we covered
15 everything with respect to that obligation?

16 A. Yes.

17 Q. Is there anything else we have not covered?

18 A. No.

19 MR. BOOZER: Mr. Stephens, please answer any
20 questions the Attorney General's office may have for you.

21 THE WITNESS: Yeah.

22 MR. JOHNSON: Just a few questions.

23 THE COURT: Mr. Ard?

24 CROSS-EXAMINATION

25 BY MR. ARD:

1 Q. Yes. You said Ms. Littlejohn never spoke on your
2 behalf at the plea hearing, correct?

3 A. Yes.

4 Q. But you recall that -- I'm sorry. But the record
5 reflects that she actually did speak on your behalf and
6 asked that they reduce your sentence, correct? Do you
7 recall that?

8 A. Yes.

9 Q. Do you remember what she asked them to reduce your
10 sentence to?

11 A. No.

12 Q. Okay. And she also brought up several mitigating
13 factors to attempt to reduce the sentence, do you
14 remember that?

15 A. Not really.

16 Q. And you mentioned that you were railroaded during
17 this process.

18 A. Yes.

19 Q. But you did get the victim pregnant, correct?

20 A. That's what I was told.

21 Q. And you realize there is a positive paternity test
22 proving you as the father?

23 A. Yes.

24 MR. ARD: Thank you, Your Honor. No further
25 questions.

1 THE COURT: Mr. Ard -- excuse me, Mr.
2 Stephens. Your attorney will argue the legality, so
3 don't feel like you have to be your own lawyer, but in
4 your own words, what was the violation of the interstate
5 agreement act, as you see it? What did the attorney do
6 wrong?

7 THE WITNESS: She didn't try to pursue for me
8 the 180 days, where it said -- in the interstate
9 agreement, if I recall correctly, it said you have 180
10 days to have this person in court; otherwise, they will
11 be remanded back to the custody of the following state
12 with the charges dismissed, and I kept pushing that issue
13 and none of it seemed to have mattered.

14 THE COURT: So what you wanted was a trial
15 within 180 days or be transferred back to your home
16 state?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: All right, sir. And you don't
19 feel like Ms. Littlejohn pursued that on your behalf?

20 THE WITNESS: Exactly.

21 THE COURT: Now, one question I've got about
22 that -- and I, of course, am reading the transcripts, so
23 I have to rely on it to understand exactly what happened,
24 but my understanding is that a motion to enforce the
25 interstate detainer act was filed on your behalf, and the

1 solicitor withdrew or nolle prossed the charges and then
2 reindicted you.

3 Am I right about that?

4 THE WITNESS: They did that nine months
5 later.

6 THE COURT: So nine months after 180 days had
7 run they did that?

8 THE WITNESS: That's when they did that.

9 THE COURT: I got you. Any further questions
10 on redirect, Mr. Boozer?

11 MR. BOOZER: No, Your Honor.

12 THE COURT: Very good. Thank you, Mr.
13 Stephens. You may come down.

14 Any further witnesses on behalf of the
15 Applicant?

16 MR. BOOZER: No further witnesses on behalf
17 of the applicant.

18 THE COURT: I assume you'll make your legal
19 arguments at the end. Let's turn to the State.

20 Mr. Ard, do you have any witnesses for the
21 State?

22 MR. ARD: Yes, Your Honor. I would like to
23 call Ms. Littlejohn to the stand, please.

24 THE COURT: Very good.

25 DEBRA LITTLEJOHN,

DEBRA LITTLEJOHN - DIRECT EXAMINATION

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. ARD:

5 Q. Ms. Littlejohn, just a few questions for you,
6 preliminary issues. How long have you been practicing
7 law?

8 A. Since 1990.

9 Q. Has that always been in criminal law?

10 A. No. A portion of it has been Family Court and
11 personal injury, but the vast majority of it has been
12 criminal law.

13 Q. And do you recall when you first got involved in
14 Mr. Stephens's case?

15 A. I do. Actually, have a note here as to when I got
16 involved -- I think he mentioned it was October of 2013,
17 I think is when it was, somewhere around in that time
18 frame.

19 Q. And about how many times would you say you met
20 with Mr. Stephens?

21 A. If he said five, I don't disagree with that.

22 Q. And when was this IAD brought to your attention?

23 A. I did recall he brought it to my attention fairly
24 early on, and I recall that because I actually never in
25 all these years had an IAD case. Mr. Schwacke, in our

1 office, had just finished an IAD case, so I actually went
2 back and spoke with him about that, how do we do this
3 IAD case, and I pulled the statute and started doing a
4 little bit of research on it and hit up on Article 3 in
5 finding out how it's not just the waiver of extradition
6 that triggers it.

7 Q. And I think -- was this ever a concern to you?

8 A. The IAD?

9 Q. Yes, ma'am.

10 A. So far as --

11 Q. As affecting his case in any positive or negative
12 way?

13 A. Well, it was, because I needed to see if
14 everything is -- the way I understand the IAD -- and,
15 another thing I found out in this, there weren't that
16 many cases out there about IADs, and from everything I
17 read, the cases I read, consulted with everybody I
18 consulted with, it's not one of those well-known areas.

19 Further, you have to dot every I, cross every
20 T exactly, and, basically, if you look at Section Article
21 3(a), where it states in part that a person shall be
22 brought to trial within 180 days after he shall have
23 cause to be delivered to the prosecuting officer and the
24 appropriate Court or the appropriate officer's
25 jurisdiction, written notice of the place of his

1 imprisonment, and the request for a final disposition to
2 be made of the indictment, information, and complaint,
3 and we were not able to find a copy of the IAD that had
4 been delivered to the Court in Berkeley County in the
5 Clerk of Court's office.

6 I went over there. Ms. Lawson went over there.
7 We couldn't find anything, and then if you look at
8 Article 3, Section (b), it says, The written notice and
9 request for final disposition referred to in paragraph
10 (a) hereof shall be given or sent by the prisoner to the
11 warden, commissioner of corrections, or other official
12 having custody of him who shall promptly forward it
13 together with the certificate to the appropriate
14 prosecuting official in court by registered or certified
15 mail, return receipt requested, which would obviously
16 lead you to believe that what you would have in the
17 clerk's file is going to be that item with the return
18 receipt in the clerk's file. It wasn't in there. That
19 was not there. That -- simply waiving extradition does
20 not trigger 17-11-10, the IAD.

21 Q. And you addressed this with the solicitor at the
22 time?

23 A. I did, because Mr. Adrian DeJeu handled -- was
24 talking to -- I remember her name was Becky, I want to
25 say Becky Boyce, Becky. I remember her first name, who

1 was at the prison in Pennsylvania, and Mr. Adrian DeJeu
2 from the solicitor's office was speaking with her and
3 then Ms. Anne Williams ended up taking over the case.

4 I never received from the clerk's office or from
5 Mr. DeJeu anything that would show the certified mail
6 required under 17-11-10, Article 3, Section (b), and I
7 will tell you, I checked with several people, looked on
8 some Criminal Listservs about this area, and it is --
9 it's one of those areas where you have to really --
10 everything has to be precise to trigger it.

11 Q. And do you know why the solicitor never made any,
12 I guess, you know, actions pursuant to this IAD? Did
13 they ever -- I'm sorry. Did you ever file a continuance
14 for it, or did they file a continuance to try to push the
15 trial back to get this IAD issue resolved?

16 A. No, because the problem is, when you don't have
17 all the items, you can't then make a good faith belief
18 that you have it all because he had filled out some of
19 the stuff he needed to fill out, absolutely he had, but
20 then some of it wasn't done. Like, there wasn't that
21 certified receipt and all that you had to have, that
22 they're talking about in -- I think it's paragraph B.

23 Q. So the solicitor they nolle prossed it and he was
24 reindicted, and then this whole thing became moot,
25 correct?

DEBRA LITTLEJOHN - CROSS-EXAMINATION

1 A. Well, in that case, yes, it did.

2 Q. Okay. And just some final questions. Inevitably
3 whose decision was it to plead guilty to these?

4 A. It's always the client's decision.

5 Q. It was never coerced, never forced?

6 A. (Shakes head.)

7 MR. ARD: All right. Thank you, Your Honor.
8 No further questions.

9 THE COURT: Mr. Boozer?

10 MR. BOOZER: Court's indulgence, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BOOZER:

13 Q. Ms. Littlejohn, how are you?

14 A. Hey.

15 Q. I'll take that as good.

16 A. I am.

17 Q. Ms. Littlejohn, getting pretty much right to the
18 point, you indicated you had been appointed in October of
19 2013.

20 A. Could have been September.

21 Q. Do you recall when Mr. Stephens arrived in South
22 Carolina?

23 A. I don't. Whatever he says --

24 Q. If he said September, it may have been September?

25 A. Correct. It was around that time frame.

1 Q. Okay. Do you recall when you first met with him,
2 or spoke to him?

3 A. I see a note of speaking with him on October 29th,
4 but I would actually literally have to go through the
5 entire file to determine if that was the first time or --

6 Q. And that's fine. Please take your time if you do
7 want to look through that. It's not particularly that
8 important to me.

9 A. Okay.

10 Q. I was just wanting to know when maybe the first
11 date was. Now, you indicated there was nothing, I guess,
12 in the clerk's file about him filing or requesting this
13 interstate agreement detainer?

14 A. What I said was, you have to file it -- if you
15 look at Article 3, here, section (b), under chapter 11,
16 17-11-10 says the written notice request for final
17 disposition referred to in paragraph (a) herein shall be
18 given or sent by the prisoner to the warden, commissioner
19 of corrections, or other official having custody of him
20 who shall properly forward it together with the
21 certificate to the appropriate prosecuting official in
22 court by registered or certified mail, return receipt
23 requested.

24 So I checked -- I remember Ms. Williams and I
25 had -- the solicitor, she and I had a little, so to

1 speak, meeting, if you will, about, Do you have that in
2 your file? And she said no, and our clerk didn't have
3 it, so as far as this registered or certified mail that
4 was supposed to have come from Pennsylvania, because it
5 says who shall properly forward it, together with the
6 receipt -- certificate to the appropriate prosecuting
7 official, but, actually, it wouldn't matter. It would
8 still have to be in the clerk's office because it has to
9 be -- and the Court, but just in the event that somehow
10 or another I missed one.

11 Q. So is it your position that in your request that
12 he made pursuant to the interstate agreement on detainers
13 act was basically null and void as not being properly
14 made?

15 A. Unfortunately, yes.

16 Q. Did you have that conversation with him at all
17 during your conversation, that it was null and void and
18 he didn't properly file it?

19 A. I would think I would have said something, but I'm
20 not going to swear to it one way or the other.

21 Q. Do you have -- let me ask you this: Do you have
22 any recollection of that conversation occurring with Mr.
23 Stephens?

24 A. I don't have an independent recollection of it
25 occurring. I do recall he and I talking a good bit about

1 the IAD.

2 Q. Do you recall him ever asking you to make some
3 sort of motion or pursue some sort of avenue to where the
4 charge would be dismissed because he thought that certain
5 procedures were not being followed, such as trying the
6 case within 120 days of either him being transported down
7 here or based on him filing the initial agreement?

8 A. I remember -- and this is just in a -- not word
9 for word, but, in essence, he wanted me to pursue the IAD
10 because he thought he should be, basically, for lack of
11 better words, released and returned back to Pennsylvania.
12 I would think I would have shared with him why, but I'm
13 not going to promise you that I did, because I just don't
14 have an independent recollection of it.

15 Q. Have you reviewed the plea transcript prior to
16 today, or today?

17 A. I have reviewed it today.

18 Q. Okay. And I'm just referring back to, as I have
19 earlier, to page 12 of the transcript, and, again, this
20 is at line 12 of the transcript. If you've got a copy of
21 it up there, please, if you wouldn't mind, take a moment
22 and read that to yourself, and, if not, I can certainly
23 hand this one to you.

24 MR. BOOZER: Your Honor, may I approach the
25 witness?

DEBRA LITTLEJOHN - CROSS-EXAMINATION

1 THE COURT: I've got an extra one if you'd
2 like to use it.

3 THE WITNESS: I have it right here.

4 THE COURT: You got it?

5 THE WITNESS: I got it.

6 BY MR. BOOZER:

7 Q. And, as I said, specifically, page 12, just really
8 lines 12 through 24.

9 A. Okay. Okay.

10 Q. And then also, if you flip over to page 13,
11 beginning at line 7, through line 12.

12 A. Uh-huh.

13 Q. Have you had a moment to review those portions?

14 A. I have.

15 Q. Would you agree with me that those are basically
16 the solicitor's statements, that they're telling the
17 Court that they were on notice and that's why he was down
18 here, was pursuant to the interstate agreement on
19 detainers?

20 A. I would, but I would also say I don't understand
21 why she would -- I mean, I'm just looking at this. There
22 wasn't certified mail there. I don't know why she didn't
23 mention it.

24 Q. But it doesn't appear?

25 A. Right, right.

1 Q. And, obviously, I certainly wasn't there. Does it
2 appear that they're disputing there was anything wrong
3 with the request that was made pursuant to the interstate
4 agreement on detainers?

5 A. No, it doesn't.

6 Q. And is that the reason that he was down here in
7 South Carolina, was because he filed that?

8 A. That's my understanding.

9 Q. Okay. Do you know if it would have been properly
10 filed if they would have even brought him down to South
11 Carolina?

12 A. That, I don't know, because there's different
13 aspects of if that have to be filed, and, like, you have
14 to waive your extradition and all, and waiving
15 extradition in and of itself doesn't trigger the IAD.

16 Q. But in his case, what triggered it, obviously, was
17 his actually filing pursuant to the IAD?

18 A. Correct.

19 Q. Okay.

20 A. From what I recall, right.

21 Q. But you did not pursue any sort of motion to have
22 either the charges dismissed or for him to be taken back
23 to Pennsylvania because the case had not been called for
24 trial within that particular time frame as required by
25 the agreement?

1 A. Correct.

2 Q. Looking at it, let's just assume that it was
3 properly filed.

4 A. Okay.

5 Q. Had it been properly filed and he contends it was
6 properly filed, do you believe that pursuing a motion to
7 try to get the charge dismissed, that that is something
8 that would benefit your client?

9 A. I do. If it had been properly filed, I think it
10 would have. I think the State would obviously argue for
11 a continuance because of the DNA. I think that given the
12 DNA -- I mean, you know, it's not up to me. It's up to
13 the judge. Would it or would it not have been granted, I
14 don't know, it's up to them. Then, of course, the
15 solicitor could have indicted for other charges as well,
16 but had all the Ts been crossed, I think that it would
17 have been prudent to file for the 180 days, absolutely.

18 Q. And would that be because there is a possibility
19 that the charge could have been dismissed?

20 A. Correct. The charges that he came down here on,
21 not the ones that he was directly indicted on.

22 MR. BOOZER: Court's indulgence, Your Honor.

23 BY MR. BOOZER:

24 Q. And just looking back at the transcript --
25 actually, the solicitor was -- and they were talking

1 about time served, sort of, in that conversation, on page
2 12 and 13. They were actually looking back to, I guess,
3 the date April 12, 2013, which is when you would have
4 made the request pursuant to the agreement, that that is
5 when the sentence should be maybe started from.

6 A. 504 days? Right.

7 Q. Right.

8 MR. BOOZER: No further questions at this
9 time.

10 THE COURT: Ms. Littlejohn, I have a few
11 questions.

12 The applicant's duty, under the IAD, as I
13 understand it, is to file with the warden or the keeper
14 in the state where he's being detained the petition for
15 relief under the interstate agreement for detainers;
16 isn't that right?

17 THE WITNESS: I would think that is who they
18 would be filed with.

19 THE COURT: It says, under (b), written
20 notice and a request for a final disposition referred to
21 in paragraph (a) shall be given or sent by the prisoner
22 to the warden, commissioner of corrections, or official
23 having custody of him, so his duty is to file with the
24 entity or the individual that has custody of him, right?

25 THE WITNESS: Correct.

1 THE COURT: And then it is the duty of the
2 person who has custody of him to file -- to properly
3 forward it together with the certificate to the
4 appropriate prosecutor and Court by registered and
5 certified mail, so it's he's got the duty to file with
6 the people who are incarcerating him.

7 THE WITNESS: Right.

8 THE COURT: And then those people have the
9 duty to properly forward it on to the Court and the
10 prosecuting authorities in the receiving state.

11 THE WITNESS: Absolutely.

12 THE COURT: All right. Now, what you said is
13 that when you looked at the Berkeley County files, you
14 did not find a certified or registered letter sending the
15 materials, and I assume that you were looking for a
16 letter from the warden, commissioner of corrections, or
17 other official who had custody of Mr. Stephens; is that
18 right?

19 THE WITNESS: That's right.

20 THE COURT: And you did not find anything
21 like that?

22 THE WITNESS: I did not.

23 THE COURT: What did you find? Obviously,
24 there was something in that file about him waiving
25 extradition, because otherwise paperwork wouldn't have

1 allowed him to be transported down to South Carolina, so
2 what was in the Berkeley file?

3 THE WITNESS: I obviously don't recall. I
4 know I got some information from him as well, so I don't
5 remember if this was from him or from the file.

6 THE COURT: What are you looking at?

7 THE WITNESS: There was an agreement on
8 detainers form one.

9 THE COURT: And what was the date on that
10 form?

11 THE WITNESS: 4/12/13.

12 THE COURT: And that agreement on detainers,
13 was it signed by Mr. Stephens?

14 THE WITNESS: It was actually -- it was, with
15 regard to him, signed by the superintendent from
16 Pennsylvania.

17 THE COURT: All right. Well, then that's --
18 the superintendent of corrections forwarding to -- that's
19 the thing that the superintendent forwarded to somebody,
20 right?

21 THE WITNESS: It is.

22 THE COURT: On that form four, where does it
23 say the superintendent --

24 THE WITNESS: Form one.

25 THE COURT: Form one, who was the

1 superintendent sending it to on that form?

2 THE WITNESS: Let's see. I'm going to guess,
3 based on form two, that's entitled -- because this form
4 one is entitled Notice of Untried Indictments,
5 Information on Complaint, and of Right to Request
6 Disposition. Form two is entitled Inmate's Notice of
7 Place of Imprisonment and Request for Disposition of
8 Indictments, Information, or Complaints, and it's
9 addressed to Scarlett Wilson.

10 THE COURT: And it's addressed to Scarlett
11 Wilson from who?

12 THE WITNESS: From David Stephens.

13 THE COURT: Does it have the signature of a
14 warden or a superintendent or anything else?

15 THE WITNESS: It does not.

16 THE COURT: Let me look at those documents if
17 you don't mind.

18 THE WITNESS: Then I have a form three.

19 THE COURT: All right. Let's keep on going.

20 THE WITNESS: Certificate of Inmate Status,
21 and inmate status is signed by the superintendent of
22 Pennsylvania; form four, Offer to Deliver Temporary
23 Custody, that one's signed by the superintendent of that
24 one. Okay. Then this is the Commonwealth of
25 Pennsylvania sentence status summary, which gives the

1 expirations of his dates. That's three pages.

2 These are the main things -- and I'm not sure
3 if I received those from Mr. Stephens. I want to think
4 he had a copy of them, but I could be wrong.

5 THE COURT: All right. Well, let me recite
6 what Attorney Littlejohn has supplied me with: This is
7 an agreement on retainers form number one that -- and
8 this is a notice of untried indictment and right to
9 request disposition, and it is signed by Gerald L. Rozum,
10 superintendent of SCI Somerset, and it -- that would have
11 been -- that's the form that represents the
12 superintendent's indication, I have received from
13 Stephens the request, and then form two is an inmate's
14 notice of placement, imprisonment, and request a
15 disposition.

16 This is a form that's been sent to Scarlett
17 Wilson, the local prosecuting authority. It is a notice
18 that he's being held in the prison, requires a
19 certificate of inmate status and offer of temporary
20 custody attached. It's got the inmate's name on it.
21 It's not signed, but it's got Stephens's name on it. And
22 then there's an agreement on detainers regarding the
23 certificate of his status as an inmate in SCI Somerset
24 regarding the warrant on a case we have here, and it's
25 signed by Gerald L. Rozum, and that was addressed to

1 Scarlett Wilson, and then an offer to deliver temporary
2 custody.

3 This is an offer by the superintendent of the
4 prisons in Pennsylvania to deliver temporary custody to
5 Solicitor Wilson, and then there is sentence status
6 summary information from the Commonwealth of Pennsylvania
7 that indicates the max out date for him from the
8 Pennsylvania confinement of May the 23rd, 2014 which all
9 coordinates with the story that has been told about him
10 coming down here pursuant to the detainer materials close
11 to his max-out date, is what it looks like.

12 I'm going to put these matters into evidence
13 as Court Exhibit No. 1. I'm handing the documents to the
14 court reporter at this time to mark that, and I ask both
15 you counsel, is there any objection?

16 MR. BOOZER: No objection, Your Honor.

17 THE COURT: Very well. It will be done.

18 (Court's Exhibit 1 marked for
19 identification.)

20 If you hand this over to Ms. Littlejohn,
21 we'll keep a copy in our files, but we'll make a copy for
22 you so you'll have a copy back in your files. We'll let
23 you get the copy back that has got the exhibit mark on it
24 so you know that it's been done, and you gentlemen can
25 look at this at the appropriate time, but let me conclude

1 my examination of Ms. Littlejohn.

2 Ms. Littlejohn, what I'm getting out of these
3 papers, and you tell me if it accords with what you
4 remember, is that Mr. Stephens was sent down here from
5 Pennsylvania pursuant to his waiver of extradition.
6 Apparently, he originally fought extradition. Then he
7 decided to waive extradition and come down here and asked
8 to be speedily tried under the interstate agreement on
9 detainers. Does that accord with what --

10 THE WITNESS: I don't recall about him -- I
11 just recall he waived extradition and came down here.

12 THE COURT: Right. So he comes down here
13 pursuant to this paperwork. We don't know what's in
14 Berkeley County's records, so we can't really determine
15 right now whether Berkeley got a copy in the clerk's
16 records, but we at least know that materials were sent to
17 Scarlett Wilson.

18 THE WITNESS: Right.

19 THE COURT: By the superintendent, which is
20 in accord with what happened. Mr. Stephen can't have any
21 direct interaction with the Court or the prosecution, but
22 the act says that the superintendent supposed to do that,
23 and it looks like that's what he did, best we can tell.

24 Then it would appear in the record of the
25 transcript, page 13, Ms. Littlejohn, is that the

1 solicitor recited that beginning on line 13: The other
2 thing I would like to put on the record is that Mr.
3 Stephens filed that and was asking to be tried within 180
4 days. Ms. Littlejohn did bring that to our attention and
5 was prepared to file a speedy trial motion, but the
6 problem was we didn't have the SLED results back. So we
7 informed her that we would exercise our right to ask for
8 a continuance and felt certain we would be granted one
9 because we had no SLED results.

10 The whole argument became moot when I
11 realized, after I talked to the victim, the dates were
12 wrong on the original warrant and that there were
13 actually three counts instead of one, so we basically
14 nolle prossed the warrant that was the subject of this
15 interstate detainer, and I directly indicted the three
16 counts of CSC with a minor.

