

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI FROM SPARTANBURG COUNTY

The Honorable R. Ferrell Cothran, Jr., Presiding Judge

Appellate Case No: 2017-001973

BRANDON HARLEY EATON,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

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1 STATE OF SOUTH CAROLINA }
 2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS

3
 4 STATE OF SOUTH CAROLINA,)
 5 PLAINTIFF,)
 6 vs.)
 7 BRANDON HARLEY EATON,)
 8 DEFENDANT.)

TRANSCRIPT
 OF
 RECORD
 2012-GS-42-798
 2013-GS-30-1428

9
 10 August 7th, 2013
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.

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

17 SUSAN REESE
 18 ASSISTANT SOLICITOR
 Attorney for the State

19 GEDDES ANDERSON
 20 ESQ.
 Attorney for the Defendant

21
 22
 23 PAMELA E. GREEN
 24 Circuit Court Reporter
 25 Seventh Judicial Circuit

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

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

THE COURT: All right. Ms. Reese, you ready to call the case?

SOLICITOR REESE: I am, Your Honor.

We may need to just clarify the defendant's address. It looks like there may be --.

THE COURT: All right. Take a second and be sure we got everything right.

(Pause.)

SOLICITOR REESE: I think we're ready.

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

SOLICITOR REESE: Your Honor, before you is Brandon Harley Eaton. He is pleading guilty under two indictments. He is waiving presentment in both cases.

He was originally indicted here in Spartanburg County on 2012-GS-42-0798 for criminal sexual conduct with a minor in the first degree. He is waiving presentment today and pleading guilty to criminal sexual conduct in the first degree, which is -- carries zero to thirty.

He is also pleading guilty, Your Honor -- I think he's here to waive jurisdiction and plead guilty to a Laurens County case. He was indicted there on Indictment 2013-GS-30-1428. It looks like that indictment has not been true billed at this time and he is pleading guilty. He's

1 waiving presentment and pleading guilty to criminal sexual
2 conduct in the first degree.

3 The only recommendation as to these two charges is that
4 they run concurrent, Your Honor.

5 In addition, the State had indicted the defendant on
6 lewd act upon a minor as kind of an alternative indictment.
7 We are dismissing that in return for the plea to this
8 charge, and there is another case, a pending investigation
9 regarding another five year old in Laurens County, and I
10 will tell the judge more in the facts of that, but we have
11 agreed, and Laurens County has agreed, not to pursue those
12 charges in return for this plea.

13 THE COURT: All right. Let's see. Mr. Anderson, you
14 agree with the solicitor's statement of the plea agreement?

15 MR. ANDERSON: Yes, I do, Your Honor.

16 THE COURT: All right. And you've discussed that with
17 your client?

18 MR. ANDERSON: Absolutely.

19 THE COURT: All right. And he's agreed to proceed
20 under that basis?

21 MR. ANDERSON: That's right.

22 THE COURT: All right. Please swear the defendant for
23 me.

24 THE CLERK: Yes, sir.

25 (WHEREUPON, the defendant was placed under oath at this

1 time.)

2 THE COURT: Mr. Eaton, you were present in the
3 courtroom. You heard the solicitor go over the indictments
4 with me and state the basis on which those pleas were being
5 offered to the Court as well as some representations
6 concerning other cases.

7 Did you understand what she told me?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Have you discussed that with your lawyer?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And have you agreed to proceed with this
12 plea on that basis?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. Now, Mr. Eaton, the charges
15 that are before the Court in Cases 2012-GS-42-798 and
16 13-GS-30-1428, those are both criminal sexual conduct in the
17 first degree. They each carry zero to thirty years in
18 prison. They are both classified as violent offenses and
19 most serious offenses.

20 I will tell you that, that, for that reason, they
21 qualify for what is commonly referred to in our state as one
22 of your strikes. That means, in the future, if you were to
23 be found guilty of or plead guilty to similarly classified
24 crimes that your plea in these cases could be used in those
25 cases to make the sentences more severe. Could result in a

1 sentence of life imprisonment without the possibility of
2 ever receiving a parole.

3 Do you understand that that -- this -- these pleas
4 would have that effect possibly in the future?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. Mr. Eaton, I also note that one
7 of these cases is -- originated in Laurens County. You have
8 the right to have this case heard in that county if you
9 choose. I've been told by the solicitor that the -- part of
10 the agreement is that this plea be handled in this county.

11 Do you understand that you have the right to have that
12 case handled in Laurens County if you chose to do that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And are you in agreement that the case be
15 handled here in Spartanburg along with this other plea?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: So, you're waiving that venue?

18 THE DEFENDANT: Yes.

19 THE COURT: Is that correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Now, Mr. Eaton, do you suffer
22 from any mental, physical, nervous conditions, any kind of
23 condition whatsoever that would, in anyway, affect your
24 ability to reason, to make good decisions, or to be able to
25 handle your plea today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Have you taken or used any drugs,
3 medications, or other substances that would have that, that
4 same or similar effect on your abilities?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: So, I take it, Mr. Eaton, you -- do you
7 understand what you're doing today?

8 THE DEFENDANT: Yes, sir.

9 SOLICITOR BARNETTE: And do you feel that you're able
10 to handle this plea today?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right, sir. Now, the State has not
13 made any further recommendations concerning sentencing in
14 this matter. That means that I would have the authority, if
15 I found it necessary, to sentence you up to the full extent
16 allowed by the law, and in this case, and in these cases,
17 that would be up to a total of 60 years in prison.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Now, you're here today with
21 your attorney.

22 Are you satisfied with your attorney's services?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Have you had sufficient time in which to
25 consult with him?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And is there anything else that you feel
3 that he ought to do for you?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: And is there anything else that you feel
6 that you ought to consult with him about?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: All right. So, as far as your
9 representation is concerned, you're fully satisfied with
10 your lawyer?

11 Do I understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Okay. Now, Mr. Eaton, you have the right
14 to plead either guilty or not guilty to these two charges.

15 How do you wish to plead?

16 THE DEFENDANT: Guilty.

17 THE COURT: On both charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, counselor, I'm sure you've discussed
20 the charges with your client, is that correct?

21 MR. ANDERSON: That's correct, Your Honor.

22 THE COURT: And I would think that, among the many
23 things you would of discussed with him, you would of
24 discussed the nature of these charges as well as the others
25 that were involved in this plea, the possible penalties that

1 are involved in those cases, any defenses that he may of had
2 to the charges, his rights under the Constitution, and how
3 they relate to the matters that are involved in this case?

4 Are those some of the things that you discussed with
5 him?

6 MR. ANDERSON: Yes, sir.

7 THE COURT: And---

8 MR. ANDERSON: Absolutely.

9 THE COURT: Sir?

10 MR. ANDERSON: Absolutely, yeah.

11 THE COURT: Okay. Do you feel that he has been able to
12 understand the advice that you've given to him?

13 MR. ANDERSON: He's, he's perfectly lucid, Your Honor.
14 He's prepared to go forward. He understands exactly what
15 he's doing. I've talked to him at length about these cases,
16 and he's prepared to go forward with them.

17 THE COURT: All right. Now, do you agree with the
18 decision that he's made to offer a plea in these two cases?

19 MR. ANDERSON: That's correct, Your Honor.

20 THE COURT: Okay. Now, Mr. Eaton, the information that
21 I have been given is that you are 18 years of age, is that
22 correct?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: Ninth grade, sir.

1 THE COURT: Have you ever gotten a GED?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you ever attempted to do that?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Now, are you married?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you have any children?

8 THE DEFENDANT: No, sir.

9 THE COURT: Were you employed when you were arrested?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you ever been employed in the past?

12 THE DEFENDANT: No, sir.

13 THE COURT: Never had a job?

14 THE DEFENDANT: Never.

15 THE COURT: All right. Now, Mr. Eaton, has anyone, in
16 anyway, mistreated you, tried to put pressure on you, tried
17 to do anything to force you or make you offer a plea in your
18 case?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: So, are you offering this plea freely and
21 voluntarily?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Have you had enough time to consider your
24 case and any defenses that you might of had?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Have you had -- have -- have you had
2 sufficient time to prepare a defense if you wished to do
3 that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Now, has anyone made any promises,
6 guarantees, assurances to you about anything in connection
7 with your plea today?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Has someone made a promise to you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: And what was the nature of the promise?

12 THE DEFENDANT: To---

13 MR. ANDERSON: I think we mentioned, judge, and may I
14 interrupt?

15 THE COURT: Uh-huh. (Affirmative).

16 MR. ANDERSON: It's something about the, the leg
17 monitor, the foot monitor about the case, and something like
18 that. But it's nothing significant in terms of jeopardizing
19 this proceeding here.

20 THE COURT: All right. Well, I---

21 MR. ANDERSON: You might want to pursue whatever he's
22 talking about.

23 THE COURT: I'm gonna, I'm gonna pursue whatever he's,
24 whatever he's told me.

25 Is that what we're talking about?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Well -- but has anybody made
3 any promises or guarantees to you about anything such as
4 pardon, parole, probation, early release, the length of
5 sentence you'd receive?

6 Any promises or guarantees about that?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Now, about the leg monitor, tell me what
9 you, what's your belief about that.

10 THE DEFENDANT: I believe it helped me calm down.

11 THE COURT: Okay, sir. So you think that will help
12 you?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. So, you're---

15 MR. ANDERSON: Can I interrupt again?

16 THE COURT: Yes, sir.

17 MR. ANDERSON: I told him it might be that he might not
18 have to wear it is what I'm saying under the terms of this
19 plea negotiations.

20 THE COURT: All right.

21 SOLICITOR REESE: Your Honor, can I just clarify?

22 THE COURT: Yes, ma'am.

23 SOLICITOR REESE: He is waiving presentment. He was
24 originally indicted as CSC first with a minor.

25 THE COURT: Uh-huh. (Affirmative).

1 SOLICITOR REESE: And he's waiving presentment and
2 pleading guilty to CSC first.

3 THE COURT: Right.

4 SOLICITOR REESE: Under that statute, he does not have
5 to---

6 THE COURT: There's not a mandatory requirement of GPS.

7 SOLICITOR REESE: There's not a mandatory requirement
8 of GPS on -- under the CSC first.

9 THE COURT: I understand.

10 SOLICITOR REESE: So, I think that's what we're talking
11 about. I just wanted to be clear about what I told him.

12 THE COURT: Okay. And I suspected that given the nature
13 of the negotiations.

14 Is that what we're talking about, sir?

15 THE DEFENDANT: Yes Your Honor.

16 THE COURT: Okay.

17 SOLICITOR REESE: And, Your Honor, I'm not sure. I did
18 not check, before I handed that to you, to see if he had
19 initialed that he was waiving presentment on the sheet.

20 THE COURT: Well, I -- there's -- it's X'd, but he has
21 not initialed it. So, I'm gonna tell -- talk to him
22 about---

23 SOLICITOR REESE: Okay.

24 THE COURT: ---that as well.

25 Now, Mr. Eaton, on both of these charges, I might as

1 well take care of that at this point in time, the -- it
2 appears that neither of them have gone to a Grand Jury for
3 presentment, and I will tell you that, under the
4 Constitution, you have the right to have this case presented
5 to a Grand Jury before we try you or before we complete
6 acceptance of a plea.

7 The Grand Jury doesn't determine your guilt or
8 innocence. The Grand Jury decides whether or not the State
9 has sufficient evidence for the case to come forward to this
10 Court for a trial. So, they determine whether there is a,
11 is, is sufficient evidence to justify either a trial being
12 held or being sent forward for a plea to be taken.

13 Now, neither you or your lawyer is allowed to be
14 present at Grand Jury proceedings. Those are held in
15 secret. The only thing they consider is the strength of the
16 evidence the State might have in your case.

17 Neither of these cases has gone to the Grand Jury yet.
18 You have the right to have that happen, that it go to the
19 Grand Jury. If you wish to waive that right and proceed
20 with this plea today, then you'll need to initial the
21 documents that I have indicating that you wish to go forward
22 today.

23 So, if you need to consult with your lawyer about that
24 decision, you have a right to do that. If you're willing to
25 waive that presentment, then I'll ask you to sign these

1 documents.

2 Do you need to talk to your lawyer about that?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you wish to waive presentment?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you wish to give up that right?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. I'm gonna pass the documents
9 down to you and ask that you initial the appropriate blank
10 and they'll show you where you need to initial it.

11 (Pause.)

12 THE COURT: Thank you.

13 All right. Now, Mr. Eaton, there are other
14 Constitutional rights you have beside that right to have
15 your case go to the Grand Jury, and I'm gonna go over those
16 with you now. And if you have a question when I finish my
17 explanation I want you to ask it. I'll be glad to be -- to
18 explain these to you further. I want to be sure that you
19 understand your Constitutional rights.

20 Again, you have that Constitutional right to have the
21 case go to the Grand Jury. You've told me you wish to give
22 that up and go forward today.

23 Is that true?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. You have a right to an

1 attorney, and you've told me you've had an ample opportunity
2 to discuss your case with your lawyer, and you're satisfied
3 with your legal advice.

4 Is that still true?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You have a right to request or demand a
7 trial by a jury.

8 Now, at that trial you would be presumed, under the
9 law, to be innocent. That presumption would continue until
10 such time as the State proved your guilt, and they have a
11 burden of proving your guilt to the jury by proof beyond a
12 reasonable doubt. You would not be required to prove
13 anything at a trial since defendants are presumed to be
14 innocent.

15 Now, at the trial also you would have the right to have
16 subpoenas issued to witnesses to require that they come and
17 attend the trial. Possibly they could be required to
18 testify.

19 You'd also have the right, at your trial, to confront
20 or question anyone who might testify during the trial. At
21 the trial you have the absolute right to present any defense
22 you might have to the charges against you. You'd also be
23 given the opportunity at the trial to try to suppress any
24 evidence the State may have against you. That includes
25 statements that you might have made prior to the time of the

1 trial.

2 At every stage of a criminal proceeding you have the
3 right to remain silent. And if you chose, at a trial, to
4 remain silent, the judge is required to instruct the jury
5 that your silence could not be used against you in any
6 manner whatsoever.

7 Now, do you understand the rights that I just went over
8 with you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you have any questions about any of
11 them?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Now, do you realize that if you plead
14 guilty, as you have, and I later accept that plea, you will
15 have given up or waived all of those Constitutional rights
16 as they relate to these two charges?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Does that fact, in anyway, cause you to
19 want to change the pleas that you entered?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: So, you're still pleading guilty?
22 Is that true?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Are you pleading guilty because you are
25 guilty?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. I'm gonna ask the solicitor to
3 go over the facts in your case. Listen to what she has to
4 say because I'm going to ask you about those facts in just a
5 minute.

6 Yes, ma'am.

7 SOLICITOR REESE: Thank you, Your Honor.

8 Your Honor, this actually started -- the defendant is
9 the half-brother of the mother of this victim. He had come
10 to live with his sister and her family for a couple months
11 previous to this. This -- a couple months in 2011. I
12 believe it was April and May, and, during that time, the
13 mother said that she was aware the defendant was spending a
14 lot of time with her daughter and that she has three
15 children. He seemed to be very good to them.

16 He did leave the home toward the end of May of 2011.
17 It was then, Your Honor, in July of -- July 27th of 2011,
18 that her daughter, **Victim-1**, mentioned to her that she was
19 having trouble going to the bathroom, that she was bleeding,
20 and she needed some help in the bathroom. **Victim 1** usually
21 needed no help like that. So, her mother went to see what
22 was going on, and what she said was -- she didn't know what
23 it was at the time. It looked like warts all over her
24 daughter's anus and rectum.

25 At that point she took her daughter to Doctor's Care.

1 Doctor's Care evaluated Victim 1 and said that they believed
2 that this was a sexually transmitted disease. They told the
3 mother to go home, that law enforcement would be contacting
4 her.

5 The mother questioned her daughter and asked her what
6 was happening, but Victim 1 wasn't real forthcoming at that
7 point. She went over to kind of talk to her father,
8 Victim 1's grandfather, about what was going on, and her
9 grandfather, at that time, knew that something was wrong
10 with Victim 1 and took her into the bedroom.

11 Victim 1 did not want to talk about what happened, but
12 she said that her bottom was hurting and her grandfather put
13 her in the shower. At that point the grandfather saw what
14 was happening, and he said she was very -- in a lot of pain.
15 He sat her down and asked her what had happened, and, at
16 that point, she disclosed that her Uncle Harley had been
17 dating her.

18 The grandfather insisted that the child be immediately
19 taken to the ER and they were taken to Spartanburg Regional
20 Medical Center. The child was evaluated there. She found
21 to be -- she tested positive for genital warts. She tested
22 positive for the HPV virus that causes that. She tested
23 positive for Trichomoniasis and she tested positive for
24 Chlamydia. Victim 1 continued to talk primarily to her
25 grandfather about what had happened, and the child was

1 referred to the Children's Advocacy Center for evaluation.

2 Trisha Austin, who was the forensic interviewer that is
3 present in the courtroom today, she did come because of
4 interest in this plea, Victim 1 told her, in a lot of detail,
5 that she was dating her uncle, that a lot of this happened
6 in her bedroom, that he would put his penis in her monkey,
7 which was her term for vagina, he would put it in her
8 bottom, and that he, at one occasion, had her put her mouth
9 on his penis. She told Trisha that he sometimes would pee
10 on her bed when this was happening.

11 Trisha then began to talk to her more about whether or
12 not she'd ever seen this happen with anyone else, and Victim 1
13 began to disclose that her other cousin, Victim 2 was also
14 dating Harley, and that this had happened in Laurens County,
15 that she had watched the dates because she was present
16 during the dating, and she described the same type of dating
17 that she described to Trisha.

18 At that point the Children's Advocacy Center asked for
19 a referral to Victim 2 Victim 2 did come in. She refused to
20 disclose anything. She denies that anything ever happened
21 to her sexually. However, medical follow-up revealed that
22 she did have the STD's that Victim 1 had.

23 That case has been under investigation. Victim 2 has
24 never disclosed although Victim 1 is a witness to that case,
25 and although there are -- there is evidence of the STD's the

1 other child had. In return for this plea, Laurens County is
2 not going forward in that case, and so I just want to put
3 that on the record that that is part of the agreement.

4 **Victim 1** at that point, went back. She has been to
5 several medical appointments and she had to have those warts
6 surgically removed, and they believe that she will have
7 periodic surgeries throughout her life to try to take care
8 of this problem. She seems to be doing better now, and she
9 has been through therapy.