17 Is that what you recall was the situation?

18 THE WITNESS: I recall she thought she could
19 get a continuance.

20 THE COURT: Right. But what she ended up
21 doing, rather than moving for a continuance, to just
22 nolle prossed the whole thing. Now, when she nolle
23 prossed the whole thing, did that start the clock
24 rerunning on the speedy trial, or what is your opinion
25 about that?

1 THE WITNESS: Honestly, I think when she
2 nolle prossed it, he was down here on those, on those new
3 direct indictments.

4 THE COURT: Uh-huh. So then what was --

5 THE WITNESS: So therefore these are new
6 things. The one he was down here on is now gone, and --

7 THE COURT: So what should have happened?

8 THE WITNESS: That's a brand new charge here.
9 It doesn't have anything to do with the IAD.

10 THE COURT: Well, that's what I was asking,
11 so is the IAD thing out the window because of that?

12 THE WITNESS: That's what I would think.

13 THE COURT: All right.

14 THE WITNESS: I mean, sort of doesn't seem
15 fair, but -- I would think so because he was brought down
16 here not on that particular one.

17 THE COURT: One final thing. The speedy
18 trial would run -- his entitlement to speedy trial under
19 IAD would run from the time he was -- he actually waived
20 extradition.

21 THE WITNESS: Right.

22 THE COURT: And that would have been in
23 September of 2012. Does that accord with what you see in
24 that transcript, page 12, line 8 and 9?

25 THE WITNESS: That would be correct.

1 THE COURT: All right. So if his 180 days
2 began to run from September of 2012, when would it have
3 been up? March of --

4 THE WITNESS: 2013.

5 THE COURT: And he actually did not have a
6 guilty plea hearing until September of 2014; is that
7 correct?

8 THE WITNESS: He didn't even get to South
9 Carolina until September of 2013, almost some six months
10 after --

11 THE COURT: So if you ran it from September
12 of 2013, then 180 days would be March of 2013, correct.

13 THE WITNESS: Around about, yes.

14 THE COURT: And he was not guilty pleading
15 until September of 2014 -- excuse me, March of 2014, as
16 opposed to September of 2014, correct?

17 If he comes in September of 2013, that's the
18 first time he can start calculating his entitlement to
19 180 days to a speedy trial. That would put him at March
20 of 2014, right?

21 THE WITNESS: Correct.

22 THE COURT: And he was heard in September of
23 2014.

24 THE WITNESS: Correct.

25 THE COURT: So there was some gap, but not as

1 big a gap as discussed here. There was actually a
2 five-month gap, five- or six-month gap.

3 THE WITNESS: Right.

4 THE COURT: All right.

5 Nothing further from me, Ms. Littlejohn.

6 Mr. Ard? Anyone else?

7 MR. ARD: Nothing further, Your Honor.

8 THE COURT: Mr. Boozer?

9 MR. BOOZER: Nothing further, Your Honor.

10 THE COURT: You may come down. All right,

11 Mr. Ard?

12 MR. ARD: Nothing further, Your Honor.

13 THE COURT: All right. Mr. Boozer, on behalf
14 of the applicant, anything further?

15 MR. BOOZER: Your Honor, I think I'll let the
16 record just kind of stand for all of -- in support of our
17 allegations.

18 THE COURT: Well, would you like to present
19 argument?

20 MR. BOOZER: Briefly, Your Honor.

21 THE COURT: Yes, sir.

22 MR. BOOZER: If it pleases the Court, Judge,
23 I do think this is kind of a unique situation. As
24 Ms. Littlejohn indicated, there aren't a whole lot of
25 instances that she found while she was doing her

1 research, I guess, into the case on situations involving
2 the interstate agreement on detainers, and, likewise, I
3 have not dealt with this issue, so it's new to me as
4 well.

5 I think in this case Mr. Stephens followed
6 all of the steps necessary to get him down here to South
7 Carolina to deal with this charge, and, in so doing, that
8 triggers kind of some benefits for him because the State
9 then has to abide by certain rules and timelines. I
10 think in this situation Mr. Stephens's position is he
11 should have been given the opportunity to pursue the --
12 to try and get the charge dismissed by his lawyer for
13 failing to follow the timeline of 180 days, and
14 Ms. Littlejohn admitted that if everything were done
15 properly, and it appears from what we've seen that's been
16 marked as Court's Exhibit No. 1, everything was done
17 properly by Mr. Stephens. Everyone was on notice he was
18 down here, and that's why he was here, was pursuant to
19 the agreement.

20 She felt that it would have been prudent to
21 probably make that motion to at least try and get the
22 charges dismissed. It's a rare opportunity in a criminal
23 case to have some sort of procedural bar where it just
24 knocks the case, you know, out of the court system, but
25 certainly they could come back and indict later on, but I

1 certainly think he deserves that opportunity to make that
2 argument, and we don't know what the solicitor's office
3 would have done had the charge been dismissed pursuant to
4 a motion by Ms. Littlejohn, but I think she should have
5 made that the motion because without the motion, he
6 remained here in South Carolina.

7 While he's in South Carolina, she said it was
8 unfair, but they nolle prossed it and served him with
9 three more charges that he then had to deal with, so that
10 is the basis of his argument and why he feels he's
11 entitled to post-conviction relief, Your Honor.

12 THE COURT: Thank you, Mr. Boozer.

13 Mr. Ard, reply?

14 MR. ARD: Yes, Your Honor, just briefly. I
15 think the State's of the opinion that this IAD issue
16 really has no bearing on this case. Ms. Littlejohn
17 addressed it. She said there was no certified letter.
18 That means there's no adherence to the statute, and where
19 it comes down to, the solicitor dismissed those charges
20 in accord with, you know, her rightful authority to do
21 so, and at that point, the IAD issue has no bearing on
22 this case, and there is no prejudice on behalf of the
23 defendant.

24 He admitted to what he did. He apologized
25 for what he did. He accepted responsibility, and we --

1 like I said, we think -- we're of the opinion that his
2 PCR application should be denied for those reasons.

3 THE COURT: All right. Mr. Ard, if the Court
4 were to view the facts and material that are in the
5 record as an indication that the appropriate notification
6 of South Carolina had been made by the superintendent of
7 prisons. He obviously filed what he was supposed to
8 file, and the question that you've got, and it's a
9 legitimate one, is were the proper steps taken to notify
10 the prosecutor and the Court about the request for a
11 speedy trial pursuant to the interstate agreement on
12 detainers.

13 If I found that those statutory requirements
14 have been met, then what's your position on whether he
15 has the benefit of that as being able to pursue dismissal
16 and was he incompetently represented when that was not
17 pursued before re-indictment?

18 MR. ARD: Even if that was the result, I
19 still think that there is no prejudice on behalf of the
20 defendant. There is substantial evidence leaning toward
21 his guilt in these issues, and when those charges were
22 dismissed, I think that this issue is that is completely
23 separate from this case. Those charges that he came down
24 here on maybe should have been dismissed, but not these
25 new indictments, and that's why we're here today. Ms.

1 Littlejohn did address that.

2 THE COURT: All right, Mr. Ard. Mr. Boozer,
3 anything in reply?

4 MR. BOOZER: Nothing in reply, Your Honor.

5 THE COURT: I don't take many things under
6 advisement and have not since I've been here, but I do
7 think this warrants a little bit of a look.

8 What I would like to do is request that Mr.
9 Boozer and Mr. Ard furnish me with a proposed order while
10 elucidating theirs which includes an elucidation of their
11 positions on this IAD matter. I would like to receive it
12 within ten days. I'll get the clerk to hand me up a
13 form, PCR form, and I'll specify that in the order.

14 Mr. Ard, have you prepared any forms?

15 MR. ARD: No, ma'am.

16 THE COURT: Okay. Well, I can do that right
17 now. If you just have patience, let me go and get that
18 done so my skirts are clean before we go to the next
19 matter.

20 (Brief recess.)

21 Okay. I'm handing the Clerk of Court an
22 order that says the matter heard is under advisement.
23 Both the attorneys for the State and Mr. Stephens are
24 ordered to submit proposed orders to me within ten days.
25 I know Mr. Johnson's crowd has got my e-mail address. Do

1 you have it, Mr. Boozer?

2 MR. BOOZER: I do, Your Honor.

3 THE COURT: They had it wrong in some of the
4 filings, but it's the same old one I've always had when I
5 was chief.

6 MR. BOOZER: And, Your Honor, may I request
7 an extra five days? I have a term with Judge Hood
8 beginning in Aiken this week from Friday.

9 THE COURT: Well, I'm going to give you both
10 15 days because I want you both to simultaneously submit
11 them, so let's just say 15 days.

12 MR. BOOZER: Thank you, Your Honor.

13 MR. ARD: Thank you, Your Honor.

14 - - -

15 (Whereupon, the proceedings were concluded.)

16 - - -

17

18

19

20

21

22

23

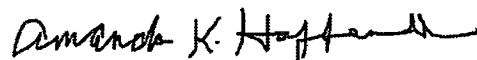
24

25

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 16th of September 2016.

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

October 18, 2017



Circuit Court Reporter

Agreement on Detainers: Form I

In duplicate. One copy of this form, signed by the prisoner and the warden should be retained by the warden. One copy, signed by the warden should be retained by the prisoner.

NOTICE OF UNTRIED INDICTMENT, INFORMATION OR COMPLAINT
AND OF RIGHT TO REQUEST DISPOSITION

Inmate David Stephens No. KR-2528 Inst. SCI-Somerset

Pursuant to the Agreement on Detainers, you are hereby informed that the following are the untried indictments, informations, or complaints against you concerning which the undersigned has knowledge, and the source and contexts of each.

2/16/2011 Berkeley County, South Carolina

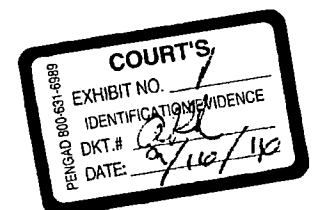
Warrant# M-333205

Criminal Sexual Conduct with Minor, or Attempt –
 Victim 11 to 14 yrs of Age Inclusive - Second Degree

You are hereby further advised that by the provisions of said Agreement you have the right to request the appropriate prosecuting officer of the jurisdiction in which any such indictment, information or complaint is pending and the appropriate court that a final disposition be made thereof. You shall then be brought to trial within 180 days, unless extended pursuant to provisions of the Agreement, after you have caused to be delivered to said prosecuting officer and said court written notice of the place of your imprisonment and your said request, together with a certificate of the custodial authority as more fully set forth in said Agreement. However, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Your request for final disposition will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against you from the state to whose prosecuting official your request for final disposition is specifically directed. Your request will also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein and a waiver of extradition to the state of trial to serve any sentence there imposed upon you, after completion of your term of imprisonment in this state. Your request will also constitute a consent by you to the production of your body in any court where your presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which you are now confined.

Should you desire such a request for final disposition of any untried indictment, information or complaint, you are to notify the Records Office of the institution in which you are confined.



Agreement on Detainers: Form I (continued)

You are also advised that under provisions of said Agreement the prosecuting officer of a jurisdiction in which any such indictment, information or complaint is pending may institute proceedings to obtain a final disposition thereof. In such event, you may oppose the request that you be delivered to such prosecuting officer or court. You may request the Governor of this state to disapprove any such request for your temporary custody but you cannot oppose delivery on the grounds that the Governor has not affirmatively consented to or ordered such delivery.

DATED: 4-12-13 BY: GJ Rozum

Gerald L. Rozum
Superintendent
SCI-Somerset
1590 Walters Mill Road
Somerset, PA 15510

RECEIVED

DATE _____

INMATE David Stephens NO. KR-2528

Agreement on Detainers: Form II

Five copies, if only one jurisdiction within the state involved has an indictment, information or complaint pending. Additional copies will be necessary for prosecuting officials and clerks of court if detainers have been lodged by other jurisdictions within the state involved. One copy should be retained by the prisoner. One signed copy should be retained by the warden. Signed copies must be sent to the Agreement Administrator of the state which has the prisoner incarcerated, the prosecuting official of the jurisdiction which placed the detainer, and the clerk of the court which has jurisdiction over the matter. The copies for the prosecuting officials and the court must be transmitted by certified or registered mail, return receipt requested.

INMATE'S NOTICE OF PLACE OF IMPRISONMENT AND REQUEST FOR
DISPOSITION OF INDICTMENTS, INFORMATIONS OR COMPLAINTS

TO: Scarlett A. Wilson, Prosecuting Officer Berkeley County
(jurisdiction)
South Carolina, Court District
(jurisdiction)

And to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

You are hereby notified that the undersigned is now imprisoned in

SCI-Somerset at Somerset, PA
(institution) (town and state)

and I hereby request that a final disposition be made of the following indictments, informations or complaints now pending against me:

2/16/2011 Arrest Warrant# M-333205 Criminal Sexual Conduct with Minor, or Attempt –
Victim 11 to 14 yrs of Age Inclusive – Second Degree

Failure to take action in accordance with the Agreement on Detainers, to which your state is committed by law, will result in the invalidation of the indictments, informations or complaints.

I hereby agree that this request will operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against me from your state. I also agree that this request shall be deemed to be my waiver of extradition with respect to any charge or proceeding contemplated hereby or included herein, and a waiver of extradition to your state to serve any sentence there imposed upon me, after completion of my term of imprisonment in this state. I also agree that this request shall constitute a consent by me to the production of my body in any court where my presence may be required in order to effectuate the purposes of the Agreement on Detainers and a further consent voluntarily to be returned to the institution in which I now am confined.

Agreement on Detainers: Form II (continued)

If jurisdiction over this matter is properly in another agency, court or officer, please designate the proper agency, court or officer and return this form to the sender.

The required Certificate of Inmate Status and Offer of Temporary Custody are attached.

DATED: _____ David Stephens KR-2528
(Inmate's name and number)

The inmate must indicate below whether he has counsel or wishes the court in the receiving state to appoint counsel for purposes of any proceedings preliminary to trial in the receiving state which may take place before his delivery to the jurisdiction in which the indictment, information or complaint is pending. Failure to list the name and address of counsel will be construed to indicate the inmate's consent to the appointment of counsel by the appropriate court in the receiving state.

A. My counsel is _____,
(name of counsel)

whose address is _____
(street, city and state)

B. I request the court to appoint counsel.

(inmate's signature)

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor under Article IV, copy of this Form should be sent to the prosecutor upon receipt by the warden of Form V. Copies also should be sent to all other prosecutors in the same state who have lodged detainers against the inmate. A copy may be given to the inmate.

CERTIFICATE OF INMATE STATUS

RE: <u>David Stephens</u>	<u>KR-2528</u>
(inmate)	(number)
<u>SCI-Somerset</u>	<u>Somerset, PA</u>
(institution)	(location)

The PA Department of Corrections hereby certifies:

1. The term of commitment under which the prisoner above name is being held:
9m-2y
2. The time already served: 258 days
3. Time remaining to be served on the sentence: 404 days
4. The amount of good time earned: 90 days
5. The date of parole eligibility of the prisoner: 2/23/2013
6. The decisions of the Board of Parole relating to the prisoner: (if additional space is needed use reverse side)
Unknown
7. Maximum expiration date under present sentence: 5/23/2014
8. Detainers currently on file against this inmate from your state are as follows:

Berkely County, South Carolina Warrant# M-333205 Dated: 2/16/2011
Charges: Criminal Sexual Conduct with Minor, or Attempt – Victim 11 to 14 yrs of
Age – Second Degree

DATED: 4-12-13

BY:

[Signature]

Gerald L. Rozum
Superintendent
SCI-Somerset
1590 Walters Mill Road
Somerset, PA 15510

Agreement on Detainers: Form IV

In the case of an inmate's request for disposition under Article III, copies of this Form should be attached to all copies of Form II. In the case of a request initiated by a prosecutor, this Form should be completed after the Governor has indicated his approval of the request for temporary custody or after the expiration of the 30 day period. Copies of this Form should then be sent to all officials who previously received copies of Form III. One copy also should be given to the prisoner and one copy should be retained by the warden. Copies mailed to the prosecutor should be sent by certified or registered mail, return receipt requested.

OFFER TO DELIVER TEMPORARY CUSTODY

Date _____

TO: Scarlett A. Wilson, Solicitor Prosecuting Officer
(insert name and title if known)

Berkeley County, South Carolina
(jurisdiction)

and to all other prosecuting officers and courts of jurisdictions listed below from which indictments, informations or complaints are pending.

RE: David Stephens Number KR-2528
(inmate)

Dear Sir:

Pursuant to the provisions of Article V of the Agreement on Detainers between this state and your state, the undersigned hereby offers to deliver temporary custody of the above-named prisoner to the appropriate authority in your state in order that speedy and efficient prosecution may be had of the indictment, information or complaint which is described in the attached inmate's request. The required Certificate of Inmate Status is enclosed.

If proceedings under Article IV(d) of the Agreement are indicated, an explanation is attached.

Indictments, informations or complaints charging the following offenses also are pending against the inmate in your state and you are hereby authorized to transfer the inmate to custody of appropriate authorities in these jurisdictions for the purposes of disposing of these indictments, informations or complaints.

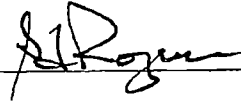
Agreement on Detainers : Form IV (continued)

Offense	County or Other Jurisdiction
<u>Criminal Sexual Conduct with Minor, or</u>	<u>Berkeley County</u>
<u>Attempt - Victim 11 to 14 yrs of Age -</u>	<u></u>
<u>Second Degree</u>	<u></u>
<u></u>	<u></u>

If you do not intend to bring the inmate to trial, will you please inform us as soon as possible?

Kindly acknowledge.

BY: _____



Gerald L. Rozum
Superintendent
SCI-Somerset
1590 Walters Mill Road
Somerset, PA 15510

A. My counsel is _____
name of counsel

whose address is _____
(street, city and state)

B. I request the court to appoint counsel.

(inmate's signature)



COMMONWEALTH OF PENNSYLVANIA **DC16E - SENTENCE STATUS SUMMARY DEPARTMENT OF CORRECTIONS**

Name: David Leon Stephens

Inmate # KR2528

Certified Version 1, Dated 5/28/2012 1:43:59 PM

1. REFERENCES AND IDENTIFICATION

DOC # KR2528	Commitment Name DAVID LEON STEPHENS	PEPP # 27001055	SD # 274704715	FBI # 274704715	Photo Photo #
DOB 04/02/1974	Place of Birth LORIS SC USA		Race E	Sex M	

2. SENTENCE SUMMARY (RRRI)

Sent Date	County/State/Federal	Indication	Sent Type	Minimum			Maximum		
				Y	M	D	Y	M	D
08/01/2012	Lackawanna	CP0002838 CT2/2009			5		2		
Plea:	Plead Guilty	OTN: L5188213							
Offense:	CC4904A1 - UNSWORN FALSIFICATION TO AUTHORITIES							RRRI	

Reception Date	08/22/2012	Reentered from DOC #	
Controlling Minimum Date	02/23/2013	New Maximum - PV	
Controlling Maximum Date	05/23/2014	True Minimum Expiry Date	5/23/2013
RRRI Minimum Expiry Date	2/23/2013		

Summary or Remarks on Sentence

None

3. SENTENCE STRUCTURE

Commitment Credit

Computation 1 CP0002838 CT2/2009 : 05/23/2012 to 08/01/2012

all/Escape/Interruption Time Data

Name: David Leon Stephens

Inmate #: KR2528

Criminal Version: Nov 19 11

4. NON-INCARCERATED OFFENSES

Sent Date	County/State/Federal	Incident#
08/01/2012	Lackawanna	CP0002636 CT 2/2009
Description:	CT1: DUI: GEN IMP BAC .08- .10 1ST OFFENSE PROBATION GP	
Comments:		

5. DETAINERS

Detainer#	Date	Agency	Agency Identification	OTN	Type
1	02/16/2011	SOUTH CAROLINA	M333205		Out of State
Charges:	CRIMINAL SEXUAL CONDUCT WITH MINOR, OR ATTEMPT VICTIM 11 TO 14 YRS OF A 2ND DEGREE				

Deleted Detainers (For those deleted since last DC16)

Detainer#	Date Deleted	Agency	Agency Identification	OTN	Type
None					
Remarks:	None				

6. PRIOR DOC NUMBERS

None					
------	--	--	--	--	--

7. ACTIONS: BOARD OF PARDONS

Decision Date	File Number	Action	Comments
None			

Last Modified By: Kessler, Jennifer K

Signed On By: Horvath, Cindy L

Generated By: Horvath, Cindy L

Instance

Name: David Leon Stephens

Inmate #: KR25283 Geriatric Parole Unit

3. SENTENCE STRUCTURE (Cont'd)

Item	Computation 1		
Indictments Included	CP0002636 CT2/2009		
Eff Date	05/23/2012		
Expiration of Minimum	02/23/2013		
Expiration of Maximum	05/23/2014		
Custody for Return - PV			
Delinquent Time			
Backtime Credit			
Backtime Owed			
New Maximum CRV			
Sentence	09/28/2012		
Computation Date			
Basis of Computation	Initial		

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

David Leon Stephens, #361522,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2015-CP-08-0640

ORDER GRANTING PCR

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

2017 NOV -9 PM 12:42

FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 11, 2015. Respondent made its Return on March 28, 2016. An evidentiary hearing into the matter was convened on September 16, 2016 at the Berkeley County Courthouse. Lance S. Boozer, Esquire represented Applicant. Jonathan S. Arndt, a third-year law student at the Charleston School of Law under the South Carolina Supreme Court Rule 401 (Student Practice Rule), under the supervision of J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2014 term of the Berkeley County Grand Jury for two counts of Criminal Sexual Conduct with a minor (CSC), 2nd degree (2014-GS-08-0644, -645).¹ The Applicant was represented by Debra K. Littlejohn, Esquire ("Counsel").

On September 17, 2014, the Applicant pled guilty as indicted. The Applicant was sentenced

¹ Applicant was originally charged with Criminal Sexual Conduct, with a minor, 2nd Degree. Applicant was served with this warrant on or about September 19, 2013. The disposition of this charge is discussed further below.

by the Honorable Kristi Lea Harrington to confinement for a period of fifteen years. The Applicant did not appeal his conviction or sentence.

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

1. "Constitutional rights were violated due to violation of my IAD which was dismissed when they brought these charges on me"
 - a. "I was expedited here on a (IAD) signed in April, 2013; which expired in October, 2013 and didn't have court until Nov. 2013"
2. "Public Defender said I'm going to let my client speak for himself"
 - a. "My public Defender did not speak on my behalf in pleading my case"
3. "Held in custody 7 months on a charge that was supposed to be dismissed in Oct. 2013 until evidence was found to charge me with these charges."
 - a. "After I was charged with these crimes my charge I sat in jail for 7 months after violation of my IAD was dismissed"

#2
S/H
At the evidentiary hearing, Applicant testified on his own behalf. Debra K. Littlejohn, Esquire also testified. This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

STANDARD OF REVIEW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 268 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

Based on the record and testimony presented at the PCR hearing, this Court finds Applicant has met his burden of proof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Ineffective Assistance of Counsel

At the evidentiary hearing, Applicant alleged and testified Counsel failed to file a motion

and/or otherwise request from the court that his charges be dismissed for failing to abide by the Interstate Agreement on Detainer (IAD). Applicant also alleged Counsel failed to speak on his behalf. Applicant testified he was previously incarcerated in a Pennsylvania correctional facility. Upon notice that he was being sought in connection with the CSC, 2nd degree, referenced in footnote 1 above, Applicant testified and the plea transcript reflects he waived extradition to South Carolina in or around September 2012. Plea tr. p. 12, ll. 5-10. Applicant testified and the plea transcript further reflects, that in April 2013, Applicant completed and submitted the IAD forms. Plea. tr. p. 12, ll. 11-16. Applicant further testified he submitted the IAD request in order to seek disposition of the charge within 180 days and believed that deadline would have expired sometime in October 2013. Applicant testified he was not delivered to South Carolina until September 2013.

#4
Applicant also testified that he requested that Counsel file for a dismissal of the charge based on an IAD violation. Applicant testified counsel indicated she would look into it but never pursued any such motion or request to have the charge dismissed based on an IAD violation. Applicant indicated he remained in custody and, eventually, the State realized there was an error in the original warrant for CSC, 2nd degree, and directly indicted the Applicant for three (3) counts of CSC, 2nd degree. Applicant testified he then proceeded to plead guilty because he felt he had been "railroaded."

Counsel testified she first began representing the Applicant in October 2013, shortly after his arrival to Berkeley County from Pennsylvania. She recalled discussing Applicant's concern that he felt there was an IAD violation. Counsel further testified that she was not very familiar with IAD requests and asked other attorneys in her office about the issue and conducted legal research. She also testified she attempted to locate a copy of the IAD in the Berkeley County Clerk

of Court's file, however, she could not locate where it had been delivered to the County. She did not believe that the Applicant had properly complied with all parts of the IAD such as obtaining or requesting a certified delivery receipt.

On cross-examination and upon questioning by this Court, Counsel acknowledged that the Applicant arrived in South Carolina in September 2013. When shown a copy of the plea transcript, Counsel admitted that it appeared that the Solicitor was on notice of the Applicant's IAD submission and he was in fact in Berkeley County pursuant to the IAD request and the completed IAD form was provided to the plea court. Counsel testified she should have pursued a request for dismissal of the charge due to an IAD violation but believed the Solicitor would have requested a continuance.

#5
JST
The IAD is an interstate compact by which the states, the District of Columbia, and the Federal Government have established uniform procedures for the transfer of prisoners serving sentences in one state to another state for the disposition of pending charges, South Carolina enacted the IAD into law in 1962. S.C. Code Ann. 17-11-10 (2006). Article III(a) of the IAD requires that a defendant "be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition the made..." Article III(d) further provides that if a defendant is not tried within this timeframe, the charge will be dismissed with prejudice, however, the court may grant a continuance upon request.

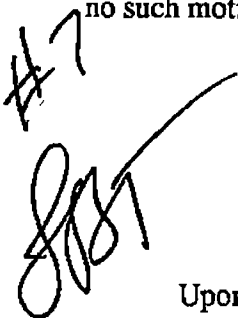
Violations of the IAD do not amount to constitutional violations warranting the application of a dismissal. See State v. Tucker, 376 S.C. 412, 416-17, 656 S.E.2d 403, 405-06 (Ct. App. 2008). Additionally, "[g]uilty pleas 'generally act as a waiver of all non-jurisdictional defects and

defenses.’” Id. (quoting State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000)); see also State v. Deaner, No. 2011-UP-472, 2011 WL 11735733, at 1 (S.C. Ct. App. Oct. 26, 2011) (holding that by proceeding with a voluntary guilty plea the defendant implicitly waived any challenges to his conviction based on violations under the IAD).

In Tucker, the defendant, through counsel, made a motion to dismiss his charges due to an IAD violation. Id. at 405. The court denied defendant’s motion. Id. The defendant then entered a guilty plea and expressly waived his right to appeal the court’s ruling on the IAD motion and also to file a PCR application. Id. Subsequently, the defendant filed a direct appeal alleging the court erred in ruling on the IAD violation and his plea and conviction should have been vacated. Id. The South Carolina Court of Appeals affirmed the conviction and held that the defendant waived any and all defects of the IAD when he entered the guilty plea, and that he also expressly waived his right to appeal during the plea. Id. at 406. The Court of Appeals did not address whether he waived his right to a PCR application. Id. at 408.

Applicant’s case is distinguishable from Tucker. Specifically, in Tucker, the defendant actually made a request to dismiss his charge due to an IAD violation, however, that request was denied. The defendant attempted to challenge the court’s ruling through a direct appeal. In Applicant’s case, he was not even afforded the opportunity to request that his charge be dismissed when there was actually an IAD violation. He testified at the PCR hearing that he requested his Counsel raise the IAD violation, however, she did not. Counsel confirmed she did not make a motion or request for dismissal of Applicant’s charge. This Court finds Counsel was ineffective for failing to do so. Furthermore and unlike the defendant in Tucker, Applicant did not file a direct appeal but rather a PCR application alleging his Counsel was ineffective for failing to pursue dismissal of his charge, rendering his guilty plea involuntary.

The "statutory right to dismissal due to an administrative violation of these [IAD] rules is therefore not "'fundamental,' even though its impact on a defendant may be great." U.S. v. Palmer, 574 F.2d 164, 167 (3rd Cir. 1978). Here, Applicant was deprived of the rare opportunity to have his charge dismissed with prejudice due to Counsel's ineffectiveness. This Court is aware that the State could have certainly requested a continuance, however, had Counsel made a motion to dismiss, the burden would have then been placed on the State to show it was "necessary and reasonable" to continue to the case. This Court finds Applicant complied with the IAD provisions. This Court finds Counsel's thoughts that the IAD was not properly filed are incorrect. Additionally, this Court finds that the Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the charge dismissed with prejudice. The record and Counsel's testimony reflects no such motion or request was made.



CONCLUSION

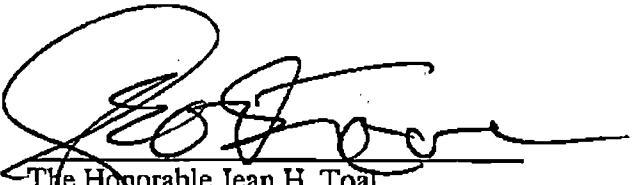
Upon review of the entire record, including the Applicant's IAD request that was made a part of the PCR hearing record, this Court finds Applicant has met his burden of proof that counsel was ineffective for failing to pursue dismissal of the charge, rendering his guilty plea involuntary. Accordingly, this Application for PCR must be granted.

IT IS THEREFORE ORDERED:

1. That the Application for PCR is granted;
2. Applicant's convictions are vacated and sentence reversed;
3. Applicant be remanded to the custody of Berkeley County; and

4. Applicant receive a new trial.

AND IT IS SO ORDERED this 10th day of Oct., 2017 ~~2016.~~


The Honorable Jean H. Toal
Presiding Judge
Ninth Judicial Circuit

2758

#8

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

David Leon Stephens, SCDC No. 361522,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-08-0640

**RESPONDENT'S MOTION TO
RECONSIDER, ALTER, OR AMEND
PURSUANT TO RULE 59(e), SCRCF**

This matter comes before this Court by way of an application for post-conviction relief filed on March 11, 2015, by David Leon Stephens ("Applicant"). A hearing on this application was held in the Berkeley County Court of Common Pleas before the Honorable Jean H. Toal, former Chief Justice of the South Carolina Supreme Court and acting circuit court judge. By written order filed November 9, 2017, and received by Applicant on November 17, 2017, this Court granted the post-conviction relief, vacated Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial, finding plea counsel was ineffective for failing to move for dismissal of Applicant's charges based on a violation of the Interstate Agreement on Detainers Act ("the IAD Act").

Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCF, would respectfully show unto this Court:

PROCEDURAL HISTORY

On September 7, 2010, a report was filed with the Berkeley County Sheriff's office in reference to a sexual assault committed by Applicant against the twelve-year-old minor victim.

(Arrest Warrant M-333205)¹. On February 16, 2011, the Berkeley County Sheriff's Office sought and obtained a warrant for Applicant's arrest for second-degree criminal sexual conduct with a minor. (Arrest Warrant M-333205). The accompanying affidavit specifically alleged the following:

That on or between 05/21/10 and 06/17/2010 the defendant did commit the above stated offense in that he did willfully, unlawfully, and feloniously engaged in sexual intercourse with a female victim date of birth [REDACTED] and said offense having occurred at [REDACTED] Horseshoe Road, Goose Creek, SC located in the County of Berkeley. Facts to establish the aforesaid: On 09/07/10 a report was filed with the Berkeley County Sheriff's Office in reference to a sexual assault committed by the defendant. The victim was seen at Lowcountry Children Center and disclosed sexual abuse by defendant. The twelve-year old victim disclosed vaginal/penile intercourse by the defendant. The victim became pregnant as a result of the sexual assault. The victim knows the defendant by sight and sound. The victim was twelve years old and the defendant was over the age of twenty-one at the time of the sexual assault. The affiant and the victim are witnesses to prove the same.

(Arrest Warrant M-333205) (emphasis added).

On August 22, 2012, Applicant began serving a term of imprisonment within the Commonwealth of Pennsylvania Department of Corrections following his guilty plea to "Unsworn Falsifications to Authorities." (Court's Exhibit 1). While incarcerated in

¹ Undersigned counsel is unsure if this arrest warrant and a complete set of all records pertaining to Applicant's General Sessions matters subject to this post-conviction relief action were presented to this Court. In the event that they were not, Respondent argues that pursuant to Rule 201(f), SCRE, courts are permitted to take judicial notice of facts at any stage of a case. Most importantly, "an appellate court can take judicial notice of something that was not before the trial court if is indisputable." Wise v. Wise, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011). As all of these documents are on file with the Berkeley County Clerk of Court's office (and therefore readily available to all parties involved) and are directly pertinent to this post-conviction relief action, Respondent argues they are properly before this Court. See generally South Carolina Dep't of Soc. Servs. v. Janice C., 383 S.C. 221, 227, 678 S.E.2d 463, 467 (Ct. App. 2009) ("These documents were filed with the family court; therefore, they were part of the record.").

Pennsylvania, Applicant became aware of Arrest Warrant M-333205 for second-degree criminal sexual conduct with a minor based on his genital penetration and resulting impregnation of the minor victim. On April 12, 2013, Applicant partially² filled out an IAD Act request form, which was forwarded to the Ninth Circuit Solicitor's Office. (Court's Exhibit 1). However, this form was never filed with the Berkeley County Clerk of Court.³

On September 18, 2013, Applicant was brought to South Carolina. (Guilty Plea Tr. 18). Shortly thereafter, Applicant was appointed Debra K. Littlejohn, Esquire, to represent him on the charges arising out of the conduct contained within Arrest Warrant M-333205. Littlejohn was aware of the IAD Act request Applicant had made and she brought Applicant's IAD Act request for a speedy disposition of his charge to the attention of the State. (Guilty Plea Tr. 13). In response, Anne Williams, the prosecuting Assistant Solicitor, informed Littlejohn that SLED DNA results to determine paternity of the twelve-year-old minor victim's aborted fetus were still pending and she would move for a continuance of the case until such results were obtained.⁴ (Guilty Plea Tr. 13-16, PCR Tr. 29, 37).

On June 18, 2014, Assistant Solicitor Williams dismissed Arrest Warrant M-333205 and directly presented three new indictments against Applicant based on additional information she gathered during interviews with the minor victim, including additional felonious conduct and a slight variation in the dates the incidents occurred. The three new indictments, all which were true billed by the Berkeley County Grand Jury on May 13, 2014, were as follows: second-degree

² Numerous locations on Applicant's IAD Act form are blank and do not contain Applicant's signature. See Court's Ex. 1.

³ Trial counsel Littlejohn testified she was unable to locate a copy of the IAD Act request on file with the Berkeley County Clerk of Court. (PCR Tr. 21). Undersigned counsel contacted the Berkeley County Clerk's Office on November 22, 2017, and after looking through all of Applicant's General Sessions files, confirmed no copy of the IAD Act form was on file.

⁴ Results of the paternity test revealed Applicant was the biological father of the twelve-year-old minor victim's aborted fetus. (Guilty Plea Tr. 16; PCR Tr. 16).

criminal sexual conduct with a minor based on digital penetration of the minor victim; second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim; and lewd act (2014-GS-08-0644, -0645, -0646).

On June 19, 2014, Applicant, who had concluded his Pennsylvania sentence, was released on bond on the three indictments (2014-GS-08-0644, -0645, -0644).

On September 17, 2014, Applicant appeared in the Berkeley County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge, and pled guilty to the two indicted counts of second-degree criminal sexual with a minor (2014-GS-08-0644, -0645). At the plea proceeding, the State and Littlejohn both referenced Applicant's IAD Act request and that they were awaiting the SLED DNA results to determine paternity of the aborted fetus before bringing Applicant's case to trial. Pursuant to plea negotiations between Applicant and the State for a sentence cap of fifteen years, Judge Harrington sentenced Applicant to fifteen years imprisonment; the remaining lewd act indictment was dismissed pursuant to the plea agreement. Applicant did not file an appeal.

On March 11, 2015, Applicant filed an application for post-conviction relief alleging a violation of the IAD Act and ineffective assistance of counsel. Respondent made its return on March 28, 2016, requesting an evidentiary hearing be convened on the application. Thereafter, on September 6, 2016, Applicant, through counsel Lance S. Boozer, Esquire, filed an amended application alleging an additional ground for relief: that Applicant's guilty plea counsel was involuntary. An evidentiary hearing was held before this Court on September 16, 2016, in the Berkeley County Court of Common Pleas. Applicant was present and represented by counsel Boozer. Respondent was represented by John Ard, a third-year law student at the Charleston School of Law, practicing under Rule 401, SCACR, and supervised by J. Rutledge Johnson,

Esquire, of the South Carolina Attorney General's Office. At the hearing, testimony was taken from Applicant and his former plea counsel, Debra K. Littlejohn, Esquire. At the conclusion of the hearing, this Court took this matter under advisement and requested proposed orders from both parties.

By written order filed November 9, 2017, this Court granted post-conviction relief, vacated Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial, finding plea counsel was ineffective for failing to move for dismissal of Applicant's charge based on a violation of the IAD Act. Respondent received copy of the order on November 17, 2017. This motion to reconsider, alter, and amend pursuant to Rule 59(e), SCRCP, follows.

ARGUMENT IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden as set forth in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, an applicant must first prove that counsel's performance was deficient as measured by its "reasonableness under professional norms." Id. Second, an applicant must establish that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

In its Order of Dismissal, this Court found plea counsel Littlejohn was ineffective for failing to motion or request for the dismissal of Applicant's charge based on an IAD violation. (Order Granting PCR 6). This Court found,

Here, Applicant was deprived of the rare opportunity to have his **charge** dismissed with prejudice due to Counsel's ineffectiveness. This Court is aware that the State could have certainly requested a continuance, however, had Counsel made a motion to dismiss, the

burden would have been placed upon the State to show it was “necessary and reasonable” to continue the case. This Court finds Applicant complied with the IAD provisions. This Court finds Counsel’s thoughts that the IAD was not properly filed are incorrect. Additionally, this Court finds that Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the charge dismissed with prejudice.

(Order Granting PCR 7) (emphasis added). Despite numerous references to a violation of the IAD in reference to Applicant’s charge (presumably the second-degree criminal sexual conduct for genital penetration based on Arrest Warrant M-333205), this Court inexplicably vacated both of Applicant’s convictions and remanded the matter for a new trial on both indictments (including the digital penetration indictment that was unrelated to Applicant’s IAD Act request).

Respondent respectfully asserts this Court’s order is based on numerous legal and factual errors and that this Court’s grant of post-conviction relief should be reconsidered and denied.

Applicant did not properly comply with IAD provisions

As an initial matter, Respondent respectfully notes this Court’s finding that “Applicant properly complied with the IAD provisions” is in error, as Applicant did not properly cause a copy of his IAD paperwork to be filed with the Berkeley County Clerk of Court as required to avail himself of the benefits and protections of the IAD Act.

The IAD Act is a “compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State’s outstanding charges against a prisoner of another State.” New York v. Hill, 528 U.S. 110, 111 (2000) (citations omitted). Critically, the IAD Act was designed to create “cooperative procedures” between the states and the federal government in order to “encourage the expeditious and orderly disposition of” outstanding charges and detainers against prisoners incarcerated in other jurisdiction based on

the “uncertainties” caused by such charges and detainers. S.C. Code Ann. § 17-11-10, art. I; see State v. Finley, 277 S.C. 548, 550, 290 S.E.2d 808, 809 (1982) (“The purpose of I.A.D. is to foster the expeditious disposition of charges outstanding against prisoners so as to eliminate uncertainties which accompany the filing of detainers.”).

Based on the IAD Act, two distinct deadlines are imposed upon the State after a detainer against a defendant held in another jurisdiction is filed—a 180-day deadline and a 120-day deadline. See S.C. Code Ann. § 17-11-10, art. III(a) (setting out a 180-day deadline for the commencement of trial); S.C. Code Ann. § 17-11-10, art. IV(c) (setting out a 120-day deadline for the commencement of trial). Specifically, when a defendant files a request complying with the IAD Act’s requirements⁵ for final disposition in connection to a filed detainer, the defendant “shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer’s jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint.” S.C. Code Ann. § 17-11-10, art. III(a). Likewise, “trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving state” when a defendant is transferred pursuant to a detainer regardless of whether the defendant ever requested final disposition. S.C. Code Ann. § 17-11-10, art. IV(c). Ordinarily, if a defendant is not brought to trial within the applicable statutory period, the IAD

⁵ Regarding the IAD Act’s requirements, the defendant must have written notice of the place of his imprisonment and his request for a final disposition delivered to both the prosecuting officer and “the appropriate court of the prosecuting officer’s jurisdiction.” S.C. Code Ann. § 17-11-10, art. III(a). Significantly, if the defendant fails to comply with those express requirements, the IAD Act’s 180-day deadline will not be triggered and will not begin to run. See State v. Johnson, 278 S.C. 668, 671, 301 S.E.2d 138, 140 (1983) (“We hold appellant’s letter did not comply with the IAD requirements and thus did not trigger the running of one hundred eighty day period during which a prisoner must be brought to trial under Article III of the IAD.”).

Act requires the trial judge to dismiss the pending indictment, information, or complaint with prejudice. S.C. Code Ann. § 17-11-10, art. V(c).

In the present case, Applicant did not properly comply with the IAD Act's requirements because he did not properly file or otherwise cause to be delivered a copy of his IAD Act request with the Berkeley County Clerk of Court. Because he did not comply with those express requirements, the IAD Act's 180-day deadline will **not** be triggered and will **not** begin to run. See State v. Johnson, 278 S.C. 668, 671, 301 S.E.2d 138, 140 (1983) ("We hold appellant's letter did not comply with the IAD requirements and thus did not trigger the running of one hundred eighty day period during which a prisoner must be brought to trial under Article III of the IAD."). Therefore, Applicant's partially filled-out IAD Act request form, dated April 12, 2013, did not trigger the IAD Act's 180-day deadline and is not dispositive in this case.

Dismissal of Both of Applicant's Convictions Based on a Purported IAD Act Violation is Erroneous

Notwithstanding Applicant's failure to comply with the express requirements of the IAD Act, Applicant was delivered to South Carolina on September 18, 2013, thereby triggering the 120-day timeline pursuant to S.C. Code Ann. § 17-11-10, art. IV(c), as to the second-degree criminal sexual conduct with a minor charge for which Arrest Warrant M-333205 was issued and for which the State lodged a detainer against Applicant. Importantly though, regardless of which timeline was applicable and regardless of whether either timeline was violated, Respondent respectfully submits any grant of relief based on an IAD Act violation should **only** apply to the second-degree criminal sexual conduct with a minor charge for Applicant's genital penetration of minor victim based on the information contained in Arrest Warrant M-333205 and **not** the other, unrelated second-degree criminal sexual conduct with a minor charge based on Applicant's

digital penetration of minor victim that was indicted in 2014 or the lewd act indictment (2014-GS-08-0646) that was dismissed pursuant to the plea agreement entered into between Applicant and the State. The two separate charges are based on conduct separate and apart from the conduct giving rise to the charge upon which Arrest Warrant M-333205—the basis for the detainer lodged against Applicant—was founded.

Applicant was not made aware of these two additional charges until after he was directly indicted for both on May 13, 2014, well after he was brought to the state pursuant to the IAD Act (and in fact, after he had completed serving his sentence on the Pennsylvania charges). See Court's Exhibit 1 listing Applicant's parole eligibility as "2/23/13" and maximum expiration of the present sentence as "5/23/14" for the Pennsylvania charge. Therefore, the IAD Act is inapplicable to these two charges and any purported violation should not result in the dismissal of these charges (the other second-degree criminal sexual conduct with a minor charge and the lewd act charge). See United States v. Sanders, 669 F.2d 609, 610 (9th Cir. 1982) (holding, without discussion, that where a one-count complaint, upon which the detainer was based, was dismissed for failure to comply with the prescribed time period and a new complaint was filed containing the dismissed count and two new but related counts, the trial court properly dismissed only the original count); Espinoza v. State, 949 S.W.2d 10, 12 (Tex. App. 1997) (noting that "[b]y its terms, [the IAD] limits dismissal to a charge forming the basis of the detainer" and holding that conviction, even though on a related charge, was not on the charge on which the detainer was lodged; Commonwealth v. Boyd, 451 Pa. Super. 404, 679 A.2d 1284, 1287 (1996) (holding that speedy trial provisions of IAD did not apply where charges for which detainer was lodged were "separate and apart" from new charges that were subject of conviction); People v. Greenwald, 704 P.2d 312 (Colo.1985) (holding statute requiring trial within 120 days of

defendant's return to state relates only to the charges underlying the detainer by which state secured temporary custody of prisoner incarcerated in another state); People v. Oiknine, 79 Cal. App. 4th 21, 93 Cal. Rptr. 2d 720 (1999) (holding although a dismissal with prejudice of the five counts from the original complaint satisfied the requirements of the IAD, nothing in the IAD suggests that new charges, which were not specified in the detainer, can or should be dismissed along with the older charges that were listed in the detainer). Therefore, this Court's ruling that all of his convictions (including the unrelated second-degree criminal sexual conduct with a minor conviction based on Applicant's digital penetration of the minor victim) should be reversed based on a purported IAD Act violation is based on an error of law.

CONCLUSION

Based on all the foregoing, Respondent respectfully requests this Court reconsider its prior ruling and deny relief as to the other second-degree criminal sexual conduct with a minor charge because it is wholly unrelated to the IAD Act. Respondent requests a hearing to fully argue this 59(e), SCRCP, motion and address each of the raised issues before this Court.

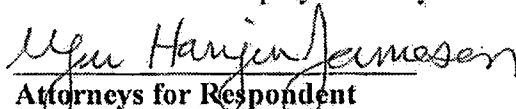
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By:


Attorneys for Respondent
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

November 27, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2015-CP-08-0640
	)	
DAVID LEON STEPHENS	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion to Alter or Amend** the order granting post-conviction relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201

DATED this 27th day of November, 2017.


MEGAN HARRIGAN JAMESON
 Senior Assistant Deputy Attorney General
 S.C. Bar No. 79114
 Office of Attorney General
 Post Office Box 11549
 Columbia, South Carolina 29211
 (803) 734-3737

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A NO: 2015-CP-08-640
	)	
David Stephens, #361522	)	
	)	
Applicant,	)	
	)	RETURN TO RESPONDENT'S
v.	)	MOTION TO ALTER OR AMEND
	)	ORDER GRANTING PCR
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

This Court granted Applicant's PCR application by Order filed November 9, 2017. On November 28, 2017, Respondent submitted a Motion to Alter or Amend Judgment pursuant to Rule 59(e).