10 At the time of the case, the defendant, in July, they
11 began looking for him. They -- law enforcement was not able
12 to arrest him until January. We -- Tracy Moss and
13 Investigator Bentley with the Laurens County Police
14 Department at the time are both here as well. They did
15 interview him after they did find him.

16 He gave a statement admitting that he had done these
17 things to the two girls. He claimed, at that point, that he
18 did not penetrate them. However, he said he did put his
19 penis between their legs and, and in -- on their bottom and
20 he didn't really understand why he had done those things,
21 but he had done them.

22 At that point we, in the Solicitor's Office, indicted
23 as to the -- we had the CSC. We indicted for the lewd act
24 in case there was an issue about whether or not penetration
25 had actually occurred.

1 We then, then consulted with Doctor Nancy Henderson who
2 evaluated the child. She, of course, is a sexual abuse
3 pediatrician, she's board certified, and her opinion would
4 of been, at trial, that, in order for Chlamydia and
5 Trichomoniasis to be -- to -- for the child to have that
6 that -- those, those infections would have to be injected
7 into the cavity, that there would be no way of getting those
8 just by touching. So, therefore, it was her opinion that
9 penetration of some sort would of had to occur. At that
10 point we just decided not to pursue the lewd act and that
11 was the reason for the dismissal.

12 It's not a separate charge. It was just kind of a, a
13 fall back for us, and when we realized it wasn't
14 necessary---

15 THE COURT: Based on the facts of the case?

16 SOLICITOR REESE: Yes, sir, the -- I think Victim 1 --
17 the case in Laurens County is also with Victim 1 She
18 disclosed that this happened in her house in Spartanburg,
19 and that was located at [REDACTED],
20 that that happened between April and May of 2011 while he
21 was living there. So, she did discloses that, but she also
22 disclosed that it happened in Laurens County when she would
23 go visit her uncle there at that address in Laurens, and
24 that is the reason it's the same victim in both of these
25 cases, and those are the facts, Your Honor.

1 The child's grandfather and mother are present, and
2 would like to address the Court when it's appropriate.

3 THE COURT: All right. Thank you.

4 Mr. Eaton, you were present in the courtroom.

5 Did you hear what the solicitor told me about these
6 cases?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did you understand what she said?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Is that information true?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Now, have you told me the truth today?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Did anyone tell you how to respond to any
15 of my questions?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: So, the responses that you've given me have
18 been your own, is that correct?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Now, is there any part of what we've
21 discussed during your plea that you'd like to reconsider any
22 response that you've given to me?

23 THE DEFENDANT: No, sir.

24 THE COURT: So, you'd stand by every response I've
25 received thus far?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. It's my finding then that this
3 plea has been freely and voluntarily given, that you're
4 aware of the charges and the penalties, and you've had the
5 advice of an attorney, and you're satisfied with that legal
6 advice, and there's a factual basis or reason for you to
7 offer the plea.

8 At this time, counselor, you may speak on behalf of
9 your client.

10 MR. ANDERSON: Thank you very much, judge, and let me
11 start off by saying this. That we're dealing with a child,
12 not only the victim, but this is a child. This child was
13 barely -- in other words, had it been a few months earlier,
14 we'd be in Family Court with this case. We're dealing with
15 not some long time, year long, two year long sexual problem
16 that a person has like some of the newspaper articles that
17 we see that go on for years. We're dealing with -- and I'll
18 outline what he told me about the Spartanburg case.

19 All of this, Your Honor, is family involved. Not, not
20 that it mitigates anything in terms of what happened, but
21 I'm saying that the victim is his niece. In other words,
22 his mother is the mother of the children involved. He comes
23 more in my bailiwick, which is the Eighth Circuit,
24 Greenwood, Laurens, Abbeville, and Newberry. But she wants,
25 she wants him to come up to Spartanburg, and, and talking

1 about the Spartanburg case, to visit with his half-sister.
2 They don't have the same father, but the mother of these
3 children is the half-sister of, of Brandon.

4 So, he comes up to Spartanburg and, and, as you see
5 every day in this courtroom, drugs were involved and I
6 think, in this case, if any drug has ever mitigated a
7 criminal offense it's this case. He's souped up on it. He,
8 he's on marijuana. He comes up here and he doesn't -- he's
9 jobless. He's a ninth grade drop-out. He's a person who,
10 every time I talked to him, is a kind -- and by the way, let
11 me interrupt by saying he's been over here just about two
12 years back here in the county jail. Right at -- how many
13 months is it, son?

14 THE DEFENDANT: Twenty.

15 MR. ANDERSON: Twenty months.

16 So, he's been over here drying out, and I counseled
17 with him that he knows he's got to serve some time. But
18 I'll argue about that in -- remark about that in a minute.
19 But, but if anyone that needs a second chance to try to stay
20 on the straight and narrow it's Brandon.

21 But getting back to the narrative that I'm giving to
22 you, Your Honor, so he comes up here for the weekend, and,
23 in fact, he tells me that, that his mother said well, I'm
24 gonna take you up there and, and stay with them the weekend.
25 I'll pick you up after the weekend. Then he gets a call and

1 said no, I can't come to see you, and then it involved with
2 some, some member of the family wanting to go on a, a -- was
3 getting married, was going on a honeymoon and he had to stay
4 up here about a week to ten days, according to what he told
5 me.

6 So, he gets involved in a drunken stupor, under the
7 influence, with these children. Just like he -- in other
8 words, I could, I could probably safely say, judge, that
9 he's probably been in a stupor like this for months. With
10 regard to Laurens County, jobless. It's just what you see
11 everyday up here. The whole -- I heard you up here
12 yesterday, sitting back there, you were sentencing someone
13 and talking about their family, and saying you gonna go
14 back -- he was -- you were telling some defendant up here
15 that you're gonna -- that you gave probation to that,
16 that -- don't go back and mess this up.

17 So, this is a prime example of a youngster who has a
18 future, who is, who, in my judgment, of course I don't know
19 him as well as some of his family, but appears to me you've
20 heard him respond to you, courteous, sober, a chance to make
21 it in life, and so all of these unfortunate incidences
22 and -- occur and here he stands before you looking at a
23 heavy weight kind of sentence with a dim future unless you
24 take some consideration and mercy, and I'm not, I'm not one
25 of these liberal bleeding heart liberal people, but I know

1 this man. In fact, I know some of his family. That's the
2 reason I was hired on the case.

3 But he's a person, I think, that can make it, and I
4 know there's a lot of family friction and I understand that.
5 I know about the victim's problems that might occur in the
6 future. But what, what I aim toward my remarks, Judge
7 Couch, is with regard to the brevity. I don't think there's
8 any proof that this man is a sexual deviant that's going to
9 be a problem in the future, and what I'm asking you to do is
10 to consider perhaps giving him some time. I told him, I
11 said you gonna catch some time out of this. He understands
12 that. You know, I'm, I'm a dinosaur in this high speed
13 America, I tell you, and they usually listen to what I tell
14 him.

15 what I told him that -- but, but I told him
16 realistically you're gonna get some more time. You need to
17 understand that. I'll stand down here and, of course, I
18 told him you got zero to 30, 60 years, and as I understand
19 it, there's some concurrency involved in, in the plea
20 negotiation, but -- and I, I told him that he's got to
21 understand that. He needs to -- of course, I told him
22 you're going into the adult -- and I might say this at the
23 outset. I tried to attempt, in some way, to get the charges
24 reduced down so he could get a YOA with regard to the
25 youthful offender sentence, but was unsuccessful in that

1 regard.

2 But we're still dealing with the same kind of person.
3 He was barely 17 when this happened. So, those are issues,
4 Your Honor, that I wish you would consider in trying to give
5 some mid range kind of sentence with regard to this. I
6 frankly don't deserve -- I don't think he deserves
7 probation. You know, that's a possibility. But I don't
8 think he's deserving under the facts of the case. I don't
9 think he is a six -- a sick sexual deviant. I just don't
10 think that, and I don't think the facts of the case indicate
11 it.

12 He has -- by the way, he has no record. I don't think
13 he has any record.

14 Does he, Susan?

15 SOLICITOR REESE: No, Your Honor.

16 MR. ANDERSON: No, sir.

17 And this is his first offense. He's been over in the
18 county jail for almost two years, and, and he -- I think
19 he's learned his lesson. Of course, no telling what might
20 happen in the adult population down there wherever he's
21 going, but I understand that he needs to be punished.
22 That -- and I'm not, I'm not so naive as to -- these kind of
23 cases are easy for you to handle, and, and I know it's
24 difficult on family members.

25 We've got his family out here, and they got the

1 victim's family somewhere out there, and everybody is
2 interested in him. But he's a very kind hearted young man,
3 and I just wish you would consider, in my judgment, brevity
4 of time span as to when this happened. Youthfulness, barely
5 17 when it happened, and I think he's got a future.

6 And when I talked to him, he wants to get all this
7 behind him. He's -- he wanted to stand up and say yes, I
8 did it and he has done that this morning. So, I plead with
9 you, Judge Couch, to, to provide what leniency you see fit
10 to, to impose on him.

11 THE COURT: Thank you, sir.

12 Mr. Eaton, this is your opportunity to address the
13 Court.

14 Anything you'd like to say?

15 THE DEFENDANT: I'm sorry for being here. Sorry for
16 the solicitor. Sorry for my family, my parents, what I put
17 them through. This is 20 months is a life experience. I'm
18 sorry.

19 THE COURT: I've heard no prior record.

20 Is that correct?

21 SOLICITOR REESE: No prior record, Your Honor.

22 THE COURT: You indicated some of the victim's family
23 wish to be heard?

24 SOLICITOR REESE: Yes, Your Honor, and I think, in my
25 notes, it looks like I neglected to mention the victim's age

1 for purposes of the plea. She was five years old at the
2 time.

3 THE COURT: All right. If they'll come forward please.

4 SOLICITOR REESE: I think we have two people who would
5 wish to address the Court.

6 THE COURT: State your name please, ma'am.

7 MS. Mother : Mother

8 THE COURT: And your relationship to the situation is?

9 MS. Mother : I'm the victim's mother and the
10 defendant's sister.

11 THE COURT: Thank you.

12 I'll be happy to hear from you.

13 MS. Mother : Ever since I found out about this my
14 family has been somewhat in turmoil. Especially Victim 1
15 she's had to go through therapy, surgery, and she's took it
16 hard.

17 THE COURT: Yeah, I can understand. Take your time.

18 MS. Mother : I feel like I failed as her mother to
19 protect her from things like this, and she, she doesn't --
20 when this happened, she just -- she didn't want to talk to
21 anybody. She didn't want to play much anymore, and she's --
22 she use to have nightmares and scream and there was nothing
23 I could do for her. Just hold her and comfort her, and I
24 just, I just want to bring her peace, to let her know that
25 she'll be okay.

1 THE COURT: Thank you, ma'am.

2 Sir, your name is?

3 MR. Grandfather : Grandfather Grandfather .

4 THE COURT: And your relationship to the situation?

5 MR. Grandfather : I'm the child -- her grandfather.

6 THE COURT: All right. Thank you.

7 I'll be happy to hear from you, sir.

8 MR. Grandfather : Your Honor, since all this is taken
9 place, it's put a heavy toll on our family. My grandkids,
10 they lived in Papa's nest for three years, a little over
11 three years. Papa let them leave. It seems like, when Papa
12 let them leave the nest, that's when all this happened.

13 They were, I felt like, protected under my wing, and it
14 seemed like I dropped it in seeing what my grandchild's been
15 through and what she's gonna continue going through from now
16 on.

17 I do have a picture here. This is, this is my --
18 that's an innocent child, and I hurt for this child seeing
19 what she's going through, and it's just hard on this family.

20 THE COURT: I understand.

21 MR. Grandfather : That's all.

22 THE COURT: Thank you, sir.

23 MR. Grandfather : Yes, sir.

24 THE COURT: Anything else from the State?

25 SOLICITOR REESE: Nothing further from the State.

1 THE COURT: All right. Counselor, do you have a number
2 of days that he has served so I can give him credit?

3 SOLICITOR REESE: Your Honor, the date of arrest was
4 January 9th, 2012.

5 THE COURT: So, he's been in continuously since
6 January 9th of 2012.

7 Mr. Eaton, I have considered all of the information
8 that's been presented to me during your plea this morning.
9 It is a tragic situation. It's even doubly tragic to this
10 Court when it involves family members and especially when
11 the victims are of such a young age as the victim is in this
12 case.

13 I have, as I said, considered the arguments of your
14 counsel, the nature of the offense, and I've determined the
15 proper sentence in this case to be that you be confined in
16 the State Department of Corrections for a period of 20
17 years. I have given you credit for the time that you've
18 served. I've run those concurrently. I have ordered that
19 you be required to register as a sex offender.

20 Good luck to you, sir.

21 SOLICITOR REESE: Thank you.

22

23

24 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

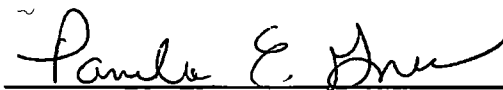
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 7th day of August, 2013.

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

August 22nd, 2014

A handwritten signature in cursive script, reading "Pamela E. Green", is written over a horizontal line.

PAMELA E. GREEN, Court Reporter

2014-CP-42-2792

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant.)

BRANDON HARLEY FORTON)

v.)

#00356444)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LFE CORRECTIONAL, BISHOPVILLE, S.C.
2. Name and location of Court which imposed sentence SPARTANBURG G.S.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-42-0798 CSC w/ MINOR
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 7, 2013 - 20 YEARS
 - (b) _____

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SPARTANBURG COUNTY
2014 JUL 18 PM 2:45

- (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) EVIDENCE SUPPORTS GUILT
- (b) WAS ADVISED THAT HE COULD GET MORE TIME
- (c) FROM THIS JUDGE
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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SPRINGFIELD, MO

- FILED
CLERK OF COURT
SARASOTA COUNTY
2014 JUL 18 PM 2:45
TAMARA L. CROOKLEY

- 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. _____

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SUPERIOR COURT
2014 JUL 18 PM 2:45
HONOLULU

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) MISREPRESENTATION FROM ATTORNEY

(b) ATTORNEY GRADY ANDERSON ABANDONED TO SUPPORT

(c) HOWEY'S CLAIM

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (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. STUDER P. ANDERSON
 - ii. P.O. Box 700
 - iii. GARLAND, SC 29648
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea
 - ii. _____
 - iii. _____

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

To have sentence overturned

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

No

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SOUTH CAROLINA
2014 JUL 18 PM 2:15
JAMES B. SCHWABE

STATE OF SOUTH CAROLINA)

County of)

Spartanburg)

VERIFICATION

I, CORSON M. HENDERSON, 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.

CORSON M. HENDERSON
 ATTORNEY FOR APPLICANT
 IN LOURENS PER
 C/A NO. 2013-CP-30-789

SWORN to and subscribed before me this 18th
 day of July, 2014.

Patricia M. Detamore (L.S.)
 Notary Public

My Commission Expires: 7/18/15

SC BAR # 15348
 864-229-8000

FILED
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 SPARTANBURG COUNTY
 2014 JUL 18 PM 2:15
 JUDICIAL DEPARTMENT

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

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

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

Brandon Harley Eaton
Applicant

SWORN or affirmed to and subscribed before me this
28th day of March, 2014

Jean Perre
Notary Public

My Commission Expires: 01-14-2019

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 SUPERIOR COURT
 2014 JUL 18 PM 2:15
 COURT HOUSE
 WASHINGTON DC

WITNESSES

Spartanburg County Sheriff's Office

SENTENCE MADE
Spartanburg County Sheriff's Office

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

7. ASSESSMENT
FINE CARD MADE

M129623

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

FEB 23 2012

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-0798

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 27 2012

TERM

THE STATE

vs.

Brandon Eaton

Indictment for

CRIMINAL SEXUAL CONDUCT
W/MINOR, FIRST DEGREE

SC Code: 16-03-0655(1)

CDR Code: 0385

Class FEL-C(V)

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CLERK OF COURT
SPARTANBURG COUNTY

2012 FEB 29 PM 1:51

M. HOPE BLACKLEY

SCANNED

41

28

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

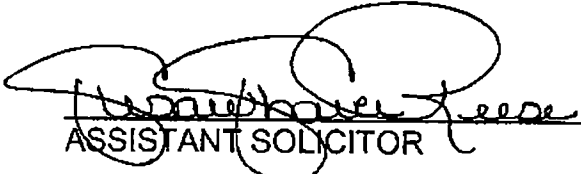
FEB 23 2012

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Brandon Eaton, did in Spartanburg County, between the dates of September 30, 2010 and July 27, 2011, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor victim, [REDACTED], who was under eleven (11) years of age at the time of the said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-03-655 (1), *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


ASSISTANT SOLICITOR

COUNTY OF SPARTANBURG
 STATE VS.
Brandon Harley Eaton
 AKA:
 Race: WHITE Sex: M Age: 18
 DOB: [REDACTED] SS# [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Laurens, SC 29360
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2012GS4200798A/W#: M129623Date of Offense: 4/1/2011S.C. Code §: 16-03-0655(A)CDR Code #: 0385

SENTENCE SHEET

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

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

☐ CONVICTED OF or ☒ PLEADS

TO: Sex / Criminal sexual conduct - First degree (0-30 years and sex offender registration)

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160
☐ 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. BHE (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 6772 Brandon Eaton [Signature] 372
 REESE, SUSAN C 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 20 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. 575 days since 1/1/12☐ 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

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: Must register as a sex offender
☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.
Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Pam Green

SCCA/217 (03/2011)

Presiding Judge [Signature]Judge Code: 2135Sentence Date: 8/7/13

ARREST WARRANT 11/21/12

M-129623

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

Brandon Harley Eaton

Address:

Laurens, SC 29360-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5 7 Weight: 140

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Tracy Moss - 1004

Offense: Sex / Criminal sexual conduct with minor or
Attempt -victim under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant Brandon Eaton
on 1-9-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Tracy Moss

being duly sworn deposes and says that defendant Brandon Harley Eaton

did within this county and state on or about 04/01/2011

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That between April 1, 2011 and July 27, 2011 in the county of Spartanburg, one Brandon Harley Eaton did engage in sexual battery
by having sexual intercourse with a minor, the victim being less than eleven years old and the defendant being more than three
years older. KFD

Warrant based upon police investigation.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/1/2011 defendant Brandon Harley Eaton

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor or Attempt -victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me

on 11/21/2011

Signature of Judge (L.S.)

Jason Thomas Wall

Judge Code: 7019

Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-2335

Judge's Telephone (864)596-2564

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

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AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

44

FILED
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SPARTANBURG COUNTY
2012 JAN 12 PM 2:13
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 Brandon Harley Eaton, #00356444
 Plaintiff(s),
 -vs-

State Of South Carolina,
 Defendant(s).

IN THE COURT OF COMMON PLEAS
 7th JUDICIAL CIRCUIT
 CASE NO.: 2014CP4202792
 APPOINTMENT OF COUNSEL OR GAL
 (Select one.)

☒ ORDER
☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- ☒ Post-Conviction Relief (PCR)/habeas case
☐ SVP case
☐ Minor Name Change
☐ Adoption
☐ Custody and/or Visitation
☐ Other: Post Convict Rel 500
☐ Juvenile
☐ Abuse and Neglect

It appears Brandon Harley Eaton, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
☐ court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
☐ Other: .

Therefore, it is ordered that **John B. Rucker**, hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
 August 11, 2014

M. Hope Blackley
☐ Circuit Judge ☒ Clerk of Court

Plaintiff Attorney:

John B. Rucker	
Attorney at Law	
522 North Church Street	
Greenville, S. C. 29601 (864) 271-9925	

Defendant Attorney:

State Of South Carolina	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	2014-CP-42-2792
Brandon Harley Eaton, #356444,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed July 18, 2014, 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 Spartanburg County Clerk of Court. The Applicant was indicted at the February 2012 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor, first degree (2012-GS-42-0798). The Applicant was represented by Geddes D. Anderson, Esquire. On August 7, 2013, the Applicant waived presentment and pled guilty to the charge of criminal sexual conduct – 1st degree¹. The Honorable Roger L. Couch sentenced the Applicant to concurrent terms of twenty (20) years. The applicant did not appeal his convictions or sentences.

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

¹ The applicant was also indicted at the August 2013 term of the Laurens County Grand Jury for criminal sexual conduct with a minor, first degree (2013-GS-30-1428). After waiving venue for the Laurens County charge, he waived presentment and pled guilty to criminal sexual conduct – 1st degree. Applicant has also filed an application in Laurens County, 2013-CP-30-0789.

Department of Corrections, 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 reason:

1. Ineffective assistance of counsel, specifically,
 - a. Misrepresentation from attorney,
 - b. "Attorney Geddes Anderson nor the State had him evaluated . . . he [Applicant] is bipolar/ADHD"
 - c. "Attorney Geddes Anderson agrees and will support he should have had Harley evaluated because of his condition and the seriousness of this case."

III.

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, (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 (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 expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

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

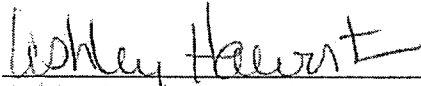
November 18, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-42-2792
BRANDON HARLEY EATON, #356444	)	
	)	
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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 18TH day of November, 2014.


 Ashley Hawthorth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
 -----)

IN THE COURT OF
 COMMON PLEAS
 2014-CP-42-2792

BRANDON HARLEY EATON)
)
 APPLICANT)
 vs.)
)
 STATE OF SOUTH CAROLINA)
)
 RESPONDENT)
 -----)

TRANSCRIPT OF RECORD

JANUARY 12, 2016
 SPARTANBURG, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JR.

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

J. BRANDT RUCKER, ESQUIRE
 ATTORNEY FOR APPLICANT

ALICIA A. OLIVE, ESQUIRE
 ATTORNEY FOR RESPONDENT

MARGARET SULLIVAN,
 CIRCUIT COURT REPORTER

I N D E X

WITNESSES:

BRANDON H. EATON

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BY MS. OLIVE . . . 22

CONTESSA NORWOOD

BY MR. RUCKER . . . 26

GEDDES ANDERSON

BY MS. OLIVE . . . 30

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

THE COURT: Okay.

MS. OLIVE: May it please the court, Your Honor.
This is Brandon Harley Eaton vs. the State of South
Carolina, 2014-CP-42-2792.

Mr. Eaton was indicted in February of 2012 for
criminal sexual conduct of a minor in the first degree.
He was represented by -- I hope I'm pronouncing your
name correctly -- Geddes Anderson on -- on August 7,
2013. He waived presentment and pled guilty to
criminal sexual conduct first degree.

He also -- my understanding is that -- and the
transcript reflects this as well -- that as part of
that plea he -- he also waived venue for -- that he
also had a charge in Laurens County for which he pled
on the same day in Spartanburg. It was also criminal
sexual conduct -- excuse me -- criminal sexual conduct
with a minor.

(Off-record discussion between Ms. Olive and Mr.
Anderson.)

MS. OLIVE: Right. He waived venue for the
Laurens County charge and pled guilty -- well, he did
plead guilty to criminal sexual conduct first degree in
exchange for that Laurens County -- I believe nolle

1 crossed -- or they did not pursue another charge. He
2 is also-- it's my understanding that he's also filed a
3 post conviction relief action in Laurens County
4 regarding that charge.

5 (Off-record discussion between Ms. Olive and Mr.
6 Anderson.)

7 MS. OLIVE: Okay. Your Honor, I apologize. I
8 believe actually Mr. Anderson just informed me that --
9 that that P.C.R. in Laurens County has been resolved.
10 I'm not sure --

11 THE COURT: Well, that's not before me anyway, is
12 it?

13 MS. OLIVE: I'm --

14 THE COURT: I'm only dealing with the
15 Spartanburg case?

16 MR. RUCKER: Yes, sir. I think that's what you
17 have jurisdiction over.

18 THE COURT: Okay.

19 MS. OLIVE: My apologies. I'm just reading from
20 my Return. I apologize, I didn't mean to confuse
21 things. Mr. -- I'm sorry. I'm going to go back. I'm
22 not sure -- okay.

23 Mr. Eaton pled guilty to criminal sexual conduct
24 with a minor -- I'm sorry -- criminal sexual conduct in
25 the first degree on August 7, 2013. He was in front of

1 Judge -- Judge Couch. Judge Couch sentenced him to
2 concurrent terms of 20 years. He did not appeal the
3 convictions or sentences.

4 Mr. Eaton is present in the courtroom today. He
5 is represented by Brandt Rucker. He alleges several
6 specific things, ineffective assistance of counsel --
7 and I'll turn it over to Mr. Rucker at this time to --
8 to state what those are.

9 MR. RUCKER: Your Honor, just for -- for the
10 record, my client tells me he has -- and I know it's
11 not before you, but just to straighten out the record,
12 my client tells me he has not withdrawn his P.C.R.
13 application in Laurens County. I wanted to make sure
14 to get that out just in case that was going to
15 influence how this case was resolved as far as how much
16 time he was looking at.

17 THE COURT: Okay.

18 MR. RUCKER: Okay. I'll call my client, Harley
19 Eaton to the stand.

20 THE COURT: All right, sir, if you'd come around
21 and place your left hand on the Bible and raise your
22 right.

23 BRANDON HARLEY EATON, having
24 been first duly sworn, testified as follows:

25 THE COURT: Okay. Thank you, sir.

DIRECT EXAMINATION BY MR. RUCKER:

Q. Mr. Eaton, state your full name for the record please, sir.

A. Brandon Harley Eaton.

Q. And what name do you go by?

A. Brandon.

Q. Okay, Brandon, I'm sorry. Mr. Eaton, what is your -- Brandon, what is your current sentence?

A. Twenty years.

Q. Okay. And what -- what charge did you plead guilty to?

A. C.S.C first degree with a minor.

Q. Okay. All right. Make you sure you speak loudly so the court reporter and I can hear you. Okay?

A. Yes, sir.

Q. All right. Who was your attorney in this case?

A. John Rucker.

Q. I'm sorry. Who was your attorney in the case where you pled guilty?

A. Geddes Anderson.

Q. How did you get Geddes Anderson as an attorney?

A. We paid him.

Q. Okay. Who is "we"?

1 A. Me and my family.

2 Q. All right. Do you know -- do you know how
3 much y'all paid him?

4 A. No, sir.

5 Q. Okay. Brandon, have you ever been treated for
6 any kind of mental disorders?

7 A. Bipolar disability.

8 Q. All right. Did you -- are you under treatment
9 now for that as well?

10 A. No, sir.

11 Q. All right. Have you sought out treatment for
12 it?

13 A. What do you mean by that?

14 Q. I mean have you tried to talk to a doctor
15 while you've been in prison?

16 A. Yes, sir.

17 Q. Okay. Did you inform Mr. Anderson of the
18 mental issues you had?

19 A. Yes, sir.

20 Q. Did you have some development delays when you
21 were a young child as well?

22 A. Yes, sir.

23 Q. All right. Let's be clear about this, how
24 many times did you actually meet with Geddes Anderson,
25 your attorney?

BRANDON EATON -- DIRECT

1 A. About one time.

2 Q. All right. Is it about one time or just one
3 time?

4 A. Just one time.

5 Q. How long did y'all meet?

6 A. About 45 minutes.

7 Q. All right. Did you tell him at that time that
8 you had had some mental issues?

9 A. Yes, sir.

10 Q. All right. How old were you at the time you
11 met with him?

12 A. Seventeen.

13 Q. Okay. Did you give a confession in your
14 underlying case or a statement to the police?

15 A. Yes, sir.

16 Q. Why did you give a statement to the police?

17 A. I was under the influence.

18 Q. Okay. What -- you were under the influence of
19 what?

20 A. That -- that if I give a statement, I was
21 going to be on an ankle monitor.

22 Q. You were promised something in return for your
23 statement?

24 A. Yes, sir.

25 Q. Do you know if that statement -- that -- that

1 interview was videotaped?

2 A. No, sir, I don't.

3 Q. All right. Do you -- do you recall who
4 interviewed you?

5 A. Walter Bentley.

6 Q. And who is Walter Bentley?

7 A. My detective.

8 Q. Your -- for what agency? Was that Laurens
9 County, Greenwood County, Spartanburg --

10 A. Laurens County.

11 Q. Laurens County. Were you interviewed by any
12 other police officers?

13 A. It was one more. I don't know her name.

14 Q. Do you know who your alleged victim was here
15 in Spartanburg County?

16 A. Yes.

17 Q. What is her name?

18 A. Minor [REDACTED] [REDACTED] [REDACTED]

19 Q. Minor [REDACTED]? Is that yes or no?

20 A. Yes, yes, sir.

21 Q. All right. Did you discuss this case fully
22 with Geddes Anderson or do you believe you didn't have
23 enough time to talk to him?

24 A. I didn't have enough time to talk to him.

25 Q. Why did you plead guilty in this case?

BRANDON EATON -- DIRECT

1 A. It was like I was under the influence --
2 trying -- really trying to go home.

3 Q. Okay. Did you believe when you went forward
4 with your guilty plea, that you were not going to get
5 prison time?

6 A. A little.

7 Q. All right. Why did you believe you were just
8 going to get a little?

9 A. Because I didn't think the case was like that.

10 Q. All right. I can't hear you.

11 A. I didn't think the case was like that.

12 Q. Okay. What do you mean -- did your attorney
13 tell you, you didn't think -- he didn't think you were
14 going to get much time?

15 A. Yes, sir.

16 Q. All right. Did you ever go over the discovery
17 with him?

18 A. No, sir.

19 Q. Do you recall reviewing a Child Advocacy
20 Center videotape with him?

21 A. No, sir.

22 Q. Do you recall reading over statements that
23 were given by the child at the Children's Advocacy
24 Center of Spartanburg?

25 A. No, sir.

1 Q. Did you have any of your discovery before you
2 pled guilty?

3 A. No, sir.

4 Q. When did you first get your discovery?

5 A. When I was -- about a year after I had done
6 been sentenced.

7 Q. Okay. Did you want to appeal your -- first of
8 all, were you surprised by your sentence?

9 A. A little.

10 Q. Well, a little or a lot?

11 A. A lot.

12 Q. Okay. Did you ask Mr. Anderson to appeal
13 the -- the -- the decision of the court?

14 A. Yes, sir.

15 Q. What did he tell you about that?

16 A. He said he was going to do it for me.

17 Q. All right. To your knowledge did he actually
18 file an appeal on your behalf?

19 A. Yes, sir.

20 Q. What did he tell you were your grounds for
21 that appeal?

22 A. Basically going -- going to go back in front
23 of the judge.

24 Q. Okay. Did he -- did he call that a motion --
25 and I know this is legal ease -- but did he call that a

BRANDON EATON -- DIRECT

1 motion to reconsider or an appeal?

2 A. I don't recall.

3 Q. All right. But he told you y'all are going to
4 go back in front of that same judge?

5 A. No. He said a judge; he didn't say the same
6 judge.

7 Q. Okay. Did you think it was going to be a
8 judge that could fix the -- to get the sentence you
9 thought you were going to get?

10 A. Yes, sir.

11 Q. Did that ever happen?

12 A. No, sir.

13 Q. Did you ever go back in front of another
14 judge?

15 A. No, sir.

16 Q. Have you been in front of another judge before
17 today?

18 A. No, sir.

19 Q. What are you specifically claiming that Mr.
20 Anderson did incorrectly that you can say?

21 A. I say he didn't do his job on my part.

22 Q. All right. And is that based on your review
23 of your discovery since then?

24 A. Yes, sir.

25 Q. Is that yes or no -- I'm sorry.

1 A. Yes, sir.

2 Q. All right. What -- what is that based on
3 then?

4 A. Ask your question again, sir.

5 Q. All right. After reviewing your discovery, do
6 you think there's information within that discovery
7 that you didn't know about that would have helped your
8 case?

9 A. Yes, sir.

10 Q. And what is that information?

11 A. Well, my disability for one. And it's -- it's
12 a lot of things in there --

13 Q. Okay.

14 A. -- that's not true.

15 Q. All right. Let's start with this -- I know a
16 lot of this is uncomfortable and personal, but the
17 alleged victim in your case tested for Chlamydia; is
18 that right?

19 A. Yes, sir.

20 Q. Which is a sexually transmitted disease?

21 A. Yes, sir.

22 Q. Did -- did you have medical records to provide
23 to Mr. Anderson that you -- you do not have Chlamydia?

24 A. Not at the time, sir.

25 Q. But would you have done that if you knew that

BRANDON EATON -- DIRECT

1 was an issue?

2 A. Yes, sir.

3 Q. All right. You had no health problems to your
4 knowledge?

5 A. Yes, sir.

6 Q. All right. Did you -- do you believe someone
7 else committed this crime -- this Spartanburg crime?

8 A. Yes, sir.

9 Q. Who do you think that is?

10 A. George Brown.

11 Q. And who is George Brown?

12 A. George Brown was my sister's boyfriend --
13 ex-boyfriend -- her ex-boyfriend.

14 Q. All right. Did he live in that home?

15 A. Yes, sir.

16 Q. Did he -- kind of describe him, and the judge
17 will have some transcript to kind of give him a
18 background.

19 A. He -- he lived there about three years, and
20 every day basically been around the kids about three
21 years straight.

22 Q. All right. To your -- to your knowledge, did
23 the child in your -- the alleged victim in your case,
24 in Spartanburg County, say that you did anything to her
25 in those interviews directly?

1 A. No, sir.

2 Q. Did she say that someone else -- it could have
3 been someone else?

4 A. Yes, sir.

5 Q. Did Geddes Anderson ever talk to you about
6 that?

7 A. No, sir.

8 Q. Did he ever ask you who this George Brown
9 fellow was?

10 A. I think one time he did.

11 Q. All right. Was that during your 45 minute
12 meeting?

13 A. Yes, sir.

14 Q. And did you tell him who he was?

15 A. Yes, sir.

16 Q. To your knowledge, did Mr. Anderson or his
17 investigator, or anybody from his office, go out and
18 meet with this person?

19 A. No, sir.

20 Q. To your knowledge he never made an attempt
21 even if the guy wouldn't talk?

22 A. No, sir.

23 Q. Did -- did other people in your family know of
24 the accusations against Mr. Brown?

25 A. Yes.

BRANDON EATON -- DIRECT

1 Q. Do you know where George Brown is now?

2 A. Laurens County.

3 Q. All right. Is -- did he ever talk to you
4 about this case?

5 A. No, sir.

6 Q. Do you -- do you believe that they pointed
7 towards you to try to get him out of trouble and get
8 you in trouble?

9 A. Yes, sir.

10 Q. To your knowledge, did Spartanburg County ever
11 interview him as part of this case?

12 A. No, sir.

13 Q. To your knowledge, did Mr. Anderson -- in your
14 discovery, did you ever ask Spartanburg County if they
15 would look at him or had they talked to him?

16 A. No, sir.

17 Q. All right. Do you understand -- I know it's a
18 complicated question, do you understand what I'm
19 asking?

20 A. No. Say it again.

21 Q. I get going fast, sorry. To your knowledge,
22 did Mr. Anderson ever investigate George Brown and talk
23 with the Sheriff's Department about George Brown?

24 A. No, sir.

25 Q. All right. Let's go back to your confession.

1 Do you recall what you actually told Detective Bentley?

2 A. Not off hand.

3 Q. Did you admit to doing -- did you say you did
4 any of what he was alleging you did?

5 A. Yes, sir.

6 Q. Why did you -- what did you say as far as the
7 victim in Spartanburg County?

8 A. I said I did it because, basically, he said I
9 was going on be on an ankle monitor.

10 Q. Did you -- did he tell you that you would be
11 prosecuted as a juvenile if they went forward?

12 A. No, sir.

13 Q. Why would you admit that you did it simply to
14 get the ankle monitor?

15 A. I was just trying to get home. I'm -- I'm
16 young. .

17 Q. All right. I misunderstood what you said.
18 You're trying to get home that day is what you're
19 saying?

20 A. Yes, sir.

21 Q. All right. Was your mom present with you
22 during this?

23 A. No, sir.

24 Q. Did they bring her in to talk to you?

25 A. No, sir.

BRANDON EATON -- DIRECT

1 Q. Where was the interview done?

2 A. In Spartanburg -- the Spartanburg --

3 Q. Was it the Sheriff's Department?

4 A. I think so.

5 Q. All right. Was Mr. Bentley a uniformed
6 officer or was he plain clothes, dressed like me?

7 A. Plain clothes.

8 Q. All right. But did he tell you he was a part
9 of a police agency?

10 A. Yes, sir.

11 Q. Did he inform you of your right to talk to an
12 attorney?

13 A. No, sir.

14 Q. Did he inform you of your right to speak with
15 your mom?

16 A. No, sir.

17 Q. All right. Did Mr. Anderson ever attempt to
18 have you prosecuted in this case as a juvenile to your
19 knowledge?