In its Motion, Respondent argues this Court erred in granting Applicant's PCR application. Applicant submits that this Court's Order Granting PCR contains the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRPC. Applicant further submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Respondent's Motion should be denied without a hearing.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Phone: (803) 608-5543

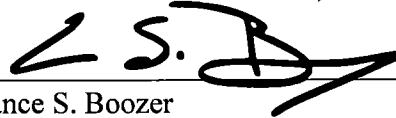
November 28, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A NO: 2015-CP-08-640
	)	
David Stephens, #361522	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Return to Respondent's Motion to Alter or Amend Judgment upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Megan Harrigan Jameson
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
1400 Laurel Street, Suite 4A
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
November 28, 2017

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF BERKELEY) COURT OF COMMON PLEAS
 3) 2015-CP-08-0640

4 David Leon Stephens,)
 5 Plaintiff,)
 6 vs.) TRANSCRIPT OF RECORD
 7 State of South Carolina,)
 8 Defendant.)

9 April 4, 2018
 10 Columbia, South Carolina

11
 12
 13 B E F O R E:

14 THE HONORABLE JEAN H. TOAL, JUDGE.
 15
 16

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

18 LANCE S. BOOZER, ESQ.
 19 Attorney for the Petitioner

20 MEGAN H. JAMESON, ASSISTANT ATTORNEY GENERAL
 21 Attorney for the Defendant
 22
 23
 24
 25

DEBORAH M. McCURDY, RPR
 Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 APRIL 4, 2018

2 THE COURT: All right, ladies and gentlemen.
3 This is the matter of The State against David Leon
4 Stephens. This is 2015-GS-08-00644.

5 Mr. Stephens is present in the courtroom.
6 Good morning, Mr. Stephens.

7 MR. STEPHENS: Good morning.

8 THE COURT: Yes, sir.

9 Along with his counsel, Mr. Lance Boozer.

10 MR. BOOZER: Good morning, Your Honor.

11 THE COURT: The State is present in the
12 courtroom, and is represented by Megan?

13 MS. JAMESON: Jameson, Your Honor.

14 THE COURT: Jameson. And?

15 MS. JAMESON: Your Honor, this is our legal
16 assistant, Ms. Jennifer Jennison, who is here with
17 us today.

18 THE COURT: Very good.

19 All right. Just to review what has been done
20 in this file, I issued an order granting
21 post-conviction relief in this matter on
22 November 9th, 2017.

23 The State timely filed a motion for
24 reconsideration of that order and accompanied that
25 with a legal brief describing the State's position

1 about the matter. Mr. Boozer filed a return on
2 behalf of Mr. Stephens. And here we are.

3 I have a complete file in the matter, but,
4 most importantly, including the order of the Court;
5 the guilty plea of Mr. Stephens, taken on
6 September 17th, 2014, before the Honorable Kristi
7 L. Harrington; the transcript of the proceedings
8 before me on September 16th, 2016; the pleadings in
9 this matter; and copies of the various indictments
10 and the IAD material. So I think I have got
11 everything we need to proceed.

12 Ms. Jameson, you are the moving party asking
13 that this matter be reopened, so you may proceed.

14 MS. JAMESON: Thank you, Your Honor.

15 As Your Honor stated, we are here for the
16 State's motion to reconsider the grant of
17 post-conviction relief to David Stephens.

18 The State is asking this Court to reconsider
19 its grant of relief as to the second conviction for
20 the criminal sexual conduct with a minor that was
21 unrelated to the conduct from Arrest Warrant
22 M333205, upon which the detainer was based.

23 The State is conceding that there was a
24 violation of the IAD Act as to the first second
25 degree criminal sexual conduct with a minor charge

1 for Applicant's general penetration of the minor
2 victim based on the information contained in Arrest
3 Warrant M333205, because he was not brought to
4 trial within 120 days as required under Article
5 IV(c) of the IAD Act and the State did not move for
6 a continuance. However, the State's position is
7 that does not apply to the second second degree
8 criminal sexual conduct with a minor indictment to
9 which Mr. Stephens pled because it is unrelated
10 conduct.

11 And I'd like to review a timeline of the
12 events that happened in this case. I think it is
13 at the heart of the issue here: The Interstate
14 Agreement on Detainers Act and the Court's granted
15 relief.

16 On September 7th, 2010, a report was filed
17 with Berkeley County Sheriff's Office in reference
18 to a sexual assault committed by Mr. Stephens
19 against a 12-year-old minor victim.

20 On February 16th, 2011, the Berkeley County
21 Sheriff's Office sought and obtained an arrest
22 warrant for his arrest based on that conduct for
23 second degree criminal sexual conduct with a minor,
24 and that was the Arrest Warrant M333205.

25 And the pertinent portions from the affidavit

1 that accompanied the arrest warrant specifically
2 allege the following: That on or between May 21,
3 2010, and June 17, 2010, the Defendant did
4 willfully commit the above-stated offense and that
5 he did willfully, unlawfully, and feloniously
6 engage in sexual intercourse with a female victim
7 with the date of birth of [REDACTED]; and that on
8 September 7, 2010, a report was filed with the
9 Berkeley County Sheriff's Office in reference to
10 the sexual assault committed by Mr. Stephens. The
11 victim was seen at the Lowcountry Children's Center
12 and disclosed the sexual abuse by the Defendant.
13 Particularly, she disclosed vaginal-penile
14 intercourse by the Defendant. And the victim
15 became pregnant as a result of the sexual assault.
16 The victim knows the Defendant by sight and sound.
17 She was 12 years old. And the Defendant was over
18 the age of 21 at the time of the sexual assault.
19 And that all comes from that Arrest Warrant
20 M333205.

21 On August 22nd, 2012, Mr. Stephens, again
22 serving a term of imprisonment within the common
23 laws of Pennsylvania Department of Corrections,
24 following a guilty plea to unsworn falsification to
25 authorities -- this information is contained in

1 Court Exhibit 1, for Your Honor's reference -- and
2 while incarcerated in Pennsylvania, he became aware
3 of Arrest Warrant M333205 for second degree
4 criminal sexual conduct with a minor based on his
5 general penetration and resulting impregnation of
6 the 12-year-old minor victim.

7 Thereafter, on April 12, 2013, an IAD request
8 form was partially filled out on Mr. Stephens'
9 behalf, which was forwarded to the Ninth Circuit
10 Solicitor's Office, and that was entered at the
11 evidentiary hearing as Court's Exhibit 1. However,
12 Applicant failed to sign the form anywhere and,
13 more importantly, it was never properly filed with
14 the Berkeley County Clerk of Court.

15 And, therefore, the State's position is, since
16 the form wasn't properly filled out and wasn't
17 filed with the Clerk of Court as required by the
18 Act, the 180-day timeline under Article III of the
19 IAD Act did not start to run.

20 However, on September 18th, 2013, Mr. Stephens
21 was brought to South Carolina, thereby triggering
22 the 120-day provision under Article IV of the IAD
23 Act. And shortly thereafter he was appointed Debra
24 Littlejohn to represent him on the charges arising
25 out of that Arrest Warrant M333205. Ms. Littlejohn

1 was made aware of the IAD Act request the Applicant
2 had made, and she requested a speedy disposition of
3 his charge.

4 And in response, Anne Williams, the
5 prosecuting Assistant Solicitor, informed
6 Mr. Stephens' attorney that SLED DNA results to
7 determine the paternity of the minor victim's
8 aborted fetus were still pending and she would move
9 for a continuance until such results were obtained.
10 Regrettably, Ms. Williams did not move for a
11 continuance.

12 On June 18th, 2014, Assistant Solicitor
13 Williams dismissed Arrest Warrant 333205 and
14 directly presented three new indictments against
15 Applicant. These new indictments were based on
16 newly discovered information she gathered during
17 new interviews with the minor victim, including
18 additional felonious conduct and a slight variation
19 in the dates that occurred.

20 These three new indictments were true-billed
21 by the Berkeley County Grand Jury. It was a second
22 degree criminal sexual conduct with a minor based
23 on digital penetration of the minor victim, a
24 second second degree criminal sexual conduct with a
25 minor based on genital penetration, which is the

1 same felonious conduct from that Arrest Warrant
2 M333205, and a lewd act indictment.

3 These two additional indictments are fully
4 unrelated to the conduct that was contained in
5 Arrest Warrant M333205, upon which the detainer was
6 based, and the State's position is therefore they
7 are not subject to the provisions of the IAD Act.

8 On June 14th -- excuse me -- June 19th, 2014,
9 Mr. Stephens concluded his Pennsylvania sentence
10 and was released on bond in South Carolina.

11 On September 17th, 2014, he appeared in
12 Berkeley County Court of General Sessions before
13 Judge Harrington, and he pled guilty to the two
14 indictments for second degree criminal sexual
15 conduct with a minor, and the lewd act was
16 dismissed pursuant to a plea agreement.

17 At the plea proceeding, the State and
18 Ms. Littlejohn both referenced Mr. Stephens' IAD
19 Act request and indicated that they were waiting on
20 the SLED DNA results to determine paternity of the
21 aborted fetus before bringing his case to trial.
22 However, again, the State did not move for a
23 continuance based on those grounds, and pursuant to
24 plea negotiations for a cap of 15 years, Judge
25 Harrington sentenced Mr. Stephens to 15 years

1 imprisonment. And, again, the remaining lewd act
2 charge was dismissed pursuant to the plea
3 agreement.

4 He did not file an appeal. However, he did
5 timely file an application for post-conviction
6 relief. And this Court, in its order from
7 November 9, 2017, granted post-conviction relief
8 and vacated both of Mr. Stephens' convictions and
9 remanded the matter back to Berkeley County General
10 Sessions for a new trial based on that counsel was
11 ineffective for failing to move for dismissal of
12 Applicant's charge based on a violation of the IAD
13 Act. And there is numerous references in the order
14 to a violation against Applicant's charge.
15 However, the Court vacated both of his convictions,
16 including the unrelated second degree criminal
17 sexual conduct based on the digital penetration.

18 And the State's position is any violation --
19 which the State is conceding there was a violation
20 pursuant to Article IV(c) -- that that should not
21 apply to the digital penetration indictment for
22 criminal sexual conduct with a minor in the second
23 degree.

24 The clear language of the IAD Act supports
25 this position. Under Section 5 it notes that it

1 generally applies to charge or charges on which the
2 detainer is based. I could not find any case law
3 on point. As Your Honor knows, IAD violations come
4 up so infrequently. I think that is clear from the
5 record both of the guilty plea proceeding and the
6 evidentiary hearing that it seems like the
7 Solicitor and the Defense counsel were all a little
8 confused as to timelines, but the State's position
9 is that there was a violation as to the genital
10 penetration criminal sexual conduct with a minor in
11 the second degree, but it shouldn't apply to the
12 digital penetration.

13 In our brief we cited additional persuasive
14 authority to the Court, but I think the statutory
15 authority is within the act itself.

16 And I would note for the record that in
17 Applicant's response, he hasn't responded either
18 directly or indirectly to any of the State's
19 arguments here. And we would ask that Your Honor
20 would reconsider and deny relief as to the second
21 second degree criminal sexual conduct charge not
22 arising out of the arrest warrant.

23 THE COURT: Okay. Let me get a couple of
24 things straight from a factual standpoint.

25 When did Berkeley County true-bill the direct

1 indictments?

2 MS. JAMESON: May 13, 2014, for all three.
3 That would be the second degree CSC with a minor
4 based on digital penetration; the second degree CSC
5 with a minor based on genital penetration; and the
6 lewd act.

7 THE COURT: All right. Now, that is before
8 the nol-prossing of those charges, almost over a
9 month before the nol-prossing of the violations
10 which did not take -- the original indictment did
11 not take place until June the 18th of 2014.

12 MS. JAMESON: Yes, Your Honor.

13 THE COURT: So one of the things that is
14 concerning to me is the constitutional foundation
15 for these direct indictments in that at least one
16 of them is infected with a problem of double
17 jeopardy. If we are now conceding that the 333205
18 indictment should have been dismissed, then it
19 would not be proper to directly indict on that same
20 conduct, would it?

21 MS. JAMESON: No, Your Honor. And the State
22 concedes that that relief was properly granted as
23 to that second degree CSC with a minor charge.

24 THE COURT: Well, let's then look at the
25 documents, or compare documents with respect to the

1 two different indictments. Let me see if I can
2 find them, and you see if you can find them, then
3 maybe we will be looking at the same time.

4 I am looking at an arrest warrant in the
5 matter of M333205.

6 MS. JAMESON: Your Honor, to make sure we are
7 both looking at the same thing, is this the
8 document?

9 Yes. Perfect.

10 THE COURT: All right. And that indicates The
11 State against David Stephens. And it cites a
12 Pittsburgh address; right?

13 MS. JAMESON: Yes, Your Honor.

14 THE COURT: And that address is a home address
15 or his address in the incarceration facility?

16 MS. JAMESON: Your Honor, I'm not sure. I
17 would defer to Mr. Stephens on that.

18 THE COURT: Okay. We'll find that out.

19 And it says: Offense, criminal sexual conduct
20 with minor, or attempt, victim 11 to 14 years of
21 age, second degree, Offense Code 0396. Okay?

22 MS. JAMESON: Yes.

23 THE COURT: And the affidavit says: That on
24 or between May 21st, 2010, and June 17th, 2010, the
25 Defendant did commit the above-stated offense,

1 which was criminal sexual conduct with a minor, or
2 attempt, 11 to 14 years, second degree. And did
3 unlawfully and feloniously engage in sexual
4 intercourse with a female, date of birth [REDACTED],
5 said offense having occurred at [REDACTED] Horseshoe Road,
6 Goose Creek, facts to establish the aforesaid on
7 9/7/10 report, victim seen Lowcountry Children's
8 Center, disclosed vaginal intercourse by Defendant.
9 Victim became pregnant as a result of sexual
10 assault. Knows the Defendant by sight. Twelve
11 years old and the Defendant over 21. Right?

12 MS. JAMESON: Yes, Your Honor.

13 THE COURT: So that seems to describe a single
14 assault; correct?

15 MS. JAMESON: Yes, Your Honor.

16 THE COURT: But the date is not quite certain.
17 It is somewhere between May 21st and June 17th of
18 2010; correct?

19 MS. JAMESON: Yes, Your Honor.

20 THE COURT: And that apparently has a return
21 that wasn't signed until he came to South Carolina;
22 is that right? Or am I wrong there? It has a
23 return of 9/18/13.

24 MS. JAMESON: Yes, Your Honor. I believe he
25 was brought to South Carolina September -- that.

1 day, yes.

2 THE COURT: So that is when he was actually
3 served. But he obviously had some notice before
4 that, because he filed an Interstate Detainer
5 proceeding.

6 MS. JAMESON: Well, the State's position would
7 be that he didn't properly file --

8 THE COURT: Well, let's explore that for a
9 moment?

10 MS. JAMESON: --Yes.

11 THE COURT: When you ask for a review by your
12 incarcerating authorities of your detention, you
13 don't do that to people down in South Carolina, you
14 do that to the warden who is holding you, do you
15 not?

16 MS. JAMESON: Yes, you do.

17 THE COURT: And then it is up to the warden
18 who is holding you to send that request on to the
19 proper authorities in the, what would be the
20 receiving state, if you are transported?

21 MS. JAMESON: Yes, Your Honor.

22 THE COURT: After having waived extradition.
23 Correct?

24 MS. JAMESON: Yes, Your Honor.

25 THE COURT: All right. And obviously the

1 warden sent that material to Solicitor Wilson, did
2 he not?

3 MS. JAMESON: Yes.

4 THE COURT: Now, tell me why that wasn't a
5 perfectly appropriate way to send South Carolina
6 notice of these things? Where do you come up with
7 this idea that it has to also go to the Clerk of
8 Court for Berkeley County?

9 MS. JAMESON: If you look -- from the statute
10 itself, Your Honor, if you look at the statute, it
11 is clear that it has to be delivered to the
12 prosecuting authority, but also the court in the
13 county where the conviction is. And so the State's
14 position is that -- it is twofold. That it wasn't
15 properly filled out. If you look at Court's
16 Exhibit 1, which is the IAD form, Mr. Stephens
17 hasn't signed it anywhere. It is completely devoid
18 of a signature.

19 THE COURT: Right. But a signature is the
20 only defect in it, but it obviously was transported
21 to his warden?

22 MS. JAMESON: Yes.

23 THE COURT: And his warden then signed the
24 appropriate materials for its transmittal to South
25 Carolina?

1 MS. JAMESON: Yes.

2 THE COURT: We will talk in a minute about
3 where it should have gone and your opinion. But
4 whatever you say the defects were, they weren't
5 enough to keep the warden from determining that,
6 Yes, this was in fact a request by Mr. Stephens and
7 sending that request on to the prosecutor; right?

8 MS. JAMESON: Yes, Your Honor. And I am
9 citing to Article III of the statute. And it says
10 that: The written notice and request for final
11 disposition referred to in Paragraph (a) hereof
12 shall be given or sent to the prisoner by the
13 prisoner to the warden, commissioner of
14 corrections, or other official having custody of
15 him, who shall promptly forward it, together with a
16 certificate, to the appropriate prosecuting
17 official and court --

18 THE COURT: Let's just stop right there. The
19 first thing is, you have read something that makes
20 it clear that he has done exactly what he should
21 do. There is nothing in there that says he has got
22 to sign it. It does say he is supposed to send it
23 to the appropriate warden.

24 MS. JAMESON: Uh-huh.

25 THE COURT: And he obviously did that, because

1 the warden sent it on. So from the standpoint of
2 what he has filled out, he has done everything he
3 is supposed to do. Would you agree with that?

4 MS. JAMESON: I think it needs to be signed.
5 I think that the paperwork --

6 THE COURT: Well, the act doesn't say that.
7 Would you at least agree with that?

8 MS. JAMESON: That portion does.

9 A moment's indulgence, Your Honor.

10 (Pause.)

11 MS. JAMESON: But, Your Honor, I would --

12 THE COURT: Of course, the State made no claim
13 about any of this at the time it was sent, but,
14 rather, he was transported; correct?

15 MS. JAMESON: He was transported, Your Honor.
16 And I want to be very clear, the State is conceding
17 an IAD violation pursuant to Article IV.

18 THE COURT: Right. What I'm trying to do is
19 track through it enough to be able to understand
20 the interrelationship between --

21 MS. JAMESON: Certainly.

22 THE COURT: -- the concession that is being
23 made with respect to 333205, the original
24 indictment, criminal sexual conduct with a minor
25 second degree, and the additional charge of lewd

1 act and digital penetration.

2 MS. JAMESON: Your Honor, the State's position
3 is that you have to comply with all the express
4 requirements as laid out in the IAD Act. And
5 failure to comply with any of them -- it is strict
6 liability. There is no good faith/bad faith. It
7 is strict liability. And the State would cite
8 State v. Johnson, which is cited in our motion to
9 reconsider the sentence for that --

10 THE COURT: Yes.

11 MS. JAMESON: -- proposition.

12 THE COURT: I understand.

13 MS. JAMESON: Yes.

14 THE COURT: All right. It would seem to me,
15 as I ruled before --

16 MS. JAMESON: Uh-huh.

17 THE COURT: -- that with respect to what he
18 was supposed to do about the IAD request, he has
19 done everything he is supposed to do. And that is
20 reinforced by his actual transportation to
21 Charleston and incarceration there. And then the
22 service upon him of this very warrant as soon as he
23 got to Charleston, none of that would have occurred
24 except for the prosecutor's action in getting him
25 down here. Am I right about that?

1 MS. JAMESON: Well, yes, Your Honor, but I
2 think that --

3 THE COURT: I mean, if Scarlett Wilson had
4 any question about whether or not he made a proper
5 IAD request, she would not have asked him to be
6 shipped down here, would she?

7 MS. JAMESON: Well, the State could have --
8 and that is when our --

9 THE COURT: But the State didn't.

10 MS. JAMESON: Well, we don't know whether they
11 are planning on bringing him down here or not. It
12 wasn't properly filed with the Clerk's Office. In
13 our --

14 THE COURT: I don't see at all his duty to
15 file with the Clerk's Office. At most, the warden
16 might have had some duty in that regard. But I
17 don't see -- what he is supposed to do is file with
18 his warden.

19 MS. JAMESON: Uh-huh. Yes, Your Honor.

20 THE COURT: That he has done. And I think we
21 are kind of engaging in a hypothetical discussion
22 in some respects --

23 MS. JAMESON: Yes, Your Honor.

24 THE COURT: -- because y'all have admitted
25 that the bottom line is, the deadline was missed.

1 MS. JAMESON: Yes.

2 THE COURT: And so then we go further.

3 MS. JAMESON: Uh-huh.

4 THE COURT: And look at what then happened
5 after the deadline was missed. There is no
6 question but what he -- even Ms. Littlejohn, in her
7 testimony in the PCR hearing, agrees that he made
8 requests of her to explore this IAD issue from the
9 very first time she met him.

10 MS. JAMESON: Certainly.

11 THE COURT: And she did not have a complete
12 understanding of how the IAD law works -- she says
13 that -- and agrees that had she understood what she
14 understood at the time of the hearing, it would
15 have been to his benefit to have asked that charge
16 be dismissed; correct?

17 MS. JAMESON: Yes, Your Honor. And I think --

18 THE COURT: And that could have been done well
19 before any attempt was made by the Solicitor, kind
20 of in the -- much later on to directly indict him
21 and then dismiss?

22 MS. JAMESON: Yes, Your Honor. I think that
23 as soon as 120 days, by my calculation, from the
24 September 18th day, the January date is
25 January 18th, 2014, I think that on January 19th,

1 2014, Ms. Littlejohn should have moved for
2 dismissal of that one indictment based on an IAD
3 violation, although the Solicitor's Office and
4 Ms. Littlejohn both indicated at the guilty plea
5 proceeding that they were waiting on some SLED
6 results. Unfortunately, the Solicitor didn't move
7 for a continuance.

8 THE COURT: Well, the Solicitor didn't move
9 for a continuance.

10 MS. JAMESON: Certainly.

11 THE COURT: And that must be done in order
12 to --

13 MS. JAMESON: Yes, Your Honor.

14 THE COURT: -- even get to court. And it is
15 not mandatory, it is up to the Court to consider
16 whether to do that.

17 MS. JAMESON: Certainly. And, regrettably, it
18 wasn't done here, but I think it is controlling,
19 and that is why the State is conceding there was an
20 IAD violation as to the genital penetration and
21 impregnation charge.

22 Going back to the arrest warrant that Your
23 Honor was reading from before, the arrest warrant
24 says: Sexual intercourse with a female victim.
25 And then later below it says: The 12-year-old

1 victim disclosed vaginal-penile intercourse by the
2 Defendant. The victim became pregnant as a result
3 of the sexual assault.