20 A. No, sir.

21 Q. Did he tell you he was going to do that?

22 A. No, sir.

23 Q. Did you ever see any paperwork showing he had
24 moved to try to get the court -- case moved back to
25 juvenile court?

1 A. No, sir.

2 Q. Did you ever go through juvenile court at all
3 in this case?

4 A. No, sir.

5 Q. Did you anticipate that you were going to go
6 through juvenile court?

7 A. No, sir.

8 Q. And why not?

9 A. I was 16 at the time. I thought -- I know --
10 they charged me as an adult.

11 Q. Okay. But he never explained the law to you,
12 did he?

13 A. No.

14 Q. He --

15 A. No, sir.

16 Q. He never went over the statutes that govern
17 who can be tried as an adult when they're under age,
18 did he?

19 A. No, sir.

20 Q. Okay. And you actually waived presentment of
21 an indictment, which is a fairly sophisticated thing.
22 Do you know what waiving a presentment of indictment
23 means?

24 A. No, sir.

25 Q. Did he explain that to you?

BRANDON EATON -- DIRECT

1 A. No, sir.

2 Q. Did you tell the judge he did explain that to
3 you?

4 A. No, sir.

5 Q. Okay. To this day, do you know what waiving
6 an indictment is?

7 A. No, sir.

8 Q. All right. Do you believe that that affected
9 your case going forward?

10 A. Yes.

11 Q. All right. And does that -- do you believe
12 that's the charge -- the conviction you actually
13 received?

14 A. Yes, sir.

15 Q. All right. But to make it as clear as we can,
16 is it your claim he was ineffective because he didn't
17 go over the discovery and find witnesses that would
18 have assisted you in your case?

19 A. Yes, sir.

20 Q. Do you believe that if he would have crossed
21 examined witnesses, including potentially the alleged
22 victim, that you would not have -- you either would
23 have gotten a better guilty plea, you could have been
24 prosecuted as a juvenile, or you would have been
25 acquitted?

1 A. Yes, sir.

2 Q. All right. Do you know what acquitted means?

3 A. Not right off hand.

4 Q. All right. Let's make sure -- do you think
5 that you would not have been found guilty if he would
6 have done his job and cross examined and done -- done
7 his due diligence, or followed through with what he
8 wanted to do?

9 A. Yes, sir.

10 Q. How far did you go in school?

11 A. Ninth grade, sir.

12 Q. Ninth grade. Can you read and write?

13 A. Yes.

14 Q. Would you say you're a good reader or does it
15 take you some time?

16 A. It takes me some time.

17 Q. Have you talked to doctors about the problems
18 y'all have because of your condition?

19 A. Yes.

20 Q. All right. What are those problems?

21 A. Just I got to stay focused on things.

22 Q. Okay. And do you believe that you really
23 didn't understand what you were signing when you signed
24 the confession?

25 A. Yes, sir.

1 Q. All right.

2 MR. RUCKER: No further questions, Your Honor.

3 **CROSS EXAMINATION BY MS. OLIVE:**

4 Q. Mr. Eaton, do you recall at your guilty plea
5 hearing the Solicitor explained the facts of the case,
6 what evidence they had against you?

7 A. No.

8 Q. You don't recall that?

9 A. No, ma'am.

10 Q. But it -- well -- would it -- would you like
11 me to show you the transcript?

12 A. Yes.

13 Q. Would that be helpful? Do you recall that you
14 agreed with those facts in that case?

15 A. Yes, ma'am.

16 Q. And the judge asked you if anyone had told you
17 how to respond to his questions; did he not?

18 A. Yes.

19 Q. And you told him that he didn't -- that no one
20 had told you how to respond?

21 A. Yes.

22 Q. And he also asked you if every response you
23 had given him -- well, he said, "So the responses that
24 you have given me have been your own; is that correct?"
25 And you said, "Yes, Your Honor".

1 A. Yes, ma'am.

2 Q. He also asked you is there any part of what
3 we've discussed during your plea that you would like to
4 reconsider, any response that you've given to me, and
5 you said no, sir; correct?

6 A. Yes, ma'am.

7 Q. So you never said anything to the judge about
8 the fact that you thought someone else was responsible
9 for these charges?

10 A. No, ma'am.

11 Q. Okay. Even though he gave you plenty of
12 opportunity to do that?

13 A. Yes.

14 Q. And you -- did, in fact, tell your lawyer that
15 you thought someone else was responsible for these
16 charges?

17 A. No, ma'am.

18 Q. Okay. So it's your -- your testimony today is
19 that your medical records would have shown that you did
20 not have Chlamydia or H.P.V.?

21 A. Yes, ma'am.

22 Q. And that would have been at the time you were
23 charged -- and the judge also asked you if you had
24 enough time to talk with your lawyer, and you said you
25 had, correct?

1 A. Yes, ma'am.

2 Q. And the judge also informed you that you
3 were -- he did ask you if you were waiving presentment
4 to the Grand Jury on those charges, correct?

5 A. Yes, ma'am.

6 Q. And he said yes -- or I apologize -- did ask
7 you if you were waiving presentment.

8 MS. OLIVE: That's all the questions that I have.

9 MR. RUCKER: Your Honor, I just have a few
10 follow-up.

11 THE COURT: Okay.

12 MR. RUCKER: May it please the court.

13 **REDIRECT EXAMINATION BY MR. RUCKER:**

14 Q. Brandon, do you recall a search warrant being
15 issued against you, where you had to go to the hospital
16 to be tested?

17 A. Yes, sir.

18 Q. And do you recall what the results of those
19 tests were?

20 A. Yes, sir.

21 Q. What were the -- what was the hospital testing
22 for?

23 A. Chlamydia.

24 Q. All right. And did you receive a copy in your
25 discovery from Mr. Anderson of the results of those

1 tests?

2 A. Yes, sir.

3 THE COURT: What is your date of birth?

4 THE WITNESS: [REDACTED].

5 THE COURT: [REDACTED]?

6 THE WITNESS: [REDACTED].

7 THE COURT: Okay. Thank you.

8 MR. RUCKER: Your Honor, I'd like to have these
9 marked.

10 THE COURT: Okay. Are you offering to mark them
11 for identification, or are you offering them into
12 evidence?

13 MR. RUCKER: I'm sorry. I'm offering to mark them
14 for identification, then I'll --

15 THE COURT: Does the State have any objection? I
16 mean, he can authenticate them. I just didn't know
17 whether --

18 MS. OLIVE: No, Your Honor.

19 THE COURT: All right. They're -- they're in
20 evidence without objection.

21 (Applicant's Exhibit No. 1 admitted into
22 evidence.)

23 MR. RUCKER: Thank you, Your Honor.

24 BY MR. RUCKER:

25 Q. I'm going to show you what has been marked as

1 Plaintiff's Exhibit No. 1 into evidence, are those your
2 test results?

3 A. Yes, sir.

4 Q. What do they say?

5 A. Negative.

6 Q. So you -- you never -- to your knowledge, you
7 were tested and you did not have this sexually
8 transmitted disease they alleged?

9 A. Yes, sir.

10 MR. RUCKER: No further questions, Your Honor.

11 MS. OLIVE: Nothing further from the State.

12 THE COURT: Okay.

13 MR. RUCKER: Your Honor, I have one additional
14 witness.

15 THE COURT: Okay.

16 MR. RUCKER: I anticipate her testimony to be
17 short. I call Contessa Norwood to the stand.

18 THE COURT: You can step down.

19 CONTESSA NORWOOD, having
20 been first duly sworn, testified as follows:

21 THE COURT: Please state your name, please, ma'am.

22 THE WITNESS: Contessa Norwood.

23 THE COURT: Spell your last.

24 THE WITNESS: N-o-r-w-o-o-d.

25 THE COURT: Okay.

1 MR. RUCKER: May it please the court.

2 DIRECT EXAMINATION BY MR. RUCKER:

3 Q. Ms. Norwood, what is your relationship to my
4 client?

5 A. I'm his mother.

6 Q. Okay. Are you familiar with his medical
7 history?

8 A. Yes, sir.

9 Q. Okay. At the time that he was charged in this
10 case, how old was he?

11 A. Six -- he was 16 when he was accused, and I
12 think he had just turned 17 when they arrested him.

13 Q. Okay. Do you know of development delays or
14 mental problems that Brandon has had through his life?

15 A. Yes, sir.

16 Q. All right. How -- and you have been around
17 him that entire time, how does that affect the way he
18 lives?

19 A. He's more childish than a normal child his
20 age.

21 Q. Okay. And so -- what does that mean? What do
22 you mean by that?

23 A. Like his mind set is a little slower than a
24 regular child his age would be.

25 Q. Do you think he understood, after his

1 conversations with Mr. Anderson, about what was
2 happening?

3 A. No, sir.

4 Q. Did y'all -- did you ever meet with Mr.
5 Anderson personally by yourself?

6 A. Like twice.

7 Q. Were you with Brandon when he met with Mr.
8 Anderson that one meeting?

9 A. No, sir.

10 Q. Why were you not there?

11 A. Brandon was already in Spartanburg Detention.

12 Q. Okay. To your knowledge, did Mr. Anderson go
13 up to see him in Spartanburg Detention at all?

14 A. Once.

15 Q. Okay. Was that right before the guilty plea?

16 A. Yes.

17 Q. Okay. Did you in fact -- were you the one who
18 paid Mr. Anderson?

19 A. Yes, sir.

20 Q. Did Brandon have any kind of -- did he have
21 his own money at the time?

22 A. Yes, sir. He was getting a check for
23 disability.

24 Q. All right. And what disability was that?

25 A. ADHD and bipolar.

1 Q. And that was based on a previous diagnosis of
2 a doctor?

3 A. Yes, a State doctor.

4 Q. Okay. Do you think he really understood When
5 he entered that guilty plea exactly what was happening?

6 A. No, sir.

7 Q. Did you have conversations with him before he
8 went to the plead guilty about what he thought was
9 going to happen?

10 A. No, sir.

11 Q. All right. Did you -- what did you think was
12 going to happen based on your conversations with Mr.
13 Anderson?

14 A. Mr. Anderson had -- he said that -- he was
15 wanting to put him up here. He would hope he would get
16 like 10 years, and then he'd just do a little bit of
17 time and still have the rest of his life to live.

18 Q. Okay. Did you --

19 A. Since he -- since he confessed at -- when they
20 investigated him.

21 Q. Did Mr. Anderson ever tell you he was going to
22 try to challenge this case at all?

23 A. No. No.

24 Q. Did you get the feeling you -- Brandon was
25 being walked in for a plea?

1 A. Yeah.

2 MR. RUCKER: All right. No further questions.

3 MS. OLIVE: I have no questions of this witness,
4 Your Honor.

5 THE COURT: Thank you, ma'am.

6 MR. RUCKER: That's our entire case.

7 THE COURT: Okay.

8 MS. OLIVE: The State would call Geddes Anderson
9 to the stand.

10 THE COURT: All right. Come around please, sir.

11 THE WITNESS: Judge, how are you?

12 THE COURT: Fine, sir. If you would raise your
13 right hand.

14 GEDDES D. ANDERSON, having
15 been first duly sworn, testified as follows:

16 THE COURT: Thank you, sir. Answer the questions
17 the attorneys may have.

18 **DIRECT EXAMINATION BY MS. OLIVE:**

19 Q. Good afternoon, Mr. Anderson.

20 A. Good afternoon.

21 Q. How long -- how long have you been practicing
22 law?

23 A. Forty-four years.

24 Q. And about how much of that time has been
25 criminal?

1 A. Probably 70 or 80 percent.

2 Q. Do you recall whether -- were you retained in
3 this case?

4 A. That's right.

5 Q. At what point were you retained; do you
6 recall?

7 A. I think it was in the month of February of
8 2012, in that -- in that period of time.

9 Q. Okay. And Mr. Eaton testified that you had
10 only met with him one time, is that --

11 A. That -- that -- that sounds about correct.
12 Let me say this, this child was arrested in January of
13 2012. He turned 17 in September of 2011. These events
14 did occur in the summer -- it would have been July of
15 2011. And the State was going forward with the
16 criminal sexual conduct with a minor, which carries a
17 mandatory minimum of 25 years up to life, which
18 needless to say is a rather scary ordeal for the young
19 fellow to go through.

20 Now, I was trying to get youthful offender from
21 Ms. Reese of the Solicitor's Office up here, and she
22 never would do that. There was family involved. There
23 was interracial issues going on with regard to various
24 matters in the home.

25 Q. Did you file a motion for discovery in this

1 case?

2 A. Yes, I did. It was mailed, according to my
3 records, in -- in February. I came to Spartanburg, I
4 believe it was in March, and got the packet of
5 information, discovery. I went through it.

6 In the meantime, there was no -- I did not have
7 the preliminary hearing. It was outside the 10 year --
8 I mean, the 10 day period of time. I did not ask for
9 it. Perhaps I could have gotten one over the years,
10 and learned more through the Solicitor's Office, the
11 discovery you get, and I went forward with the
12 discovery.

13 Q. So do you feel that you had complete
14 discovery?

15 A. Pardon me?

16 Q. Do you feel that you had complete discovery?

17 A. Yes, yes, I feel like I did.

18 Q. Okay.

19 A. Of course it concerned me that he had admitted
20 to the police officer, Bentley, that he that -- he
21 confessed to him. And there was some degree of problem
22 about him and Tracy, the young -- I think these
23 children were four years old or -- quite young. And
24 they also had the Laurens County case, so we were faced
25 with a rather severe sentencing framework.

1 Anyway, without a record, I felt somewhat
2 confident and probably -- perhaps overly so, that he
3 would come out after serving approximately two years in
4 the county jail here --

5 Q. Did you make any promises to him about that?

6 A. No. I've never done that in my life. Now I
7 did suggest to him that -- and he's correct in
8 remembering that, I think I did say I feel like you
9 ought to get about 10 years. That's what I'm aiming
10 for, trying to convince Judge Couch and -- but there
11 were other -- others in the courtroom and they had
12 their say, which puts the judge in a difficult position
13 with these kind of cases.

14 Now, I'll tell you what's a fact, and I'll go
15 ahead and say it. Now, if I had known about what --
16 what was disclosed about the medical report, then that
17 casts a different light on this case.

18 Q. Well wasn't that -- the allegations, I believe
19 you said --

20 A. About the -- having him evaluated and I feel
21 --

22 Q. Are you --

23 A. That I should have done that, and I told him
24 that. I told Contessa that, that I feel like I should
25 have had him evaluated as to his -- as to his plea --

1 coming forward with a plea and the voluntariness of his
2 plea would come -- would have come into play. But he
3 was perfectly lucid at the times that I talked with
4 him, and he appeared to understand what he was doing
5 and he appeared to have confidence in -- what I usually
6 have is somewhat a degree of ability to get a fair
7 sentence. I feel like 20 years without him having a
8 record was excessive in my judgment. Of course, Judge
9 Couch looked at it different.

10 Q. Well, there was -- I'm going to ask you a
11 little bit about the Laurens issue just because that
12 was part of the plea agreement in this case, was it
13 not?

14 A. That's right. That's right. It's been --
15 it's been -- either officially nolle prossed or
16 dismissed, or perhaps nolle prossed. I haven't checked
17 the clerk of court's records in Laurens. But I took
18 care of that -- got that resolved. I don't think
19 there's a -- any necessity of having a P.C.R. in
20 Laurens County. I think all that's been resolved.

21 Q. Well, I'm not asking you about the P.C.R. I
22 just mean as part of his plea, not only did they have a
23 charge against him with respect to the same victim, but
24 they had a charge against him with respect to another
25 victim; correct? And well -- I don't want to put words

1 in your mouth, but that was the case; right?

2 A. That's right.

3 Q. Okay. And --

4 A. I think it was -- I think it was just in
5 Laurens County -- well, I've forgotten. I'll -- I'll
6 have to double check that.

7 Q. Okay. Well, is it your recollection that they
8 were going to -- that Laurens County had agreed to not
9 pursue any charges?

10 A. That's right, and that's been finalized. I
11 don't think there's any problem in Laurens County. I
12 think there was a hold earlier in his sentencing, and I
13 got in touch with the Solicitor's Office who handles
14 Laurens County, Greenwood, Newberry and Abbeville, the
15 Eighth Circuit. And there's nothing against him
16 pending in the Eighth Circuit.

17 Q. Right. Well, I don't -- I'm not asking about
18 that. I'm just asking that -- as a part of this plea
19 to these two criminal sexual conduct cases, Laurens
20 County agreed to -- to not pursue --

21 A. That's right. That's right.

22 Q. -- the charge against the second victim?

23 A. That's over.

24 Q. I wanted to make that clear. And with regard
25 to Mr. Eaton's allegation that he -- well, he entered

1 some records that apparently he had been tested for
2 Chlamydia, and he was negative. Did he share those
3 with you or are you aware of that?

4 A. I don't remember that at all. Now, to be
5 perfectly honest with you and candid with you in -- of
6 course, I'm being candid throughout, but I don't
7 remember that. I don't remember that at all.

8 Q. Do you remember him ever telling you that he
9 --

10 A. Perhaps I should -- wait, let me say this now
11 -- perhaps I should have. But I was going by what the
12 discovery I had. Of course, I'm no visionary. And
13 perhaps I was not diligent enough in that regard, and
14 I'm being plain about it.

15 Q. Are you saying that you think that that was
16 part of the discovery, that those records were?

17 A. No, I don't -- I didn't -- I didn't see that
18 in there. If it is, then I overlooked it if it was.
19 But not in the discovery I had. In other words, he
20 has -- he has transmitted something that, apparently,
21 from what I found out just a moment ago, is that he
22 didn't have the disease. Certainly that would have
23 come into play.

24 Q. Well, he didn't have the disease in February
25 of 2012?

1 A. That's right.

2 Q. Okay. But these allegations occurred in --
3 between --

4 A. Somewhere in 2011 --

5 Q. Right -- between April of 2011 and July of --

6 A. That's correct.

7 Q. Okay. I know that you -- I mean, you may or
8 may not be aware of this -- I know you're not a medical
9 expert, but is it your understanding that Chlamydia is
10 a curable disease?

11 A. No, I don't know that. I don't -- I really
12 don't.

13 Q. Okay. Well, I'll move forward then.

14 A. Anyway to the -- there was a physician --

15 Q. Well, I'm going to ask you in regards to
16 the -- so you -- you said you testified you reviewed
17 the discovery, did you review the discovery with Mr.
18 Eaton?

19 A. No, I didn't really go over it with him. I
20 did not do that. I did not have the paperwork. I
21 remember we met, we were here for a good period of time
22 in the county jail, in a room over there.

23 Q. But have you -- but you, yourself, did review
24 all of this?

25 A. Oh, yeah. Oh, yeah. I got it. In fact, I

GEDDES ANDERSON -- DIRECT

1 came up here in March and got it, March of 2012, so I
2 had it several months.

3 Q. Did you feel if you had gone to trial -- well,
4 let me ask you this --

5 A. I was not going to go with this situation. Of
6 course, he was 16 apparently when this -- when this
7 happened, but not with what I saw. I never had the
8 intention of taking this case to a jury trial. It was
9 too dangerous. I felt confident since he had -- if we
10 had got into an Jackson Denno situation as to whether
11 or not he -- maybe that -- maybe that would have been
12 successful, a motion for a Jackson Denno hearing.

13 But I didn't want to take that risk and him
14 looking at a mandatory 25 years, at least in -- in --
15 and also in Laurens County, and the two qualified --
16 the two strike situation. So there are a lot of things
17 that come into play.

18 And I felt that I could probably talk the court
19 into a mid range type of sentence, which probably would
20 have been fair in this situation. But they didn't --
21 even though he will have to serve -- well, I don't want
22 to get into that. But he did -- he had already done
23 the equivalent of about two years in the county jail at
24 some -- but we got him that.

25 Q. Did he ever mention to you anything about the

1 possibility that someone else was responsible?

2 A. No. I -- I don't remember him saying that.

3 And -- and what concerned me was the fact that he -- he
4 admitted it to that officer, and at least the first
5 time he -- apparently, when they were making inquiry,
6 that he said that he didn't penetrate the -- any
7 orifice of the child -- he didn't use those words of
8 course. But there was a doctor who said that -- that
9 it did appear that penetration had occurred. So there
10 was -- it's the kind of case you don't want to try with
11 so much to lose.

12 Q. Did he give you the names of any other
13 witnesses that you could have spoken with?

14 A. No. I don't remember him doing that. But
15 I'll be right to explain here that I think as far as
16 the -- mitigating the -- the circumstances with regard
17 to what happened with him and these children, that --
18 that was an evaluation made and the correct -- or some
19 favorable result would have been forthcoming from
20 the -- from the psychiatrist or psychologist, it would
21 have helped with regard to the sentencing procedure.

22 Q. I --

23 A. In that -- in that, I was not diligent enough.

24 Q. You did -- but you did have a mitigation? I
25 mean you presented a mitigation to the judge, right?

1 A. Oh, yeah. Oh, yeah, well, he didn't have a
2 record. He had been in no trouble. He was very kind.
3 And, in fact, I was very impressed with him as if --

4 Q. Would you say your mitigation statements were
5 fairly lengthy?

6 A. Fairly so. You know, they were all good
7 enough, but you just do the best you can.

8 Q. Ultimately, was it his decision to plead
9 guilty?

10 A. Yes, I feel like it was. In fact, I -- I felt
11 like he was perfectly lucid and, you know, I was
12 talking to him. He was very responsive to me, and we
13 had -- right before the plea, we had another conference
14 over here and, you know, in one of these anti-rooms
15 here.

16 Q. So you feel you -- did you feel at any time in
17 your conversation with him, that a mental evaluation
18 was necessary?

19 A. I didn't -- I didn't really feel -- of course,
20 you -- you know almost everybody who comes in the
21 courtroom can use an evaluation. That's the way I look
22 at it. Particularly if you're raised with some -- I
23 don't mean to be jocular up here, but -- because it's
24 not that way -- but most people that are charged with
25 some kind of serious offense need it, you know, an

1 evaluation of some kind. Of course, money comes into
2 play. I thought about that.

3 And Ms. Norwood couldn't afford a lot of that,
4 and money was owed me on the case, too. I didn't --
5 that didn't have any affect on me proceeding. Had I
6 been paid the full amount, I would have done the same
7 thing.

8 MS. OLIVE: That's all the questions I have.

9 MR. RUCKER: May it please the court?

10 THE COURT: Yes, sir.

11 **CROSS EXAMINATION BY MR. RUCKER:**

12 Q. Mr. Anderson, I'm Brandt Rucker. I represent
13 Mr. Eaton at this point. Did -- did you send copies of
14 the discovery you had -- or a copy of the discovery you
15 had to my client, Brandon Eaton?

16 A. No, I didn't.

17 Q. In prison?

18 A. Oh, yeah, yeah, I did. I did to his mother's.

19 Q. Okay.

20 A. Excuse me. But I did not send him, while I
21 was representing him -- while I was in the process of
22 representing him. He -- in other words, he didn't get
23 it from me, he got it from his mother after the fact --
24 after he was sentenced.

25 Q. Is it your testimony that the Solicitor's

1 Office did not give you a copy of the search warrant
2 and the results by the doctor's office of Brandon?

3 A. I can't -- I didn't -- I went over this a day
4 or two ago, Mr. Rucker, and I -- I don't know the
5 answer to that question.

6 Q. That's a pretty big deal? I mean it's more
7 than mitigating, isn't it? It's a defense.

8 A. I would say so.

9 Q. Did you go over the Child Advocacy Center
10 videotapes with Brandon?

11 A. Yes.

12 Q. Did you -- you did? And what day was that
13 done; do you recall?

14 A. No, I don't recall that.

15 Q. Was that during your one meeting?

16 A. Well, I didn't go over it with him. No, I --
17 no, we didn't watch it -- we didn't go over that.

18 Q. Okay. Have you actually reviewed those tapes?

19 A. Yes, I did summarily.

20 Q. All right. I -- what -- and I'm not trying to
21 be ugly here, but what do you mean by summarily?

22 A. Well, you know, I don't remember exactly what
23 all was on it, but --

24 Q. Do you recall reviewing them?

25 A. Yes.

1 Q. Do you recall reviewing the Child Advocacy
2 Forensic Assessment Summary of Minor [REDACTED] ?

3 A. I can't recollect what -- what was said about
4 that right off.

5 Q. Do you recall that it -- that was part of the
6 discovery that was given to you by the -- by the
7 Solicitor's Office?

8 A. Well, I remember the date.

9 Q. Okay. Did -- did you also get a written
10 document showing the writings of the forensic
11 interviewer?

12 A. Well, I think I have it here.

13 Q. Okay. Were you subpoenaed by the Attorney
14 General's Office to bring your file today?

15 A. Yes, I was.

16 Q. And would that discovery be within the file?

17 A. I would -- I would think it would be.

18 Q. Have you read Minor [REDACTED] Forensic
19 Assessment Summary?

20 A. Well, I can't recollect. If you will tell me
21 what it is, I --

22 Q. Do you recall her saying that there was a man,
23 George Brown, that did a lot of that?

24 A. Yeah, I saw -- I remember that.

25 Q. Do you recall if the Sheriff's Office ever

1 executed a search warrant against Mr. Brown?

2 A. I don't recollect that.

3 Q. Do you recall the relationship between George
4 Brown and the alleged victim's mother?

5 A. Well, I remember reading that in the report.

6 Q. All right. Who is the alleged victim's mother
7 and what relation is she to my client, Mr. Eaton?

8 A. I believe the half sister, wouldn't it have
9 been.

10 Q. I mean -- do you recall that?

11 A. I think that's what the relationship was.

12 Q. Okay. She had disclosed numerous times that
13 George Brown had repeatedly penetrated her and raped
14 her?

15 A. That's in --

16 Q. Right?

17 A. That's in the discovery.

18 Q. Where is the George Brown -- or at the time of
19 your guilty plea, where was George Brown?

20 A. I don't know.

21 Q. Did you ever try to talk to him?

22 A. No, I did not.

23 Q. Is there a chance you didn't go over the
24 Assessment Summary thoroughly?

25 A. Perhaps so.

1 Q. Is it -- is it fair to say that these are very
2 important details that the child accuses two different
3 men, and then says it didn't happen at all at other
4 times?

5 A. That's right. I saw that -- son, I saw that
6 in the reports, in the discovery. I saw that. But it
7 still was a situation where perhaps if we go on to
8 trial, the Jackson Denno hearing would not have been
9 successful, and then we're faced with a rather serious
10 situation for him.

11 Q. Is it fair to say a reasonable attorney would
12 have gotten a psychological evaluation to see --

13 A. Yes, I think perhaps so.

14 Q. -- to see if he was able to give a statement
15 like that or --

16 A. That's right.

17 Q. -- or if he understood what was happening?

18 A. In fact, I -- I told Contessa that that was
19 negligent on -- negligence on my part not to do that.
20 So I agree with you, sir.

21 Q. And you wrote a letter to her saying that?

22 A. That's right.

23 Q. But I want to be clear about this, the
24 psychological evaluation would have been done to
25 determine if his confession was voluntary; right?

1 A. That's right.

2 Q. But that was never done?

3 A. That's right.

4 Q. You never sent him down to see if he even knew
5 what the detective was talking to him about?

6 A. That's right. In fact, I agree with you, sir.

7 Q. Did you ever review any videotape of that
8 actual invest -- or that investigator's interview of my
9 client?

10 A. I don't think I did.

11 Q. Did you ever have any discussions with -- I
12 guess Investigator Detective Bentley about the case?

13 A. I have -- I have forgotten -- I don't know
14 whether I did. I remember talking with police. I
15 don't remember specifically whether it was him.

16 Q. Do you normally take notes as part of your
17 representation of people just in case you have to
18 account for what you did?

19 A. Usually I do.

20 Q. All right. Do you recall taking notes about
21 an interview with the person who took the confession of
22 your client, which the whole case was hinged upon?

23 A. No. I don't take any notes anymore.

24 Q. Why did you not -- did you do anything to
25 attempt to get this placed in Family Court?

1 A. Not anything officially.

2 Q. Do you know -- do you know if the law required
3 a hearing to determine his mental capacity, and also
4 whether this should be a Family Court hearing or not?

5 A. That's -- that's -- that's what I should have
6 done.

7 Q. And you did none of that?

8 A. That's right.

9 Q. Additionally, the family -- do you know how
10 much the family --

11 A. They would have moved, I feel like, though,
12 son, that -- that the State would have moved forward
13 with it as it was and -- still was looking at that
14 serious situation.

15 Q. I'm asking really if you did anything to try
16 to stop it being prosecuted in the --

17 A. That's right, not officially. That's right.

18 Q. Okay. Do you think you could have?

19 A. I think it would have been worth a try.

20 Q. In your negotiations --

21 A. -- we all would in hindsight.

22 Q. Which Solicitor did -- Assistant Solicitor did
23 you negotiate with up here?

24 A. Susan Reese.

25 Q. All right. And who did you negotiate with in

1 Laurens?

2 A. I've forgotten who it was, but that's not --
3 that case all along was going to be a -- I felt like
4 was going to be wrapped up with this case, and nolle
5 prossed or dismissed, so I wasn't -- I don't think that
6 any -- any negotiation, as I recollect, specifically
7 with a -- with a -- it might have been -- I can't think
8 of his last name, Jack -- who is no longer in the
9 Laurens, he's --

10 Q. Would that be Jack Hammet?

11 A. Jack Hammet. That's exactly who that is. I
12 feel like I talked briefly with him, but it wasn't
13 until Ms. Norwood contacted me about a hold being
14 placed on him from Laurens County which interfered with
15 his -- with his getting -- making progress in the
16 prison system. And we got that straightened out not so
17 long ago, and it's been resolved and it's over and done
18 with.

19 Q. All right. Just to clarify, how many charges
20 did he plead guilty to in Spartanburg County?

21 A. Two.

22 Q. Was that -- one of those charges a Laurens
23 County charge?

24 A. No.

25 Q. Was that a Greenville County charge?

1 A. No. It was in Spartanburg.

2 Q. Both Spartanburg County charges?

3 A. Yes. There were different little children as
4 I recollect.

5 Q. Okay. I'm just asking to clarify for -- for
6 the court.

7 A. No, we didn't plead guilty to Laurens at all.

8 Q. Okay.

9 A. That's never been done. In fact, as I said
10 time and again, that case has concluded.

11 Q. Did you tell my client you were going to file
12 a motion to reconsider the sentence?

13 A. I don't think I ever said that. Now, I heard
14 him testify to that. I don't think I ever said that.

15 Q. Why did you not file a motion to reconsider
16 for such a strong sentence?

17 A. Well, I think every time I file one, it never
18 changed so you -- there we are, so --

19 Q. Did you file an appeal on his behalf?

20 A. No, I never did, and I never said I would.

21 Q. Did you discuss with him his right to an
22 appeal?

23 A. I don't know whether I did or not.

24 Q. Is it fair to say that he was swept up in this
25 process? I mean, he was depending on you to have these

1 answers and you didn't have these answers?

2 A. That's right. I think that perhaps that I
3 wasn't diligent enough in this case to be perfectly
4 honest with you.

5 Q. Do you believe if you were to -- I'm going
6 to -- may I approach the court reporter, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. RUCKER:

9 Q. Mr. Anderson, I'm going to show you what's
10 been marked a Plaintiff's Exhibit No. 2; do you
11 recognize that document?

12 A. Yeah. I think this is in my -- in my file.

13 Q. Okay. So you -- can you -- can you read off
14 what that says at the top -- what's the title of the
15 document?

16 A. Forensic Assessment Summary.

17 Q. And who is the person that the summary was
18 done upon?

19 A. Minor [REDACTED].

20 Q. All right. Do you recall reading that
21 document -- or those pages before you talked to Brandon
22 Eaton or afterwards?

23 A. I probably read it all over -- I read it -- I
24 probably read it before talking to him.

25 Q. Okay. But you don't know -- you don't know

1 for sure if you did read it?

2 A. Yeah, I feel sure I read it.

3 Q. So you -- when you read it, you missed that
4 George Brown was an alleged perpetrator?

5 A. Surely -- he confessed to it also. Sure, I
6 knew that George Brown was -- was involved in it, but
7 Harley had confessed, too.

8 Q. But you never looked in to see what was going
9 on with that, in addition to not doing the
10 psychological evaluation to determine if he could
11 voluntarily confess?

12 A. I -- I was worried about Harley's situation
13 with regard to the charges against him.

14 Q. But did you think if that confession wasn't
15 allowed in, or if the judge ruled he couldn't give a
16 voluntary confession, that George Brown probably is the
17 person who did this?

18 A. Probably.

19 Q. And yet Brandon Eaton was walked in and pled
20 guilty to 20 years, and George Brown could have been
21 the one that did it all along?

22 A. Probably.

23 Q. That's a pretty big probably?

24 A. Yes, it is. And I agree with you.

25 Q. You -- you agree that you -- do you agree that

1 you reviewed the search warrant as part of your review
2 of the discovery, or did you not read it?

3 A. Ask the question again.

4 Q. I'm sorry. Did you have a copy of the search
5 warrant and the results that have already been admitted
6 into evidence as part of your discovery?

7 A. Well, I had all the information I needed to
8 plead him guilty, son.

9 Q. And Plaintiff's Exhibit No. 2 is the -- is an
10 accurate copy of what you got from the Solicitor's
11 Office?

12 A. Exactly, right --

13 MR. RUCKER: All right. I move that in evidence
14 as Plaintiff's -- or Applicant's Exhibit No. 2.

15 THE COURT: What says the State?

16 MS. OLIVE: No objection.

17 THE COURT: It's in without objection.

18 (Applicant's Exhibit No. 2 admitted into
19 evidence.)

20 BY MR. RUCKER:

21 Q. What actual investigation did you do in this
22 case?

23 A. Just what was in the discovery.

24 Q. All right. You never went out and talked to
25 any of the witnesses?

1 A. No, no, no, I did not.

2 Q. And you said that you had enough to walk -- to
3 take him in to plea; is that right?

4 A. According to what I was faced with, with the
5 discovery I had, Mr. Rucker, I felt confident that we
6 had a shot at getting him through this with a mid range
7 type of sentence. And I felt that that would be
8 something that perhaps could be done, and I failed at
9 it. It's as simple as that.

10 Q. Do you think there's a real chance that you
11 plead guilty an innocent person?

12 MS. OLIVE: Objection, that's speculation --

13 A. I don't think he's innocent, no. I don't
14 think he's innocent.

15 BY MR. RUCKER:

16 Q. And that is based on that confession?

17 A. That's right.

18 THE COURT: Hold on.

19 MR. RUCKER: I'm sorry, Judge.

20 THE COURT: I want to rule on the objection. He's
21 already answered it anyway. I was slowly --

22 MR. RUCKER: Okay.

23 THE COURT: I'll allow the question and answer.

24 MR. RUCKER: I apologize.

25

1 BY MR. RUCKER:

2 Q. That was based on the confession?

3 A. That's right.

4 Q. And you never got a scientist or anybody with
5 a background in that --

6 A. I should have -- I should have gotten him
7 evaluated.

8 Q. Do you know -- you know Ms. Contessa Norwood;
9 right?

10 A. Correct.

11 Q. She just testified. She is still in the
12 courtroom?

13 A. That's right.

14 Q. Do you know if she was present during the
15 investigator's discussion with Mr. Eaton?

16 A. I don't know whether she was.

17 Q. Do you know if anybody else was in that room
18 while the confession was taken?

19 A. I don't.

20 Q. Do you know what was promised --

21 A. I wasn't involved in the case, son, at that
22 point.

23 Q. But did you do any kind of follow-up to get
24 incident reports or supplemental reports to show what
25 was done during that time?

1 A. No, I did not.

2 Q. Is it your belief now that there's true
3 problems with that confession?

4 A. Probably so.

5 Q. Could you have discovered that before you went
6 forward with the guilty plea?

7 A. I could -- perhaps could have.

8 Q. And that would affect his ability to know
9 whether he should plead guilty or not; is that fair?

10 A. That's right.

11 MR. RUCKER: All right. No further questions.

12 THE COURT: Okay. Anything further from the
13 State?

14 MS. OLIVE: Just one question, Your Honor.

15 **REDIRECT EXAMINATION BY MS. OLIVE:**

16 Q. Mr. Anderson, based on your review of the
17 discovery, your experience in law, 44 years; your
18 discussions with your client, did you feel it was in
19 his best interests to plead guilty?