4 THE COURT: Right. There is no question but
5 what this arrest warrant is for a single act.

6 MS. JAMESON: Yes.

7 THE COURT: No question about that.

8 MS. JAMESON: Yes. In the guilty plea
9 transcript, if you'll look at Page -- really it is
10 12 through 13, 14, and 15, when the Solicitor is
11 kind of going over the facts, but I want to draw
12 Your Honor's attention to Page 15, Lines 16 through
13 20, where she talks about there were three times
14 that Mr. Stephens went into her bedroom. And on
15 the earlier pages --

16 THE COURT: Where are you?

17 MS. JAMESON: Page 15 of the guilty plea
18 transcript, Your Honor, Lines 16 through 17. She
19 went three times into his bedroom. And on the
20 earlier page, 13 -- this is Solicitor Williams
21 talking: The whole argument became moot when I
22 realized after I talked to the victim the dates
23 were wrong and we actually had three counts instead
24 of one.

25 So the State's position is that after gearing

1 up for trial and talking to the victim additional
2 times, they realized there was additional felonious
3 conduct --

4 THE COURT: Let's stop right there, though.

5 MS. JAMESON: Yes.

6 THE COURT: What you did in this plea was that
7 he was directly indicted for a lewd act. We are
8 dismissing that charge as a part of this agreement,
9 so lewd act is out of the picture at this time no
10 matter what I rule. You can't go back on a
11 dismissal.

12 MS. JAMESON: Certainly.

13 THE COURT: That is the case?

14 MS. JAMESON: Yes.

15 THE COURT: So what we now have at the most is
16 the --

17 MS. JAMESON: Digital penetration.

18 THE COURT: -- digital penetration.

19 MS. JAMESON: Yes.

20 THE COURT: Now, tell me what then happened on
21 the digital penetration per this guilty plea
22 record?

23 MS. JAMESON: One moment, Your Honor.

24 (Pause.)

25 MS. JAMESON: Well, the State directly

1 presented an indictment that was true-billed.

2 THE COURT: I understand.

3 MS. JAMESON: For the digital.

4 THE COURT: Yes. And so where was that in
5 this guilty plea resolved?

6 MS. JAMESON: A moment's indulgence.

7 (Pause.)

8 THE COURT: As I read what he pled guilty to,
9 it was the sexual intercourse. And I just want
10 to --

11 MS. JAMESON: He pled guilty to two different
12 counts, the 2014-GS-08-645 and 644. And if you'll
13 look at the indictments for both of those offenses,
14 one clearly states it is for the -- I'll start with
15 44. And I'm reading --

16 THE COURT: 644, I have got that here.

17 MS. JAMESON: That David Leon Stephens, in
18 Berkeley County...genital intercourse upon the
19 minor victim. And then if you look at 645, it is
20 digital penetration of the minor victim.

21 THE COURT: Well, I'm just looking at what I
22 have here, and that may well be what you have got.
23 I have got 644. This is digital intercourse.
24 Okay? And I have got a sentencing sheet and a
25 signature by Mr. Stephens; right?

1 MS. JAMESON: Yes, Your Honor.

2 THE COURT: And it says consecutive to
3 sentence on 645.

4 MS. JAMESON: Both of the sentences --

5 THE COURT: Or concurrent.

6 MS. JAMESON: Yes.

7 THE COURT: Excuse me, it says concurrent with
8 645. Now, where is 645?

9 MS. JAMESON: Your Honor, it should be in the
10 packet I provided.

11 THE COURT: I have got 645 here.

12 MS. JAMESON: Yes.

13 THE COURT: And I have got concurrent. But I
14 don't have -- it may be it just wasn't copied
15 right, but all I've got is the first page and the
16 title sheet. I don't have the second page, which
17 would be --

18 MS. JAMESON: May I approach? I have my
19 personal copy. It has got my notes on there.

20 THE COURT: Yes. How about just bring that up
21 here and let me look at it? It may have been a
22 mis --

23 MS. JAMESON: There is a lot of different
24 clerk's records in there, so I apologize if it
25 wasn't included.

1 THE COURT: Hang on.

2 MS. JAMESON: Your Honor, I might have an
3 additional copy.

4 THE COURT: Okay.

5 MS. JAMESON: And, Your Honor, I actually have
6 an extra copy of that, so here is a clean copy for,
7 Your Honor.

8 THE COURT: All right. That was one thing. I
9 obviously didn't have a complete copy of it.

10 MS. JAMESON: I'm sorry, Your Honor.

11 THE COURT: All right. Now, so we agree now
12 that what this thing boils down to at the present
13 time, the lewd act was dismissed, so it is gone?

14 MS. JAMESON: Yes.

15 THE COURT: The 644 should have been dismissed
16 and PCR was properly therefore granted. And what
17 would happen with that is, it is not the normal PCR
18 where you get a retrial, it should have been
19 dismissed, and therefore it is gone?

20 MS. JAMESON: Yes. I don't know exactly
21 procedurally how that would work. I think Your
22 Honor's order remands it back to Berkeley County,
23 the next General Sessions, but I think at that time
24 his new counsel would make a motion to dismiss and
25 it would have to be granted.

1 THE COURT: It would have to be granted.

2 MS. JAMESON: Yes. Either way, the State is
3 conceding that that charge cannot be viable.

4 THE COURT: And so no matter what I do
5 otherwise, I should, in this order upon
6 reconsideration, clarify and make it clear that
7 there are two charges that are no longer valid
8 because one was dismissed by the Solicitor and the
9 other was found by me that it should have been
10 dismissed because post-conviction relief should
11 have been granted because of the incompetency of
12 counsel in not raising the fact that the charge
13 should have been dismissed, and the State is
14 conceding that.

15 MS. JAMESON: The State is only conceding as
16 to the genital penetration.

17 THE COURT: Right. Exactly.

18 MS. JAMESON: Yes. I just wanted to make it
19 clear for the record.

20 THE COURT: And that would then leave not
21 conceded by the State, 645, which is the digital
22 penetration, or have I got the numbers wrong?

23 MS. JAMESON: Yes, Your Honor, I think that is
24 correct. But either way, they are the two CSC
25 seconds with a minor, one for genital and one for

1 digital. And the State's position is the
2 genital --

3 THE COURT: Goes away.

4 MS. JAMESON: -- was properly granted by Your
5 Honor, unfortunately. Strict liability.

6 THE COURT: I have heartburn about that.
7 Everyone who touches this case, this is terrible
8 conduct, and even Mr. Stephens felt that way about
9 it when he entered the plea when he talked about
10 the details of the matter itself, and particularly
11 in light of the tragedy in his own life with his
12 own daughter, he conceded this is a very tough
13 factual situation. But that is not what I'm here
14 to deal with. I have got to deal with the --

15 MS. JAMESON: Yes. And, Your Honor, if I
16 could just for the record state -- I know that you
17 said before we are kind of debating hypotheticals,
18 whether it is Section 3 or Section 4. The State's
19 position would be that because the consequences are
20 so severe, the charges are dismissed, cannot be
21 revised. That is why the act requires strict
22 liability. And it needed to be filed with the
23 Clerk's Office and it needed to be properly filled
24 out because the consequences are so severe. So I
25 just wanted to clarify our position on that, Your

1 Honor.

2 THE COURT: Yes. And, of course, my holding
3 before was the State did not bring up those matters
4 at the time before the time expired.

5 MS. JAMESON: Certainly.

6 THE COURT: But what I'm still just a little
7 concerned about is this question of whether -- when
8 the only thing you had before you was the sexual
9 intercourse charge that was the foundation for the
10 original warrant --

11 MS. JAMESON: Uh-huh.

12 THE COURT: -- and original indictment,
13 whether you can, before you dismiss any of that,
14 bring the same charge again by direct indictment as
15 that which should have been dismissed, and whether
16 that has any impact on the State's right to go back
17 now into this same relationship, --

18 MS. JAMESON: Uh-huh.

19 THE COURT: -- the span of which was mentioned
20 in the original indictment -- there isn't any other
21 period of time for which this digital penetration
22 comes, it comes from a period of time that
23 coincides with what was initially averred, as I
24 understand it -- whether the State could, before it
25 dismissed that previous charge, directly indict on

1 these other charges, or whether there is some
2 problem there with the fact that the State,
3 realizing that it has a charge it can't pursue,
4 nevertheless violates his double jeopardy rights by
5 reindicting him on the very same thing. Can the
6 State, for that same period of time, having not
7 indicted pursuant to the previous investigation and
8 having had an investigation and a talk with the
9 victim that was many, many months before all this
10 took place, suddenly turn around and directly
11 indict before it does anything about the invalid
12 charge?

13 MS. JAMESON: So if I'm understanding Your
14 Honor --

15 THE COURT: I am probably not reciting it in
16 the clearest way, but I think you understand what
17 I'm getting at.

18 MS. JAMESON: I think I do. So it sounds like
19 what Your Honor is saying -- excuse me if I am
20 inartful -- is that kind of the hangup for the
21 Court is that he was directly indicted for these
22 three offenses before the other charges were
23 dismissed?

24 THE COURT: (Nods affirmatively.)

25 MS. JAMESON: Okay. I understand. The

1 State's position would be that, while that might
2 have an impact on the conduct from Arrest Warrant
3 333205, it has no impact on the digital penetration
4 or the lewd act, which I know has already been
5 dismissed and we are not really here before, but
6 just for the record's sake, I don't believe it had
7 -- the State's position is it doesn't have any
8 impact on those two remaining indictments. And
9 those are from ongoing conversations that the
10 Solicitor had with the minor victim. I think the
11 guilty plea transcript references that she had gone
12 to several forensic interviews and counseling
13 sessions at the Lowcountry Children's Center. This
14 was an ongoing investigation.

15 And at the time of the guilty plea, there is
16 some reference made that the victim is still in
17 ongoing counseling and didn't even want to appear
18 at the guilty plea proceeding. And so the State's
19 position is, this could have been discoverable even
20 after the dismissal of Arrest Warrant 333205
21 because, as Your Honor knows, disclosure,
22 particularly with minor victims, is often an
23 ongoing process. She initially only disclosed the
24 genital penetration, but then later disclosed the
25 digital penetration and some other acts.

1 And so the State's position is that this could
2 have been discovered after these were indicted and
3 he could have been directly indicted properly for
4 the second CSC based on digital penetration and the
5 lewd act.

6 THE COURT: Sure.

7 MS. JAMESON: So he shouldn't be afforded a
8 windfall result where all three of his charges are
9 dismissed and the other two weren't related to the
10 detainer for which he was brought down here.

11 THE COURT: I guess the only reason I am
12 mentioning that oddity of time in that the direct
13 indictment is done before the other charge is
14 dismissed, is because of something that came up in
15 a case I recently had here in Richland. And it is
16 whether the failure to get a conviction on a charge
17 and the ultimate indictment for other matters
18 concerning that same scenario is prosecutorial
19 misconduct. And I'm not talking about
20 prosecutorial misconduct in the sense that there is
21 some bad intent, but there is a whole line of cases
22 that deal with improper use of authority from the
23 standpoint of the technical scenario we are talking
24 about now.

25 MS. JAMESON: Yes.

1 THE COURT: And, as we know, you can't
2 punish -- in my case, the case I heard and was
3 ultimately resolved, the problem arose from a jury
4 that hung. And when the Defense attorney attempted
5 to discuss, Well, maybe we can resolve this in some
6 way, the Solicitor, the Assistant Solicitor,
7 responded by saying, Oh, no, we are going to up the
8 charges now --

9 MS. JAMESON: Uh-huh.

10 THE COURT: -- arising out of the same
11 scenario. And that is what I had to wrestle with
12 and deal with in the matter I heard when the case,
13 a newly indicted case was presented to me for
14 possible trial. And motions were made to dismiss
15 it on the basis I'm projecting to you now. None of
16 that has happened here. All right? And so I may
17 be speaking a little bit in a vacuum, but that time
18 sequence worried me a little bit. I mean, quite
19 honestly, Mr. Stephens may get a pretty good break
20 even if I let the digital penetration matter stand
21 because of the time he has already served and what
22 might ultimately be done to resolve the matter
23 otherwise. So I get that.

24 MS. JAMESON: And the State's position is
25 he -- there was a violation. The Solicitor's

1 Office should have moved for the continuance. I
2 think they had a good faith basis based on the
3 record. We don't know what would have happened,
4 but it sounds like from the record Mr. Stephens'
5 counsel, Ms. Littlejohn, agreed that they needed
6 the SLED paternity results for the aborted fetus
7 before they could really go forward.

8 THE COURT: And, of course, nobody --

9 MS. JAMESON: But, unfortunately, it is strict
10 liability. Unfortunately, the State didn't move
11 for continuance. And on Day 21, Ms. Littlejohn
12 should have moved for dismissal. She didn't.
13 And --

14 THE COURT: That is where my ruling comes in.

15 MS. JAMESON: The State is conceding that that
16 is a harsh reality. That is a harsh pill for the
17 Solicitor's Office to swallow and for these victims
18 to swallow. But Mr. Stephens shouldn't be entitled
19 to a windfall result on unrelated conduct.

20 THE COURT: Sure.

21 MS. JAMESON: Based on that. And that is our
22 position.

23 THE COURT: Okay. Thanks very much,
24 Ms. Jameson. And thanks for your kindness in
25 responding to my rather lengthy questions.

1 MS. JAMESON: Certainly, Your Honor.

2 THE COURT: Mr. Boozer?

3 MR. BOOZER: Thank you, Your Honor. If it
4 pleases the Court?

5 Justice Toal, I want to address one issue that
6 arose today, which is I think a statement was made
7 to the effect that our response to the State's
8 request to reconsider didn't address all the
9 issues. I think it did, because essentially our
10 response is, the order was correct. Your Honor's
11 rulings and findings of fact and conclusions of law
12 were correct. So I don't want for it to seem as
13 though --

14 THE COURT: I understand all that. The issue
15 we are dealing with, though, comes down to
16 something that wasn't fully explored in the hearing
17 before me or in my order as a separate basis, and
18 that is the issue of the viability, the continuing
19 viability of the digital penetration charge. And,
20 quite honestly, I am -- that is the reason I
21 decided to have a hearing on this thing rather than
22 to rule.

23 MR. BOOZER: And in that vein, let me please
24 say this. The first thing I would like to say is,
25 obviously, when the State had Mr. Arndt, who was a

1 third year law student, handling this case, he did
2 a fantastic job.

3 THE COURT: Listen. The State need make no
4 apologies. That law student, supervised of course
5 by Mr. Johnson, if you read the transcript of the
6 proceedings, he handled things very well. So the
7 State need not worry that its interests were not
8 protected.

9 MR. BOOZER: Absolutely. And I wanted to
10 commend him for -- you know, this is certainly a
11 difficult area of the law not only I think for
12 lawyers, but judges as well. It is something that
13 we just don't see all that often. And he did a
14 fantastic job.

15 Now, Your Honor, with that being said, I think
16 my client would take the position that Your Honor
17 obviously had an opportunity to hear arguments and
18 testimony at the PCR hearing. Your Honor also
19 requested and was provided with proposed orders not
20 only from the Applicant, but also from the State,
21 with arguments as to why the case should be granted
22 or not granted.

23 And in this instance, the State has sort of
24 taken four, sort of -- if we go back to the old
25 presidential race -- flip-flopping positions of, at

1 the plea the State seemed to say, Well, there is an
2 IAD and it was valid. And then we get to the PCR
3 hearing and, Well, the IAD isn't valid. And then
4 we get the proposed order and again they argue, It
5 is not valid. Then in the motion to reconsider, It
6 is not valid. Then we get here today and they say,
7 Well, we are conceding that there was an IAD
8 violation.

9 Your Honor, my position is this. I think what
10 the State has done and what they are looking at
11 when they submitted this proposed motion for
12 reconsider is that they looked back and say, Oh,
13 maybe we should have presented this case a little
14 bit differently, maybe we should have made some
15 different arguments and maybe examined the
16 witnesses a little bit differently. And so now
17 they are saying, Judge, this motion to reconsider,
18 this is really the proposed order we should have
19 submitted for consideration.

20 And I think in all fairness to the Applicant,
21 they should be foreclosed from doing that. I think
22 that Your Honor should be limited to what was heard
23 as the PCR hearing and the arguments presented
24 there, the arguments that were presented in the
25 proposed order, and not sort of these new

1 arguments.

2 I came in prepared to argue about their
3 position that there was not an IAD violation.

4 THE COURT: That is not what they are doing
5 now. And we are really targeted in on a very
6 specific thing right now.

7 MR. BOOZER: We are.

8 THE COURT: Which is this digital penetration
9 charge. And the three charges are referenced in
10 the order, but there is no separate discussion of
11 the digital penetration charge as being viable
12 independent of the IAD argument.

13 The order, as I look at it, deals with the IAD
14 as a foundation for the post-conviction relief
15 application. And neither side really explored the
16 separate vitality of this digital penetration
17 charge. But, of course, on reconsideration, the
18 State is now targeting us on that. Now, tell me
19 why they can't do that at this time.

20 MR. BOOZER: Sure.

21 Justice Toal, I think -- and it works in our
22 favor when the State references the strict
23 liability with this IAD. And I say that because of
24 this. In the IAD statute, as is referenced in Your
25 Honor's order, the charge will be dismissed with

1 prejudice. And so there is --

2 THE COURT: Well, they are agreeing to that.
3 They are agreeing to the dismissal of the old
4 charge and the new charge. What happened
5 procedurally was the old charge was dismissed, a
6 new charge -- three new charges were directly
7 indicted. At the plea the State dismissed one of
8 those charges, so it goes away. The State
9 dismissed or reindicted on the same facts, so they
10 pretty much had to agree to dismiss the old charge.
11 And then they proceeded on the three new charges,
12 including a charge that has not been dismissed, nor
13 was it previously indicted. And that is the
14 conundrum I'm facing right now: Is it too late for
15 the State to raise this support for the vitality of
16 that particular charge now? I would agree with
17 you, if you read the transcript, none of you talked
18 about that, nor did I ask you any separate
19 questions about it.

20 MR. BOOZER: Your Honor, I do believe it
21 probably is too late. And that has kind of been --

22 THE COURT: Well, I know you believe that, but
23 I need some sort of a foundation for that belief.

24 MR. BOOZER: And it is difficult to state with
25 any certainty that I have any foundation for that

1 belief, because this is such a unique situation,
2 maybe one of the State's own making. So whatever
3 it goes back to the trial court on, they may have
4 some issues bringing whatever they want to bring
5 back, and that is their issue. But I do think that
6 they are foreclosed on that, Your Honor. I'm not
7 sure if that answers the pointed question.

8 THE COURT: I think that is maybe the best you
9 can do in the present circumstances.

10 I'm going to turn back to you, Ms. Jameson.

11 MS. JAMESON: Yes, Your Honor.

12 THE COURT: In reply. And, particularly,
13 just -- I think we all understand each other on the
14 other charges, but specifically on the charge of
15 digital penetration, has the State lost in the
16 ability to ask me to reconsider on the basis of
17 what transpired in the original hearing and in my
18 order by not having really focused on that until
19 now?

20 MS. JAMESON: No, Your Honor, I don't believe
21 so. If you look at the closing arguments that were
22 made by the representative from the State, his
23 argument was in the vein of, It is separate
24 conduct, he was indicted for new charges, and
25 erroneously lumped in the conduct from Arrest

1 Warrant 33325. But the State's position is it is
2 preserved as to our argument here today, and none
3 of that is addressed in this Court's order, and so
4 I think it would be the State's duty to file a Rule
5 59(e) to preserve --

6 THE COURT: Because the order itself does not
7 address the separateness of the charges?

8 MS. JAMESON: Yes. Yes. So the State's
9 position is, this isn't a new argument. At the PCR
10 evidentiary hearing, we argued that these were not
11 subject to the IAD because they were new conduct.
12 That is still the State's position as to digital
13 penetration.

14 And in candor with the Court, when I took over
15 this file, I realized there was an IAD violation.
16 And I think that that is why the State has to
17 concede here. It is a violation. He is entitled
18 to the grant on the genital penetration. But
19 digital penetration, our argument hasn't changed.
20 This is conduct that was discovered after he was
21 already brought pursuant to the detainer and he
22 shouldn't be afforded a windfall result for the
23 State's failure to strictly comply with the IAD
24 requirements.

25 THE COURT: Thank you, ma'am.

1 All right. This is what we are going to do.
2 Ms. Jameson, I would like for you to prepare this
3 order for me and send it to me within ten days, a
4 copy of course to Mr. Boozer. Mr. Boozer, you will
5 have ten days from receipt of this from Ms. Jameson
6 to give me any reaction, and hopefully I'll be able
7 to look at what you submit. But my current
8 inclination -- and that is why I'm asking
9 Ms. Jameson to prepare this order -- is this: I
10 will grant reconsideration, and on reconsideration
11 with Number 1, find in accordance with the State's
12 concession that the criminal sexual conduct sexual
13 intercourse charge should have been dismissed for
14 violation of IAD. And I will dismiss it. So it
15 does not need to be returned to Berkeley County for
16 dismissal, rather I will direct that it be
17 dismissed, and that will save you from having an
18 unnecessary hearing in Berkeley County.

19 With regard to the lewd act, I will
20 specifically find that the State's dismissal of
21 that charge on the guilty plea in September of 2014
22 in front of Judge Harrington is dispositive, and
23 therefore the lewd act charge is directed to be
24 dismissed on the record, if it has not already been
25 dismissed, in Berkeley County.

1 And with regard to the digital penetration,
2 that indictment and charge survives. Mr. Stephens'
3 contention is that his guilty plea to all three of
4 these matters was not a knowing and voluntary
5 guilty plea because of the failure of his counsel
6 to pursue the IAD dismissals. I find that that
7 guilty plea to the digital penetration matter is
8 not infected by the pleas to the other matters.

9 And, therefore, I will amend my order to make
10 it clear that the digital penetration matter is not
11 dismissed, but that obviously Mr. Stephens can
12 still, even if I find that it is a viable charge,
13 Mr. Stephens can still pursue post-conviction
14 relief for his voluntariness. And I find that that
15 plea was a voluntary plea. Judge Harrington does
16 go through very, very specifically all the charges,
17 the consequences of the charges, and so forth.

18 Now, if I sign that order, of course
19 Mr. Stephens will have every right to appeal that
20 to the Court of Appeals. And I may be wrong about
21 my analysis of voluntariness, and that is what is
22 still giving me a little bit of problem. None of
23 you have really addressed what I'm talking about
24 right now, which is his post-conviction relief
25 application talks about voluntariness and it talks

1 about the IAD. And I want to see how you write
2 that and, quite frankly, I want to see how
3 Mr. Boozer would write it. I don't think
4 Mr. Boozer needs to spend any time on the matters
5 that I have dismissed or regard as dismissed, but
6 competing orders that will be important to me are
7 an analysis of whether or not, on the basis of the
8 post-conviction relief record that we have here, he
9 has made out a case of involuntariness with respect
10 to his plea to the digital penetration matter.

11 And, again, my current inclination is that it
12 survives and that involuntariness has not been
13 shown. But I want to have both of you scrutinize
14 these records and look very clear at them.

15 Another way to skin that cat would have been
16 to argue for a reconsideration -- would be to argue
17 for reconsideration of that determination, if I
18 make it, and that I will leave to Mr. Boozer at
19 some other time.