20 A. Absolutely.

21 MS. OLIVE: Thank you.

22 THE COURT: You can step down. Thank you, sir.
23 Can you -- can either one of y'all tell me whether
24 George Brown was ever charged in any these of cases?

25 MR. RUCKER: We have no information that he was,

1 no, sir. That's one of the more confusing parts of the
2 case.

3 THE COURT: And, of course, in my packet, I have a
4 plea sheet that he plead guilty to a Laurens County
5 charge, and the judge sentenced him to 20 years.

6 MR. RUCKER: Yes, sir.

7 THE COURT: Has that plea been set aside?

8 MR. RUCKER: Not to my knowledge, no, sir. And
9 the P.C.R. is -- according to my client, is still going
10 forward.

11 MR. ANDERSON: No, it's not -- let me see. I've
12 got -- I've got paperwork here.

13 THE COURT: I have a plea sheet showing an
14 indictment from Laurens County, indictment
15 2013-GS-30-1428, where he pled guilty on August 7,
16 2013, and received a 20 year sentence to run concurrent
17 with the Spartanburg sentence.

18 MS. OLIVE: Yes, Your Honor. It's -- it's covered
19 in the transcript. I think Mr. Anderson may have
20 misspoken.

21 THE COURT: Okay. And I -- I just wanted to know
22 if something had happened to those charges -- because
23 what I have before me, he pled guilty. So when he says
24 they were nolle prossed --

25 MS. OLIVE: I -- yes, Your Honor, I -- certainly

1 --

2 THE COURT: And other charges, but he pled guilty
3 to it.

4 MS. OLIVE: Yeah. Certainly if I was back at the
5 office, I could check our files and figure out what's
6 going on with the Anderson P.C.R.

7 THE COURT: Okay.

8 MS. OLIVE: But -- but my understanding, based on
9 what I have in my Return, is that there is a pending
10 P.C.R. in Laurens County still. And I speculate what
11 happened is he pled guilty to two C.S.C charges, one
12 was Spartanburg, one was Laurens, both on the same day,
13 so he's filed a P.C.R. on that Laurens one.

14 THE COURT: Okay. Okay. Anything further from
15 either side?

16 MR. RUCKER: No, sir.

17 THE COURT: All right. I will let y'all know on
18 this case.

19 MS. OLIVE: Thank you, Your Honor.

20 THE COURT: Does this conclude the day?

21 MS. OLIVE: Yes, Your Honor.

22 MR. RUCKER: Yes, sir.

23 THE COURT: Okay. Let me -- I'd like to talk to
24 y'all in chambers.

25 MR. RUCKER: Yes, sir.

(Whereupon, the hearing adjourned.)

* * * END OF TRANSCRIPT * * *

CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
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 SPARTANBURG COUNTY, SOUTH CAROLINA, ON
THE 12TH OF JANUARY, 2016.

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

3.18.16

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER

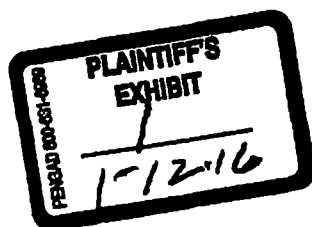
02/24/12 Page 58

J. David Wren, MD PHD, Director

Spartanburg Regional Medical Center
101 E. Wood Street
Spartanburg, South Carolina 29303-3072Dept of Laboratory Medicine
864-560-6212EATON, BRANDON H
17Y
PHYSICIANS, EDMRN: S000829581
DOB: [REDACTED]
Location: PT Type: EMERGENCY ROOMACCT#: [REDACTED]
Admitted: 01/08/2012**SEROLOGY**

Accession No. MG12009003

	Result
Urine 01/09/2012 12:13 Released 01/11/2012 10:45	
Neisseria Gonorrhoeae	Negative **
Chlamydia Trachomatis	Negative **

Patient Name: EATON, BRANDON H
Location:
PT Type: EMERGENCY ROOM

HPF ONLY- OUTPATIENT AND ED REPORT

Printed: 01/12/2012 02:33
Page: 1 of 1

PRINTED BY: JH24657

DATE 2/1/2012

J. David Wren, MD PHD, Director

Spartanburg Regional Medical Center
101 E. Wood Street
Spartanburg, South Carolina 29303-3072Dept of Laboratory Medicine
864-560-6212EATON, BRANDON H
17Y
PHYSICIANS, EDMR#: S000829581
DOB: [REDACTED]
Location: PT Type: EMERGENCY ROOMACGT#: [REDACTED]
Admitted: 01/08/2012SEROLOGY

Accession No. MG12009003

Urine		Result
01/09/2012 13:28	Neisseria Gonorrhoeae	Pending
	Chlamydia Trachomatis	Pending

Patient Name: EATON, BRANDON H
Location:
PT Type: EMERGENCY ROOM

HPF ONLY OUTPATIENT AND ER FINAL DI

Printed: 01/10/2012 02:35
Page: 1 of 1

PRINTED BY: JH24657

DATE 2/1/2012

J. David Wren, MD PHD, Director

Spartanburg Regional Medical Center
101 E. Wood Street
Spartanburg, South Carolina 29303-3072Dept of Laboratory Medicine
864-560-6212EATON, BRANDON H
17Y
PHYSICIANS, EDMR#: S000829581
DOB: [REDACTED]
Location: PT Type: EMERGENCY ROOMACCT#: [REDACTED]
Admitted: 01/09/2012SEROLOGY

Accession No. MG12008003

	Result
Urine	
01/09/2012 12:12	
Neisseria Gonorrhoeae	Pending
Chlamydia Trachomatis	Pending

Patient Name: EATON, BRANDON H
Location:
PT Type: EMERGENCY ROOM

HPF ONLY OUTPATIENT AND ER FINAL DI

Printed: 01/11/2012 02:33
Page 1 of 1

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DATE 2/1/2012

J. David Wren, MD PHD, Director

Spartanburg Regional Medical Center
101 E. Wood Street
Spartanburg, South Carolina 29303-3072Dept of Laboratory Medicine
864-560-6212EATON, BRANDON H
17Y
PHYSICIANS, EDMR#: S000829581
DOB: [REDACTED]
Location: PT Type: EMERGENCY ROOMACCT#: [REDACTED]
Admitted: 01/09/2012**SEROLOGY**

Accession No. MG12009003

		Result
Uc13a		
01/09/2012 11:13	Neisseria Gonorrhoeae	Negative **
Revised 01/11/2012	Chlamydia Trachomatis	Negative **
14163		

Patient Name: EATON, BRANDON H
Location:
PT Type: EMERGENCY ROOM

HPF ONLY OUTPATIENT AND ER FINAL DI

Printed: 01/12/2012 02:33
Page: 1 of 1

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DATE 2/1/2012

02/24/12 Page 62

J. David Wren, MD PHD, Director

Spartanburg Regional Medical Center
101 E. Wood Street
Spartanburg, South Carolina 29303-3072Dept of Laboratory Medicine
864-560-6212EATON, BRANDON H
17Y
PHYSICIANS, EDMR#: S000828581
DOB: [REDACTED]
Location: PT Type: EMERGENCY ROOMACCT#: [REDACTED]
Admitted: 01/09/2012SEROLOGY

Accession No. MG12008003

		Result
Urine 01/09/2012 12:35 Collected 01/11/2012 18:05	Neisseria Gonorrhoeae	Negative **
	Chlamydia Trachomatis	Negative **

Patient Name: EATON, BRANDON H
Location:
PT Type: EMERGENCY ROOM

HPF ONLY OUTPATIENT AND ER/FINAL DI

Printed: 01/13/2012 02:33
Page 1 of 1

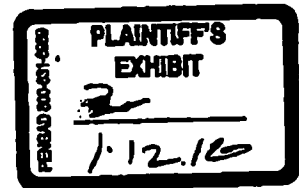
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DATE 2/1/2012



Children's
Advocacy Center
of Spartanburg

100 Washington Place
Spartanburg, SC 29302
864-565-9922



FORENSIC ASSESSMENT SUMMARY*

Child: Victim

Date of birth and age: 5 years old

Who child currently lives with: Mother (mother), mother's husband (Mother's Husband), and her two younger brothers (Brother 1/4 and Brother 2/9 months).

Referred By: Detective Tracy Moss with the Spartanburg County Sheriff's Office

Referral Allegations: Allegedly, child disclosed that her uncle (Harley Eaton) had touched her butt with his wee wee. Victim came forward with this information while being seen at a Doctor's Care and Spartanburg Regional for anal warts (later identified as Genital Warts caused by the sexually transmitted disease, HPV). 10/4/11

Dates of Session(s): 8/8/11 and 8/12/11

Type of Disclosure: Sexual Abuse by both Harley Eaton and George Brown (last name provided by mother). Witnessing domestic violence between her mother and both Mother's Husband and George Brown (during their respective relationships).

Perpetrator(s): Harley Eaton and George Brown (last name provided by mother)

Location(s): Victim reported that Harley would abuse her in his room at her Nana's house and in her own room that she has at her mother and Mother's Husband house.

Incident(s): When explaining who lives at her house, Victim said "Harley doesn't live there because he was touching me". She explained that Harley is the 16 year old brother of her mother, who lives at Nana's house. She said he touched her "monkey" and "butt" with his "wee wee" on both the inside and outside. She also reported that Harley would "pee" a little on the bed after he would have his "wee wee" in her "monkey". She said this "pee" was yellow. She said she had some pain and bleeding, explaining that the bumps on her butt will bleed". Victim said that Harley called this kind of touching "dating" and told her not to tell about it or he would "spank her butt". Victim reported that the abuse took place in her room in her mother and Mother's Husband house. She said her dad would be at work and her mother would be in another room watching tv). She said it was just her and Harley and she was "too scared to tell him to stop". Victim added that the first time this occurred was in the bedroom.

Victim reported that Harley has other girlfriends named Minor and Minor2. She said Minor2 is older than Harley and she has seen them holding hands. She went on to report that Minor is 5 years old. She said Minor lived at Roger's house and then at Nana's house with Harley. She went on to state that she didn't like what Harley would do, but that Minor did like it. She clarified that she was referring to Harley "putting his wee wee in us". Victim went on to disclose that when Harley would abuse her and Minor together it

helping
children
heal



would take place at her "Nana's" house in Harley's room. She said that her "Nana" would be in another room asleep. She said Harley would take his clothes and both of their clothes off. She said she saw them "dating" and explained that Harley would put his "wee wee" on Minor "monkey" and "butt". She said Harley would tell both of them not to tell. She then said she would tell him she didn't care and she would tell. She said Minor didn't want to tell because she was "shy". Victim denied knowing of or witnessing Harley do any of these things to her brothers (Brother 1 and Brother 2), explaining they were boys. She did report that Harley would throw her and Brother 1 on the couch. Evaluator then utilized the Gingerbread Drawing Technique to clarify the details of the abuse. Victim reported that Harley had used his hands and his "wee wee" to touch her on her "monkey", "butt" and mouth. She explained that his hands would touch only touch her monkey on the outside. She confirmed that his "wee wee" would go inside her "monkey" and "butt". She also reported during this conversation that Harley would put his "wee wee" inside her mouth. She said "he want me to put my mouth on his wee wee and it tasted horrible". Victim verbalized feelings of guilt and responsibility at not being able to keep the abuse from happening during this conversation. Evaluator then went on to utilize the gingerbread bread drawing technique to understand the details of what Victim reported witnessing between Minor and Harley. Victim reported that Harley used his hands to touch Minor's "butt" and his "wee wee" to touch her "monkey". She also reported that the pee came out of Harley's "wee wee" when Minor was there.

During the follow up interview, Victim confirmed all the same details regarding her disclosure of abuse by Harley Eaton. In talking about when Harley would ejaculate on the bed, she talked about how he would spit on something and rub it in. She also talked spontaneously about how when she and Harley would "date" at bedtime she would throw up. Victim then referenced back to an experience she had with a man named "George" in which she would also throw up. She went on to disclose being the victim of sexual abuse by "George" which she described as a black man that used to date her mother. She reported that George would "pee pee" in her mouth. Victim was able to clarify the details of the abuse utilizing the gingerbread drawing technique. She reported that George used his "wee wee" (penis) to go inside her "butt". She said the "pee" did not come out in her "butt", "only in her mouth". She said his "wee wee" touched her "monkey", but only on the outside. Victim said George would take her pants and panties down and do these things to her in her mother's room at her Papa's house where they lived. She said her mother broke up with George a long time ago and she does not see him anymore. Victim also reported that her current disclosure about George was the first time she has told anyone about it.

Victim reported that the only pornographic material she has seen were pictures of her Aunt Meghan and her boyfriend naked and "dating" each other. She said no one told her to look at them. When discussing how her mother and George got along when they were in a relationship, Victim reported that they would "push and punch" each other. She went on to talk about domestic violence between her mother and Mother's Husband (current husband). Victim also talked about a specific incident in which her mother grabbed a knife and "almost hit George with it". Victim was unable to provide great clarity and distinction about these incidents of domestic violence and which man was involved in them. She

became quite nervous and guarded as this evaluator attempted to gain clarity. Victim actually requested that I not discuss some of this information and became avoidant to further questions. The only additional information she provided was that her mother would "push and slap" Mother's Husband and her mother would say things like "Get off me...get off of me!" While Victim was guarded and unclear about some of the details, she did clearly reported being a witness to domestic violence in her home. Victim did also report that Mother's Husband "whoops" her with his hands and a belt. She said her pants are on, but she has had bruised before as a result.

As Victim's follow up interview ended, she did also confirm that she witnessed Harley sexually abuse Minor. She provided the same abuse details and added that Harley would go back and forth as she made a "humping" motion. When talking about how Harley would do this to Minor's "monkey" she added that Harley "didn't like the butt because it got messy". She said Minor had to wipe very hard. Victim was unable or unwilling to provide further detail as to how she became aware of this information. Soon thereafter, Victim had to stop the interview to go to the bathroom. She was in the bathroom for an extended period of time. When she was able to return to the interview room, she talked about the fact that she had a bowel movement and it had hurt and been bleeding. She reported that she had been having pain and bleeding since the "bumps" showed up on her bottom.

p/4/30

Additional Details:

Summary of Interview with Mother (mother)

Mother reported that she had been helping Victim wipe at lunch one day when she noticed warts on her bottom. She reported that she took Victim to Doctor's Care where she was informed that they were Genital Warts caused by the HPV virus. She said they were then seen the next day at Spartanburg Regional where a swab was taken and a urine test completed to confirm the HPV/Genital Warts diagnosis. Mother reported that Victim first disclosed the sexual abuse to her maternal grandfather. She said Victim told him that Harley had used his wee wee to touch her butt and put it all the way in. She said Victim made the same disclosure to the nurse and doctor at the hospital. She reported that Victim told them that Harley would also do these things to her cousin (Minor /5). She stated that Minor is the daughter of her brother (Roger) and a woman named Iyonni . She said they live in Laurens, SC. She reported that her mother (Nana) and Roger are aware of the allegations but state they do not believe any abuse occurred.

Mother reported that the abuse would have taken place sometime in the months of April and May 2011. She said all of her children went and stayed in Laurens with her mother for a full week in early April. She said Minor was also staying at her mother's house at that same time. She said that during May 2011 her mother kicked Harley out of her house and she then allowed him to stay at her home for several weeks. She said the only time she remembered leaving the children in his care was one time when she ran to Wal Mart for a short time. She did acknowledge that he was living with her family and certainly spent time with all the children.

Mother reported that she is unaware of any previous allegations against Harley or any abuse history of his own. She said the only relevant information she is aware of is that he had recently been talking often to her about how he would have intercourse often, sometimes with four girls a day.

In a follow up interview, **Mother** reported that she had an old friend (George Brown) that she has known since high school. She said he is a black man and he did sleep on the couch at their house sometimes. She did deny, however, that they were ever in a romantic relationship. She said it has been several years since they spent time with him. She reported that she understands that George is currently in prison. She said he was arrested the first time for Armed Robbery, but she is unsure what the most recent charge was.

Mother also reported that she feels like there is a good chance that Harley is still in contact with **Minor**. She said it is her understanding that **Minor** was staying at Nana's house the week prior and that Harley had spent the night there on Friday at least.

Summary of Collateral Interview (8/12/11) with **Brother I (4 year old brother)**

Brother I was seen as a collateral interview to **Victim**'s forensic evaluation. **Brother I** participated in the interview on an age appropriate level, but did not make a disclosure of abuse. He did provide information that Harley and **Minor** both lived at their Nana's house when he would be there.

Forensic Medical Evaluation of **Victim with Dr. Nancy Henderson (Board Certified Child Abuse Forensic Pediatrician)**

Victim was seen by Dr. Henderson at the Children's Advocacy Center of Spartanburg. Please reference the reports from this evaluation for a summary of the results.

Forensic Evaluation and Forensic Medical Evaluation of **Minor**
Minor was seen at the Children's Advocacy Center of Spartanburg for both evaluations. Please reference the reports from this evaluation for a summary of the results.

Professional Opinion: **Victim** made a clear, detailed disclosure of sexual abuse against both Harley Eaton and George Brown (last name provided by mother). In summary she provided the following:

Alleged Offender: Harley Eaton

- Penile-vaginal and penile-anal penetration (wee wee inside my monkey and butt)
- His wee wee in her mouth
- Said he "peed" a little on her bed after his wee wee was in her monkey
- Said happened in her bed at her house. (step-dad at work and mom in her bedroom)
- Also said it happened in Harley's room at her Nana's (mat. Grandmother) house.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Brandon Harley Eaton, #356444

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016 JUN 24 AM 10: 25

2014-CP-42-2792 MOPE BLACKLEY

**ORDER GRANTING
RELIEF**

This matter came before the Court by way of an Application for Post-Conviction Relief (PCR). The Applicant is represented by Brandt Rucker, Esq. The State of South Carolina was represented by Assistant Attorney General Alicia Olive. The Applicant is currently serving two twenty year concurrent sentences in the South Carolina Department of Corrections pursuant to a guilty plea. Of note, the

A hearing was held on January 12, 2016. The Applicant appeared and testified. The applicant's former attorney, Geddes Anderson, Esq., appeared and also gave testimony. The Court reviewed the entire case file, including the plea transcript, and heard the testimony of all parties and witnesses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

 The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the February 2012 term of the Spartanburg County Grand Jury for criminal sexual conduct, first degree. (2012-GS-42-0798) The Applicant was

also indicted at the August 2013 term of the Laurens County Grand Jury for criminal sexual conduct with a minor, first degree (2013-GS-30-1428). The applicant waived venue for the Laurens County charge, and consented to pleading guilty in Spartanburg County in order to plead to both the Laurens County charge and the Spartanburg County charge at the same time. The applicant waived presentment and pled guilty to two counts of criminal sexual conduct, first degree before the Honorable Roger L. Couch. The applicant was sentenced by Judge Couch to concurrent terms of twenty (20) years. The applicant did not appeal his convictions or sentences. Of note, the applicant has also filed an application in Laurens County for post-conviction relief. (2013-CP-30-0789) arising from this guilty plea.