20 In other words, what I'm telling you, Mr.
21 Boozer, if I make the determination to sign the
22 order Ms. Jameson projects, which will find that
23 that plea was voluntary, then you may be on the
24 reconsideration track, if such a thing is
25 permitted, and I'm not quite sure about that

1 either. But, if not, you will certainly have the
2 ability to appeal on his behalf. But, again, I
3 have not quite decided about how to deal with it.
4 It is a very difficult, highly technical case, and
5 certainly one that deserves all of our
6 consideration. These are not matters that have
7 anything to do with the conduct itself. They have
8 a lot to do with how our procedure works. And that
9 is what I have an issue about as I rule on this
10 matter.

11 So I thank both of you for your thoughtful
12 consideration.

13 (Pause.)

14 THE COURT: Yes. My law clerk points out
15 something very important. It is not proper to
16 bring up on a 59(e) a new argument, and so one of
17 the things that you need to cover in, (a) a ruling
18 made in your favor on the digital penetration
19 charge, Ms. Jameson, and that you, Mr. Boozer, need
20 to cover in your order, which would deny
21 reconsideration of the digital penetration issue,
22 is what the record shows with respect to whether
23 that issue was covered and raised in the
24 proceedings the first time around. And thanks so
25 much for making me clarify that, Ms. Rutkoski,

1 because that is what I meant by some of the
2 comments I have already made about whether it can
3 be raised at this time. But you really need to pay
4 attention to that, because that is an error that
5 the Appellate Court will be quick to look at. We
6 are a very strict preservation state, and that is
7 going to have to have been raised appropriately by
8 the State, and potentially by the Defendant, but
9 certainly on the front end by the State. The State
10 is going to have to at least put enough into the
11 record to segregate out that separate analysis of
12 the digital penetration matter.

13 Thank you very much. The Court will be in
14 recess.

15 MR. BOOZER: Thank you, Your Honor.

16 MS. JAMESON: Thank you, Your Honor.

17 (WHEREUPON, the proceedings were
18 concluded at 11:55 a.m.)

19
20
21
22
23
24
25 **(END OF TRANSCRIPT)**

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Berkeley County, South Carolina, on the 4th day of April, 2018.

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

September 9, 2018

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
David Leon Stephens, SCDC No. 361522,	)	Case No. 2015-CP-08-0640
	)	
Applicant,	)	ORDER GRANTING RESPONDENT'S
	)	MOTION TO RECONSIDER, ALTER,
v.	)	OR AMEND PURSUANT TO RULE
	)	59(e), SCRCPP AND AMENDING PRIOR
State of South Carolina,	)	ORDER GRANTING POST-
	)	CONVICTION RELIEF
Respondent.	)	
	)	

This matter comes before this Court by way of an application for post-conviction relief filed on March 11, 2015, by David Leon Stephens ("Applicant"). A hearing on this application was held in the Berkeley County Court of Common Pleas before the Honorable Jean H. Toal, former Chief Justice of the South Carolina Supreme Court and acting circuit court judge. By written order filed November 9, 2017, and received by Applicant on November 17, 2017, this Court granted the post-conviction relief, vacated both of Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial, finding plea counsel was ineffective for failing to move for dismissal of Applicant's charges based on a violation of the Interstate Agreement on Detainers Act (the IAD Act).

Thereafter, on November 27, 2017, Respondent filed a Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCPP, asking this Court to reconsider its ruling and deny relief as to one of Applicant's two convictions for second-degree criminal sexual conduct with a minor. On November 28, 2017, Applicant filed a return to this motion, asking this Court to summarily deny Respondent's motion without a hearing.

A hearing on Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule

59(e), SCRCF, was held on April 4, 2018 at the Richland County Courthouse.¹ Applicant was present alongside counsel Boozer. Respondent was present and represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. Following arguments from counsel, this Court grants Respondent's motion to reconsider its previous order and finds as follows:

PROCEDURAL HISTORY

On September 7, 2010, a report was filed with the Berkeley County Sheriff's office in reference to a sexual assault committed by Applicant against the twelve-year-old minor victim. (Arrest Warrant M-333205). On February 16, 2011, the Berkeley County Sheriff's Office sought and obtained a warrant for Applicant's arrest for second-degree criminal sexual conduct with a minor. (Arrest Warrant M-333205). The accompanying affidavit specifically alleged the following:

That on or between 05/21/10 and 06/17/2010 the defendant did commit the above stated offense in that he did willfully, unlawfully, and feloniously engaged in sexual intercourse with a female victim date of birth [REDACTED], and said offense having occurred at [REDACTED] Horseshoe Road, Goose Creek, SC located in the County of Berkeley. Facts to establish the aforesaid: On 09/07/10 a report was filed with the Berkeley County Sheriff's Office in reference to a sexual assault committed by the defendant. The victim was seen at Lowcountry Children Center and disclosed sexual abuse by defendant. The twelve-year old victim disclosed **vaginal/penile intercourse** by the defendant. The victim became pregnant as a result of the sexual assault. The victim knows the defendant by sight and sound. The victim was twelve years old and the defendant was over the age of twenty-one at the time of the sexual assault. The affiant and the victim are witnesses to prove the same.

(Arrest Warrant M-333205) (emphasis added).

On August 22, 2012, Applicant began serving a term of imprisonment within the

¹ By consent of all parties, this hearing was held in Richland County. A scheduling order vesting this Court with jurisdiction to hear this PCR action was signed by the Honorable Donald W. Beatty, Chief Justice of the South Carolina Supreme Court, on March 9, 2018.

Commonwealth of Pennsylvania Department of Corrections following his guilty plea to “Unsworn Falsifications to Authorities.” (Court’s Exhibit 1). While incarcerated in Pennsylvania, Applicant became aware of Arrest Warrant M-333205 for second-degree criminal sexual conduct with a minor based on his genital penetration and resulting impregnation of the minor victim. On April 12, 2013, Applicant partially² filled out an IAD Act request form, which was forwarded to the Ninth Circuit Solicitor’s Office. (Court’s Exhibit 1). However, this form was never filed with the Berkeley County Clerk of Court.³

On September 18, 2013, Applicant was brought to South Carolina. (Guilty Plea Tr. 18). Shortly thereafter, Applicant was appointed Debra K. Littlejohn, Esquire, to represent him on the charges arising out of the conduct contained within Arrest Warrant M-333205. Littlejohn was aware of the Applicant’s request pursuant to the IAD Act and she brought Applicant’s IAD Act request for a speedy disposition of his charge to the attention of the State. (Guilty Plea Tr. 13). In response, Anne Williams, the prosecuting Assistant Solicitor, informed Littlejohn that SLED DNA results to determine paternity of the twelve-year-old minor victim’s aborted fetus were still pending and she would move for a continuance of the case until such results were obtained.⁴ (Guilty Plea Tr. 13-16, PCR Tr. 29, 37). However, the State never sought a continuance.

On June 18, 2014, Assistant Solicitor Williams dismissed Arrest Warrant M-333205 and directly presented three new indictments against Applicant based on additional information she

² In Respondent’s motion and at the hearing on this motion, Respondent noted that numerous locations on Applicant’s IAD Act form are blank and Applicant’s signature is not on any of the numerous pages of the form. See Court’s Ex. 1.

³ At the evidentiary hearing, trial counsel Littlejohn testified she was unable to locate a copy of the IAD Act request on file with the Berkeley County Clerk of Court. (PCR Tr. 21). Respondent contacted the Berkeley County Clerk’s Office on November 22, 2017, and after a review of the entirety of Applicant’s General Sessions files, the Clerk’s office confirmed no copy of the IAD Act form was on file.

⁴ Results of the paternity test revealed Applicant was the biological father of the twelve-year-old minor victim’s aborted fetus. (Guilty Plea Tr. 16; PCR Tr. 16).

gathered during interviews with the minor victim, including additional felonious conduct and a slight variation in the dates the incidents occurred. The three new indictments, all which were true billed by the Berkeley County Grand Jury on May 13, 2014, were as follows: second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644); second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645); and lewd act (2014-GS-08-0646).

On June 19, 2014, Applicant, who had concluded his Pennsylvania sentence, was released on bond on the three indictments.

On September 17, 2014, Applicant appeared in the Berkeley County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge, and pled guilty to second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644) and second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645). At the plea proceeding, the State and Littlejohn both referenced Applicant's IAD Act request and that they were awaiting the SLED DNA results to determine paternity of the aborted fetus before bringing Applicant's case to trial. Pursuant to plea negotiations between Applicant and the State for a sentence cap of fifteen years, Judge Harrington sentenced Applicant to fifteen years imprisonment; the remaining lewd act indictment (2014-GS-08-0646) was dismissed pursuant to the plea agreement. Applicant did not file an appeal.

On March 11, 2015, Applicant filed an application for post-conviction relief alleging a violation of the IAD Act and ineffective assistance of counsel. Respondent made its return on March 28, 2016, requesting an evidentiary hearing be convened on the application. Thereafter, on September 6, 2016, Applicant, though counsel Lance S. Boozer, Esquire, filed an amended

application alleging an additional ground for relief: Applicant's guilty plea counsel was involuntary. An evidentiary hearing was held before this Court on September 16, 2016, in the Berkeley County Court of Common Pleas. Applicant was present and represented by counsel Boozer. Respondent was represented by John Ard, a third-year law student at the Charleston School of Law, practicing under Rule 401, SCACR, and supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office. At the hearing, testimony was taken from Applicant and his former plea counsel, Debra K. Littlejohn, Esquire. At the conclusion of the hearing, this Court took this matter under advisement and requested proposed orders from both parties.

By written order filed November 9, 2017, this Court granted post-conviction relief, finding plea counsel was ineffective for failing to move for dismissal of Applicant's charge based on a violation of the IAD Act. Specifically, this Court found:

Here, Applicant was deprived of the rare opportunity to have his charge dismissed with prejudice due to Counsel's ineffectiveness. This Court is aware that the State could have certainly requested a continuance, however, had Counsel made a motion to dismiss, the burden would have been placed upon the State to show it was "necessary and reasonable" to continue the case. This Court finds Applicant complied with the IAD provisions. This Court finds Counsel's thoughts that the IAD was not properly filed are incorrect. Additionally, this Court finds that Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the charge dismissed with prejudice.

(Order Granting PCR 7) (emphasis added). This Court vacated both of Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial.

Thereafter, on November 27, 2017, Respondent filed a Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCR, asking this Court to reconsider its ruling and deny relief

as to the second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645).

On November 28, 2017, Applicant filed a return to this motion, asking this Court to summarily deny Respondent's motion without a hearing. A hearing on Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, was held on April 4, 2018 at the Richland County Courthouse.

RESPONDENT'S ARGUMENTS IN SUPPORT OF RECONSIDERATION

In its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, Respondent moved for this Court to reverse its earlier decision and deny post-conviction relief as to Applicant's conviction for second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645), asserting this Court improperly vacated both of Applicant's convictions as this Court's ruling that an IAD violation had occurred should only apply to the conviction that was subject to the initial detainer—the second-degree criminal sexual conduct with a minor based on the genital penetration of the minor victim based on Arrest Warrant M-333205 (2014-GS-08-0644). Respondent also argued this Court improperly determined Applicant had properly filed a request for the speedy disposition of his charges within 180 days pursuant to Article III of the IAD Act, although Respondent conceded there was an IAD violation pursuant to Article IV because Applicant was not brought to trial (and the State did not move for a continuance) within 120 days of being brought to South Carolina based on the detainer for Arrest Warrant M-333205. See S.C. Code Ann. § 17-11-10. Respondent's arguments from its motion and as presented at the hearing on said motion are set forth more fully below:

Inapplicability of Article III of the IAD Act

Although not dispositive on the underlying issue in light of Respondent's concession that there was an IAD violation pursuant to Article IV, Respondent asks this Court to reconsider its finding that "Applicant properly complied with the IAD provisions." Respondent argues Applicant did not properly file a copy of his IAD paperwork with the Berkeley County Clerk of Court as required to avail himself of the benefits and protections of the IAD Act pursuant to Article III.

The IAD Act is a "compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State." New York v. Hill, 528 U.S. 110, 111 (2000) (citations omitted). Critically, the IAD Act was designed to create "cooperative procedures" between the states and the federal government in order to "encourage the expeditious and orderly disposition of" outstanding charges and detainers against prisoners incarcerated in other jurisdiction based on the "uncertainties" caused by such charges and detainers. S.C. Code Ann. § 17-11-10, art. I; see State v. Finley, 277 S.C. 548, 550, 290 S.E.2d 808, 809 (1982) ("The purpose of I.A.D. is to foster the expeditious disposition of charges outstanding against prisoners so as to eliminate uncertainties which accompany the filing of detainers.").

Based on the IAD Act, two distinct deadlines are imposed upon the State after a detainer against a defendant held in another jurisdiction is filed—a 180-day deadline and a 120-day deadline. See S.C. Code Ann. § 17-11-10, art. III(a) (setting out a 180-day deadline for the commencement of trial); S.C. Code Ann. § 17-11-10, art. IV(c) (setting out a 120-day deadline for the commencement of trial). Specifically, when a defendant files a request complying with

the IAD Act's requirements⁵ for final disposition in connection to a filed detainer, the defendant "shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint." S.C. Code Ann. § 17-11-10, art. III(a). Likewise, "trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving state" when a defendant is transferred pursuant to a detainer regardless of whether the defendant ever requested final disposition. S.C. Code Ann. § 17-11-10, art. IV(c). Ordinarily, if a defendant is not brought to trial within the applicable statutory period, the IAD Act requires the trial judge to dismiss the pending indictment, information, or complaint with prejudice. S.C. Code Ann. § 17-11-10, art. V(c).

Respondent argues Applicant did not properly comply with the IAD Act's requirements because he did not properly file or otherwise cause to be delivered a copy of his IAD Act request with the Berkeley County Clerk of Court and significant portions of his form were not completed (including a lack of his signature anywhere on the form). Because he did not comply with those express requirements, Respondent asserts the IAD Act's 180-day deadline was not triggered and did not begin to run. See State v. Johnson, 278 S.C. 668, 671, 301 S.E.2d 138, 140 (1983) ("We hold appellant's letter did not comply with the IAD requirements and thus did not trigger the running of one hundred eighty day period during which a prisoner must be brought to trial under

⁵ Regarding the IAD Act's requirements, the defendant must have written notice of the place of his imprisonment and his request for a final disposition delivered to both the prosecuting officer and "the appropriate court of the prosecuting officer's jurisdiction." S.C. Code Ann. § 17-11-10, art. III(a). Significantly, if the defendant fails to comply with those express requirements, the IAD Act's 180-day deadline will not be triggered and will not begin to run. See State v. Johnson, 278 S.C. 668, 671, 301 S.E.2d 138, 140 (1983) ("We hold appellant's letter did not comply with the IAD requirements and thus did not trigger the running of one hundred eighty day period during which a prisoner must be brought to trial under Article III of the IAD.").

Article III of the IAD.”). Therefore, Respondent argues Applicant’s partially filled-out IAD Act request form, dated April 12, 2013, did not trigger the IAD Act’s 180-day deadline and requests this Court alter its ruling finding Applicant was entitled to relief pursuant to Article III of the IAD Act. However, as discussed below, Respondent concedes there was an IAD Act violation pursuant to Article IV.

This Court erred in dismissing both of Applicant’s Convictions

Despite Respondent’s argument Applicant did not properly comply with the express requirements of the IAD Act to avail himself of the benefit of the Act pursuant to Article III, Respondent concedes Applicant was delivered to South Carolina on September 18, 2013, thereby triggering the 120-day timeline pursuant to S.C. Code Ann. § 17-11-10, art. IV(c), as to the second-degree criminal sexual conduct with a minor charge based on genital intercourse with the minor victim for which Arrest Warrant M-333205 was issued and for which the State lodged a detainer against Applicant (2014-GS-08-0644).

Importantly though, Respondent argues any grant of relief based on an IAD Act violation should only apply to the second-degree criminal sexual conduct with a minor charge for Applicant’s genital penetration of minor victim based on the information contained in Arrest Warrant M-333205 (2014-GS-08-0644) and not the other, unrelated second-degree criminal sexual conduct with a minor charge based on Applicant’s digital penetration of minor victim that was indicted in 2014 (2014-GS-08-0645) or the lewd act indictment (2014-GS-08-0646) that was dismissed pursuant to the plea agreement entered into between Applicant and the State. Respondent argues the two separate charges are based on conduct separate and apart from the conduct giving rise to the charge upon which Arrest Warrant M-333205—the basis for the detainer lodged against Applicant—was founded.

Applicant was not made aware of these two additional charges until after he was directly indicted for both on May 13, 2014, well after he was brought to the state pursuant to the IAD Act (and in fact, after he had completed serving his sentence on the Pennsylvania charges). See Court's Exhibit 1 listing Applicant's parole eligibility as "2/23/13" and maximum expiration of the present sentence as "5/23/14" for the Pennsylvania charge. Therefore, Respondent argues the IAD Act is inapplicable to these two charges and any purported violation should not result in the dismissal of these charges (the other second-degree criminal sexual conduct with a minor charge and the lewd act charge).

In support of this argument, Respondent cites to the following language from the IAD Act:

The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.

S.C. Code Ann. § 17-11-10, Art. V(d). Respondent argues the plain reading of Article V(d) makes it clear the IAD Act only applies to the charge or charges subject to the detainer, which in the present case, would only be the second-degree criminal sexual conduct with a minor charge for Applicant's genital penetration of minor victim based on the information contained in Arrest Warrant M-333205.

Beyond the plain language in the IAD Act, Respondent argues numerous other jurisdictions have interpreted the IAD Act in a similar manner. See United States v. Sanders, 669 F.2d 609, 610 (9th Cir. 1982) (holding, without discussion, that where a one-count complaint, upon which the detainer was based, was dismissed for failure to comply with the prescribed time

period and a new complaint was filed containing the dismissed count and two new but related counts, the trial court properly dismissed only the original count); Espinoza v. State, 949 S.W.2d 10, 12 (Tex. App. 1997) (noting that “[b]y its terms, [the IAD] limits dismissal to a charge forming the basis of the detainer” and holding that conviction, even though on a related charge, was not on the charge on which the detainer was lodged; Commonwealth v. Boyd, 451 Pa. Super. 404, 679 A.2d 1284, 1287 (1996) (holding that speedy trial provisions of IAD did not apply where charges for which detainer was lodged were “separate and apart” from new charges that were subject of conviction); People v. Greenwald, 704 P.2d 312 (Colo.1985) (holding statute requiring trial within 120 days of defendant’s return to state relates only to the charges underlying the detainer by which state secured temporary custody of prisoner incarcerated in another state); People v. Oiknine, 79 Cal. App. 4th 21, 93 Cal. Rptr. 2d 720 (1999) (holding although a dismissal with prejudice of the five counts from the original complaint satisfied the requirements of the IAD, nothing in the IAD suggests that new charges, which were not specified in the detainer, can or should be dismissed along with the older charges that were listed in the detainer).

Respondent argues the IAD Act is only applicable to the second-degree criminal sexual conduct with a minor charge for Applicant’s genital penetration of minor victim based on the information contained in Arrest Warrant M-333205 (2014-GS-08-0644), as it was the only known conduct at the time the detainer was issued against Applicant. Therefore, Respondent asks this Court to reconsider its ruling and deny Applicant relief on his convictions for the unrelated second-degree criminal sexual conduct with a minor conviction based on Applicant’s digital penetration of the minor victim (2014-GS-08-0645).

**APPLICANT'S RESPONSE TO RESPONDENT'S MOTION FOR
RECONSIDERATION**

In its reply, Applicant argues this Court's order granting post-conviction relief contained the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRCP, and this Court properly ruled on all issues presented at the post-conviction relief hearing.

At the hearing, Applicant argued the arguments set for in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, were contradictory to the position previously taken by Respondent and that Respondent should be foreclosed from making any different or new arguments. When questioned by this Court as to whether the provisions of the IAD Act or its applicability to both of the charges was addressed fully, Applicant conceded that neither party had addressed this issue at the hearing and the issue was not addressed in this Court's order granting post-conviction relief.

SUMMARY OF ARGUMENTS PRESENTED AT THE HEARING

At the hearing, Respondent argued the positions as set forth in its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP. In reply, Applicant argued the arguments set for in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, were contradictory to the position previously taken by Respondent and that Respondent should be foreclosed from making any different or new arguments. When questioned by this Court as to whether the provisions of the IAD Act or its applicability to both of the charges were addressed fully, Applicant conceded these specific issues were not addressed in this Court's order granting post-conviction relief.

In reply, Respondent argued it had not taken a contradictory position, as it always argued the IAD Act was inapplicable to the new indictments issued after Applicant was brought to South Carolina.

**GRANT OF RECONSIDERATION AND AMENED FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

After reviewing the records and arguments presented in this case, this Court grants Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, and finds as follows:

Respondent's Augments in Support of Reconsideration are Properly Before this Court

As an initial matter, this Court finds the arguments presented by Respondent are not contradictory or new and, therefore, are properly before this Court. This Court is mindful that new issues cannot be presented to the court for the first time in a motion to reconsider. See Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (recognizing that an issue may not be raised for the first time in a motion to reconsider). However, this Court finds the issues raised in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, were raised to this Court at the evidentiary hearing. The record establishes that Respondent has consistently argued any purported IAD Act violation would not apply to new indictments issued after Applicant was brought to South Carolina, including second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645). See PCR Tr. 42 ("[W]here it comes down to, the solicitor dismissed those charges in accord with, you know, her rightful authority to do so, and at that point, the IAD issue has no bearing on this case and there is no prejudice on behalf of the defendant."). Additionally, there is conflicting testimony and argument from Applicant as to whether any IAD violation would

impact both of his convictions, as Applicant argues any violation would apply to his single conviction or both convictions, as evidenced by his interchangeable use of “charge” and “charges” throughout the evidentiary hearing. See e.g. PCR Tr. 13, 41-42. Furthermore, the witnesses were questioned as to whether any IAD Act violation would apply to the new indictments obtained after Applicant was delivered to South Carolina. See e.g. PCR Tr. 22-23, 25, 38. Clearly, these arguments and issues were raised to this Court prior to Respondent’s Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCPP.

Moreover, this Court finds its previous order did not address the particular provisions of the IAD Act or its applicability to the specific convictions subject to this application—second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644), second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645), as well as the dismissed lewd act indictment (2014-GS-08-0646). Therefore, it was imperative that Respondent file a motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCPP. “Upon reaching a decision, a post-conviction relief court is required to “make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented” in a PCR application, including whether the applicant satisfied his burden as to each prong of the Strickland test described above.” Tappeiner v. State, 416 S.C. 239, 249 n.5, 785 S.E.2d 471, 476 n.5 (2016) (citing S.C. Code Ann. § 17-27-80; Marlar v. State, 375 S.C. 407, 408, 653 S.E.2d 266, 266 (2007)). As our Supreme Court noted in Marlar,

We take this opportunity to reiterate our admonition that “[c]ounsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the

order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by 17-27-80 and Rule 52(a), SCRCP.

Marlar, 375 S.C. at 410, 653 S.E.2d at 267 (citing Pruitt v. State, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992)). Because this Court's previous order did not address the particular provisions of the IAD Act or its applicability to the specific convictions subject to this application, Respondent properly filed the necessary motion asking this Court to address these issues.

An IAD Violation warrants the dismissal of the Second-Degree Criminal Sexual Conduct with a Minor Conviction Based on Genital Penetration

In its previous order, this Court found plea counsel Littlejohn was ineffective for failing to motion or request for the dismissal of Applicant's charge based on an IAD violation. (Order Granting PCR 6). This Court found, "Applicant was deprived of the rare opportunity to have his charge dismissed with prejudice due to Counsel's ineffectiveness. . . . [T]his Court finds that Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the charge dismissed with prejudice." (Order Granting PCR 6).