This court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has had the opportunity to weigh the testimony of the witnesses, review the transcript, and review and weigh the evidence in this case pursuant to S.C. Code Ann. § 17-27-80 (2003).

The Applicant alleges he received ineffective assistance of counsel. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable

probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052). Additionally, in a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

The Applicant presented evidence through his testimony, his mother's testimony, and exhibits. The State of South Carolina called Mr. Anderson in response. Mr. Anderson admitted that his representation was constitutionally deficient, and that he made the following errors in his representation: he failed to properly research the applicable law, he failed to properly investigate the facts of the case including a potential third person who may have committed the crimes and a dubious confession of the applicant, and that he failed to have the applicant evaluated because of the applicant's diminished capacity. Mr. Anderson also failed to conduct proper discovery and review it with his client.

The Court has reviewed the allegations of the Applicant thoroughly and finds that Mr. Anderson's representation failed to meet the standard required under *Strickland* in that he failed to render reasonably effective assistance regarding the guilty plea. The Applicant has met his burden of proof regarding his claim that trial counsel was ineffective in failing adequately represent the applicant in his guilty pleas.

A guilty plea defendant is also entitled to the effective assistance of plea counsel. *Hill v. Lockhart*, 474 U.S. 52, 58 (1985); *Hyman v. State*, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012). The two-prong *Strickland* analysis applies to PCR claims alleging plea counsel was ineffective. *Hill*, 474 U.S. at 58. "In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and

intelligently entered." Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). To show prejudice, a guilty plea defendant must establish there is a reasonable probability that, but for plea counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 58-60; Hyman, 397 S.C. at 43, 723 S.E.2d at 379. The prejudice prong "focuses on whether [plea] counsel's constitutionally ineffective performance affected the outcome of the plea process." Taylor, 404 S.C. at 360, 745 S.E.2d at 102. "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

In reviewing the guilty plea, it is clear that the applicant's education level is limited. Based on the transcript, and the testimony of the applicant, there are real questions about his mental capacity. Because of the seriousness of the crime, and the applicant's uniformly acknowledged limited mental capacity, a reasonable attorney would have asked for a mental evaluation in this case. The results of the mental evaluation could have affected the outcome of the plea. Additionally, Mr. Anderson testified that he failed to review the forensic evaluation and videos with the applicant, and failed to investigate the alleged confession of the applicant, and failed to inform the applicant of the potential suppression of that statement to police.

Additionally, allegations were made against another suspect, and it appears from the testimony at the PCR hearing that there may have been problems with the alleged victim's statements, including outright contradictions. None of this was properly investigated by Mr. Anderson. The guilty plea does not appear to be free, voluntary and with advice of competent counsel. There is a likely possibility that had the applicant been

evaluated and been fully informed of the implications of his the discovery that he would not have gone forward with this plea. Counsel's errors lead directly to the guilty plea in this matter. Clearly, counsel's representation was constitutionally insufficient, and led to undue prejudice for the applicant. The applicant has met his burden and the case must be remanded for a new trial.

CONCLUSION

Based on the foregoing, the Court finds and concludes the applicant has met his burden, and that this case must be remanded for a new trial.

IT IS THEREFORE ORDERED:

1. The applicant's current sentence should be vacated and the matter should be remanded for a new trial.

AND IT IS SO ORDERED this 8 day of June, 2016.

Manning, S.C.

R. Ferrell Cothran, Jr.
The Hon. R. Ferrell Cothran, Jr.
Presiding Judge, Seventh Judicial Circuit

Spartanburg, SC

Date: _____

2016 JUN 24 AM 10:25

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Brandon Harley Eaton, #356444,	)	Case No. 2014-CP-42-2792
	)	
Applicant,	)	
	)	MOTION TO RECONSIDER, ALTER, OR
v.	)	AMEND PURSUANT TO RULE 59(e), SCRPC
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, pursuant to Rules 59(a) and (e), SCRPC, would respectfully show unto this Court:

I.

This matter came before the Court by way of an Application for Post-Conviction Relief filed July 18, 2014. The Court convened an evidentiary hearing into the matter on January 12, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by J. Brandt Rucker, Esquire. By order filed June 24, 2016, the Court granted relief on the grounds that counsel failed to conduct an appropriate investigation. Respondent received a copy of this order on June 28, 2016.

II.

Respondent respectfully asks this Court to reconsider its judgment granting Applicant post-conviction relief. In the order granting relief, the Court found plea counsel "ineffective in failing [to] adequately represent the applicant in his guilty pleas." (Order p. 3). Respondent respectfully submits this Court should reconsider this ruling on several grounds.

A.

First, Respondent respectfully submits the Order does not make all necessary findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80. The Court found counsel

"ineffective in failing [to] adequately represent the applicant in his guilty pleas." (Order p. 3). However, the Order makes no specific finding that Counsel's performance was deficient. With respect to prejudice, the Order only states that "there is a likely possibility that had the applicant been evaluated and been fully informed of the implications of his discovery that he would not have gone forward with this plea." The Order fails to specifically address each allegation of ineffective assistance of counsel and apply the standard to each allegation, which has resulted in a "cumulative error" analysis. See, e.g., Fisher v. Angelone, 163 F.3d 835, 852-53 (4th Cir. 1998) (holding a cumulative effect analysis is inappropriate and that the appropriate analysis focuses upon each individual allegation of ineffective assistance). Accordingly, Respondent submits the Court must make a finding as to each individual allegation. See Strickland v. Washington, 466 U.S. 668, 687, (1984) ("Unless a defendant makes both showings [i.e., both deficient performance and prejudice] it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable").

In his application, Applicant alleged only that his plea attorney, Geddes Anderson, should have had him mentally evaluated because "he is bipolar/ADHD" and alleged that Anderson agreed he should have had Applicant evaluated. At the PCR hearing, several additional last-minute allegations were made. Ultimately, the issues raised at the PCR hearing consisted of whether Applicant's guilty plea was involuntary based on ineffective assistance of counsel for: (1) failing to request a competency evaluation; (2) failing to adequately investigate and to adequately consult with Applicant; (3) failing to advise Applicant that his confession could have been challenged in a pretrial Jackson v. Denno hearing. However, the Order granting PCR provides a blanket statement that:

the guilty plea does not appear to be free, voluntary, and with the advice of competent counsel. There is a likely possibility that had the applicant been evaluated and been fully informed of the implications of his discovery that he would not have gone forward with this plea. Counsel's errors lead directly to the

guilty plea in this matter. Clearly, counsel's representation was constitutionally insufficient, and led to undue prejudice for the applicant.

(Order pp. 4-6.). Respondent respectfully asks this Court to apply the appropriate standard, which requires the Court to make findings as to whether Applicant satisfied his burden as to each allegation.

The applicant must prove both that counsel's performance was deficient and that such deficient performance prejudiced him. Strickland, 466 U.S. at 688. The Court measures counsel's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117-18, 326 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). The question is whether counsel "provided representation within the range of competence required" in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." Strickland, 466 U.S. at 689. This Court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance[.]" Strickland, 466 U.S. at 689.

To show prejudice, the applicant must affirmatively prove that "there is a reasonable probability that, but for counsel's unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000). "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." Strickland, 466 U.S. at 693.

An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (emphasis added)

(citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44 (1969). Before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). This "must be established by a complete record and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975). When determining issues relating to guilty pleas, the Court will consider the entire record, including the transcript of the guilty plea

and the evidence presented at the PCR hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

Respondent submits the above standards must be applied to each of Applicant's allegations individually.

B.

Second, Respondent submits that the Court may have overlooked facts that were set forth in the plea transcript. Respondent submits that Applicant's statements at the guilty plea hearing should be conclusive because he failed to provide any reason why he should be allowed to depart from the truth of his statements. See Crawford, 519 F.2d 347.

The facts presented at the plea hearing were that the victim's mother was Applicant's half-brother, and that Applicant had come to live with them April-May of 2011. At the end of July 2011, the victim's mother discovered she had what appeared to be warts on her genitals. The victim then disclosed to her grandfather that "her Uncle Harley had been dating her." (Tr. p. 19, lines 16-17). The victim was immediately taken to the emergency room where she was evaluated and tested positive for the following sexually transmitted diseases: (1) genital warts, (2) the HPV virus which caused the warts, (3) Trichomoniasis, and (4) Chlamydia. (Tr. p. 19, lines 17-25). The victim was later referred to the Children's Advocacy Center ("CAC") for evaluation where victim disclosed, in a lot of detail, that she was dating her uncle, that this would often happen in her bedroom, that he penetrated her vaginally and anally, and on one occasion put her mouth on his penis. (Tr. p. 20). The victim also disclosed that she had seen this happen with her cousin, which happened in Laurens County. Though the second victim never disclosed the abuse, she did test positive for the same sexually transmitted diseases as the first victim. (Tr. p. 20, lines 18-22).

Counsel stated to the plea judge that he discussed the plea agreement with Applicant. Counsel testified at the PCR hearing that as part of the guilty plea, Laurens County had agreed

not to pursue charges related to another five year old victim in that county. Counsel stated to the judge that Applicant had agreed to proceed on that basis. Applicant was sworn at the plea hearing. He stated that he understood what the solicitor had stated regarding the plea agreement, that he discussed that with his attorney, and that he had agreed to proceed with the guilty plea on that basis. (Tr. p. 5, lines 2-13). The plea judge reviewed Applicant's charges with him, including the sentencing range and their classification as violent and most-serious. Applicant stated he did not suffer from any mental, physical, nervous conditions, any kind of condition whatsoever that would, in any way, affect his ability to reason, to make good decisions or to handle his plea that day. (Tr. p. 6, lines 21-25). Applicant agreed he understood what he was doing and that he felt he was able to handle the plea. (Tr. p. 7, lines 6-10). He indicated he understood that he could be sentenced to up to 60 years on the charges. (Tr. p. 7, lines 12-17). Applicant stated he was satisfied with his attorney's services, and stated he had sufficient time to consult with his attorney, did not feel there was anything else he needed to do and did not feel he needed to consult with him about anything else. (Tr. p. 7, line 18-p. 8, line 11). Counsel agreed that he had discussed the charges with Applicant, including the nature of the charges, the possible penalties, any defenses he might have had, his constitutional rights. (Tr. p. 8, line 22-p. 9, line 5). The plea judge inquired whether Applicant understood what he was doing and counsel stated "he's perfectly lucid, Your Honor. He's prepared to go forward. He understands exactly what he's doing. I've talked to him at length about these cases, and he's prepared to go forward with them." (Tr. p. 9, lines 13-16). Applicant denied that anyone had in any way mistreated him, tried to put pressure on him, or tried to do anything to force him to plead guilty. (Tr. p. 10, lines 15-18). Applicant stated he had had time to consider his case and any defenses he might have had. (Tr. p. 10, line 23-p. 11, line 4). Applicant indicated he understood his right to have his charges presented to the grand jury but indicated that he was waiving that right along with his right to a

jury trial, his right to remain silent, and his right to confront his accusers. (Tr. pp. 13-17). Applicant agreed that the facts presented by the solicitor were true.

Respondent submits that the record of Applicant's guilty plea establishes that Applicant's guilty plea was freely and voluntarily entered, and that Applicant presented no reason at the PCR hearing why he should be allowed to depart from his sworn statements at his guilty plea. Respondent submits Applicant's guilty plea hearing transcript is conclusive in this case.

C.

Respondent respectfully requests this Court reconsider its ruling that Applicant should be granted a new trial. Respondent submits Applicant has failed to satisfy his burden of proving either deficiency or prejudice as to each allegation.

1. Competency Evaluation

Respondent submits that even if Plea Counsel had requested a mental evaluation, the evaluation would have shown that Applicant was competent to stand trial. The mental competency standard for guilty plea hearings is the same as for one who is standing trial. Godinez v. Moran, 509 U.S. 389 (1993). The appropriate inquiry is whether the defendant has sufficient and present opportunity to consult with his lawyer and has a basic, rational understanding of the facts of the case and the proceedings he is going through. Dusky v. United States, 362 U.S. 402 (per curium). Respondent submits that the transcript of Applicant's guilty plea, in addition to Counsel's testimony at the PCR hearing, is conclusive in this regard. Both reveal that Applicant bore a *reasonable degree of rational* understanding when he entered his plea.

Here, Counsel testified that he should have had Applicant evaluated, but that Applicant "was perfectly lucid at the times [he had] talked with him, and he appeared to understand what he was doing." When questioned whether he felt at any time in his conversations with Applicant

that a mental evaluation was necessary, Counsel stated that he did not, although everyone charged with a crime could use an evaluation. He testified again that he felt that he was "perfectly lucid" and that he was responsive to counsel in conversation, and that right before the plea, they had another conference. Counsel testified that he thinks "some favorable result would have been forthcoming" from the psychiatrist or psychologist that would have helped with regard to the *sentencing procedure*.

Applicant was not evaluated as part of this PCR proceeding, nor did he introduce any records to establish that he currently or previously lacked sufficient competency to stand trial. Applicant testified that he has been treated for bipolar disorder and had some developmental delays as a child. He testified it takes him longer to read and write. He testified he completed the ninth grade. Applicant's mother testified he is more childish than a normal child, in that, his mindset is a little slower than a regular child his age would be. She testified simply that she did not think he understood his conversations with Counsel about what was happening. She testified Applicant was receiving disability money for "ADHD" and bipolar disorders. This Court can only speculate as to what the results of a competency evaluation would have been because no reports of any kind were provided by Applicant. Applicant has not satisfied his burden of showing that Counsel was ineffective where Counsel has testified that Applicant was "perfectly lucid" and appeared to understand their discussions. In addition, Counsel stated the same at the guilty plea hearing, and Applicant told the plea judge that he did not suffer from any mental issues that affected his decision making and that he understood what was doing that day.

Applicant faced a pending charge in Laurens County that was dropped as a result of his plea. Counsel also testified that if he had been tried on both charges, he would have been faced with a two-strike situation. Meaning, Applicant pleaded guilty to two separate charges in two separate counties when he entered this plea. Had each county tried Applicant on each charge,

pursuant to S.C. Code Ann. §17-25-45(A), Applicant would have been eligible for a life without parole sentence if convicted in the second county. In light of these circumstances, and given that Applicant pleaded guilty to criminal sexual conduct ("CSC") first but was indicted for CSC first with a minor¹—a charge that carried much more severe consequences and sentencing range had Applicant gone to trial—there is no reasonable probability that but for the alleged error of counsel, Applicant would not have pleaded guilty but would have insisted on going to trial.

2. Involuntary Confession

At the PCR hearing, Applicant raised the allegation that his confession was involuntary and that Plea Counsel failed to advise him that he might have been able to challenge the voluntariness of the confession. Respondent submits that Applicant waived all challenges to the evidence by virtue of pleading guilty. See State v. Thomason, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) ("A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses."); State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) ("A court cannot hear testimony after accepting the plea to determine either the fact or degree of the defendant's guilt because the plea admits all the elements of the offense charged.").

Regardless, Respondent submits Applicant has made no showing that Counsel was ineffective in this regard. In general, "[i]n determining whether a defendant's will was overborne in a particular case, the court[s] [have] assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). The factors courts consider include (1) the youth of the accused, (2) his education and intelligence, (3) the lack of any advice to the accused regarding his constitutional rights, (4) the length of detention and whether questioning was prolonged or repeated, and (5) use of physical punishment including the deprivation of food

¹ S.C. Code Ann. §§ 16-3-652, and 16-3-655(A)(1).

or sleep. Schneckloth, 412 U.S. at 226-27 (collecting cases). However, none of these factors is determinative. Id. See also Moran v. Burbine, 475 U.S. 412, 421 (1986) (holding Miranda waiver must be voluntary "in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.").

Here, Applicant testified that he signed a waiver form when he spoke to police, yet denied they informed him of his constitutional rights. At the PCR hearing, the only evidence that was introduced to show that Applicant's confession was involuntary was provided by Applicant and his mother. That testimony consisted of statements that Applicant suffered from bipolar disorder and "ADHD," that his mindset is a little slower than a regular child. Applicant also testified that he was "under the influence" when he gave a statement to the police. He stated that he was "going to be on an ankle monitor" and that he was promised something in return for providing a statement, but did not expand. Applicant stated that he was "under the influence" that he was "really trying to get home." Applicant testified that he thought he would get a "little" prison time and that Counsel told him that he didn't think he was going to get much time. Applicant testified he gave the statement "because, basically, he said I was going to be on an ankle monitor." He stated he was just trying to get home that day. Applicant testified he thinks the interview took place at the Spartanburg County Sheriff's Department. Applicant did not indicate that he was subjected to any type of physical or mental punishment or deprivations in the interview. Though he indicated he was not told his rights, he stated he signed a waiver, and he stated he was able to read and write. He did not indicate that the interview lasted for any particular amount of time or that he did not understand what was happening. Applicant was at least seventeen when he gave the confession.

Counsel admitted he told Applicant's mother that not obtaining an evaluation "was negligent" on his part. He stated that the evaluation would have been done to determine if his

confession was voluntary. Counsel testified that it is now his belief that there are probably problems with the confession. However, Counsel never testified that he believed a Jackson v. Denno hearing would have been successful. Instead, he testified it would have been risky and that given Applicant was facing such a serious charge with dire sentencing consequences if convicted, it was in Applicant's best interest to plea. He testified it was Applicant's decision to plea. He testified that he thought he could have gotten Applicant ten years since he had no record, but never made any promises. Further, at the guilty plea hearing, Counsel stated to the judge that he had discussed all possible defenses with Applicant. Applicant agreed that he was satisfied with Counsel.

Applicant has not been evaluated and this Court can only speculate as to the results of such an evaluation. Further, education and intelligence are only one factor to be considered in determining the voluntariness of a statement and is not alone determinative. According, Respondent submits Applicant has failed to satisfy his burden of showing either deficiency or prejudice in this regard. For the same reasons stated above, Applicant has not shown that but for Counsel's alleged failure to consult him regarding the possibility of challenging his confession, he would not have pleaded guilty but would have insisted on going to trial. Furthermore, because Applicant has not shown a reason why he should be allowed to depart from the truth of his statements at the guilty plea hearing, Applicant waived this defense when he pleaded guilty.

3. Failure to investigate or adequately consult with Applicant

"So long as a defendant's attorney conducts a reasonable investigation, . . . his performance will not be deficient." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011)." In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Even if meetings with

Applicant were brief, "this fact alone is not indicative of inadequate trial preparation." Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) ("[B]revity of time spent in consultation, without more, does not establish that counsel was ineffective.")). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). To establish counsel failed to adequately prepare, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998).

Applicant testified that the victim in this case had Chlamydia, a sexually transmitted disease. However, according to the facts provided at the plea hearing, she also tested positive for genital warts, HPV, and Trichomoniasis. Applicant told the plea judge that those facts were true. PCR Counsel questioned Applicant about whether he had medical records to provide to Plea Counsel that he did not have Chlamydia, and Applicant stated "not at that time." Applicant testified he would have done so if he knew it was an issue. Applicant testified he did receive a copy of the results of the testing for Chlamydia.

Applicant testified that he believed another individual—his sister's boyfriend—was responsible for the assault. He testified that to his knowledge the victim did not say Applicant did anything to her in the interviews directly and Counsel never discussed this with him. However, at the guilty plea hearing, the solicitor gave the facts of the case, which included facts that the victim had been interviewed by the CAC and had disclosed, in detail, that her Uncle had been dating her. She also made this disclosure earlier to her grandfather. She also indicated that she had watched her uncle date her cousin in Laurens County, and this second victim did test

positive for the same STDs. Applicant admitted he agreed with the facts that the solicitor presented at his guilty plea hearing. Applicant admitted he never said anything to the judge about the fact he thought someone else was responsible for the charges. Applicant testified he never told his lawyer that he thought someone else was responsible for the charges. Applicant indicated at his guilty plea that he was satisfied with counsel and that they had sufficient time to discuss his case. Counsel also indicated to the plea judge that he had reviewed the case with applicant including the nature of the charges and any defenses. In addition, Applicant admitted the facts were true at the guilty plea.

Counsel testified the State was going forward with CSC first with a minor, which carries a mandatory minimum of 25 years to life, if he had gone to trial. Counsel filed a motion for discovery, went through it, and felt the solicitor's office had provided complete discovery. His investigation was limited to reviewing the discovery. He testified he did not remember seeing that medical report at all. He stated if he had known about what was disclosed in the medical report, that would cast a different light on the case. He stated if it was in discovery he overlooked it, but denied that it was in what he had. Though at the hearing he stated that he did not really go over the discovery with Applicant and that he did not have the paperwork when they met, at the guilty plea hearing, he told the plea judge he had reviewed the case with Applicant including any defenses. Counsel testified at the PCR hearing that though he and Applicant did not review the victim's videotaped CAC interview together, Counsel reviewed it. He did not remember Applicant ever telling him that someone else might have been responsible. However, he then stated he knew there was another alleged perpetrator, but stressed that Applicant had confessed. Counsel also reviewed the victim's forensic assessment summary, in which she disclosed that this other person had repeatedly sexually assaulted her.

Counsel testified that a Jackson v. Denno hearing might have been successful, but that he did not want to take that risk considering the mandatory 25 years, and that the two qualified for a two-strike situation. He said going to trial was "too dangerous." Counsel testified that it was Applicant's decision to plead guilty. Counsel further testified that based on his review of the discovery, his forty-four years of experience as an attorney, and his discussions with Applicant, that he still felt it was in Applicant's best interest to plead guilty.

Respondent submits that Applicant has failed to show deficiency or prejudice. The PCR Order overlooks the fact that there was overwhelming evidence against Applicant despite the allegation that there may have been another man who had also abused the victim. Applicant gave a statement admitting he had assaulted the victim. The victim disclosed to her grandfather and to CAC that her Uncle had been dating her, and provided details of the assaults. She had also disclosed she had watched her uncle date her cousin in a different county, and an examination had revealed that child had the same infections that the victim in this case did. Regardless, this attack as to the sufficiency of the evidence should be denied because Applicant waived his right to challenge the evidence when he pleaded guilty. See State v. Thomason, 341 S.C. at 526, 534 S.E.2d at 710 ("A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses."). Accordingly, Applicant's allegation that he is actually innocent because he tested negatively for Chlamydia and because there was allegedly some other man that was responsible, is without merit.

Respondent submits Applicant has failed to show prejudice. Applicant testified that the information regarding the third party and the results of his test were included in discovery. The test was done in February of 2012, and the offense occurred between April and May of 2011. Furthermore, the victim had multiple other infections. The evidence at the PCR hearing was that Applicant did not have one of those infections many months after the offense occurred.

Applicant did not establish that such an infection could not have been eradicated through treatment in that time span. Counsel testified he was aware of the alleged other perpetrator. Notably, no connection was made between this alleged third person and the second victim. The State still had the victim's CAC interviews and would presumably have presented her testimony at trial. The victim had also been evaluated by a sexual abuse pediatrician. Counsel testified and the plea transcript reflects that as part of the plea deal, Laurens County agreed to drop the charge with respect to the other victim. In light of this evidence and in addition to the severity of the CSC first with a minor conviction as discussed above, Respondent submits Applicant has failed to satisfy his burden of proving that but for this alleged error, he would not have pleaded guilty.

II.

Lastly, Respondent respectfully asks this Court to amend factual inaccuracies in the Order. First, the Order indicates that the Court had before it the entire case file. However, the Court only had before it the guilty plea transcript, Applicant's records from the Spartanburg County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings.

Second, the Order states Counsel "admitted his representation was constitutionally deficient and that he made the following errors. . . ." However, Respondent submits that Counsel did not admit to constitutionally deficient performance or error. He stated "perhaps" he was "not diligent enough" in several aspects, but this does not rise to the level of an admission that his performance was constitutionally deficient. Constitutionally deficient performance consists of two elements and must be determined by the finder of fact. See Strickland, 466 U.S. at 688 (holding an applicant must prove both that counsel's performance was deficient and that such deficient performance prejudiced him). While Counsel did state, with respect to not ordering a psychological evaluation, that he agreed that he thought a reasonable attorney would have gotten

an evaluation done and that he told Applicant's mother that he was "negligent" for not doing so, this again, does not constitute an admission of constitutionally deficient conduct. Applicant must prove that conduct was deficient *and that he was prejudiced* by such deficiency to show Counsel rendered constitutionally ineffective assistance. Counsel did not concede prejudice. Furthermore, even if Counsel did concede he was "negligent," the determination of whether that performance was constitutionally deficient is left to the PCR judge. Therefore, Respondent submits that the Order misrepresents Counsel's testimony from the PCR hearing, and requests that this Court amend its Order.

III.

WHEREFORE, Respondent respectfully requests the Court reconsider its ruling for the foregoing reasons.

Respectfully submitted,

ALAN WILSON
Attorney General

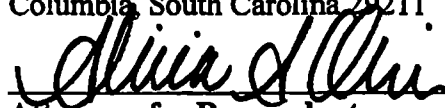
JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General
Bar No. 102089

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

By:


Attorneys for Respondent

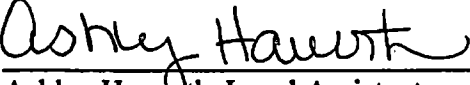
July 8, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-42-2792
BRANDON HARLEY EATON, #356444,	)	
	)	
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 Judgment** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
Brandt Rucker Attorney At Law
522 North Church Street
Greenville, SC 29601

DATED this 8th day of July, 2016.



 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-42-2792
Brandon Harley Eaton, #356444	)	
	)	
Applicant,	)	
	)	AMENDED ORDER GRANTING
v.	)	RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

This matter came before the Court by way of an Application for Post-Conviction Relief (PCR). The Applicant is represented by Brandt Rucker, Esq. The State of South Carolina was represented by Assistant Attorney General Alicia Olive. The Applicant is currently serving two twenty year concurrent sentences in the South Carolina Department of Corrections pursuant to a guilty plea.

A hearing was held on January 12, 2016. The Applicant appeared and testified. The applicant's former attorney, Geddes Anderson, Esq., appeared and also gave testimony. The Court reviewed the entire case file, including the plea transcript, and heard the testimony of all parties and witnesses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the February 2012 term of the Spartanburg County Grand Jury for criminal sexual conduct, first degree. (2012-GS-42-0798) The Applicant was

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SPARTANBURG COUNTY

also indicted at the August 2013 term of the Laurens County Grand Jury for criminal sexual conduct with a minor, first degree (2013-GS-30-1428). The applicant waived venue for the Laurens County charge, and consented to pleading guilty in Spartanburg County in order to plead to both the Laurens County charge and the Spartanburg County charge at the same time. The applicant waived presentment and pled guilty to two counts of criminal sexual conduct, first degree before the Honorable Roger L. Couch. The applicant was sentenced by Judge Couch to concurrent terms of twenty (20) years. The applicant did not appeal his convictions or sentences. Of note, the applicant has also filed an application in Laurens County for post-conviction relief. (2013-CP-30-0789) arising from this guilty plea.

This court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has had the opportunity to weigh the testimony of the witnesses, review the transcript, and review and weigh the evidence in this case pursuant to S.C. Code Ann. § 17-27-80 (2003). This Court previously ordered that relief should be granted to the Applicant. Respondent made a Motion pursuant to Rule 59(e), SCRPC, on July 8, 2016, to reconsider, alter, or amend the judgment, and the Court granted the motion to make specific findings as to each allegation raised at the evidentiary hearing, to-wit: (1) failing to request a competency evaluation; (2) failing to adequately investigate and to adequately consult with Applicant; (3) failing to advise Applicant that his confession could have been challenged in a pretrial Jackson v. Denno hearing.

The Applicant alleges he received ineffective assistance of counsel. For applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing

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professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052). Additionally, in a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

The Applicant presented evidence through his testimony, his mother's testimony, and exhibits. The State of South Carolina called Mr. Anderson in response. Mr. Anderson admitted that his representation was constitutionally deficient, and that he made the following errors in his representation: he failed to properly research the applicable law, he failed to properly investigate the facts of the case including a potential third person who may have committed the crimes and a dubious confession of the applicant, and that he failed to have the applicant evaluated because of the applicant's diminished capacity. Mr. Anderson also failed to conduct proper discovery and review it with his client.

The Court has reviewed the allegations of the Applicant thoroughly and finds that Mr. Anderson's representation failed to meet the standard required under Strickland and that he failed to render reasonably effective assistance regarding the guilty plea. The Applicant has met his burden of proof regarding his claim that trial counsel was

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ineffective in failing adequately represent the applicant in his guilty pleas.

A guilty plea defendant is also entitled to the effective assistance of plea counsel. Hill v. Lockhart, 474 U.S. 52, 58 (1985); Hyman v. State, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012). The two-prong Strickland analysis applies to PCR claims alleging plea counsel was ineffective. Hill, 474 U.S. at 58. "In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and intelligently entered." Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). To show prejudice, a guilty plea defendant must establish there is a reasonable probability that, but for plea counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 58-60; Hyman, 397 S.C. at 43, 723 S.E.2d at 379. The prejudice prong "focuses on whether [plea] counsel's constitutionally ineffective performance affected the outcome of the plea process." Taylor, 404 S.C. at 360, 745 S.E.2d at 102. "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

In reviewing the guilty plea, it is clear that the applicant's education level is limited. Based on the transcript, and the testimony of the applicant, there are real questions about his mental capacity. Because of the seriousness of the crime, and the applicant's uniformly acknowledged limited mental capacity, a reasonable attorney would have asked for a mental evaluation in this case. The results of the mental evaluation could have affected the outcome of the plea. Additionally, Mr. Anderson testified that he failed to review the forensic evaluation and videos with the applicant, and failed to investigate the alleged confession of the applicant, and failed to inform the

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applicant of the potential suppression of that statement to police.

Additionally, allegations were made against another suspect, and it appears from the testimony at the PCR hearing that there may have been problems with the alleged victim's statements, including outright contradictions. Mr. Anderson never informed the Applicant about these issues. Mr. Anderson's testimony and the applicant's testimony create true concerns regarding the alleged confession and give rise to real questions regarding the voluntariness of the alleged confession as well as whether that alleged confession was taken under undue duress. None of this was properly investigated by Mr. Anderson. Mr. Anderson also failed to inform the Applicant that he could challenge the admissibility of the alleged confession. The guilty plea does not appear to be free, voluntary and with advice of competent counsel. There is a likely possibility that had the applicant been evaluated and been fully informed of the implications of the discovery that he would not have gone forward with this plea. Counsel's errors lead directly to the guilty pleas in this matter. Clearly, counsel's representation was constitutionally insufficient, and led to undue prejudice for the applicant. The applicant has met his burden and the case must be remanded for a new trial.

CONCLUSION

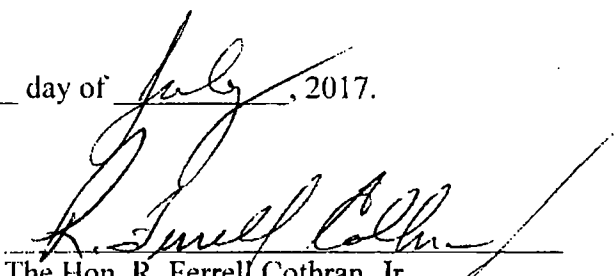
Based on the foregoing, the Court finds and concludes the applicant has met his burden, and that this case must be remanded for a new trial.

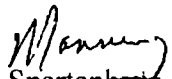
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IT IS THEREFORE ORDERED:

1. The applicant's current sentence should be vacated and the matter should be remanded for a new trial.

AND IT IS SO ORDERED this 11 day of July, 2017.


The Hon. R. Ferrell Cothran, Jr.
Presiding Judge, Seventh Judicial Circuit


Spartanburg, SC

Date: 7-11-17

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H. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
Brandon Harley Eaton, #356444)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2014-CP-42-2792

**ORDER GRANTING
RELIEF**

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter came before the Court by way of an Application for Post-Conviction Relief (PCR). The Applicant is represented by Brandt Rucker, Esq. The State of South Carolina was represented by Assistant Attorney General Alicia Olive. The Applicant is currently serving two twenty year concurrent sentences in the South Carolina Department of Corrections pursuant to a guilty plea. Of note, the

A hearing was held on January 12, 2016. The Applicant appeared and testified. The applicant's former attorney, Geddes Anderson, Esq., appeared and also gave testimony. The Court reviewed the entire case file, including the plea transcript, and heard the testimony of all parties and witnesses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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also indicted at the August 2013 term of the Laurens County Grand Jury for criminal sexual conduct with a minor, first degree (2013-GS-30-1428). The applicant waived venue for the Laurens County charge, and consented to pleading guilty in Spartanburg County in order to plead to both the Laurens County charge and the Spartanburg County charge at the same time. The applicant waived presentment and pled guilty to two counts of criminal sexual conduct, first degree before the Honorable Roger L. Couch. The applicant was sentenced by Judge Couch to concurrent terms of twenty (20) years. The applicant did not appeal his convictions or sentences. Of note, the applicant has also filed an application in Laurens County for post-conviction relief. (2013-CP-30-0789) arising from this guilty plea.

This court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has had the opportunity to weigh the testimony of the witnesses, review the transcript, and review and weigh the evidence in this case pursuant to S.C. Code Ann. § 17-27-80 (2003).

The Applicant alleges he received ineffective assistance of counsel. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable

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probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052). Additionally, in a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

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The Court has reviewed the allegations of the Applicant thoroughly and finds that Mr. Anderson’s representation failed to meet the standard required under Strickland in that he failed to render reasonably effective assistance regarding the guilty plea. The Applicant has met his burden of proof regarding his claim that trial counsel was ineffective in failing adequately represent the applicant in his guilty pleas.

A guilty plea defendant is also entitled to the effective assistance of plea counsel. Hill v. Lockhart, 474 U.S. 52, 58 (1985); Hyman v. State, 397 S.C. 35, 43, 723 S.E.2d 375, 379 (2012). The two-prong Strickland analysis applies to PCR claims alleging plea counsel was ineffective. Hill, 474 U.S. at 58. "In the context of a guilty plea, the deficiency prong inquiry turns on whether the plea was voluntarily, knowingly, and

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SPARTANBURG COUNTY
MICHOE BLACKLEY

intelligently entered." Taylor v. State, 404 S.C. 350, 360, 745 S.E.2d 97, 102 (2013). To show prejudice, a guilty plea defendant must establish there is a reasonable probability that, but for plea counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill, 474 U.S. at 58-60; Hyman, 397 S.C. at 43, 723 S.E.2d at 379. The prejudice prong "focuses on whether [plea] counsel's constitutionally ineffective performance affected the outcome of the plea process." Taylor, 404 S.C. at 360, 745 S.E.2d at 102. "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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evaluated and been fully informed of the implications of his the discovery that he would not have gone forward with this plea. Counsel's errors lead directly to the guilty pleas in this matter. Clearly, counsel's representation was constitutionally insufficient, and led to undue prejudice for the applicant. The applicant has met his burden and the case must be remanded for a new trial.

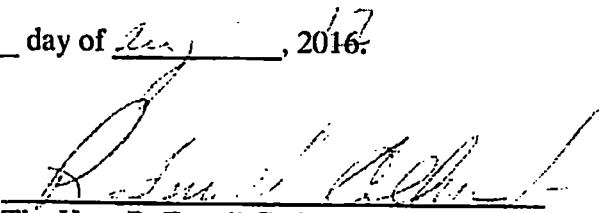
CONCLUSION

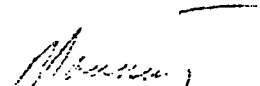
Based on the foregoing, the Court finds and concludes the applicant has met his burden, and that this case must be remanded for a new trial.

IT IS THEREFORE ORDERED:

1. The applicant's current sentence should be vacated and the matter should be remanded for a new trial.

AND IT IS SO ORDERED this 28 day of Aug, 2016.


 The Hon. R. Ferrell Cothran, Jr.
 Presiding Judge, Seventh Judicial Circuit


 Spartanburg, SC

Date: 8-25-17

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M. HOPE BLACKLEY