This Court reaffirms its prior ruling that Applicant was not brought to trial within the timelines proscribed by the IAD Act. This Court previously determined Applicant properly complied with the requirements of the IAD and therefore was entitled to a dismissal of his charges pursuant to Article III when he was not brought to trial within 180 days of delivery of his IAD form to the Ninth Circuit Solicitor's Office. Respondent argues Applicant did not properly comply with the requirements as set forth in Article III, but concedes there was an IAD Act violation pursuant to Article IV when Applicant was not brought to trial within 120 days of his delivery to South Carolina based on the detainer for Warrant M-333205 pursuant to Article IV.

Regardless of whether Article III or Article IV of the IAD Act controls, this Court finds, and Respondent concedes, a violation of the IAD Act warranted dismissal of the charge upon which the detained was based—the conduct outlined in Warrant M-333205—the second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644). This Court finds counsel was ineffective to move for dismissal of his he second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644) based on this IAD Act violation. Because the IAD Act violation warranted dismissal of the second-degree criminal sexual conduct with a minor indictment based on genital penetration of the minor victim (2014-GS-08-0644), this Court finds that this conviction must be reversed and this indictment must be dismissed with prejudice.

The Lewd Act Indictment is Dismissed with Prejudice

This Court finds Applicant's indictment for lewd act (2014-GS-08-0646) must also be dismissed with prejudice and cannot be revived by the State. The lewd act indictment was dismissed pursuant to a plea agreement entered into between Applicant and the State, and therefore, this Court finds this dismissal is final and with prejudice.

Applicant has failed to establish he is entitled to relief as to the surviving second-degree criminal sexual conduct with a minor conviction based on his digital penetration of the minor victim (2015-GS-08-0645)

This Court finds Applicant's conviction for second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2015-GS-08-0645) was separate and independent from the conduct upon which the detainer was based (as set forth in Warrant M-333205), and therefore, the IAD Act violation does not impact this conviction. See S.C. Code Ann. § 17-11-10, Art. V (d) ("The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more

untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.”) (emphasis added). As there was no IAD Act violation as to this charge, this Court finds plea counsel was not ineffective for failing to move for dismissal of this charge.

Moreover, this Court finds Applicant has failed to establish any ineffectiveness of counsel relating to this conviction.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58 (1985). In the guilty plea context, the inquiry with respect to the counsel’s alleged deficiency turns on whether the plea was voluntarily, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). Furthermore, “[t]he second, or ‘prejudice,’ requirement ... focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Hill, 474 U.S. at 59. Therefore,

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial.

Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). “There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citations omitted). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558,

640 S.E.2d 884, 886 (2007) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

Here, the record establishes Applicant's guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) was voluntarily, knowingly, and intelligently entered. The plea court engaged in a thorough plea colloquy with Applicant, during which it reviewed the possible punishments and the plea negotiations entered into between Applicant and the State (Plea Tr. 5-6). The plea court also reviewed the classifications of each offense (Plea Tr. 7-9), and advised Applicant he should expect to serve the entirety of his sentence day-for-day. (Plea Tr. 8). The plea court advised Applicant he would be placed on the sex offender registry for life, followed by Applicant's affirmation that he still wished to plead guilty. (Plea Tr. 9). Applicant told the court he had not been promised anything or threatened to induce his guilty plea and that it was solely his decision to plead guilty. (Plea Tr. 10). Applicant told the court he was satisfied with the services of counsel. (Plea Tr. 10). The plea court reviewed all of Applicant's constitutional rights and Applicant stated he wished to waive these rights and plead guilty. (Plea Tr. 10-11). Applicant admitted to the conduct giving rise to these indictments, including the digital penetration of the minor victim and the sexual intercourse with the minor victim. (Plea Tr. 11-12, 14-16). Following the State's recitation of the facts, Applicant told the plea court the facts as presented were accurate. (Plea Tr. 17). Following mitigation from counsel, Applicant addressed the court, wherein he apologized to the victims, admitted to his conduct, and asked the plea court to be as lenient as possible. (Plea T. 20-23).

At the evidentiary hearing, Applicant's only complaints about counsel's performance were that she failed to move for dismissal pursuant to the IAD Act and she failed to speak on his behalf. (PCR Tr. 5-15).

This Court finds Applicant has not met this requisite burden of proof of establishing counsel was ineffective or that his guilty plea was involuntary. The guilty plea transcript shows Applicant voluntarily, knowingly, and intelligently entered his guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645). As discussed previously, any allegation that counsel was ineffective for failing to move for dismissal based on an IAD Act violation pertaining to the second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) is without merit, as the IAD Act is not implicated by this conviction. Additionally, Applicant's claim that counsel failed to speak on his behalf is clearly refuted by the record, as counsel presented arguments in mitigation on Applicant's behalf. (Plea Tr. 20-22). Accordingly, this Court finds Applicant voluntarily, knowingly, and intelligently entered his guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) and Applicant has failed to establish any ineffectiveness of counsel as to this conviction.

CONCLUSION

Based on all the foregoing, this Court grants Respondent's motion to reconsider, alter, or amend its previous order granting post-conviction relief pursuant to Rule 59(e), SCRCP, and substitutes this order in place of its previously issued order. This Court finds Applicant is entitled to post-conviction relief and the dismissal of his conviction for second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-

0644) based on a violation of the IAD Act. Additionally, this Court finds Applicant's indictment for lewd act (2014-GS-08-0646) that was dismissed pursuant to Applicant's plea has been dismissed with prejudice and cannot be revived by the State. Moreover, this Court finds Applicant's conviction for second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645) was not affected by any IAD Act violation and denied post-conviction relief as to this conviction.

This Court notes either party wishing to secure appellate review of this Order must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Respondent's motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCP is granted;
2. This Order is substituted for this Court's prior order granting post-conviction relief;
3. Post-conviction relief is **granted** and Applicant's conviction and sentence for **second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644)** is **dismissed with prejudice** based on a violation of the IAD Act;
4. The dismissal of Applicant's lewd act indictment (2014-GS-08-0646) is with prejudice and cannot be revived by the State;

5. Post-conviction relief is **denied** as to **second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645)**;

6. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this _____ day of _____, 2018.

JEAN H. TOAL
Presiding Judge
Ninth Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

David Leon Stephens, #361522,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2015-CP-08-0640

**RESPONSE TO
STATE'S PROPOSED ORDER
GRANTING MOTION TO RECONSIDER
AND AMENDING PRIOR ORDER
GRANTING RELIEF**

FILED
2016 APR 30 PM 4:22
MARY F. THOMAS
CLERK OF COURT
BERKELEY COUNTY S.C.

AD

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 11, 2015. Respondent made its Return on March 28, 2016. An evidentiary hearing into the matter was convened on September 16, 2016 at the Berkeley County Courthouse. Lance S. Boozer, Esquire represented Applicant. Jonathan S. Arndt, a third-year law student at the Charleston School of Law under the South Carolina Supreme Court Rule 401 (Student Practice Rule), under the supervision of J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent. By written order filed November 9, 2017, and received by Applicant on November 17, 2017, this Court granted post-conviction relief, vacated Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial, finding counsel was ineffective for failing to pursue dismissal of Applicant's charges based on a violation of the Interstate Agreement on Detainers Act (IAD Act), rendering his guilty plea involuntary.

On November 27, 2017, Respondent filed a Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCR, asking this Court to reconsider its ruling and deny relief as to

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one of Applicant's two convictions for second-degree criminal sexual conduct with a minor. On November 28, 2017, Applicant filed a return to this motion, asking this Court to summarily deny Respondent's motion without a hearing.

A hearing on Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, was held on April 4, 2018 at the Richland County Courthouse. Applicant and his counsel were present. Respondent was present and represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. Following arguments from counsel, this Court requested the Respondent prepare a proposed Order granting its Motion to Reconsider and Amending the Court's prior Order granting relief. Per the Court's further instructions, please allow this memo to serve as Applicant's response to the proposed Order.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the May 2014 term of the Berkeley County Grand Jury for two counts of Criminal Sexual Conduct with a minor (CSC), 2nd degree (2014-GS-08-0644, -645).¹ The Applicant was represented by Debra K. Littlejohn, Esquire ("Counsel").

On September 17, 2014, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable Kristi Lea Harrington to confinement for a period of fifteen years. The Applicant did not appeal his conviction or sentence.

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

¹ Applicant was originally charged with Criminal Sexual Conduct, with a minor, 2nd Degree. Applicant was served with this warrant on or about September 19, 2013.

1. "Constitutional rights were violated due to violation of my IAD which was dismissed when they brought these charges on me"
 - a. "I was expedited here on a (IAD) signed in April, 2013; which expired in October, 2013 and didn't have court until Nov. 2013"
2. "Public Defender said I'm going to let my client speak for himself"
 - a. "My public Defender did not speak on my behalf in pleading my case"
3. "Held in custody 7 months on a charge that was supposed to be dismissed in Oct. 2013 until evidence was found to charge me with these charges."
 - a. "After I was charged with these crimes my charge I sat in jail for 7 months after violation of my IAD was dismissed"

By amendment on September 6, 2016:

1. Involuntary guilty plea.

At the evidentiary hearing, Applicant testified on his own behalf. Debra K. Littlejohn, Esquire also testified. This Court had before it a copy of the records of the Berkeley County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

ARGUMENT

First, Applicant submits a party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial. *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999). In its Motion to Reconsider, the State argues that the PCR court's dismissal of both of Applicant's convictions based on an IAD act violation is erroneous. Applicant contends that this issue is only now being presented to the Court for consideration and the State should be barred from making this argument.

In his initial PCR application, Applicant clearly indicated he was seeking relief from the

convictions he was currently incarcerated for (2014-GS-08-644 and 2014-GS-08-645) and also requested that the sentence be vacated. In its Return to Applicant's initial PCR application, the State included the following language:

The Applicant was indicted at the May 2014 term of the Berkeley County Grand Jury for two counts of Criminal Sexual Conduct with a minor, 2nd degree (2014-GS-08-644, -645)... On April 17, 2014 (sic) the Applicant pled guilty as indicted. The Honorable Kristi Lea Harrington sentenced the Applicant, pursuant to negotiations, to confinement for fifteen (15) years.

A further review of the State's Return reflects that it interpreted Applicant's claims as allegations of ineffective assistance of plea counsel and "probably raises questions of fact that the record does not conclusively refute." The Return then requests an evidentiary hearing to fully resolve this issue.

Our rules are clear that "every defense, in law or fact, to a cause of action in any pleading, whether a claim, counter counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required." Rule 12(b), SCRPC. A motion to dismiss, including failure to state facts sufficient to state a cause of action, must be made before pleading. *Id.* Nowhere in the Return does the State assert as a defense that an IAD act violation should not apply to these particular indictments or affect Applicant's plea or request that any claims regarding a violation of the IAD act as it relates to the indictments be dismissed.

At the beginning of Applicant's PCR hearing, the State indicated in its procedural opening that Applicant was indicted for two (2) counts of criminal sexual conduct with a minor, second degree, and Applicant pled guilty to those offenses. PCR tr. p. 3, ll. 15-22. The State, as it failed to do in its Return, failed make a request that the Court not allow any IAD act violations to affect the indictments referenced above or request that any claims regarding the two

indictments be dismissed or that any violation not render his plea involuntary. At the conclusion of the hearing, the State argued that the IAD issue "has no bearing on the case" because Applicant did not comply with the IAD act. The State's main argument at the PCR hearing was that the Applicant did not properly comply with the requirements of the IAD act.² The State briefly indicated its belief regarding the applicability of the IAD violation to the new indictments was "those charges that he came down here on maybe should have been dismissed, but not these new indictments, and that's why we're here today." PCR tr. p. 43, ll. 23-25.

Following the hearing, both parties were asked to submit proposed Orders. In the State's proposed Order, it argued counsel was not ineffective with regard to her representation and handling of the IAD issue. It also proposed that there were no IAD violations "because the solicitor lawfully dismissed the Applicant's charges before the expiration of the IAD and that if there was a violation, Applicant waived any challenges by voluntarily pleading guilty." Applicant submits the State failed to present either in its Return, by motion to dismiss prior to or at the PCR hearing or in its proposed Order the argument it now seeks to make in its Motion to Reconsider and should be precluded from doing so.

Applicant further submits the PCR court's Order granting relief contains the correct findings of fact and conclusions of law. Specifically, Applicant was clear in his initial PCR application, amended PCR application and at the PCR hearing that he was attacking his counsel's performance, all of his charges and convictions, as well as whether his plea was entered

² This is in direct contradiction to the State's own acknowledgment at the Applicant's plea that the State was aware Applicant was "filing an interstate detainer agreement" and "once he gives us notice on the interstate agreement detainer, I think he should be given credit even though he wasn't here and hadn't been served with the warrant." The State continued, "the other thing I would like to put on the record is that Mr. Stephens filed that and was asking to be tried within 180 days."

voluntarily. At the PCR hearing, following his testimony concerning the mistakes he believed his attorney made with regard to the IAD act, Applicant explained how counsel's ineffectiveness resulted in an involuntary plea:

Q: Let me ask you this: Why was it that you ended up entering the plea in this case?

A: One, I was in jail, sitting down here, because I knew my constitutional rights were violated, and I could see that I just getting railroaded anyway, so that was one of my main issues.

PCR tr. pg. 13, ll. 11-16.

Acknowledging the involuntary nature of Applicant's plea due to counsel's ineffectiveness in its Final Order, this Court found:

Upon review of the entire record, including the Applicant's IAD request that was made a part of the PCR hearing record, this Court finds Applicant has met his burden of proof that counsel was ineffective for failing to pursue dismissal of the charge, **rendering his guilty plea involuntary.**

Applicant submits this Court correctly found and addressed that counsel's inaction with regard to the IAD act rendered his *entire* plea involuntary and additionally ordered that his "convictions are vacated and sentence reversed." Applicant respectfully submits the Final Order granting PCR is proper and should not be altered and that the State's Request to Reconsider be denied.

[Signature Page Follows]

Respectfully submitted,



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April 27, 2018
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

David Leon Stephens, SCDC No. 361522,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-08-0640

ORDER GRANTING RESPONDENT'S
MOTION TO RECONSIDER, ALTER,
OR AMEND PURSUANT TO RULE
59(e), SCRPC AND AMENDING PRIOR
ORDER GRANTING POST-CONVICTION
RELIEF

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

JUN 15 PM 4:55

FILED

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This matter comes before this Court by way of an application for post-conviction relief filed on March 11, 2015, by David Leon Stephens ("Applicant"). A hearing on this application was held in the Berkeley County Court of Common Pleas before the Honorable Jean H. Toal, former Chief Justice of the South Carolina Supreme Court and acting circuit court judge. By written order filed November 9, 2017, and received by Applicant on November 17, 2017, this Court granted the post-conviction relief, vacated both of Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial, finding plea counsel was ineffective for failing to move for dismissal of Applicant's charges based on a violation of the Interstate Agreement on Detainers Act (the IAD Act).

Thereafter, on November 27, 2017, Respondent filed a Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, asking this Court to reconsider its ruling and deny relief as to one of Applicant's two convictions for second-degree criminal sexual conduct with a minor. On November 28, 2017, Applicant filed a return to this motion, asking this Court to summarily deny Respondent's motion without a hearing.

A hearing on Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule

59(e), SCRCF, was held on April 4, 2018 at the Richland County Courthouse.¹ Applicant was present alongside counsel Boozer. Respondent was present and represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson. Following arguments from counsel, this Court grants Respondent's motion to reconsider its previous order and finds as follows:

PROCEDURAL HISTORY

On September 7, 2010, a report was filed with the Berkeley County Sheriff's office in reference to a sexual assault committed by Applicant against the twelve-year-old minor victim. (Arrest Warrant M-333205). On February 16, 2011, the Berkeley County Sheriff's Office sought and obtained a warrant for Applicant's arrest for second-degree criminal sexual conduct with a minor. (Arrest Warrant M-333205). The accompanying affidavit specifically alleged the following:

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That on or between 05/21/10 and 06/17/2010 the defendant did commit the above stated offense in that he did willfully, unlawfully, and feloniously engaged in sexual intercourse with a female victim date of birth [REDACTED], and said offense having occurred at [REDACTED] Horseshoe Road, Goose Creek, SC located in the County of Berkeley. Facts to establish the aforesaid: On 09/07/10 a report was filed with the Berkeley County Sheriff's Office in reference to a sexual assault committed by the defendant. The victim was seen at Lowcountry Children Center and disclosed sexual abuse by defendant. The twelve-year old victim disclosed vaginal/penile intercourse by the defendant. The victim became pregnant as a result of the sexual assault. The victim knows the defendant by sight and sound. The victim was twelve years old and the defendant was over the age of twenty-one at the time of the sexual assault. The affiant and the victim are witnesses to prove the same.

(Arrest Warrant M-333205) (emphasis added).

On August 22, 2012, Applicant began serving a term of imprisonment within the

¹ By consent of all parties, this hearing was held in Richland County. A scheduling order vesting this Court with jurisdiction to hear this PCR action was signed by the Honorable Donald W. Beatty, Chief Justice of the South Carolina Supreme Court, on March 9, 2018.

Commonwealth of Pennsylvania Department of Corrections following his guilty plea to "Unsworn Falsifications to Authorities." (Court's Exhibit 1). While incarcerated in Pennsylvania, Applicant became aware of Arrest Warrant M-333205 for second-degree criminal sexual conduct with a minor based on his genital penetration and resulting impregnation of the minor victim. On April 12, 2013, Applicant partially² filled out an IAD Act request form, which was forwarded to the Ninth Circuit Solicitor's Office. (Court's Exhibit 1). However, this form was never filed with the Berkeley County Clerk of Court.³

On September 18, 2013, Applicant was brought to South Carolina. (Guilty Plea Tr. 18). Shortly thereafter, Applicant was appointed Debra K. Littlejohn, Esquire, to represent him on the charges arising out of the conduct contained within Arrest Warrant M-333205. Littlejohn was aware of the Applicant's request pursuant to the IAD Act and she brought Applicant's IAD Act request for a speedy disposition of his charge to the attention of the State. (Guilty Plea Tr. 13). In response, Anne Williams, the prosecuting Assistant Solicitor, informed Littlejohn that SLED DNA results to determine paternity of the twelve-year-old minor victim's aborted fetus were still pending and she would move for a continuance of the case until such results were obtained.⁴

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(Guilty Plea Tr. 13-16, PCR Tr. 29, 37). However, the State never sought a continuance.

On June 18, 2014, Assistant Solicitor Williams dismissed Arrest Warrant M-333205 and directly presented three new indictments against Applicant based on additional information she

² In Respondent's motion and at the hearing on this motion, Respondent noted that numerous locations on Applicant's IAD Act form are blank and Applicant's signature is not on any of the numerous pages of the form. See Court's Ex. I.

³ At the evidentiary hearing, trial counsel Littlejohn testified she was unable to locate a copy of the IAD Act request on file with the Berkeley County Clerk of Court. (PCR Tr. 21). Respondent contacted the Berkeley County Clerk's Office on November 22, 2017, and after a review of the entirety of Applicant's General Sessions files, the Clerk's office confirmed no copy of the IAD Act form was on file.

⁴ Results of the paternity test revealed Applicant was the biological father of the twelve-year-old minor victim's aborted fetus. (Guilty Plea Tr. 16; PCR Tr. 16).

gathered during interviews with the minor victim, including additional felonious conduct and a slight variation in the dates the incidents occurred. The three new indictments, all which were true billed by the Berkeley County Grand Jury on May 13, 2014, were as follows: second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644); second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645); and lewd act (2014-GS-08-0646).

On June 19, 2014, Applicant, who had concluded his Pennsylvania sentence, was released on bond on the three indictments.

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On September 17, 2014, Applicant appeared in the Berkeley County Court of General Sessions before the Honorable Kristi L. Harrington, circuit court judge, and pled guilty to second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644) and second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645). At the plea proceeding, the State and Littlejohn both referenced Applicant's IAD Act request and that they were awaiting the SLED DNA results to determine paternity of the aborted fetus before bringing Applicant's case to trial. Pursuant to plea negotiations between Applicant and the State for a sentence cap of fifteen years, Judge Harrington sentenced Applicant to fifteen years imprisonment; the remaining lewd act indictment (2014-GS-08-0646) was dismissed pursuant to the plea agreement. Applicant did not file an appeal.

On March 11, 2015, Applicant filed an application for post-conviction relief alleging a violation of the IAD Act and ineffective assistance of counsel. Respondent made its return on March 28, 2016, requesting an evidentiary hearing be convened on the application. Thereafter, on September 6, 2016, Applicant, through counsel Lance S. Boozer, Esquire, filed an amended

application alleging an additional ground for relief. Applicant's guilty plea counsel was involuntary. An evidentiary hearing was held before this Court on September 16, 2016, in the Berkeley County Court of Common Pleas. Applicant was present and represented by counsel Boozer. Respondent was represented by John Ard, a third-year law student at the Charleston School of Law, practicing under Rule 401, SCACR, and supervised by J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office. At the hearing, testimony was taken from Applicant and his former plea counsel, Debra K. Littlejohn, Esquire. At the conclusion of the hearing, this Court took this matter under advisement and requested proposed orders from both parties.

By written order filed November 9, 2017, this Court granted post-conviction relief, finding plea counsel was ineffective for failing to move for dismissal of Applicant's charge based on a violation of the IAD Act. Specifically, this Court found:

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Here, Applicant was deprived of the rare opportunity to have his charge dismissed with prejudice due to Counsel's ineffectiveness. This Court is aware that the State could have certainly requested a continuance, however, had Counsel made a motion to dismiss, the burden would have been placed upon the State to show it was "necessary and reasonable" to continue the case. This Court finds Applicant complied with the IAD provisions. This Court finds Counsel's thoughts that the IAD was not properly filed are incorrect. Additionally, this Court finds that Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the charge dismissed with prejudice.

(Order Granting PCR 7) (emphasis added). This Court vacated both of Applicant's convictions, and remanded the matter to the Berkeley County Court of General Sessions for a new trial.

Thereafter, on November 27, 2017, Respondent filed a Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, asking this Court to reconsider its ruling and deny relief

as to the second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645).

On November 28, 2017, Applicant filed a return to this motion, asking this Court to summarily deny Respondent's motion without a hearing. A hearing on Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, was held on April 4, 2018 at the Richland County Courthouse.

RESPONDENT'S ARGUMENTS IN SUPPORT OF RECONSIDERATION

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8/10/17
In its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, Respondent moved for this Court to reverse its earlier decision and deny post-conviction relief as to Applicant's conviction for second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645), asserting this Court improperly vacated both of Applicant's convictions as this Court's ruling that an IAD violation had occurred should only apply to the conviction that was subject to the initial detainer—the second-degree criminal sexual conduct with a minor based on the genital penetration of the minor victim based on Arrest Warrant M-333205 (2014-GS-08-0644). Respondent also argued this Court improperly determined Applicant had properly filed a request for the speedy disposition of his charges within 180 days pursuant to Article III of the IAD Act, although Respondent conceded there was an IAD violation pursuant to Article IV because Applicant was not brought to trial (and the State did not move for a continuance) within 120 days of being brought to South Carolina based on the detainer for Arrest Warrant M-333205. See S.C. Code Ann. § 17-11-10. Respondent's arguments from its motion and as presented at the hearing on said motion are set forth more fully below:

Inapplicability of Article III of the IAD Act

Although not dispositive on the underlying issue in light of Respondent's concession that there was an IAD violation pursuant to Article IV, Respondent asks this Court to reconsider its finding that "Applicant properly complied with the IAD provisions." Respondent argues Applicant did not properly file a copy of his IAD paperwork with the Berkeley County Clerk of Court as required to avail himself of the benefits and protections of the IAD Act pursuant to Article III.

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8/15

The IAD Act is a "compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State." New York v. Hill, 528 U.S. 110, 111 (2000) (citations omitted). Critically, the IAD Act was designed to create "cooperative procedures" between the states and the federal government in order to "encourage the expeditious and orderly disposition of" outstanding charges and detainers against prisoners incarcerated in other jurisdiction based on the "uncertainties" caused by such charges and detainers. S.C. Code Ann. § 17-11-10, art. I; see State v. Finley, 277 S.C. 548, 550, 290 S.E.2d 808, 809 (1982) ("The purpose of I.A.D. is to foster the expeditious disposition of charges outstanding against prisoners so as to eliminate uncertainties which accompany the filing of detainers.").

Based on the IAD Act, two distinct deadlines are imposed upon the State after a detainer against a defendant held in another jurisdiction is filed—a 180-day deadline and a 120-day deadline. See S.C. Code Ann. § 17-11-10, art. III(a) (setting out a 180-day deadline for the commencement of trial); S.C. Code Ann. § 17-11-10, art. IV(c) (setting out a 120-day deadline for the commencement of trial). Specifically, when a defendant files a request complying with

the IAD Act's requirements⁵ for final disposition in connection to a filed detainer, the defendant "shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint." S.C. Code Ann. § 17-11-10, art. III(a). Likewise, "trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving state" when a defendant is transferred pursuant to a detainer regardless of whether the defendant ever requested final disposition. S.C. Code Ann. § 17-11-10, art. IV(c). Ordinarily, if a defendant is not brought to trial within the applicable statutory period, the IAD Act requires the trial judge to dismiss the pending indictment, information, or complaint with prejudice. S.C. Code Ann. § 17-11-10, art. V(c).

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8/18/17
Respondent argues Applicant did not properly comply with the IAD Act's requirements because he did not properly file or otherwise cause to be delivered a copy of his IAD Act request with the Berkeley County Clerk of Court and significant portions of his form were not completed (including a lack of his signature anywhere on the form). Because he did not comply with those express requirements, Respondent asserts the IAD Act's 180-day deadline was not triggered and did not begin to run. See State v. Johnson, 278 S.C. 668, 671, 301 S.E.2d 138, 140 (1983) ("We hold appellant's letter did not comply with the IAD requirements and thus did not trigger the running of one hundred eighty day period during which a prisoner must be brought to trial under

⁵ Regarding the IAD Act's requirements, the defendant must have written notice of the place of his imprisonment and his request for a final disposition delivered to both the prosecuting officer and "the appropriate court of the prosecuting officer's jurisdiction." S.C. Code Ann. § 17-11-10, art. III(a). Significantly, if the defendant fails to comply with those express requirements, the IAD Act's 180-day deadline will not be triggered and will not begin to run. See State v. Johnson, 278 S.C. 668, 671, 301 S.E.2d 138, 140 (1983) ("We hold appellant's letter did not comply with the IAD requirements and thus did not trigger the running of one hundred eighty day period during which a prisoner must be brought to trial under Article III of the IAD.").

Article III of the IAD.”). Therefore, Respondent argues Applicant’s partially filled-out IAD Act request form, dated April 12, 2013, did not trigger the IAD Act’s 180-day deadline and requests this Court alter its ruling finding Applicant was entitled to relief pursuant to Article III of the IAD Act. However, as discussed below, Respondent concedes there was an IAD Act violation pursuant to Article IV.

This Court erred in dismissing both of Applicant’s Convictions

Despite Respondent’s argument Applicant did not properly comply with the express requirements of the IAD Act to avail himself of the benefit of the Act pursuant to Article III, Respondent concedes Applicant was delivered to South Carolina on September 18, 2013, thereby triggering the 120-day timeline pursuant to S.C. Code Ann. § 17-11-10, art. IV(c), as to the second-degree criminal sexual conduct with a minor charge based on genital intercourse with the minor victim for which Arrest Warrant M-333205 was issued and for which the State lodged a detainer against Applicant (2014-GS-08-0644).

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8/15/17
Importantly though, Respondent argues any grant of relief based on an IAD Act violation should only apply to the second-degree criminal sexual conduct with a minor charge for Applicant’s genital penetration of minor victim based on the information contained in Arrest Warrant M-333205 (2014-GS-08-0644) and not the other, unrelated second-degree criminal sexual conduct with a minor charge based on Applicant’s digital penetration of minor victim that was indicted in 2014 (2014-GS-08-0645) or the lewd act indictment (2014-GS-08-0646) that was dismissed pursuant to the plea agreement entered into between Applicant and the State. Respondent argues the two separate charges are based on conduct separate and apart from the conduct giving rise to the charge upon which Arrest Warrant M-333205—the basis for the detainer lodged against Applicant—was founded.

Applicant was not made aware of these two additional charges until after he was directly indicted for both on May 13, 2014, well after he was brought to the state pursuant to the IAD Act (and in fact, after he had completed serving his sentence on the Pennsylvania charges). See Court's Exhibit 1 listing Applicant's parole eligibility as "2/23/13" and maximum expiration of the present sentence as "5/23/14" for the Pennsylvania charge. Therefore, Respondent argues the IAD Act is inapplicable to these two charges and any purported violation should not result in the dismissal of these charges (the other second-degree criminal sexual conduct with a minor charge and the lewd act charge).

In support of this argument, Respondent cites to the following language from the IAD Act:

The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.

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S.C. Code Ann. § 17-11-10, Art. V(d). Respondent argues the plain reading of Article V(d) makes it clear the IAD Act only applies to the charge or charges subject to the detainer, which in the present case, would only be the second-degree criminal sexual conduct with a minor charge for Applicant's genital penetration of minor victim based on the information contained in Arrest Warrant M-333205.

Beyond the plain language in the IAD Act, Respondent argues numerous other jurisdictions have interpreted the IAD Act in a similar manner. See United States v. Sanders, 669 F.2d 609, 610 (9th Cir. 1982) (holding, without discussion, that where a one-count complaint, upon which the detainer was based, was dismissed for failure to comply with the prescribed time

period and a new complaint was filed containing the dismissed count and two new but related counts, the trial court properly dismissed only the original count); Espinoza v. State, 949 S.W.2d 10, 12 (Tex. App. 1997) (noting that “[b]y its terms, [the IAD] limits dismissal to a charge forming the basis of the detainer” and holding that conviction, even though on a related charge, was not on the charge on which the detainer was lodged; Commonwealth v. Boyd, 451 Pa. Super. 404, 679 A.2d 1284, 1287 (1996) (holding that speedy trial provisions of IAD did not apply where charges for which detainer was lodged were “separate and apart” from new charges that were subject of conviction); People v. Greenwald, 704 P.2d 312 (Colo.1985) (holding statute requiring trial within 120 days of defendant’s return to state relates only to the charges underlying the detainer by which state secured temporary custody of prisoner incarcerated in another state); People v. Oiknine, 79 Cal. App. 4th 21, 93 Cal. Rptr. 2d 720 (1999) (holding although a dismissal with prejudice of the five counts from the original complaint satisfied the requirements of the IAD, nothing in the IAD suggests that new charges, which were not specified in the detainer, can or should be dismissed along with the older charges that were listed in the detainer).

Respondent argues the IAD Act is only applicable to the second-degree criminal sexual conduct with a minor charge for Applicant’s genital penetration of minor victim based on the information contained in Arrest Warrant M-333205 (2014-GS-08-0644), as it was the only known conduct at the time the detainer was issued against Applicant. Therefore, Respondent asks this Court to reconsider its ruling and deny Applicant relief on his convictions for the unrelated second-degree criminal sexual conduct with a minor conviction based on Applicant’s digital penetration of the minor victim (2014-GS-08-0645).

**APPLICANT'S RESPONSE TO RESPONDENT'S MOTION FOR
RECONSIDERATION**

In its reply, Applicant argues this Court's order granting post-conviction relief contained the proper findings of facts and conclusions of law as required by S.C. Code Ann. 17-27-80 (1976) and Rule 52(a) SCRCP, and this Court properly ruled on all issues presented at the post-conviction relief hearing.

At the hearing, Applicant argued the arguments set forth in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, were contradictory to the position previously taken by Respondent and that Respondent should be foreclosed from making any different or new arguments. When questioned by this Court as to whether the provisions of the IAD Act or its applicability to both of the charges was addressed fully, Applicant conceded that neither party had addressed this issue at the hearing and the issue was not addressed in this Court's order granting post-conviction relief.

SUMMARY OF ARGUMENTS PRESENTED AT THE HEARING

At the hearing, Respondent argued the positions as set forth in its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP. In reply, Applicant argued the arguments set for in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, were contradictory to the position previously taken by Respondent and that Respondent should be foreclosed from making any different or new arguments. When questioned by this Court as to whether the provisions of the IAD Act or its applicability to both of the charges were addressed fully, Applicant conceded these specific issues were not addressed in this Court's order granting post-conviction relief.

In reply, Respondent argued it had not taken a contradictory position, as it always argued the IAD Act was inapplicable to the new indictments issued after Applicant was brought to South Carolina.

**GRANT OF RECONSIDERATION AND AMENED FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

After reviewing the records and arguments presented in this case, this Court grants Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, and finds as follows:

Respondent's Arguments in Support of Reconsideration are Properly Before this Court

As an initial matter, this Court finds the arguments presented by Respondent are not contradictory or new and, therefore, are properly before this Court. This Court is mindful that new issues cannot be presented to the court for the first time in a motion to reconsider. See Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (recognizing that an issue may not be raised for the first time in a motion to reconsider). However, this Court finds the issues raised in Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, were raised to this Court at the evidentiary hearing. The record establishes that Respondent has consistently argued any purported IAD Act violation would not apply to new indictments issued after Applicant was brought to South Carolina, including second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645). See PCR Tr. 42 ("[W]here it comes down to, the solicitor dismissed those charges in accord with, you know, her rightful authority to do so, and at that point, the IAD issue has no bearing on this case and there is no prejudice on behalf of the defendant."). Additionally, there is conflicting testimony and argument from Applicant as to whether any IAD violation would

impact both of his convictions, as Applicant argues any violation would apply to his single conviction or both convictions, as evidenced by his interchangeable use of "charge" and "charges" throughout the evidentiary hearing. See e.g. PCR Tr. 13, 41-42. Furthermore, the witnesses were questioned as to whether any IAD Act violation would apply to the new indictments obtained after Applicant was delivered to South Carolina. See e.g. PCR Tr. 22-23, 25, 38. Clearly, these arguments and issues were raised to this Court prior to Respondent's Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP.

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Moreover, this Court finds its previous order did not address the particular provisions of the IAD Act or its applicability to the specific convictions subject to this application—second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644), second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645), as well as the dismissed lewd act indictment (2014-GS-08-0646). Therefore, it was imperative that Respondent file a motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCP. "Upon reaching a decision, a post-conviction relief court is required to "make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented" in a PCR application, including whether the applicant satisfied his burden as to each prong of the Strickland test described above." Tappeiner v. State, 416 S.C. 239, 249 n.5, 785 S.E.2d 471, 476 n.5 (2016) (citing S.C. Code Ann. § 17-27-80; Marlar v. State, 375 S.C. 407, 408, 653 S.E.2d 266, 266 (2007)). As our Supreme Court noted in Marlar,

We take this opportunity to reiterate our admonition that "[c]ounsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order, and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the

order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the reasons for those findings as required by 17-27-80 and Rule 52(a), SCRCP.

Marlar, 375 S.C. at 410, 653 S.E.2d at 267 (citing Pruitt v. State, 310 S.C. 254, 256, 423 S.E.2d 127, 128 (1992)). Because this Court's previous order did not address the particular provisions of the IAD Act or its applicability to the specific convictions subject to this application, Respondent properly filed the necessary motion asking this Court to address these issues.

An IAD Violation warrants the dismissal of the Second-Degree Criminal Sexual Conduct with a Minor Conviction Based on Genital Penetration

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JMS
In its previous order, this Court found plea counsel Littlejohn was ineffective for failing to motion or request for the dismissal of Applicant's charge based on an IAD violation. (Order Granting PCR 6). This Court found, "Applicant was deprived of the rare opportunity to have his charge dismissed with prejudice due to Counsel's ineffectiveness. . . . [T]his Court finds that Applicant was not brought to trial within the time restrictions imposed by the IAD. Based on this violation, this Court finds Applicant could have made a valid request to have the charge dismissed with prejudice." (Order Granting PCR 6).

This Court reaffirms its prior ruling that Applicant was not brought to trial within the timelines proscribed by the IAD Act. This Court previously determined Applicant properly complied with the requirements of the IAD and therefore was entitled to a dismissal of his charges pursuant to Article III when he was not brought to trial within 180 days of delivery of his IAD form to the Ninth Circuit Solicitor's Office. Respondent argues Applicant did not properly comply with the requirements as set forth in Article III, but concedes there was an IAD Act violation pursuant to Article IV when Applicant was not brought to trial within 120 days of his delivery to South Carolina based on the detainer for Warrant M-333205 pursuant to Article IV.

Regardless of whether Article III or Article IV of the IAD Act controls, this Court finds, and Respondent concedes, a violation of the IAD Act warranted dismissal of the charge upon which the detained was based—the conduct outlined in Warrant M-333205—the second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644). This Court finds counsel was ineffective to move for dismissal of his he second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644) based on this IAD Act violation. Because the IAD Act violation warranted dismissal of the second-degree criminal sexual conduct with a minor indictment based on genital penetration of the minor victim (2014-GS-08-0644), this Court finds that this conviction must be reversed and this indictment must be dismissed with prejudice.

The Lewd Act Indictment is Dismissed with Prejudice

This Court finds Applicant's indictment for lewd act (2014-GS-08-0646) must also be dismissed with prejudice and cannot be revived by the State. The lewd act indictment was dismissed pursuant to a plea agreement entered into between Applicant and the State, and therefore, this Court finds this dismissal is final and with prejudice.

Applicant has failed to establish he is entitled to relief as to the surviving second-degree criminal sexual conduct with a minor conviction based on his digital penetration of the minor victim (2015-GS-08-0645)

This Court finds Applicant's conviction for second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2015-GS-08-0645) was separate and independent from the conduct upon which the detainer was based (as set forth in Warrant M-333205), and therefore, the IAD Act violation does not impact this conviction. See S.C. Code Ann. § 17-11-10, Art. V (d) ("The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more

untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction.”) (emphasis added). As there was no IAD Act violation as to this charge, this Court finds plea counsel was not ineffective for failing to move for dismissal of this charge.

Moreover, this Court finds Applicant has failed to establish any ineffectiveness of counsel relating to this conviction.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

#17
8/15
In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

#18
8/17

The Strickland test operates similarly when an applicant claims counsel was ineffective in the context of a guilty plea. Hill v. Lockhart, 474 U.S. 52, 58 (1985). In the guilty plea context, the inquiry with respect to the counsel's alleged deficiency turns on whether the plea was voluntarily, knowingly, and intelligently entered. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 651 (2000). Furthermore, "[t]he second, or 'prejudice,' requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill, 474 U.S. at 59. Therefore,

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.

Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citations omitted). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Suber v. State, 371 S.C. 554, 558,

640 S.E.2d 884, 886 (2007) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)).

#19
8/17

Here, the record establishes Applicant's guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) was voluntarily, knowingly, and intelligently entered. The plea court engaged in a thorough plea colloquy with Applicant, during which it reviewed the possible punishments and the plea negotiations entered into between Applicant and the State (Plea Tr. 5-6). The plea court also reviewed the classifications of each offense (Plea Tr. 7-9), and advised Applicant he should expect to serve the entirety of his sentence day-for-day. (Plea Tr. 8). The plea court advised Applicant he would be placed on the sex offender registry for life, followed by Applicant's affirmation that he still wished to plead guilty. (Plea Tr. 9). Applicant told the court he had not been promised anything or threatened to induce his guilty plea and that it was solely his decision to plead guilty. (Plea Tr. 10). Applicant told the court he was satisfied with the services of counsel. (Plea Tr. 10). The plea court reviewed all of Applicant's constitutional rights and Applicant stated he wished to waive these rights and plead guilty. (Plea Tr. 10-11). Applicant admitted to the conduct giving rise to these indictments, including the digital penetration of the minor victim and the sexual intercourse with the minor victim. (Plea Tr. 11-12, 14-16). Following the State's recitation of the facts, Applicant told the plea court the facts as presented were accurate. (Plea Tr. 17). Following mitigation from counsel, Applicant addressed the court, wherein he apologized to the victims, admitted to his conduct, and asked the plea court to be as lenient as possible. (Plea T. 20-23).

At the evidentiary hearing, Applicant's only complaints about counsel's performance were that she failed to move for dismissal pursuant to the IAD Act and she failed to speak on his behalf. (PCR Tr. 5-15).

#20
8/15/17

This Court finds Applicant has not met this requisite burden of proof of establishing counsel was ineffective or that his guilty plea was involuntary. The guilty plea transcript shows Applicant voluntarily, knowingly, and intelligently entered his guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645). As discussed previously, any allegation that counsel was ineffective for failing to move for dismissal based on an IAD Act violation pertaining to the second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) is without merit, as the IAD Act is not implicated by this conviction. Additionally, Applicant's claim that counsel failed to speak on his behalf is clearly refuted by the record, as counsel presented arguments in mitigation on Applicant's behalf. (Plea Tr. 20-22). Accordingly, this Court finds Applicant voluntarily, knowingly, and intelligently entered his guilty plea to second-degree criminal sexual conduct with a minor based on his digital penetration of the minor victim (2014-GS-08-0645) and Applicant has failed to establish any ineffectiveness of counsel as to this conviction.

CONCLUSION

Based on all the foregoing, this Court grants Respondent's motion to reconsider, alter, or amend its previous order granting post-conviction relief pursuant to Rule 59(e), SCRCP, and substitutes this order in placed of its previously issued order. This Court finds Applicant is entitled to post-conviction relief and the dismissal of his conviction for second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-

0644) based on a violation of the IAD Act. Additionally, this Court finds Applicant's indictment for lewd act (2014-GS-08-0646) that was dismissed pursuant to Applicant's plea has been dismissed with prejudice and cannot be revived by the State. Moreover, this Court finds Applicant's conviction for second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645) was not affected by any IAD Act violation and denied post-conviction relief as to this conviction.

#21
8/18/17
This Court notes either party wishing to secure appellate review of this Order must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. Respondent's motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRPC is granted;
2. This Order is substituted for this Court's prior order granting post-conviction relief;
3. Post-conviction relief is granted and Applicant's conviction and sentence for second-degree criminal sexual conduct with a minor based on genital penetration of the minor victim (2014-GS-08-0644) is dismissed with prejudice based on a violation of the IAD Act;
4. The dismissal of Applicant's lewd act indictment (2014-GS-08-0646) is with prejudice and cannot be revived by the State;

5. Post-conviction relief is denied as to second-degree criminal sexual conduct with a minor based on digital penetration of the minor victim (2014-GS-08-0645);

6. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 12th day of June, 2018.


JEAN H. TOAL
Chief Justice, Retired
Acting Circuit Court Judge

Columbia, South Carolina

#22

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

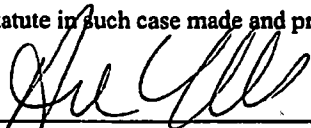
INDICTMENT

At a Court of General Sessions, convened on May 13, 2014 the Grand Jurors of Berkeley County present upon their oath:

Criminal Sexual Conduct with a Minor, Second Degree

That David Leon Stephens did in Berkeley County, South Carolina, on or between May 1, 2010 and June 17, 2010, commit a sexual battery upon a minor who was fourteen (14) years of age or less but who was at least eleven (11) years of age, to wit: genital intercourse upon victim [REDACTED], date of birth [REDACTED] 97, in violation of Section 16-3-655(B)(2), S.C. Code of Laws, 1976, as amended.

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



ANNE M. WILLIAMS
ASSISTANT SOLICITOR

AMW2013-09-02366

WITNESSES

Berkeley County Sheriff's Office

DET M Glick

AGENCY CASE NUMBER

201009039628

ARREST WARRANT NUMBER

Direct Indictment

DATE OF ARREST

September 18, 2013

ACTION OF GRAND JURY

True Bill

person of Grand Jury

Date: 5-13-14

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0800644

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2014

THE STATE

vs.

DAVID LEON STEPHENS

DOB: [REDACTED]
B/M

Indictment for

Criminal Sexual Conduct with a Minor,
Second Degree

14 MAY 13 PM 12:56
MARY P. [REDACTED]
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

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County of Berkeley

COURT OF GENERAL SESSIONS

May Term 2014

THE STATE

vs.

DAVID LEON STEPHENS

DOB: [REDACTED]

B/M

Indictment for

Criminal Sexual Conduct with a Minor,
Second Degree

HARRY F. BLOOM
CLERK OF COURT
BERKELEY COUNTY, S.C.

14 MAY 13 PM 12:56

FILED

217

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Berkeley

VS.

David Leon Stephens

AKA:

Race: BLACK Sex: M Age: 40

DOB: 74 SS#

Address: Stokes Street

City, State, Zip: Pittsburgh, PA 15205

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Criminal Sexual Conduct w/ Minor 2nd Degree, 11-14

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Williams, Anne M. SC Bar# 76463 Defendant David R. Raport 15425 Attorney for Defendant 14323 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/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: 2014-GS-08-644
☒ 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. 365 days☐ The Defendant is to be placed on the 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*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/ca	\$
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: Mia Person

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0800645

A/W#: 2014GS0800645

Date of Offense: 5/1/2010

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

PTUP

days/hours Public Service Employment

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:

sexual offender registry

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

Presiding Judge

Judge Code:

Sentence Date: 2/5/11 9/17/14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

219

COUNTY OF Berkeley
 STATE VS.
David Leon Stephens

AKA:

Race: BLACK Sex: M Age: 40DOB: 74 SS# [REDACTED]Address: Stokes StreetCity, State, Zip: Pittsburgh, PA 15205DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Criminal Sexual Conduct w/ Minor 2nd Degree, 11-14

INDICTMENT/CASE#: 2014GS0800644A/W#: 2014GS0800644Date of Offense: 5/1/2010S.C. Code §: 16-03-0655(B)CDR Code #: 0396

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS
in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Williams, Anne M. 76463 David Stephens 10/1/14 14323
 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 365 days☐ The Defendant is to be placed on the 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 ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
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3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk L. HillCourt Reporter: Mia Person

SCCA/217 (03/2011)

PTUP

 days/hours Public Service EmploymentObtain 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:

Sexual Offender Registry
No contact with victim
OR victim's family

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

Presiding Judge Kristi HanningJudge Code: 2151Sentence Date: 9/17/14